

**POSITION PAPER**  
**OF**  
**COURAGE PHILIPPINES**  
**ON Anti-Discrimination bills on SOGI**  
“An Act Prohibiting Discrimination  
On the Basis of Sexual Orientation and Gender Identity  
And Providing Penalties Therefore”

**1. Sexual Orientation and Gender Identity as Classification is Unreasonable and Against the “Equal Protection” clause**

**a. Unreasonable**

In classifying persons or things, there should be a clear and distinct difference between two categories. This is because in legal terms, classification is defined as the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars (Constitutional Law by Justice Isagani Cruz, *supra*). There has to be what is called **substantial distinction**, as contrary to **superficial difference**. This is the reason why we could distinctively classify men from women (difference in reproductive roles), minors from adults (difference in age of consent), citizens from aliens (difference in nationality) etc. This distinction can be described with relative permanency in the characteristics of the distinction being made.

However when a person uses colors for vehicles or emotions and/or lifestyles for persons, they convey superficial differences in as much as these differences can change relatively in time – there exists no permanency in the distinctions being established.

That is why it is important to understand that sexual orientation is such a superficial difference since the attraction of a person to the same sex varies in degrees, and there are recorded cases of persons with diminished same-sex attractions, if not totally re-oriented into heterosexuals. In fact, there are a number of “ex-gay ministries” available for persons struggling with same-sex attractions, such as our group Courage, and Bagong Pag-Asa, who assist the individual in understanding the struggle and living a chaste life. So to classify individuals according to their sexual orientation (homosexuals and heterosexuals) is unreasonable.

It is also equally important to understand that gender identity is also a superficial difference. As defined, it refers to a *personal* sense of identity (making it a subjective concept) based on manners of clothing, inclinations and behavior in relation to masculine or feminine conventions. Notwithstanding the argument that sexual orientation can be changed, the indicators of gender identity – manners of clothing, inclinations and behavior – are also undeniably factors in social science that can change relatively in time. The subjectivity of the definition (“personal”) makes it so general that it is difficult for it to be considered as a substantial distinction.

**b. Against the “Equal Protection” clause**

Anti-Discrimination bills on SOGI was authored to address anti-discriminatory practices. However, by doing so it **unjustly favors** a group of individuals over the rest despite basic natural gender similarities. It is made in favor of active gays and lesbians.

In the earlier position paper of Courage Philippines (2005), there was an example of two factory workers who were both due for promotions – one a homosexual, while the other a “straight” person. Given two case illustrations of employer-bias, the homosexual can use Anti-Discrimination bills on SOGI against a homophobic employer, but the “straight” person cannot use Anti-Discrimination bills on SOGI against a biased homosexual employer. This proposed bill ironically permits and allows discrimination and inequality. And the inequality lies in the behavior and/or sexual lifestyle chosen by a person – through Anti-Discrimination bills on SOGI *more protection will be given to individuals who embrace the active homosexual lifestyle*, as oppose to those who reject or fight against it.

For the “straight” person may also be having same-sex attractions but **chooses** not to act upon it, and furthermore **chooses** to conceal his or her struggles from the public. Yet because of Anti-Discrimination bills on SOGI, he or she is discriminated against in favor of individuals who choose to be openly in the active homosexual lifestyle – not unless he or she will also openly embrace the same lifestyle. And so we can see that these bills may be used to trigger an influence upon people who are genuinely struggling against same-sex attractions to consider taking on the gay lifestyle, so as not to be discriminated against.

We then see that Anti-Discrimination bills on SOGI is gravely **in violation of the constitutional guaranty of equal protection** – requiring that all persons or things similarly situated should be treated alike, both as rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others (Constitutional Law by Justice Isagani Cruz, p.120, 1991 ed.)

## 2. The Danger of “Discrimination”

Section 3 (c) of Anti-Discrimination bills on SOGI defines “*discrimination*” on grounds that are either “*actual or perceived*”. Section 4 then lists down the different discriminatory practices that may be incurred under the said bill. Categorizing a discriminatory act as **perceived** is something **relative** – to the person being accused, to the person accusing and to the circumstances and other persons that surround the act itself. Therefore, defining “discrimination” with this phrase allows the law to be manipulated by scheming individuals, to which the law does not define protection over their possible victims.

A scheming individual may or may not be a homosexual. Upon slight provocation, this individual may just simply sue anyone through this bill whom he or she feels is discriminating him or her. This person may also be just pretending to be a homosexual (although his or her gender identity – as it is defined also in the bill – is heterosexual). Yet, in the like manner, he or she may use this bill to sue anyone whom he or she pleases – convinced that he or she was discriminated against.

It can also be used by individuals, who may perceive, by mere suspicion that he or she is being discriminated against.

Also, because gender identity is defined in terms of the individual’s inclinations or behavior, it is shortchanging the **legitimacy of the behavior** action being done. By virtue of this definition, a person may use the bill to incriminate individuals or institutions, even if his or her behavior is illegitimate – such as talking or laughing boisterously in places of worship, or making sexual advances to a person he or she is attracted to.

The following are some scenarios that may occur following the approval and implementation of this bill:

- a. Boy Scouts and Girl Scouts of the Philippines will be apprehended if they will not admit individuals with active homosexual orientation as scout masters (Section 4 (b))
- b. The parishes of the Catholic Church, despite of its moral stand on homosexual activities under the right to religious freedom, will be apprehended if they will not recognize gay militant organizations that would like to enter as parish-based organizations (Section 4(d))
- c. Hospitals and clinics may be apprehended if they are not able to prioritize homosexual persons in admission to their facilities (Section 4(e))
- d. Establishments, despite of their right to draw policies of dress code and conduct in their premises, will be apprehended if they will deny entrance to a homosexual person who exhibits dress code and/or behavior contrary to the policies of the establishment (Section 4(g))
- e. The responsibility of parents over their minor children under the Family Code of the Philippines will be undermined (Section 4 (h))
- f. Law enforcers who arrest persons caught in illicit behavior (such as sexual activity in a public place) will be apprehended for harassment (Section 4 (i))
- g. Government officials who are tasked to prosecute because of this bill will be apprehended even if he judges that the discriminatory case at hand is irrelevant or invalid based on his or her own moral judgment. (Section 5)

The provision on Section 4 (j) on **other analogous circumstances** present a dangerous and vague concept, which can be used by ill-meaning individuals who wants to pursue their own selfish interests. Individuals with perversions, such as pedophiles and sadomasochists, can also use this provision to *justify their actions and behavior* as something in relation to their gender identity and sexual orientation.

## 3. Superceding Other Criminal Laws

Due to the **repealing clause** (Section 8) of the bill, it is not unlikely that it will undermine and consider useless the other criminal laws that are “inconsistent” with the provisions laid in the bill. It means it will supercede any law that is working contrary to the needs of homosexual persons.

For example, this bill may undermine the anti-harassment laws by allowing persons with homosexual inclinations and behavior to pursue other persons by making sexual advances to them, as it is warranted by their gender identity to do it because of their sexual orientation.

## 4. Anti-Discrimination bills on SOGI is Redundant of Existing Laws recognized in the Philippines

There are sufficient laws recognized in the Philippines: civil, administrative, criminal and political, that can be invoked for the protection of the rights anyone – including persons with same-sex attractions.

(The following are taken from the position paper of Courage Philippines on HB 634, dated and submitted to the House of Representatives, Committee on Civil, Political and Human Rights on May 19, 2005)

a. Universal Declaration of Human Rights

Article 1 – All human beings are born free and equal in dignity and rights

Article 7 – All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination

b. The 1987 Philippine Constitution

Section 11, Article II (State Policies) – The State values the dignity of every human person and guarantees full respect for human rights

Section 15, Article II – The State shall protect and promote the right to health of the people and instill health consciousness among them

Section 18, Article II – The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Section 26, Article II – The State shall guarantee equal access to opportunities for public service

Section 2 (2), Article IX-B (Civil Service Commission) – Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, X X X, by competitive examinations

Section 3, Article XII (Labor) – The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations. X X X They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

Section 11, Article XII (Health) – The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable costs.

Section 1, Article XIV (Education) – The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

Section 4, Article XVI (Military Service) – The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training

c. The Labor Code of the Philippines

Article 3 – The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed

Article 6 – All rights and benefits granted to workers under this Code shall X X X apply alike to all workers X X X

(These provisions specially address Section 4b of Anti-Discrimination bills on SOGI)

d. The Civil Code of the Philippines

Article 19 – Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Article 20 – Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same

Article 21 – Every person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for the damage

Article 26 – Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts X X X shall produce a cause of action for damages

(2) Meddling with or disturbing the private life or family relations of another

(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect or other personal condition

Article 27 – Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken

Article 32 – Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another shall be liable for damages:

(8) The right to equal protection of the laws

These Civil Code provisions alone can practically and sufficiently cover the entire concerns of Anti-Discrimination bills on SOGI, specifically Section 4, paragraphs (a) to (i) of said bill

e. The Anti-Graft and Corrupt Practices Act

Section 3 (e) – Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage, or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

This single special penal law practically covers the public sector applications of Section 4, paragraphs a to g of Anti-Discrimination bills on SOGI, and provides a more stiffer penalty of six (6) years and one (1) month to fifteen (15) years imprisonment, as compared to the merely one (1) year imprisonment prescribed by Anti-Discrimination bills on SOGI in case of a second offense.

f. Code of Conduct and Ethical Standards for Public Officials and Employees (RA No. 6713)

Section 4 (c) Justness and Sincerity – Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone X X X. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest.

The violation of the foregoing provision, proven in a proper administrative proceeding, may cause the removal or dismissal of the offending public official or employee concerned. And this law sufficiently addresses the concerns covered by the above-mentioned RA No. 3019 vis-à-vis Anti-Discrimination bills on SOGI

g. The Revised Penal Code

Article 287 on Unjust Vexation sufficiently covers the concerns of Section 4, paragraphs a, f, g and h.

Articles 282-287 on Threats and Coercion and Articles 353-362 on Libel and Slander and Article 364 on Intriguing Against Honor sufficiently cover the concerns Section 4 (h) of these bills and provide for a stiffer penalty to as much as twelve (12) years imprisonment in the case of grave threats involving one's sexual orientation.

h. The Anti-Sexual Harassment Act of 1995 (RA No. 7877)

Section 2 – The State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education. Toward this end, all forms of sexual harassment in the employment, education or training environment are hereby declared unlawful.

Over and above the foregoing survey of pertinent constitutional, labor, civil and criminal law provisions, persons discriminated against due to sexual orientation by public officials and/or employees have the option of commencing administrative proceedings for the removal or dismissal of such erring public servants on the ground of grave misconduct, oppression or conduct prejudicial to the best interest of the service (Civil Service Commission Memorandum Circular No 19 series of 1998). This sufficiently covers the entire length and breadth of Anti-Discrimination bills on SOGI's concerns.

## 5. Causes versus Effects with Discriminatory Practices

The bill supposedly addresses discriminatory practices made on the basis of sexual orientation and gender identity. The introduction made by Hon. Rosales in then HB 634 recognizes that it is "because of misconceptions and ignorance" that discriminatory practices are committed. After the bill enumerates the different practices that may be incurred, which is discriminatory of individuals with homosexual orientation, it forthrightly states the sanctions and penalties for such actions. But does it really address the issue?

Why are there discriminatory practices? The bill itself suggests – misconceptions and ignorance. When this same bill penalizes those who discriminate – whether actual or perceived (predisposed to vague judgment), does it help correct the misconceptions and remove the ignorance? It only helps people not to discriminate because of blind fear and greater ignorance of the homosexual condition.

Misconceptions and ignorance are answered by education – that provides truth. When people are educated on what really is going on within a homosexual, then they begin to understand, and in understanding they begin to love, and in loving they begin to abandon their misconceptions and in effect, their discriminatory practices.

Nonetheless, we must evaluate which misconceptions are in fact misconceptions, and which ones are labeled only as such but are actually "myths".

The following are the issues often raised on the topic of homosexuality and homosexual persons

*Fact 1: There are a number of persons experiencing sexual attractions towards the same sex*

It is known that there are persons that are attracted sexually towards the same sex. Even the Catechism of the Catholic Church (CCC) recognizes this: "The number of men and women who have deep-seated homosexual tendencies is not negligible." (CCC, 2358) This number, which for some may be growing exponentially due to unexplainable causes, may be attributed as a product of a culture of individualism and moral relativism. Gay activists may view the increasing number of homosexuals as an effect of a society that is becoming more "open" to accepting the gay culture. Yet we can see that it is the gay culture that influences society to conform in its relativist ways – messages like "It's ok being gay", or "Gay is happy" inundates mass media and subconsciously enters the minds of people. This ever active advocacy to promote the gay lifestyle slowly seeps into society's very moral fiber. This explains why more and more individuals experiment with a new found "alternative" lifestyle, and gets caught up by the gay culture. The Catholic Church maintains its stand that homosexual acts is "intrinsically disordered". By this it does not mean a "mental disorder" but a "sexual identity disorder" – that stems from the fact that a person is only either a man or a woman, and any deviation from one's identity with the same sex and one's attraction to the opposite sex constitutes a disorder. This disorder is a product of a person's total experience – with family, friends, institutions and society as a whole, and can be corrected with appropriate actions and therapy. The dynamics of persons with same-sex attractions is discussed further in this paper.

*Fact 2: Persons with same-sex attractions experience discrimination*

Because of a limited understanding of the nature and dynamics of homosexuality, persons who experience same-sex attractions experience discrimination from different institutions of society. Families may disown their members who have same-sex attractions. Friends may reject them. Employment, career and business opportunities may be closed to them. The academe, the government and the military may disdain them. Even church members may condemn them. Notwithstanding these, the Catholic Church remains sympathetic to them as a mother. As it states in the Catechism "They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided." (CCC, 2358)

*Myth 1: There is such a class of persons termed as "third sex"*

If there is a "third sex", then there should be a "first" and a "second". It is an inaccurate term, because the sexes should always be treated equal. And there are only two classifications of sex – based on one's dominant physiological and reproductive make-up – either male or female. There are no other classifications that will qualify. And the male should not be seen as the dominant sex, and neither should the female. Both are complementary of each other, with specific roles that should be played in society, and in the building of its basic unit – which is the family. And the family is bounded by natural laws – especially that of union and procreation. The Catholic Church recognizes these laws and sees that sexual acts between persons of the same sex are disordered based on grounds against union and procreation – "They do not proceed from a genuine affective and sexual complementarity. (Union) They close the sexual act to the gift of life. (Procreation)" (CCC, 2357). Therefore "under no circumstances can they be approved". What is being condemned here is the sexual act, not the person having same-sex attraction. Homosexuals are not to be termed as the "third sex", because their condition is a matter of personal conviction of their identity – which is not a sufficient ground to make them a separate class of persons. Discussion on this is found in the next section of this paper.

*Myth 2: All homosexuals are alike*

Homosexuals are stereotyped. Based on what is seen on the television, heard on the radio, read in the newspapers and magazines, modeled by gay persons either as personalities or someone from one's neighborhood – people paint an image of what a homosexual is. They give them positive traits – creative and artistic, fashion trendsetters, life of the party, friendly. They give them negative traits – vulgar, attention-seeker, flirt, prissy, tactless, too loud, too touchy, too vocal. Some people love them, some people hate them – the way they dress up, the way they talk, the way they walk, the way they behave. And this image that people have of a homosexual is translated to every person with same-sex attractions that they come in contact with. But this should not be done. This practice of stereotyping, typecasting people based on a certain trait that they have bring about misunderstanding, conflict and yes – discrimination. Homosexuals are not alike in many ways. In fact, the only thing that they have in common is their experience of same-sex attractions, nothing else! The discussion of the differences of homosexuals is given at a latter part of this paper.

*Myth 3: Homosexuals go to hell*

The Church has been accused of condemning homosexuals to hell. But the Catholic Church has always seen the homosexual condition as a sharing of a person with the sufferings of Jesus, as the Catechism states – "this inclination... constitutes for most of them a trial... These persons are called to fulfill God's will in their lives and, if they are Christians, to unite to the sacrifice of the Lord's Cross the difficulties they may encounter from their condition." (CCC, 2358). The Catholic Church considers the condition of the homosexual as an instrument for them to attain salvation! How is that possible? The Catechism also provides us the answer.

"Homosexual persons are called to chastity. By the virtues of self-mastery that teach them inner freedom, at times by the support of disinterested friendship, by prayer and sacramental grace, they can and should gradually and resolutely approach Christian perfection." (CCC, 2359) Persons with same-sex attractions are called to holiness!

For it is not the person that experience same-sex attraction that the Church condemns but the sexual activity between persons of the same-sex. It is the action, not the person; it is the sin, not the sinner. And people inside and outside the Church should be able to understand how to distinguish them. The practice of loving the sinner and hating the sin should always be emphasized to the clergy and even to the lay persons.

#### *Myth 4: Persons with same-sex attractions are born*

The origin of homosexuality is a struggle between nature and nurture, between genetics and environmental factors. Several researches have been made to prove both sides. To prove that it is genetic means that persons with same-sex attractions are born – and thus they could be recognized as a separate class of persons, and it would just be logical to give them all the rights to fit their condition as a class of persons.

However, advocates of genetic-origin of homosexuality have yet to prove that it is so. From Alfred Kinsey's studies that concluded "10 percent of males in the study are homosexual for at least three years during a portion of their lives", to Bailey and Pillard's twin studies, to Le Vay's hypothalamus studies, to Hamer et al's chromosome studies – they have committed one or more research flaws: 1) its researcher was biased if not qualified, 2) cases were taken from samples that were non-representative of the population being studied, and 3) cases from different studies are unable to replicate the results to make generalizations on the population being studied. Efforts of proving that there exists a gay gene are all non-conclusive.

Conversely, a type of psychotherapy, along with its proponents and advocates like Joseph Nicolosi and Gerard Van Den Aardweg, called Reparative Therapy, reveals that a person with same sex attractions is a product of intrinsic gender identity deficits that one has incurred in early childhood. And because gender identification happens as early as 0 to 3 years old, one may think that he or she was "born" that way, but was in fact just too young to remember it. The role of the same-sex parent and same-sex peers are crucial to the origins of one's homosexual orientation. Several research studies (such as that of John Thorp, 1992 and John Boswell, 1989) support these views that homosexual attraction is due to the environment. An organization of psychologists called NARTH (National Association for Research and Therapy of Homosexuality) strongly supports and practices this and similar therapeutic processes that enable a person to return to heterosexuality.

In fact, most recent studies cannot detect genetic factors in same sex attractions, and supports instead the importance of social factors (Hershberger, SL (1997): A twin registry study of male and female sexual orientation. *Journal of Sex Research* 34, 212-222.; Bailey, JM; Dunne, MP; Martin, NG (2000): Genetic and Environmental influences on sexual orientation and its correlates in an Australian twin sample. *Journal of Personality and Social Psychology* 78, 524-536.). In 2002, a study by Peter Bearman found out that the genetic contribution to same-sex attraction was zero; and that parental influence plays a more critical role in SSA (Bearman, PS; Bruckner, H (2002): Opposite-sex twins and adolescent same-sex attraction. *American Journal of Sociology* 107, 1179-1205.).

#### *Myth 5: Once a homosexual, always a homosexual*

If people think that homosexuals are born, then naturally they will think that homosexuals will not and cannot change. Once a person has been hooked into the homosexual lifestyle, it cannot get out of it. It is much like saying that alcoholics and drug addicts cannot change, but with a greater weight since the homosexual condition is considered permanent as it is seen as an "inborn" trait.

However, several groups and programs challenge these beliefs. The existence of support groups such as Courage, Bagong Pag-asa, Exodus International, In His Likeness and Freedom Ministry make a statement that says "Change is possible!" Online self-help and mentoring websites such as Door of Hope of Setting Captives Free and People Can Change testify to the truth that there is hope for the person with same-sex attraction to change, and become the true men and true women that they are called to be. A number of these groups are not purely spiritual in their approach to homosexuality, but combines psychology, sociology and spirituality in understanding and addressing the homosexual condition. Using addiction counseling and reparative therapy, psychotherapists have helped a significant number of persons with same-sex attractions either to embrace a purely chaste life or to seek re-orientation and move on to a happy heterosexual married life.

More importantly, a very recent development just occurred with the American Psychological Association (APA), the professional organization that, in 1973, removed homosexuality from the list of psychological disorders. On an e-news posted by Focus on the Family (<http://www.family.org/cforum/extras/a0041796.cfm>) dated August 25, 2006, it featured APA's President Gerald P. Koocher stating "APA has no conflict with psychologists who help those distressed by unwanted homosexual attraction." This recent stand by APA was supported by a research by Dr. Robert Spitzer, a New York-based psychiatrist who helped to convince the APA in 1973 to remove homosexuality from the list of psychological disorders. In this study he found that some people who are highly motivated to leave homosexuality could return to heterosexuality.

If these international organizations are now re-thinking their idea about homosexuality and the possibility of change, why should our society, with our strong family values and spiritual convictions, deny these facts to our public? Why should we let the gay political agenda rule our legislature? Because of these facts and the legal/moral impediments outlined in Anti-Discrimination bills on SOGI and similar bills, we enjoin you not to support them and do every legal act possible to prevent these bills from being enacted into law. For if these bills become the law of the land, the effects to our society will be irreversible.