

CQ State Report



Utah (!) Leads on LGBT Rights

Sure, it's a solid red state, but its anti-discrimination law is seen as a model

By **JONATHAN MILLER**

One day, not long ago, Steve Urquhart's teenage daughter came home from school and proudly announced that she was the new president of the Gay-Straight Alliance.

Father: "Oh? Tell me about that. What do we have to talk about?"

Daughter: "I'm not gay. I have a lot of friends that are." She went on to explain that she wanted the job because she was

worried about the bullying she saw inflicted on her non-straight friends.

That talk left its mark on Urquhart, a Republican state senator from Utah and a Mormon, who in 2015 helped lead the conservative state to forge an extraordinary compromise — signed by Republican Gov. Gary Herbert — that granted anti-discrimination protections for homosexuals and transgender individuals while at the same time providing accommodations for

religious institutions. Sen. Jim Dabakis, the only openly gay member of the Legislature, says he saw Urquhart and his fellow Republicans "evolve, change, open their hearts on the issues."

Urquhart, Dabakis and their fellow Utahns are now watching closely as states across the country are being torn inside-out over bills that many see as anti-LGBT. In North Carolina, the state's new law supersedes local anti-discrimination laws while also requiring people to use the public bathroom that corresponds to their biological sex at birth. On May 4, the U.S. Justice Department told the state that the law violates the Civil Rights Act of 1964 and would have until May 9 to "remedy these violations."

Mississippi passed a law in April that would allow religious institutions and businesses to deny services to gay and trans-

gender people. In April, Tennessee passed a law allowing professional counselors to refuse service based on religious beliefs.

Indeed, all those states have faced a furious backlash. In North Carolina, companies like PayPal and Deutsche Bank either canceled or scaled back plans for expansion. The National Basketball Association has threatened to move its 2017 All-Star Game out of Charlotte if changes to the law are not made. Bruce Springsteen canceled a concert. In Mississippi, General Electric, Coca-Cola, Northrop Grumman and Dow, among others, have called for the repeal of the law, saying it is "bad for our employees and bad for business."

None of that happened in Utah. Yes, deep red Utah, a state that in April officially declared

that pornography was creating a “public health crisis.” That’s because everyone was at the table: religious officials, lawmakers, LGBT leaders, businesses.

“At some point, red states will need to find solutions, and I think they’ll look to Utah,” Urquhart says.

It has been nearly a year since the law went into effect. A separate law also made accommodations for county clerks who did not want to issue same-sex marriage licenses. And for the most part, everyone across the state says it’s been crickets.

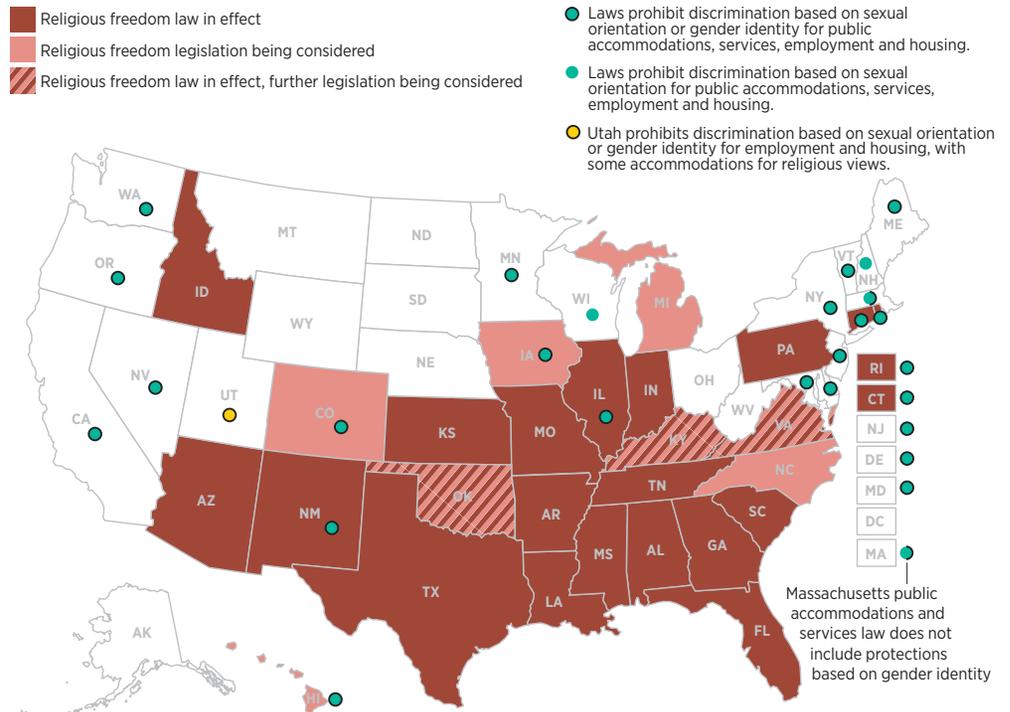
“It has generally been a non-event,” says Monica Whalen, Utah president of the Employers Council, an organization that provides legal advice to about 575 businesses in the state. “We have gotten a few phone calls, mainly about the bathroom issue, but that’s it.” The state requires employers to provide a “reasonable accommodation” for transgender people.

According to statistics compiled by the state, 18 claims of employment discrimination have been filed in the past year, with three currently active and the rest either dismissed or otherwise closed. Eight claims of housing discrimination were filed, with all but one closed for lack of evidence of discrimination. “If anything, I think we are a bit surprised at how few cases have been filed thus far,” says Alison Adams-Perlac, director of the Antidiscrimination and Labor Division at the Utah Labor Commission.

Across the country, states have introduced more than 100 bills this year dealing with everything from adoption to bathrooms, according to the American Civil Liberties Union. The flurry of bills follows the 2015 Supreme Court decision, *Obergefell v. Hodges*, granting

Expanding Bible Belt

Religious liberty laws have been passed across the South as well as in some Northern states, and more are being considered. Fewer than half the states have enacted LGBT anti-discrimination laws.



Sources: National Conference of State Legislatures, Human Rights Campaign
Ryan Kelly/CQ Roll Call

same-sex couples the right to marry. Some conservatives are fighting to get religious liberty laws established in states while also working to prevent LGBT anti-discrimination laws from getting enacted. Heritage Foundation scholar Ryan T. Anderson has written that the fight is akin to *Roe v. Wade*, and like that

landmark abortion decision, conservative groups should organize to change public opinion.

He also wrote that the new law in Mississippi, which did not provide anti-discrimination protections for LGBT people but did for those in the religious community, is perfectly reasonable and based on “the principle of

protecting minority rights after major social change.”

“Other states should follow Mississippi’s lead,” he wrote.

But people in Utah think such an approach is misguided. “Too often the battle lines have been drawn and the conversation is focused on the extremes,” says Michael Purdy, a spokesman for the Church of Jesus Christ of Latter-day Saints. “For too long we saw the discussion regarding religious freedom and LGBT rights develop into a zero-sum game. Someone had to lose for another to gain. We felt strongly that there was a better way.”

According to information compiled by the Human Rights Campaign, a group that advocates for LGBT protections, some 28 states have no anti-discrimination protections for gays



MISSISSIPPI REBELS: Human Rights Campaign president Chad Griffin protests state law.

Rogelio V. Solis/AP

and the transgendered. In all, 20 states prohibit discrimination in housing and employment based on sexual orientation and gender identity. Two states afford such protections for just sexual orientation.

Many experts think a federal solution will be needed eventually, and Congress has started kicking around proposals. Last month, House Democratic leadership urged Republicans to take up a stalled-out bill (HR 3185) introduced in 2015 that would afford sweeping protections for sexual orientation and gender identity in such areas as employment, housing, public access and education under the Civil Rights Act of 1964.

Democrats have attempted to pass an anti-discrimination employment bill for decades, but in the wake of the Supreme Court ruling they decided to aim higher. Nevertheless, the bill is almost certainly going nowhere in this Congress.

Whether the Utah approach can be replicated elsewhere is an open question. An unusual set of circumstances led to the historic bill. In early 2015 the Mormon Church, for reasons that are still unclear, softened its stance on anti-discrimination legislation, laying the groundwork for negotiations. On the other side were a group of dedicated activists who for years had advocated for anti-discrimination laws.

And yet, in the months since the legislation was passed and enacted, matters have frayed a bit. In December, the church announced that it would consider Mormons who entered into same-sex marriage to be apostates. Then in February, as Utah was debating a hate-crime bill sponsored by Urquhart, the church put out a statement suggesting that the

“careful balance” established in the 2015 bill was being upended. The Urquhart bill went down to defeat. Urquhart blamed the church and now says he is no longer a practicing Mormon, though he gives credit to the church for making an effort to support the 2015 law.

Despite the back-slapping in Utah, some national groups have criticized the bill and say that its carve-outs for religious beliefs go too far. Specifically, they point to provisions that would let, for example, a religiously affiliated employer — such as a hospital or a school — fire a worker for being married to a person of the same sex.

The bill does not provide so-called “public accommodation” — the bathroom provisions that have been a source of so much angst elsewhere were left out of the bill — and businesses with fewer than 15 employees are exempt from the LGBT anti-discrimination provisions. The Boy Scouts of America are also exempt, as are several dozen religious-based schools.

Still, for the first time, there are LGBT anti-discrimination protections in housing and employment. “That strikes me as a good deal,” says Robin Fretwell Wilson, a University of Illinois professor who helped write the Utah law. “It might not strike everybody that way.”

Dabakis says he is trying to get a public accommodation provision approved in the next session, but Wilson isn’t sure that’s going to fly. “Public accommodation is the sticky wicket in all of these states,” she says.

“It’s what’s going to stop states from making progress, and probably as well will stop the feds for a while from making progress,” Wilson says. ■



Norberto Duarte/AFP/Getty Images

Marijuana Bill Smoked by Worries Over Opioid Epidemic

WHAT HAPPENED? Vermont’s House of Representatives declined to make the state the first in the country to legalize the recreational use of marijuana via the legislative process, roundly rejecting two cannabis-related proposals on May 3.

WAIT. ISN’T VERMONT A LIBERAL NORTHEASTERN STATE? Turns out marijuana was a bridge too far, even for the state that sent Bernie Sanders to Washington. Despite winning Senate passage and getting the backing of Gov. Peter Shumlin and House Speaker Shap Smith — both Democrats — many in the Democratic-controlled House expressed skittishness about fighting an opioid drug addiction crisis while also legalizing pot. A more modest plan to allow home-growing lost in the House.

SO BACK TO THE DRAWING BOARD? Pretty much. The only thing proponents got out of their efforts was a commission to study the issue, with a proposal due by year’s end. And even if they try again next year, the law’s most visible proponent, Shumlin, won’t be in office. He has decided against seeking a fourth term.

SO THIS IS A BIG SETBACK FOR MARIJUANA ADVOCATES? Yes and no. The defeat marks the second time in six months that a legalization effort has failed — an Ohio voter initiative was overwhelmingly defeated last November. But four states and Washington, D.C., have already legalized and voters in at least five more states — Arizona, California, Maine, Massachusetts and Nevada — will decide on legalization issues in November.

— Jonathan Miller