

Transgender Rights in Hawai'i

What's Happening with Trump 2.0, State Protections, and Practical Concerns in the Healthcare Setting

April 29, 2025

Emily M. Hills, Senior Staff Attorney



The ACLU of Hawai'i

I. What is it?

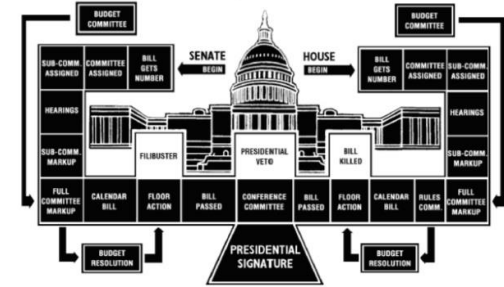
- Non-profit
- Non-partisan
- Civil rights / civil liberties watchdog

II. What does it do?

- Litigation
- Policy advocacy & lobbying
- Organizing
- Public education & press



How does a Bill become Law?



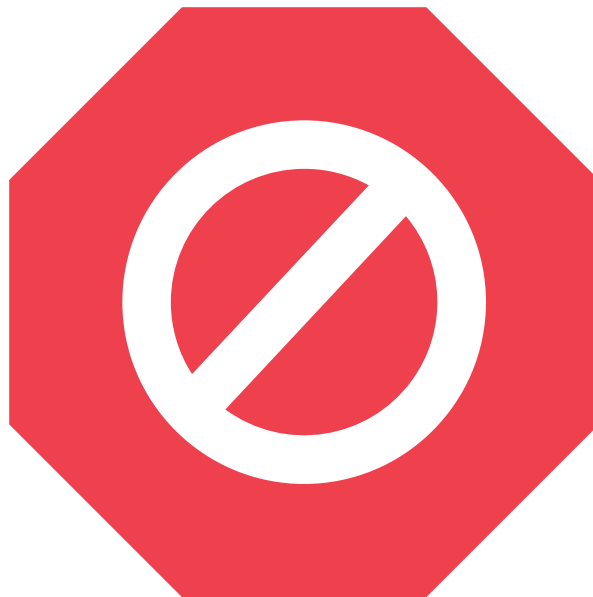
Today's Agenda

Transgender Rights in Hawai'i

1. Transgender 101
2. State rights of transgender individuals (mini Q&A)
3. What has (and hasn't) changed under Trump 2.0
4. Best practices for helping transgender patients
5. Q&A

Disclaimer

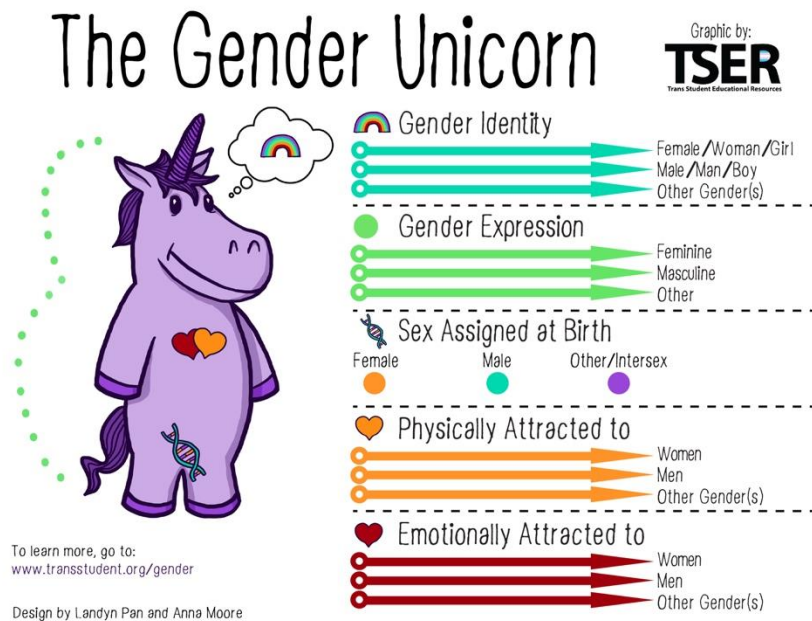
- I. This presentation is for information purposes, it is not legal advice
- II. Consult with a lawyer if you have specific questions about your (or a patient's) circumstances
- III. In this administration, policies and practices are changing quickly



What is gender identity?

Gender identity is one's own internal sense of self and their gender, whether that is man, woman, neither or both. Unlike gender expression, gender identity is not outwardly visible to others. (Yes, this is something that actually exists!)

Someone is **Transgender** when their gender identity is different from their assigned sex at birth.



Māhū

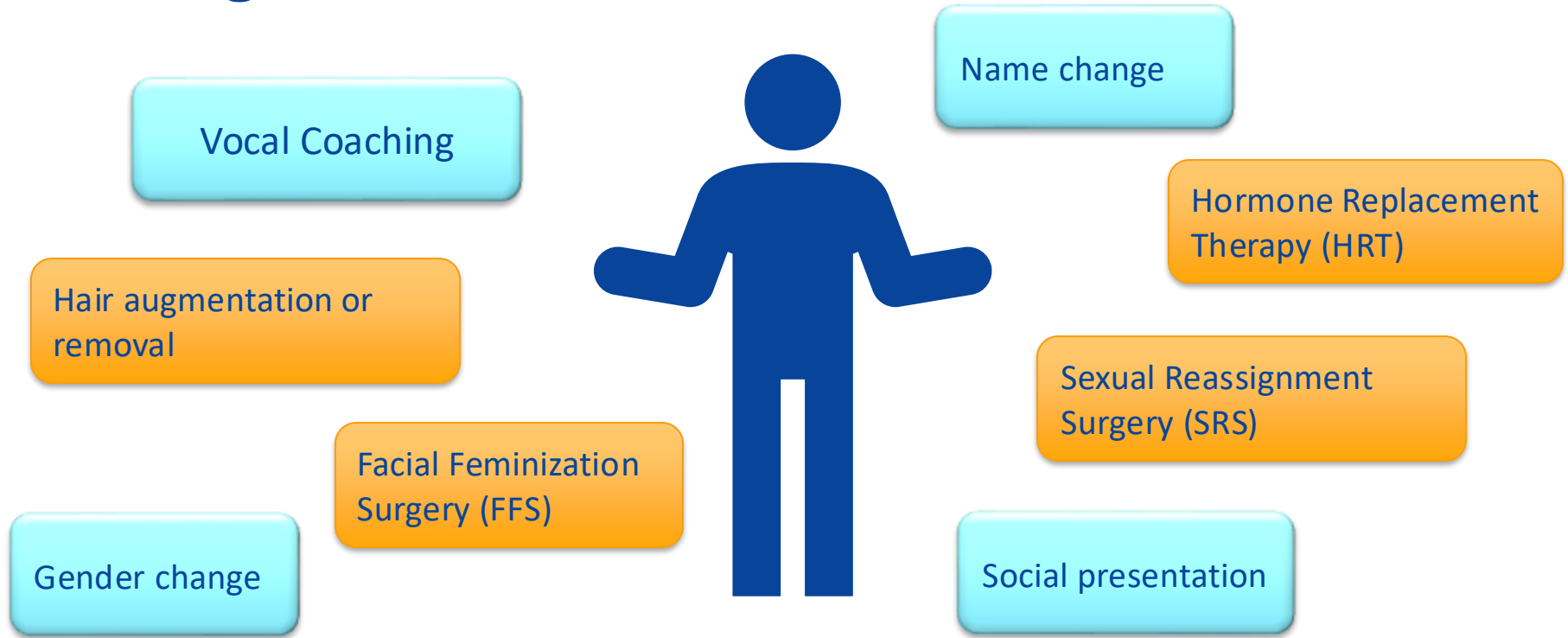
“My culture tells me that to be Māhū is nothing wrong. My culture tells me that to be Māhū is to understand that I hold an important space, but it is no greater or no less than Kāne or Wahine.”

- **The Meaning of Māhū,**

<https://outrightinternational.org/meaning-mahu>



Transgender ≠ Transition



Hawai'i DOH reports Healthcare Disparities

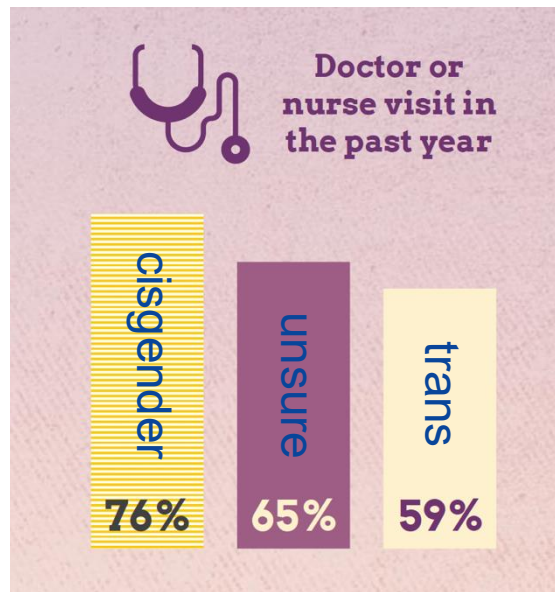
“[Transgender people] experience health disparities, including for indicators measuring access to healthcare, bullying, interpersonal violence, depression, suicidality, and substance use. Such health inequity is a significant public health concern.”

[HDOH Statement on Transgender Rights and Public Health](#)



Hawai'i DOH reports Healthcare Disparities

Youth data released in 2024



Healthcare Access

When seeking healthcare, SGM youth may be:

- Denied routine or relevant care (including hormone therapy)
- Treated harshly, harassed, or refused to be touched by providers
- Subject to excessive questioning or examination
- Referred to harmful healthcare practices such as conversion therapy

Promising Practices

In 2023, the American Academy of Pediatrics published [Inclusive and Affirming Care Strategies for Sexual and Gender Minority Patients](#)



[DOH, Sexual & Gender Minority Youth in Hawai'i: Health Highlights \(2017-2019\)](#)

**Sex/gender
discrimination**

Right to dignity

**Equal
protection**

Trans rights are civil rights.

**Right to personal
autonomy & Self-
determination**

**Right to Native
Hawaiian Cultural
Practices**

**Right to
privacy**

Freedom of Speech

**Federalism &
Self-Governance**

Hawai'i State Constitution

Hawai'i Constitution Article I, Section 3



Equality of rights
under the law shall
not be denied or
abridged by the
State on account of
sex.

Hawai'i Constitution Article I, Section 5

No person shall be deprived of life, liberty or property without due process of law, nor be denied the **equal protection** of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of . . . sex or ancestry.



“Because of Sex” = open constitutional question

“[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

Bostock v. Clayton Cnty., Georgia, 590 U.S. 644, 660 (2020)

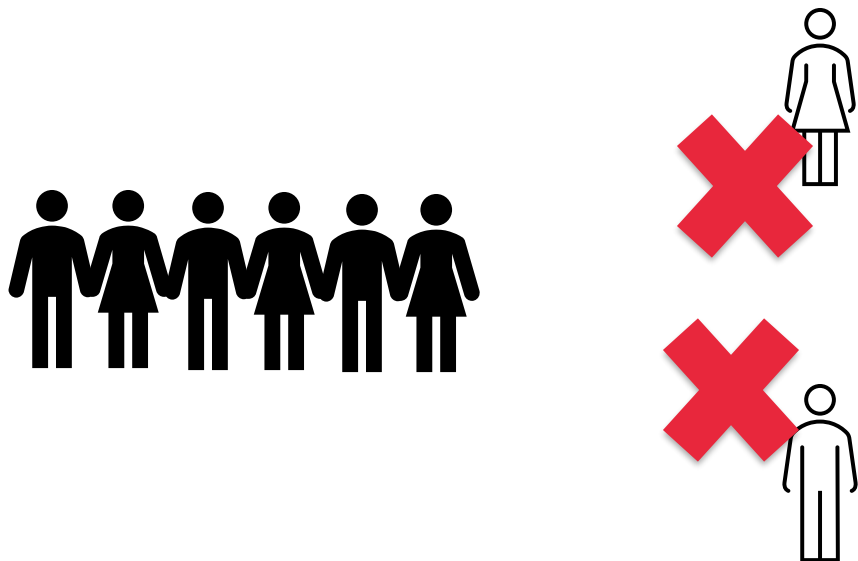
Note: this rule is in real danger at the Federal level, unclear what Federal rights will be re: Equal Protection, discrimination in education, etc.

Hawai'i State Statutes

HRS § 489-2: Gender Identity

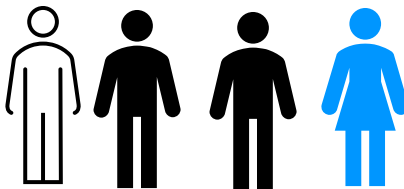
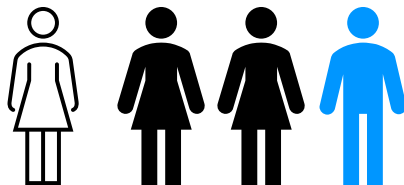
“Gender identity or expression” includes a person’s actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

Gender Identity Discrimination



Gender Identity Discrimination

Gender identity discrimination happens when a person is treated differently (worse) because their gender is different from their assigned sex at birth.



HRS § 378-2: No Employment Discrimination

Unlawful for employer to “to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment” because of “sex including gender identity or expression.”

HRS § 368D-1: No Educational Discrimination

“No person in the State, on the basis of sex, including gender identity or expression as defined in section 489-2, or sexual orientation as defined in section 489-2, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any covered educational program or activity.”

HRS § 489-3: Public Accommodations

“Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race; sex, including gender identity or expression; sexual orientation; color; religion; ancestry; or disability, including the use of a service animal, are prohibited.”

What is a place of “public accommodation”?

A comfort station; or a dispensary, clinic, **hospital**, convalescent home, or other institution for the infirm;

A professional office of a health care provider, as defined in section 323D-2, or other similar service establishment . . .

HRS § 489-2.



HRS § 431:10-A-118.3: Health Insurance



Health insurance providers “**shall [not] discriminate** with respect to participation and coverage under the policy, contract, plan, or agreement against any person on the basis of actual gender identity or perceived gender identity.”

HRS § 431:10-A-118.3: Health Insurance (cont'd)

Discrimination =

(4) Denying, canceling, or limiting coverage for services on the basis of actual gender identity or perceived gender identity, including but not limited to the following:

(A) Health care services related to gender transition; provided that there is coverage under the policy, contract, plan, or agreement for the services when the services are not related to gender transition; and

(B) Health care services that are ordinarily or exclusively available to individuals of any sex.

Questions so far?

Next up: What's happening at the federal level...



Okay, so what is happening with the Feds?

“Plastic straws are often replaced by paper straws, which are nonfunctional . . . It is therefore the policy of the United States to end the use of paper straws.”

Let's not
elevate the
degrading
language any
more than
necessary



(Obviously, this
should be a
governmental
priority...)

“Plastic straws are often replaced by paper straws, which are nonfunctional . . . It is therefore the policy of the United States to end the use of paper straws.”



(Obviously, this should be a governmental priority...)

“it is the policy of the United States that it will not fund, sponsor, promote, assist, or support the so-called “transition” of a child from one sex to another.”

“It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality.”

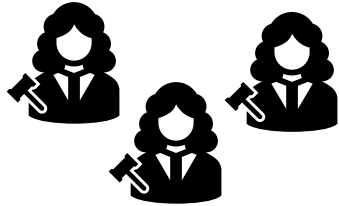


“gender ideology and discriminatory equity ideology”

“It shall . . . be the policy of the United States to oppose male competitive participation in women’s sports”

Erasing transgender
folks from society

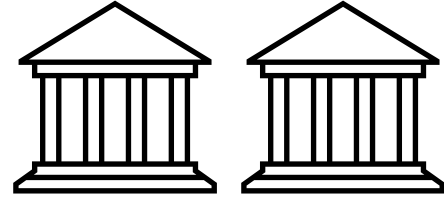
Three co-equal Branches of Government



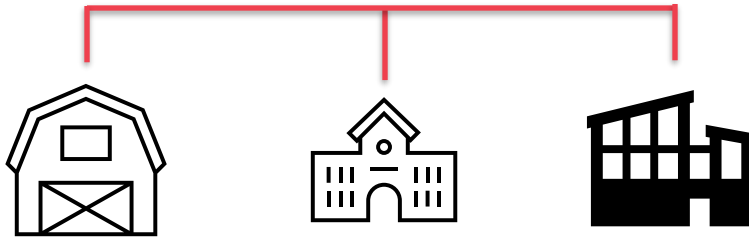
Courts



Executive
(a.k.a. President)



Legislature

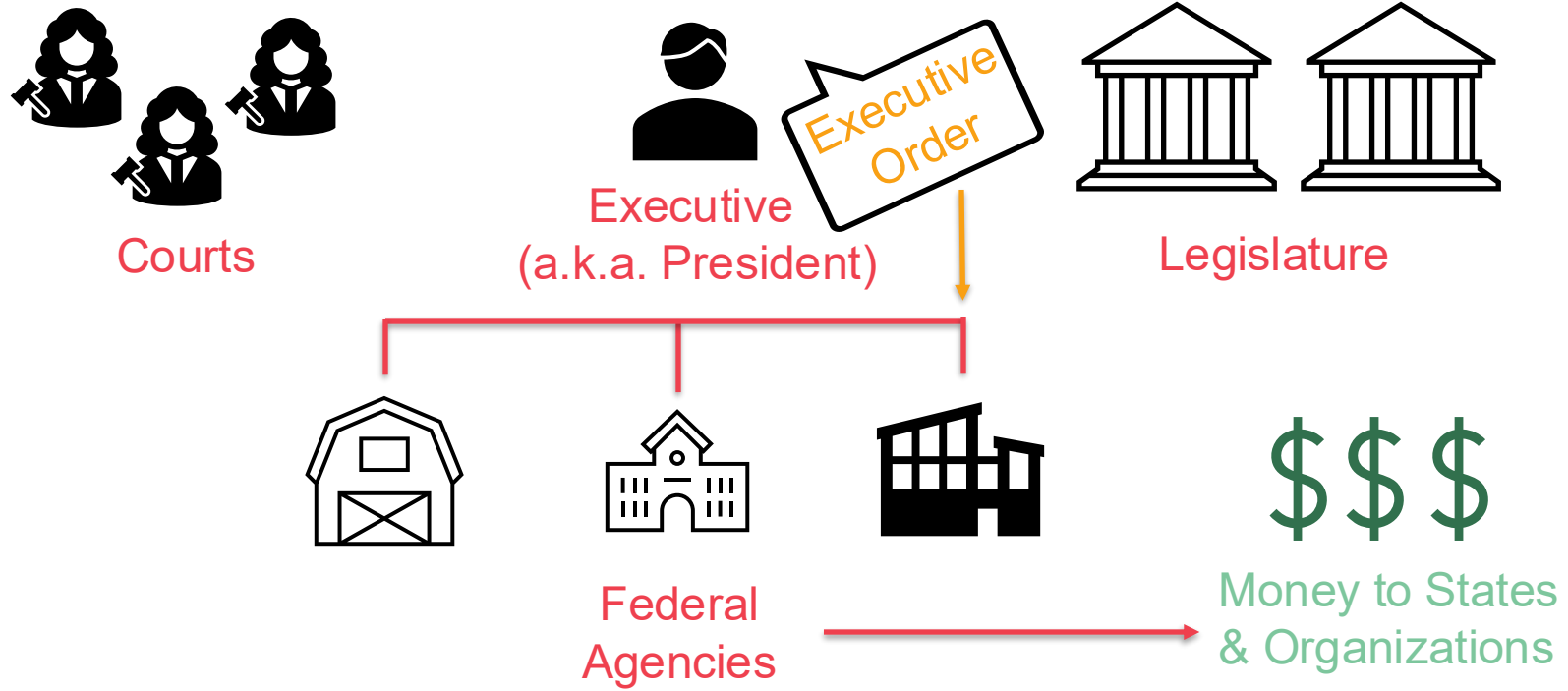


Federal
Agencies

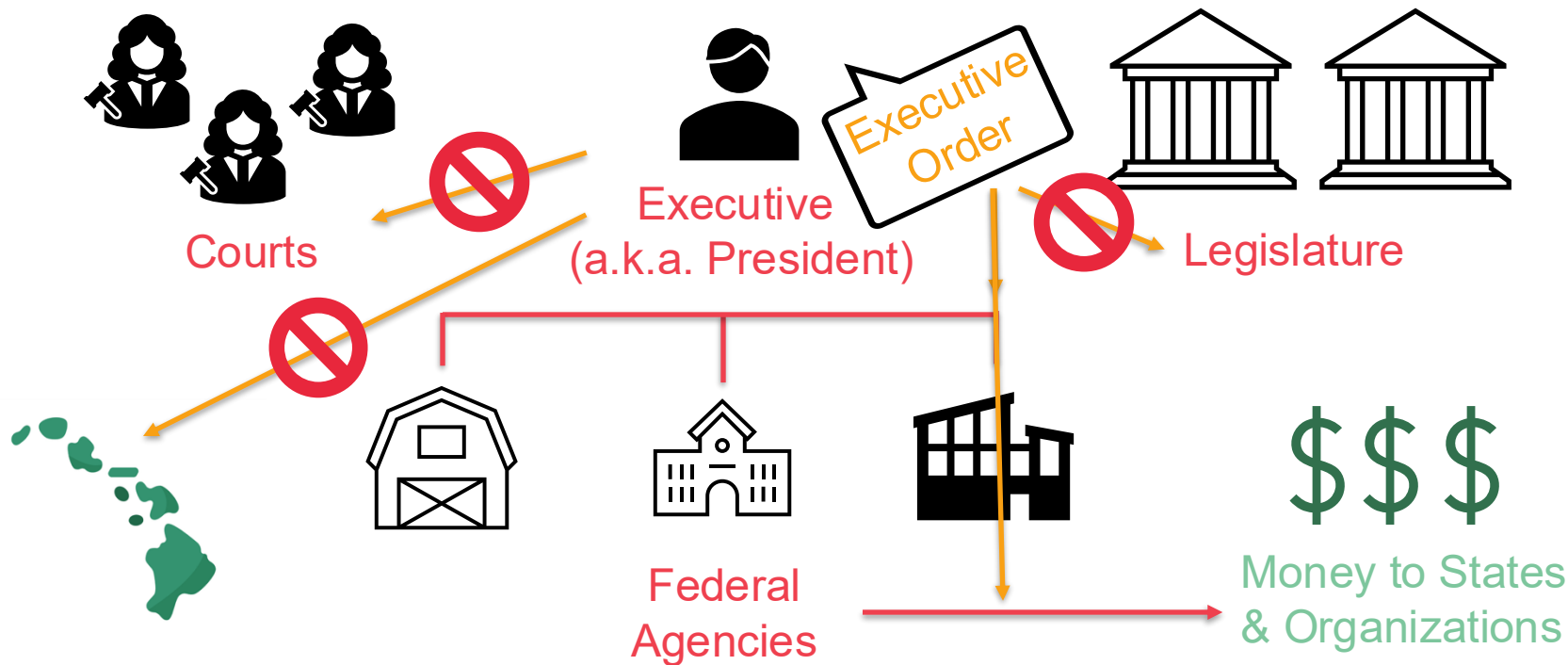


Money to States
& Organizations

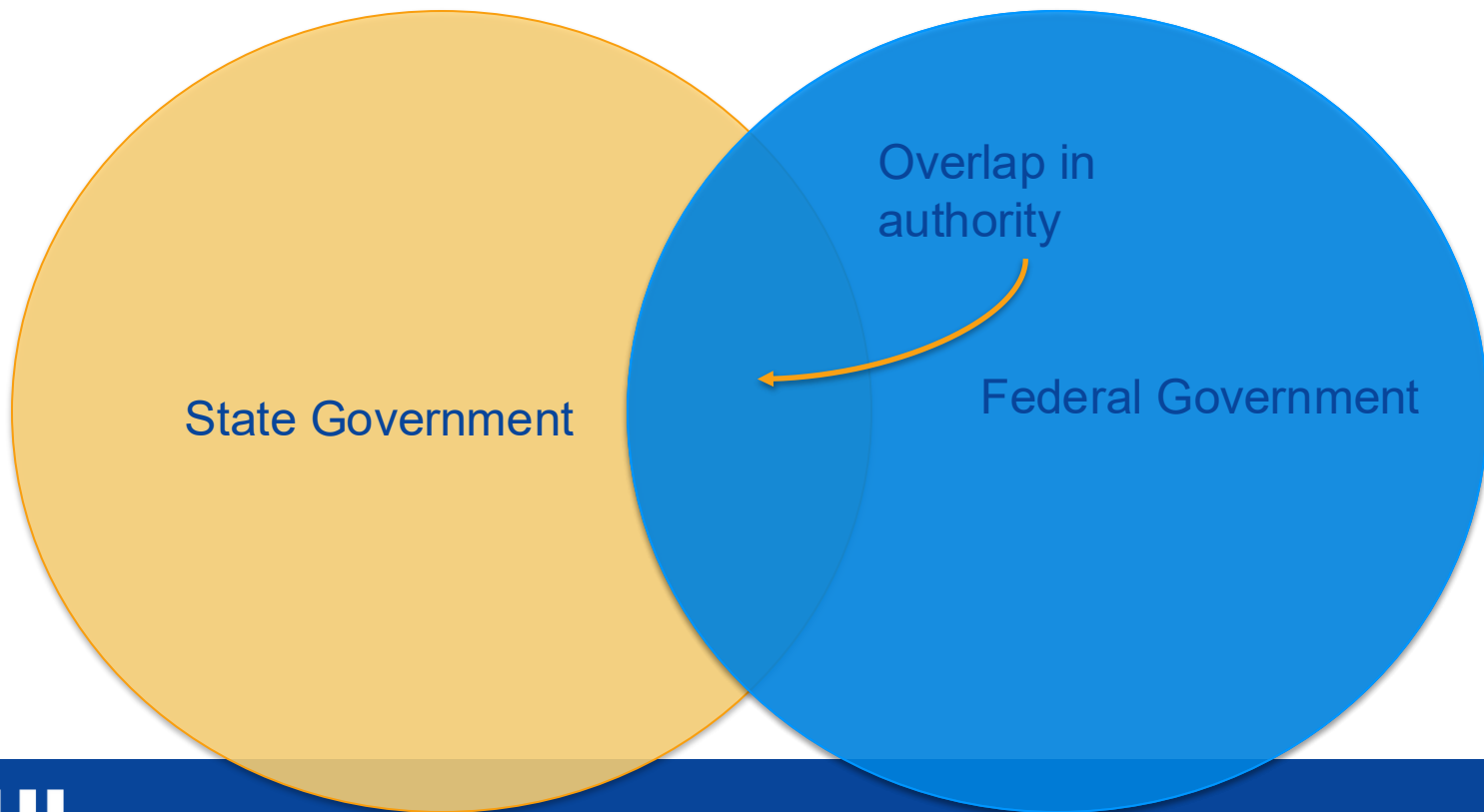
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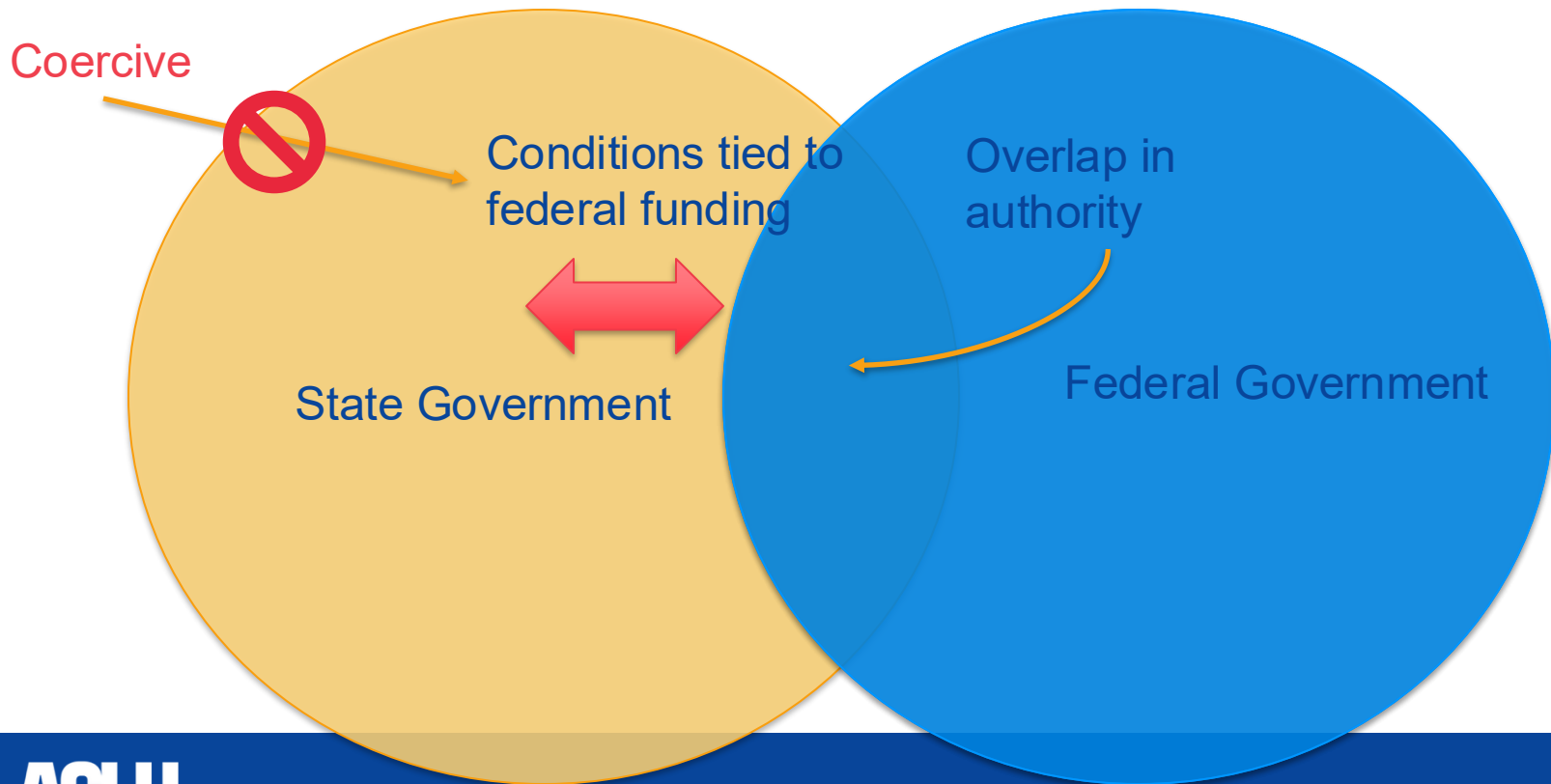
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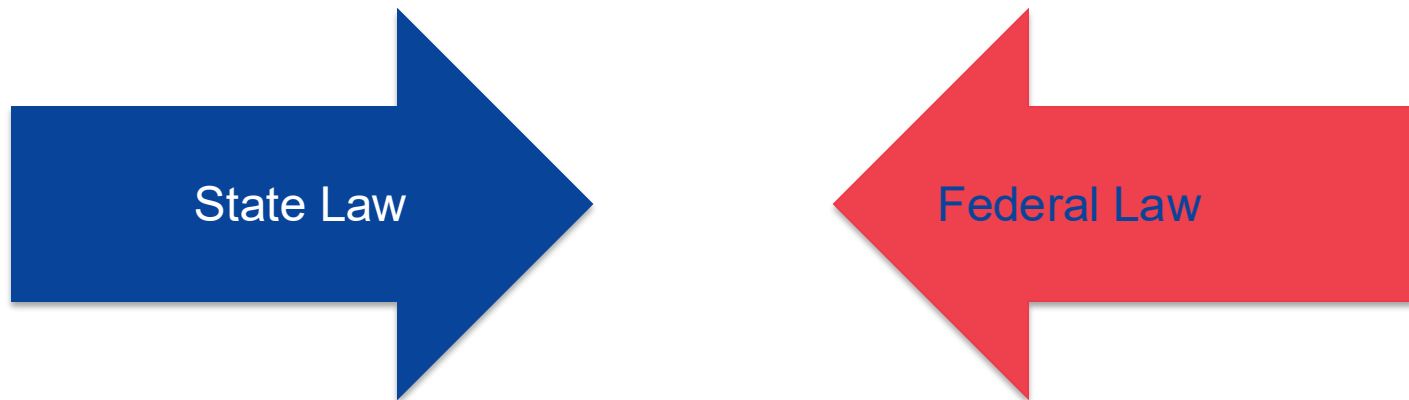
Federalism (a.k.a. State's Rights)



Federalism (a.k.a. State's Rights)



Heading toward a collision... but not there yet!



Let's talk about these Executive Orders...

Executive Order 14168

- Gender does not exist
- “Sex” cannot be changed
- “Sex” is determined at “conception”

Can he really just make
gender not exist? No.

Sec. 2. Policy and Definitions. It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality. Under my direction, the Executive Branch will enforce all sex-protective laws to promote this reality, and the following definitions shall govern all Executive interpretation of and application of Federal law and administration policy:

(a) “Sex” shall refer to an individual’s immutable biological classification as either male or female. “Sex” is not a synonym for and does not include the concept of “gender identity.”

(b) “Women” or “woman” and “girls” or “girl” shall mean adult and juvenile human females, respectively.

(c) “Men” or “man” and “boys” or “boy” shall mean adult and juvenile human males, respectively.

(d) “Female” means a person belonging, at conception, to the sex that produces the large reproductive cell.

(e) “Male” means a person belonging, at conception, to the sex that produces the small reproductive cell.

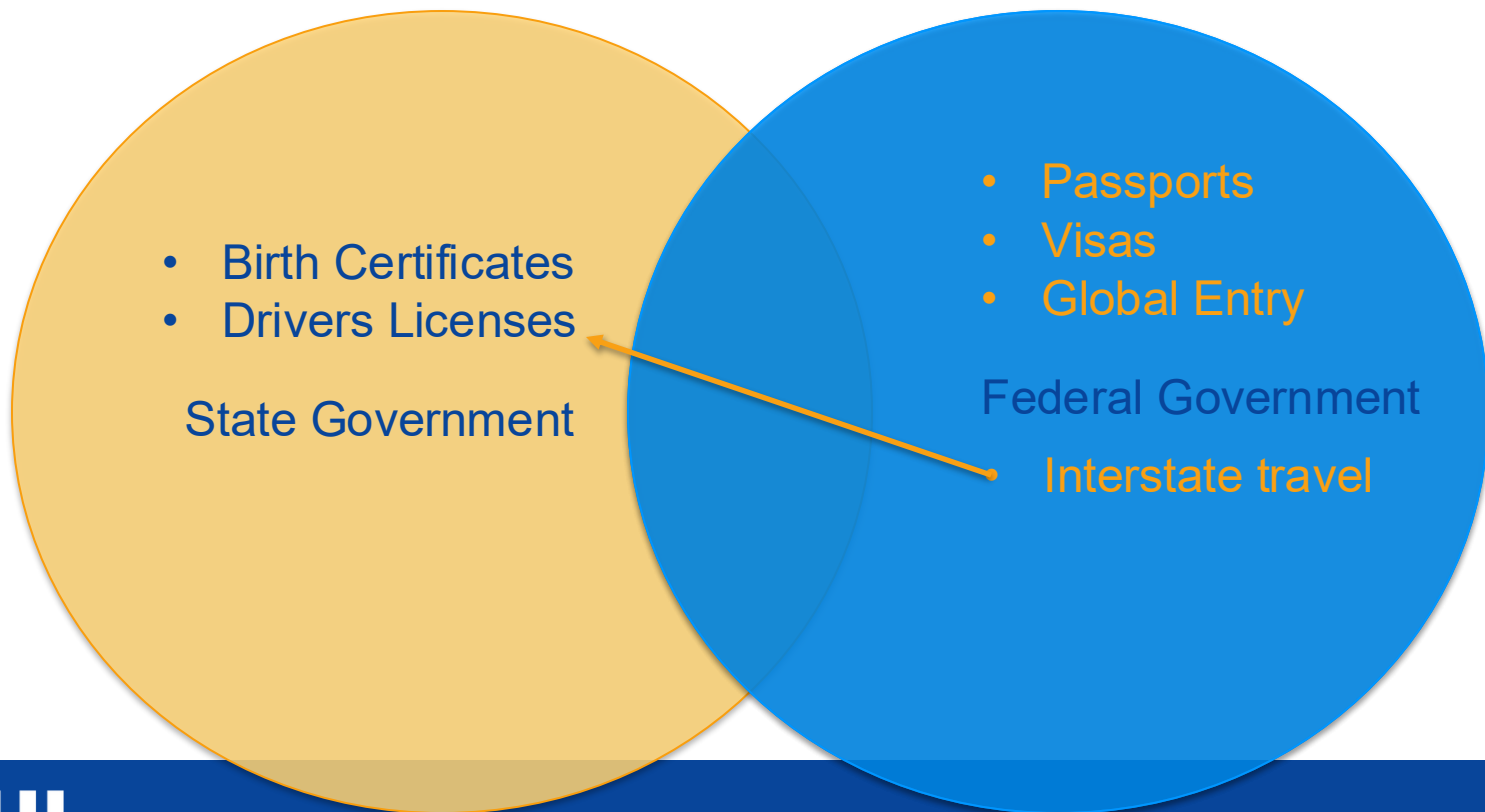
Implications for Travel Documents

E.O. 14168

“The Secretaries of State and Homeland Security, . . . shall implement changes to require that government-issued identification documents, including passports, visas, and Global Entry cards, accurately reflect the holder’s sex...”



Implications for Travel Documents



Current advice for trans folks re: ID documents

State Documents

- No change → can still change gender on Hawai'i BC or DL
- After May 7, 2025, must have REAL ID compliant ID to travel → get one ASAP
- Assess personal risk before travel

Federal Documents

- Change of gender → passport likely to issue with wrong gender
- No prior passport, all ID docs match → less risky
- Existing documents still valid until expiration
- Assess personal risk before travel

Executive Order 14201: “Transgender Sports Ban”

Therefore, it is the policy of the United States to withdraw all funds from educational programs that deprive women and girls of equal opportunities, which results in the endangerment, humiliation, and discrimination of women and girls and deprives them of privacy. It shall also be the policy of the United States to oppose male competitive participation in women's sports broadly, as a matter of safety, fairness, dignity, and truth.

This is not a ban!

Executive Order 14187

- Orders agencies to eliminate federal funding to providers of gender-affirming care
- Orders HHS to devise new recommendations for treatment of gender-dysphoria

Section 1 . *Policy and Purpose.* Across the country today, medical professionals are maiming and sterilizing a growing number of impressionable children. . . .

Accordingly, it is the policy of the United States that it will not fund, sponsor, promote, assist, or support the so-called “transition” of a child from one sex to another. and it will rigorously enforce all laws that prohibit or limit these destructive and life-altering procedures.

Sec. 2 . *Definitions.* For the purposes of this order:

(a) The term “child” or “children” means an individual or individuals under 19 years of age. . . .

(c) The phrase “chemical and surgical mutilation” means the use of puberty blockers, including GnRH agonists and other interventions, to delay the onset or progression of normally timed puberty in an individual who does not identify as his or her sex; the use of sex hormones, such as androgen blockers, estrogen, progesterone, or testosterone, to align an individual's physical appearance with an identity that differs from his or her sex; and surgical procedures that attempt to transform an individual's physical appearance to align with an identity that differs from his or her sex or that attempt to alter or remove an individual's sexual organs to minimize or destroy their natural biological functions. This phrase sometimes is referred to as “gender affirming care.”

PFLAG v. Trump (D. Md.)

Federal government prohibited from “conditioning, withholding, or terminating federal funding” based on fact that healthcare entity provides gender-affirming care to a patient under 19.

So, what does this mean?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PFLAG, INC., ET AL.,

Plaintiffs,

v.

DONALD J. TRUMP ET AL.,

Defendants.

Civil No. 25-337-BAH

* * * * *

ORDER

For the reasons stated in the accompanying memorandum opinion, it is hereby **ORDERED** that Plaintiffs' motion for a preliminary injunction, ECF 69, is **GRANTED**.¹ It is further

ORDERED that Defendants U.S. Department of Health and Human Services (“HHS”), Robert F. Kennedy, Jr., in his official capacity as Secretary of HHS; the Health Resources and Services Administration (“HRSA”); Diana Espinosa, in her official capacity as Principal Deputy Administrator of HRSA; the National Institutes of Health (“NIH”); Matthew J. Memoli, in his official capacity as Acting NIH Director; the National Science Foundation (“NSF”); Sethuraman Panchanathan, in his official capacity as Director of NSF; any subagencies of Defendant HHS, their officers, agents, successors, servants, employees, and attorneys, and any other persons who are in active concert or participation with them, are **ENJOINED** from conditioning, withholding, or terminating federal funding under Section 3(g) of Executive Order 14,168 and Section 4 of

¹ For the purposes of this preliminary injunction, “Defendants” herein refers to all Defendants listed in the amended complaint except President Trump.

PFLAG v. Trump (D. Md.)

- Case will have to be litigated to final judgment (likely SCOTUS)
- Federal Gov't still telling healthcare providers their funding could be terminated
- Motion to enforce filed March 7, 2025

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PFLAG v. Trump (D. Md.)

BOTTOM LINE:

The government cannot forbid healthcare providers from providing gender affirming care.

Don't comply in advance!

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Financial implications for trans patients

E.O. 14187

- Tricare, Medicare, Medicaid regulations at risk → but admin process
- Federal employees at risk next year (2026)
- Private health insurance still has to follow state law



Civil & criminal enforcement threats

E.O. 14187

- Female Genital Mutilation → really not applicable
- Consumer fraud → stretch
- Child abuse investigations → under state control, would require Congress to act



Civil & criminal enforcement threats

E.O. 14187

But all of this depends on providers who are brave enough to face down the federal government, and a federal government that will follow the law.



This is a really, scary time for trans folks and their families.

Many trans folks feel attacked and unsafe

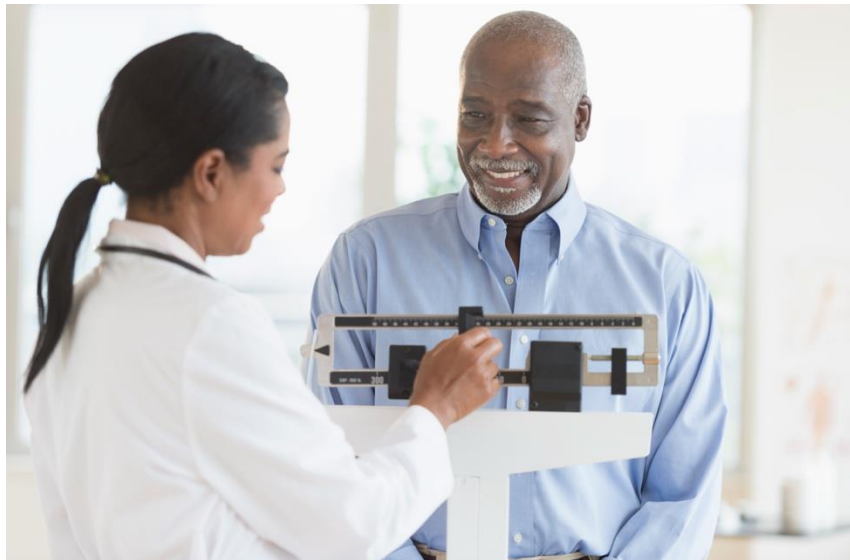
Scared, hopeless about the future

Medical treatment (esp. exams) can trigger gender dysphoria

Healthcare often setting of past trauma



Best practices for helping trans patients



- Respect names and pronouns (update chart if necessary)
- If unsure, ask about pronouns
- Keep the focus on care, only ask if necessary (genital status usually irrelevant)
- Do not disclose transgender status to anyone without permission

What else can you do to help?

- [Join the ACLU of Hawai'i!](#)
- Donate time, money, resources, expertise...
- Protest discriminatory changes ([May 1 protest at the capitol](#))

Contact ACLU of Hawai'i:
<https://intake.acluhawaii.org>

ACLU

Hawai'i

WE THE PEOPLE