



## **Response to call for input re: freedom of belief and sexual orientation/gender identity**

We are LHB-förbundet, an organisation for lesbians, gay men and bisexuals in Sweden, that seeks to reassert the definition of homosexuality as same-sex attraction and the right to organise separately as same-sex attracted individuals. We send this input to make the point that freedom of religion or belief is important to us as a duty to equality and human rights.

We appreciate that the goal of this work, as outlined on your website, is to “provide legal and political narratives to shift away from zero-sum analysis and to reconcile the theoretical bases for due enjoyment of human rights by all persons”, and are hopeful that your work will provide a step away from positioning and toward examining the interests that individual groups may have. This is also our reasoning for arguing against the routine homogenization of sexual orientation and gender identity into one group (“SOGI”), as we regard that as inadequate for preserving the interests of various groups.

We will focus on a selection of the questions, namely the ones focusing on:

1. points of tension between (and within) SOGI and FOrB,
2. discrimination against LGB people caused by unduly privileging gender identity belief,
3. discrimination against religious people caused by unduly privileging gender identity belief,
4. the question of spiritual abuse/conversion therapy.

### **1 Points of tension: our perspective**

The first question in the questionnaire is:

”What are the actual or perceived points of tension (if any) between the right to manifest one’s freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity? Are there any areas in which they are mutually exclusive?”

We would like to broaden this question, focusing not only on tension between SOGI and FoRB, but also tensions within the "SOGI" grouping, and clarify ways in which freedom of belief is important to us.

We view gender identity as a belief that people have a right to hold but no right to force others to pledge allegiance to. Many LGB people regard their orientation as based on sex and not on gender identity. For them, belief in gender identity and protection of sexual orientation are mutually exclusive.

The rights to freedom of belief, expression and assembly are central to us as LGB people. Pitting FoRB and SOGI against each other is to create a false opposition. To quote Peter Daly (legal counsel for Maya Forstater, more on her case below):

"A significant portion of lesbian, gay, or bisexual people are very clear that they are same-sex (and not same-gender) attracted. For many, their sexual orientation is therefore incompatible with a belief in gender theory. Being gender critical is therefore a fundamental aspect of their sexual orientation, and therefore their identity.

An insistence on the primacy of same-gender attraction can lead, for example, to lesbians being accused of transphobia for stating that they are not sexually attracted to males. Proponents of the Cotton Ceiling (for an explanation of this term, google it) might now be less vocal.

For gender critical gays and lesbians, the insistence of homosexuality as same-gender attraction can be seen as unvarnished, base homophobia of the type that even five years ago was thought defeated, exempt within the most reactionary and bigoted corners of society.

It is compounded when done in the name of LGBTQ rights: interpreted as being sold a version of your own sexuality which simultaneously erases your sexuality. A rejection of such an interpretation of gender theory is an aspect of gender critical belief, and it is established as a protected belief by this judgement.

There is an urgent need now to question the wisdom of grouping all LGBT people together as a homogenous single group, classified and defined solely by reference to gender theory. For gender critical gays and lesbians, transgender status is a wholly different category of characteristic from sexual orientation.

The legal right (indeed necessity) of same-sex attracted people to organize together is underlined by this judgement. This is not to say that a gender critical LGB identity is anti-trans: outside of gender theory, sexual orientation and trans status are separate categories of identity.

It is only by homogenizing a single and exclusive LGBTQ identity through gender theory that an LGB identity can be interpreted as anti-trans.”<sup>1</sup>

## 2 Gender identity belief is used to discriminate against homosexuals and bisexuals

In Tasmania, the anti-discrimination commissioner has ruled that women organising lesbian-only events could be breaking the law, if they want to gather based on sex and not on self-identified gender.<sup>2</sup> The idea is that these women are discriminating against male people who identify as women if they do not respect their belief in gender identity surpassing sex. However, this is an imposition on the women’s freedom of belief; they are forced by the state to believe, or pretend to believe, that these males have an equal right to lesbian-only spaces. This is an attack on freedom of association and freedom of expression. We would argue that freedom of religion or belief importantly includes the freedom from coercion. If the state imposes belief in gender identity, or participation in rituals and behaviors suggesting such a shared belief, said state fails to protect freedom of religion.

A notable legal challenge to enforced belief in gender identity is the judgement in *Forstater v. Garden Court Chambers*, which ruled that the belief that sex is immutable and important is protected under the Equality Act 2010. The question of whether the same applies in, for example, EU legislation will have to be tested in court. Some countries, like Sweden, specify in their anti-discrimination legislation that religion as a protected characteristic applies to religion only, not belief more broadly.

## 3 Sex matters for the religious

In Sweden there is a case of a teacher, Selma Gamaleldin, who was fired for refusing to use a pupil’s chosen pronouns. In our view, Gamaleldin has been discriminated against on the grounds of religion or other belief, as the demand on her is to deny her own religion and be forced by her workplace to participate in another belief system. The discrimination ombudsman told the school to pay damages to the pupil for supposed discrimination on the basis of gender identity. (The protected characteristic in Swedish law is “gender nonconforming identity or expression”;

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<sup>1</sup><https://www.linkedin.com/pulse/forstater-judgment-what-next-peter-daly>

<sup>2</sup>Matthew Denholm, ”Bid to exclude ‘people with penises’ from lesbian events ‘unlawful’”, The Australian. Archive link: <https://archive.ph/vbbQQ>

which DO reinterprets as “gender identity or expression”. We oppose such ideologically driven reinterpretations of the law. This is reminiscent of how Stonewall in the UK has given legal advice that contradicts UK law, in which they reinterpret the protected characteristic of “gender reassignment” to “gender identity” and in turn conflate this with the separate protected characteristic of “sex”.)

Another area where belief in gender identity has to be balanced with religious beliefs is the issue of single-sex spaces and services. For many religious as well as non-religious people, single-sex spaces are necessary for full participation in public life. Accommodations such as redefining single-sex changing rooms, spas, hospital wards etc. to segregate on the basis of self-identified gender rather than sex, exclude some religious people from public life. People from faith communities that require sex separation in some circumstances need to be accommodated to ensure their full inclusion in public life. For example, women-only swimming sessions ensure that Orthodox Jewish and conservative Muslim women can obey the dictates of their faith while getting exercise. As many of these women will simply self-exclude from these services if they become mixed-sex, data collection is difficult.<sup>3 4</sup>

## 4 A note on conversion therapy

The phrase “conversion therapy” has, until recently, been used to mean attempts to make homosexual people heterosexual, such as surgical intervention (lobotomy, clitoridectomy etc.), electric shocks, drugs or hormone treatment. More recently, LGBTQ organisations and the UN Independent Expert on Sexual Orientation and Gender Identity have conflated conversion of homosexuals with an entirely different concept, namely conversion of gender identity. There is little research on conversion of gender identity, and we regard it as unnecessary and potentially damaging to include gender identity conversion when discussing sexual orientation

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<sup>3</sup>For further reading on the needs of various religious communities for single-sex services, we recommend “Why single-sex services matter: privacy, dignity, safety and choice”, pages 58-59. <https://sex-matters.org/wp-content/uploads/2022/07/Single-sex-services-full-report.pdf>

<sup>4</sup>Reem Alsalem, UN Special Rapporteur on Violence Against Women, also notes this in her letter to the Scottish Government in November 2022. She points out that “The International Covenant on Civil and Political Rights (ICCPR) guarantees freedom of religion or belief under international law. Furthermore, article 18 of the Universal Declaration of Human Rights adopted in 1948 states that “everyone has the right to freedom of thought, conscience and religion”. Furthermore, and according to international human rights law, the obligation to fulfil human rights means that States must take positive action to facilitate the enjoyment of basic human rights. It is also recognized that substantive equality may require positive action by the State to address the specific disadvantage and needs of women, in this case migrant women and women belonging to certain minorities who may already be facing high barriers that prevent them from reaching out and approaching services and spaces for victims of violence.”

conversion, as these are separate concepts.<sup>5</sup>

It is remarkable that several of the methods that have been used to convert homosexuals (surgical and hormonal treatments) are promoted as necessary for transgender individuals. In this new paradigm, conversion of gender identity is the refusal of the same treatments that are universally condemned in conversion of homosexuals. Ironically, the transgender individuals subjected to these invasive treatments are often homosexual (with regards to birth sex).

We are deeply concerned that laws against conversion therapy might render all treatment methods that do not conform to the so-called affirmative model unlawful. There are alternative methods of working with gender dysphoria to the poorly evidenced and irreversible medical protocol. These include as Dr. Az Ha-keem's group therapy<sup>6</sup> and the organisation GETA's clinical guide for therapists<sup>7</sup>. Methods like these could be wrongfully banned as "conversion therapy", as could a parent's preference for watchful waiting over hormonal and surgical treatment or other harmful and potentially irreversible procedures such as "binding", "tucking" or changing legal gender. We view the affirmative model as a form of conversion of same-sex attracted youth, and firmly oppose legislation that bans conversion therapy in name but prescribes it in practise.

## Concluding remarks

Freedom of belief, expression and association are fundamental human rights in an open, democratic society, and as such underpin all LGBT+ rights. Freedom of belief importantly includes respecting the right of others to hold beliefs one does not agree with and might even find harmful or insulting. To undermine this freedom by legally imposing one belief system, such as the belief in gender identity enshrined in "SOGI", is a dangerous step toward totalitarianism. As LGB people we cannot support the fundamentally anti-democratic and illiberal mission of forced coalitions such as "LGBTQIA+" or "SOGI", or the shutting down of dissenting viewpoints. We strongly support freedom of belief, including the freedom from coercion.

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<sup>5</sup>In a recent report by Sweden's Agency for Youth and Civil Society, 5 percent of LGBTQ youth surveyed responded that they had been pressured in some way to not be LGBTQ. The responses that included medical "treatments", threats about forced marriage or some type of re-education travel were too low in number to produce statistically significant results. Link to the report (in Swedish): <https://www.mucl.se/publikationer/unga-hbtq-personers-utsatthet-omvandelseforsok-i-sverige>

<sup>6</sup><https://www.cambridge.org/core/journals/advances-in-psychiatric-treatment/article/psychotherapy-for-gender-identity-disorders/D10025B4A7EBBC2250E71EA6A12465F0>

<sup>7</sup><https://genderexploratory.com/clinical-guide/>.