



Massachusetts Transgender Political Coalition

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Including gender identity and gender expression in college and university anti-discrimination protections and policies.

1. Question: What does this proposed policy do?

This policy would prohibit discrimination in employment, housing, and education on the basis of a person's gender identity or expression. The term "gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self image, gender-related appearance, or gender-related expression whether or not that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with one's sex at birth. In keeping with recent MCAD rulings (see Question 3), this ordinance would make it impermissible to discriminate against an individual simply because that person does not fit a narrow stereotype of what it means to be a "real man" or a "real woman."

2. Question: Why is this policy needed?

People on college campuses face serious discrimination on the basis of gender identity or gender expression, not only in the classroom, but also in housing, and or if the college is their workplace.

- People whose gender identity or expression that does not conform to stereotypes often face severe discrimination.
- Many people are denied equal treatment on college campuses in regards to education, housing, and bathrooms on the basis of gender identity or expression.
- Many transgender people are fired after their employers find out about their plan to undergo sex reassignment surgery or learn that they have already undergone such surgery.
- College and Universities should take a stand against this invidious gender-based discrimination. Everyone deserves to live, get an education, and work with equality and dignity. No one should lose their job or be denied an education, because of their gender identity or expression.

As Cambridge-based activist Nancy Nangeroni has said, "Everyone has a stake in gender freedom, not just trans[gender] people." Stereotypes about gender are harmful to all people. Extending the non-discrimination policies to cover "gender identity or expression" will benefit all people whose gender challenges traditional stereotypes.

3. Question: Isn't this kind of discrimination already illegal? Isn't it covered by sex discrimination laws?

The case law is not clear on this issue. Despite some recent court decisions to the contrary, many courts have found that laws prohibiting sex discrimination do not apply to transgender people. Because of these conflicting decisions, confusion abounds regarding whether current non-discrimination laws cover gender identity or expression. In October of 2001, the Massachusetts Commission Against Discrimination (MCAD), a state agency, handed down a decision in which it found that the sex discrimination statute in Massachusetts covers discrimination based on gender identity and expression. The MTPC completely supports the MCAD's interpretation and we encourage other agencies and courts to find likewise, but as the law currently stands, protection for gender identity and expression is not guaranteed. With the passage of this policy, college and universities would send a clear message to all students, administrators and faculty that all people are entitled to the full protection, regardless of their gender expression. Equally important, this policy would communicate to individual people that they have access to college and university redress for the discrimination they face. Policies and laws are intended to send clear messages. Amending your college and universities non-discrimination policies would clear up any confusion and send the message that discrimination is not tolerable.

4. Question: Why does this policy propose to add "gender identity or expression" as a new protected category rather than including protections in an expanded definition of "sex"?



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It is important to make "gender identity or expression" a separate category in order to underscore the point that gender identity and expression are of equal importance with other protected categories. In addition, it will be easier to educate the public about discrimination on the basis of gender identity or expression when language is clear and accessible. While many people may never read the complete college and universities policies, they will see the inclusion of "gender identity or expression" in widely distributed general policy statements listing all the bases on which it is against school policy to discriminate.

5. How many other colleges or universities have policies?

Currently there are 25 colleges and universities around the country that have a specific policy; Massachusetts Institute of Technology is one of them.

From MIT Nondiscrimination Policy

*The Massachusetts Institute of Technology is committed to the principle of equal opportunity in education and employment. The Institute does not discriminate against individuals on the basis of race, color, sex, sexual orientation, gender identity, religion, disability, age, veteran status, ancestry, or national or ethnic origin in the administration of its educational policies, admissions policies, employment policies, scholarship and loan programs, and other Institute administered programs and activities, but may favor US citizens or residents in admissions and financial aid.**

5. Question: Will this amendment encourage cross-dressing in the school or workplace?

Opposition to cross-dressing in the school or workplace is perhaps the most commonly voiced objection to codifying non-discrimination protection on the basis of gender identity or expression. However, 77 jurisdictions, consisting of millions of people, have already extended their local non-discrimination ordinances or statutes to cover gender identity or expression (see chart for a listing of the jurisdictions) and there is no evidence that such protection leads to any increase in the number of employees who cross-dress on the job.

- Employers in jurisdictions that have passed similar ordinances have not reported or complained of any such increase in cross-dressing, and human rights departments in those jurisdictions have not been inundated with complaints from cross-dressing employees. The City of Minneapolis has had a gender identity inclusive non-discrimination law since 1975, and there has been no influx of cross-dressers into the workplaces in that jurisdiction.
- Furthermore, employers would still be entitled to have reasonable, equitable dress codes at their places of employment.

6. Question: Does this mean that women will have to share bathrooms with men, and vice versa?

This policy will prevent requiring people to use bathrooms that do not correspond to their gender identity. It will not mean that women will have to share bathrooms with men. All people must have access to safe and dignified bathroom facilities, regardless of their gender identity or expression.

- The City of Boston ordinance addresses restrooms and other such facilities separated by sex by allowing individuals to use bathroom facilities based on the gender identity that they "publicly and exclusively assert or express." This language prevents employers and proprietors of public accommodations from requiring people to use bathrooms that do not correspond to their gender identity. It does not mean that men will be sharing bathrooms with women, or vice versa. Rather, the ordinance prevents the obvious disruptions that arise when people are required to use bathrooms inappropriate to their gender identity. Transgender people whom publicly and exclusively assert and express themselves as women belong in, and have the right to use, the women's restroom. Transgender people who publicly and exclusively assert and express themselves as men belong in, and have the right to use, the men's restroom.

Allowing individuals to use the restroom that corresponds with the gender identity that they "publicly and exclusively assert or express" makes sense. There is simply no legitimate way to do "anatomy checks" or "chromosomal checks" before determining who can use what restroom. Nothing in this ordinance alters an individual's reasonable privacy and



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safety expectations in restrooms. Legitimate safety concerns, of course, need to be addressed regardless of whom poses them. If a customer or patron complains, treat each party with respect and discretion.

Notably, in all of the other jurisdictions that have passed similar ordinances, there has not been a single reported case of men in the women's room. All people must have access to safe and dignified bathroom facilities, regardless of their gender identity or expression. Proprietors of public accommodations have an obligation to make restroom facilities safe for all people. However, we cannot let legitimate safety concerns become a proxy for bias and prejudice.

- What the policy will do is prevent the obvious disruptions and problems that arise when people are required to use bathrooms inappropriate to their gender identity, (for example, when transgender women are forced to share bathrooms with men, or transgender men are forced to share bathrooms with women). This policy simply will allow individuals to use bathroom facilities based on the gender identity that they "publicly and exclusively assert or express." By adding this language, this policy will help resolve awkward bathroom situations, not create them.
- Allowing individuals to use the restroom that corresponds with the gender identity that they "publicly and exclusively assert or express" makes sense. There is simply no legitimate way to do "anatomy checks" or "chromosomal checks" before determining who can use what restroom.
- Nothing in this policy would alter an individual's reasonable privacy and safety expectations in restrooms. Legitimate safety concerns, of course, need to be addressed regardless of whom poses them. Colleges and universities have an obligation to make restroom facilities safe for all people. However, we cannot let legitimate safety concerns become a proxy for bias and prejudice.

7. Question: Would my college or university be going out on a limb here? Is our school going to be the first to adopt this kind of law?

In enacting this proposed policy, your school will join a growing number of local and state colleges, workplaces and governments that have already enacted such protections. As of April 2005, 77 jurisdictions in the U.S. have passed non-discrimination laws or ordinances that protect people on the basis of gender identity or expression (see chart).

- Civil rights legislation protecting gender identity and expression has passed in jurisdictions as varied as Pittsburgh, Seattle, Louisville, New York, Philadelphia, Cambridge, and Dallas. The state of Minnesota added gender-inclusive language to its human rights law in 1993, state of Rhode Island in 2001, and Maine in 2005.
- Lucent Technologies, American Airlines, Eastman Kodak, Walgreen's, Xerox, Apple Computers and J.P. Morgan Chase have adopted non-discrimination policies that protect transgender people. Many other businesses, both big and small, have also added gender identity and expression to their equal opportunity policies.
- Colleges and Universities with Non-Discrimination Policies that Include Gender Identity/Expression: American University, Arizona State University, Brown University, Central Washington University, City University of New York, DePauw University, Golden Gate University School of Law, Kalamazoo College, Knox College, Lehigh University, Massachusetts Institute of Technology, Middlebury College, Ohio State University, Rockport College, Maine, Rutgers University, Syracuse University, University of California, University of Iowa, University of New Hampshire, University of Oregon, University of Pennsylvania, University of Puget Sound, University of Washington, University of Wisconsin, Wesleyan University