

Alaska drops policy banning discrimination against LGBTQ individuals

On the advice of the state’s attorney general, Alaska’s civil rights agency quietly deleted language promising equal protections for LGBTQ Alaskans against most categories of discrimination, and it began refusing to investigate complaints.

By [Kyle Hopkins](#)

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The Alaska State Capitol building, photographed on Wednesday, Jan. 18, 2023 in Juneau. (Loren Holmes / ADN)

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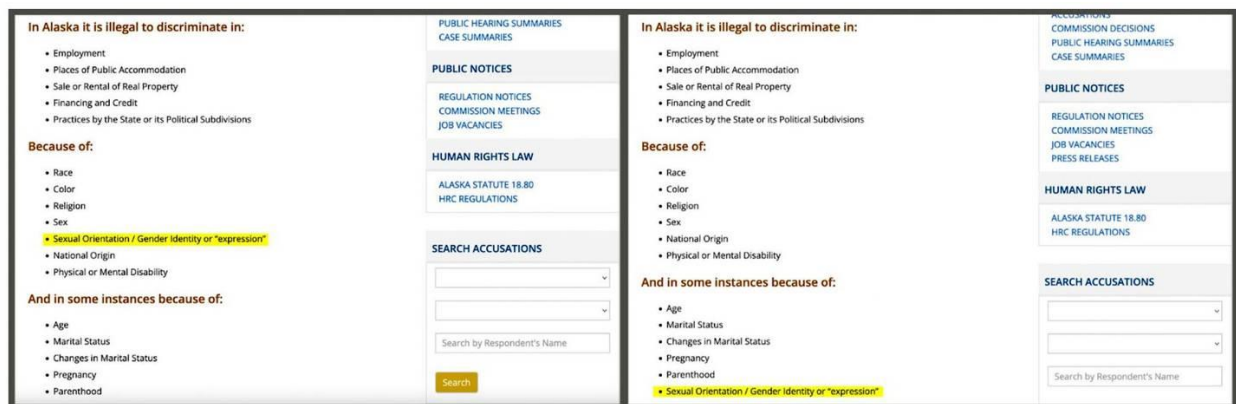
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In June 2020, after the U.S. Supreme Court ruled that workplace discrimination against people based on their sexual orientation or gender identity was illegal, Alaska quickly moved to follow suit.

[It published new guidelines](#) in 2021 saying Alaska’s LGBTQ protections now extended beyond the workplace to housing, government practices, finance and “public accommodation.” It updated the website of the Alaska State Commission for Human Rights to explicitly say it was illegal to discriminate against someone because of that person’s sexual orientation or gender identity.

The executive director for the state commission [co-wrote an essay](#) describing the ruling as a “sea change under Alaska law for LGBTQ+ individuals’ rights to be free from discrimination.”

But a year later, the commission quietly reversed that position. It deleted language from the state website promising equal protections for transgender and gay Alaskans against most categories of discrimination, and it began refusing to investigate complaints. Only employment-related complaints would now be accepted, and investigators dropped any non-employment LGBTQ civil rights cases they had been working on.



The Alaska State Commission for Human Rights website previously stated, "In Alaska it is illegal to discriminate ... because of ... sexual orientation / gender identity or "expression." As of Aug. 18, 2022, the site removed the language saying it was illegal to discriminate against LGBTQ people. A reference that was added lower on the page now says it is illegal to discriminate for those reasons "in some instances." (Highlights added by ProPublica for emphasis)

An investigation by the Anchorage Daily News and ProPublica found the decision had been requested by a conservative Christian group and was made the week of the Republican primary for governor, in which Gov. Mike Dunleavy was criticized for not being conservative enough. The commission [made the change](#) on the advice of Attorney General Treg Taylor and announced it publicly via its Twitter feed — which currently has 31 followers — on Election Day.

The LGBTQ advocacy nonprofit Identity Alaska called the reversal “state-sponsored discrimination.”

The group noted that discrimination against LGBTQ people can occur in a variety of domains, including housing, financing and other decisions by the state. “The real-world consequences of these policies are harms to LGBTQIA+ Alaskans,” Identity Alaska’s board said in a written statement to the Daily News and ProPublica.

“Without regard to sexual orientation or gender identity, all Alaskans should be protected against discrimination at the Alaska State Commission for Human Rights,” the statement said.

Robert Corbisier, who has been executive director of the Alaska State Commission for Human Rights since 2019, said the attorney general directed him to make the change in an email, though Corbisier said he would not provide the news organizations with a copy of it. He said that Taylor said the Supreme Court case, known as [Bostock v. Clayton County](#), was limited to employment discrimination and therefore the agency should limit its own enforcement to employment matters unless the state Legislature expanded its authority.

Taylor is Dunleavy’s third attorney general appointee. The governor’s first choice, Kevin Clarkson, resigned in August 2020 when the Daily News and ProPublica [reported he sent hundreds of unwanted texts to a colleague](#). Dunleavy’s next nominee to lead the Alaska Department of Law, Ed Sniffen, resigned as the newsrooms were preparing an article about [a woman who had accused him of sexual misconduct](#) that occurred in 1991. (Based on those accusations, the [state charged Sniffen](#) with three felony counts of sexual abuse of a minor. He has pleaded not guilty and is awaiting trial.)



Alaska Attorney General Treg Taylor at a news conference in Anchorage on Tuesday, March 22, 2022. (Bill Roth / ADN)

Taylor refused to be interviewed. In response to questions about the timing and purpose of his communications with the commission, his office provided a written statement.

“The Department of Law’s role is to provide legal advice to state government based on the law. The department does not make policy. Policy decisions are left up to the department’s clients, which include most executive branch departments, divisions, agencies, boards and commissions, including ASCHR,” Taylor said. “As necessitated by changes in the law or the need to correct prior advice, the department will update the advice it has previously provided to its clients.”

The office noted that Alaska joined [other states](#) in suing the federal government in August 2021 to block the application of the Bostock decision to LGBTQ people in schools and government jobs. A federal judge sided with the states and [issued a preliminary injunction](#) last year; the federal government is appealing.

Dunleavy declined interview requests. In a written statement, a spokesperson said, “The Governor’s office was not involved in the Department of Law’s legal advice on LGBTQ+ discrimination cases.”

Asked why the commission changed its policy based on a brief communication from the attorney general, Corbisier said, “The attorney general is counsel to the agency. And, I mean, I’m a lawyer. I’ve been in private practice. I think you should do what your lawyer tells you to do.”

The human rights commission describes itself as an impartial, nonpartisan arm of state government. Dunleavy ordered an investigation into the former executive director in 2019, for example, after she made a post to the agency’s Facebook page criticizing a “black rifles matter” sticker as racist.

The post drew an outcry from Alaska conservatives and gun owners, and the director was suspended for 15 days. She soon resigned, followed by the commission chairman, a gay Black man. Both said at the time that they hoped their departures would help the commission put the controversy to rest and allow it to resume its work.

The current commission chairperson said he once filed an equal opportunity employment complaint claiming he had been passed over for a job in the U.S. Army because he is a man. He has in the past year posted tweets questioning the validity of transgender identity.

“So this Roe v. Wade leak is said to be a preview of an attack against women. To the Left, what’s a woman,” the chair, Zackary Gottshall, tweeted on May 3, 2022. Two months later, he retweeted a statement by [Rep. Jim Jordan, R-Ohio](#), saying, “Crazy this needs to be said, but men can’t get pregnant.”

Asked by the Daily News and ProPublica about his views on transgender issues, Gottshall wrote: “As per my religious beliefs and convictions, I believe in the family unit as a whole, that being a

primary social group consisting of parents and children. Everyone has the right to define themselves and/or identify themselves as they see fit. Everyone also has the right to respectfully disagree based upon the protections under the 1st Amendment.”

Gottshall’s wife, Heather Gottshall, [served as campaign field director](#) for Kelly Tshibaka, who lost to incumbent [Republican Sen. Lisa Murkowski](#) last year. As [a Harvard Law student](#), [Tshibaka](#) wrote in support of an organization that advocated for gay conversion therapy, stating that “unlike race or gender, homosexuality is a choice.” Heather Gottshall also is one of three registered directors for a nonprofit called Preserve Democracy, created by Tshibaka in December.

The commission reelected Zackary Gottshall as chairman at its annual meeting on Feb. 22.

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State law does not explicitly offer civil rights protection to gay and transgender people.

But under federal law, [Title VII](#) of The Civil Rights Act of 1964 “prohibits employment discrimination based on race, color, religion, sex and national origin.”

With the Bostock ruling, the U.S. Supreme Court found sex discrimination includes discrimination against people based on sexual orientation or gender identity. In Alaska, the state Supreme Court has found that Title VII of the Civil Rights Act provides the basis for Alaska’s civil rights laws.

It was based on that precedent that the Alaska State Commission for Human Rights began accepting all categories of anti-LGBTQ discrimination complaints in 2021.

“The guidance we received from the Department of Law was, ‘You should be taking all LGBTQ cases’” in the areas in which the commission has jurisdiction, Corbisier said in a recent interview. “So employment, public accommodation, sale and rental of real property, credit and financing, and government practices. Retaliation is also a covered jurisdiction.”

That legal advice, he said, came from Kevin Higgins, an assistant attorney general assigned to advise the commission.

Neither Higgins nor Corbisier would provide the written advice, saying it was covered by attorney-client privilege.

Even so, the advice from the state Department of Law suggested that the Bostock decision had broader implications for LGBTQ rights in Alaska.

“We started thinking we had the ability to take cases across the board,” Corbisier said.

Jim Minnery, the president of the conservative Christian group Alaska Family Council, became aware of the new policy. The family council [does not hesitate to criticize Republican candidates](#) for what it considers to be too liberal a view of LGBTQ issues.

“The AK State Commission on Human Rights is simply another bureaucracy trying to seize power to make its own laws. This can’t pass in Juneau through elected office holders so they’re trying to pull an end run,” Minnery said in a text message.



Jim Minnery, president of Alaska Family Action, in 2018. (Loren Holmes / ADN)

Minnery said his group informed the Dunleavy administration in the beginning of 2021 that “the ASCHR was trying to use the Bostock ruling to circumvent having to pass legislation.”

The attorney general’s office said Minnery’s group did not influence its guidance.

What is clear, however, is that around the time of last year’s primary election, the attorney general personally got involved.

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Unlike in most states, the Alaska attorney general is appointed by the governor rather than elected.

Dunleavy appointed Taylor as acting attorney general after Sniffen resigned in January 2021. Taylor had twice run unsuccessfully for local political office. Since becoming attorney general, he has appeared on public records as the [director for a group](#) that paid for attack ads on Democratic candidates during the 2022 election cycle and is [advertised as the host](#) for a \$15,000-a-head fundraiser the group is planning this summer.

Dunleavy entered the summer [facing two well-funded Republicans](#) who positioned themselves as more conservative than the incumbent.

On a July 8 talk radio show in Kenai, host Bob Bird called on the governor's spokesperson to explain why Dunleavy had settled a federal lawsuit that now allowed public funds to be used for transgender surgeries and hormone treatments.

What would Dunleavy do, Bird hypothesized, if the Supreme Court "ruled that white males were not fully human," [according to an account](#) by the conservative faith-based news website Alaska Watchman.

"At what point would say a governor, a so-called conservative governor, say we're just not going to obey that because white males are human beings?" Bird asked, according to the website.

The Dunleavy spokesperson, Dave Stieren, said he had asked the same question in an effort to understand the state's choices for paying for gender-affirming surgeries, the site reported. He said his understanding, at the time, was that Alaska's federal Medicaid funding was at risk if the state refused the payments.

Bird at one point told the governor's spokesperson: "The people will rally to somebody who shows spine."

On July 11, the commission received a briefing on the status of LGBTQ protections in Alaska at the request of Gottshall. According to a [copy of the briefing](#), provided by Gottshall, the commission at that time was still investigating all categories of discrimination against Alaskans based on gender identity and sexual orientation.

Within the next few weeks, the director for the state human rights commission received a new email about the Bostock ruling and LGBTQ rights law in Alaska. This time it was from the attorney general himself, Corbisier said in a phone interview.

He said the email was "not a formal AG opinion."

"The substance of it was, you know, 'Your jurisdiction is for LGBTQ, is just employment,'" he said.

The Department of Law has not yet responded to a records request for the email.

It's unclear when Taylor sent the email, but Corbisier said it was just before the commission posted a note about the change to [Twitter](#) and [Facebook](#) on Aug. 16, the day of the primary election.

“Based upon updated legal advice, ASCHR will only be able to take LGBTQ+ employment discrimination cases filed under AS 18.80.220. Our position that LGBTQ+ discrimination applied to places of public accommodation, housing, credit/financing, and government practices is void,” the social media posts said.

The agency issued no news release saying it was rolling back enforcement of equality laws. There was no essay or editorials. The human rights commission's social media posts reached only a smattering of followers on the day of the statewide primary elections.

The commission also began deleting language from its website.

The homepage, [as of Aug. 15](#), had stated, “In Alaska it is illegal to discriminate in employment, places of public accommodation, sale of rental or real property, financing and credit, practices by the state or its political subdivisions because of race, color, religion, sex, sexual orientation / gender identity or ‘expression,’ national origin, physical disability.”

According to the Internet Archive, the page was changed sometime between Aug. 16 and Aug. 18 to remove the words: “sexual orientation / gender identity or ‘expression’” from the list of reasons it is illegal to discriminate against someone.

A line was added lower on the page saying that it is “in some instances” illegal to discriminate against someone based on sexual orientation and gender identity.

Elsewhere on the website, the commission removed a link to a document called “[ASCHR LGBTQ Discrimination Guide](#).”

In the meantime, the commission stopped accepting complaints of LGBTQ discrimination except for those that are workplace related.

It's unclear how many non-workplace complaints the commission received during the year it was accepting those cases. At first, Corbisier said he couldn't provide that number because complaints are confidential under state law.

When reminded that the commission does publish an annual report that provides the number of complaints received based on the category of discrimination, Corbisier said, “You might have just caught me, because I know we started tracking LGBTQ (complaints) when that jurisdiction originally changed.”

The director later called back to say no statistics would be available on the number and nature of anti-LGBTQ complaints the commission received because that information was not tracked within its database. (Any such complaints would have been filed under the more broad category of sex discrimination, he said.)

The commission's [2022 annual report](#) showed 134 complaints were filed in 2022, including 25 based on sex.

Brandon Nakasato served on the human rights commission from 2016 to 2019. He resigned as chairman around the same time the former director was suspended for publicly criticizing the “black rifles matter” sticker she saw on a truck in the agency’s parking lot.



Alaska State Commission for Human Rights members Marcus Sanders, left, David Barton, middle, and Brandon Nakasato at a meeting of the panel in 2019. “I think legislators need to hear how this lack of protection is hurting people,” Nakasato said. (Mark Thiessen/AP Photo)

It hasn't been a smooth ride since. The agency made headlines in November 2022 when its former executive director, a Black woman, [sued the state](#) saying that she was subjected to a hostile work environment, underpaid compared with past directors and fired because of her gender, race and status as a military veteran. The state denied the claims in a November answer to the lawsuit; the case is awaiting trial in federal court.

Nakasato had been part of [an effort in 2016](#) to try and convince the Alaska Legislature, unsuccessfully, to change state law to enshrine civil rights protections for gay and transgender people so that the commission wouldn't have to rely on the whims of judges.

“I think legislators need to hear how this lack of protection is hurting people,” he said. “I was one of those little gay kids that considered killing themselves, living in a rural area, who believes

that they were the weirdest person on earth. And there are teens like that in the (Alaska) Bush right now who need to hear that their leaders are caring for them too.”

Have you filed or tried to file a complaint alleging discrimination on the basis of sexual orientation or gender identity with the Alaska State Commission for Human Rights? If so, we'd like to hear about your experience. Please email us at alaska@propublica.org.