President Trump's Crusade Against the Transgender Community

Brendan Williams

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PRESIDENT TRUMP’S CRUSADE AGAINST THE TRANSGENDER COMMUNITY

BRENDAN WILLIAMS*

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INTRODUCTION

In his dystopian speech during the 2016 Republican National Convention, Donald Trump accepted the Republican nomination and “[v]owed ‘to do everything in my power to protect our L.G.B.T.Q. citizens from the violence and oppression of a hateful foreign ideology.’” As the audience applauded, Mr. Trump deviated from his prepared text, observing: ‘I have to say, that as a Republican, it is so nice to hear you cheering for what I just said.’”

Vox reported President Donald Trump as, “[a] different kind of

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2. Id.
Republican. As someone from liberal New York, he signaled that he would be the person to finally move his political party on LGBTQ issues.\(^3\) During a campaign event, Trump held a Pride flag, and said the key acronym (“L, G, B, T . . . Q”) at the 2016 Republican convention.\(^4\) At NBC’s “Today Show,” Trump expressed that transgender people “[s]hould be allowed to use whatever bathroom they feel most comfortable with — including at Trump Tower in New York.”\(^5\)

There had not been much indication the thrice-divorced Trump — who bragged that avoiding sexually transmitted diseases was his “personal Vietnam”\(^6\) — was a true social conservative. Trump met his New York development mentor Roy Cohn, Sen. Joseph McCarthy’s (R., Wis.) infamous counsel, “[a]t Le Club, a members-only nightspot in Manhattan’s East 50s, where models and fashionistas and Eurotrash went to be seen.”\(^7\) Cohn litigated housing discrimination cases and other legal matters for the

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4. Id.; see also Jonathan H. Adler, Trump Says Gay Marriage Is ‘Settled’ by the Courts, but not Abortion, WASH. POST (Nov. 14, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/11/14/trump-says-gay-marriage-is-settled-by-the-courts-but-not-abortion/?utm_term=.1a03b020e3c7 (In a typically-incoherent, false exchange, shortly after the 2016 election, President-elect Trump was quoted in a “60 Minutes” interview:

Lesley Stahl: One of the groups that’s expressing fear are the LGBTQ group.

You—

Donald Trump: And yet I mentioned them at the Republican National Convention. And—

Lesley Stahl: You did.

Donald Trump: Everybody said, “That was so great.” I have been, you know, I’ve been a supporter."

5. Ashley Parker, Donald Trump Says Transgender People Should Use the Bathroom They Want, N.Y. TIMES (Apr. 21, 2016), https://www.nytimes.com/politics/first-draft/2016/04/21/donald-trump-says-transgender-people-should-use-the-bathroom-they-want/ (Texas Senator Ted Cruz, at that time Trump’s major rival for the Republican presidential nomination, immediately attacked Trump for his statement, sending out this critical message on Twitter: “Common sense: grown men shouldn’t be in bathrooms w/ little girls”).


Trump family.\textsuperscript{8} That Cohn was gay did not seem to matter, until Cohn started battling AIDS, prompting Trump to shift his business elsewhere.\textsuperscript{9}

Peter Thiel, an openly-gay billionaire and venture capitalist, openly voiced his approval of Trump, stating:

I am proud to be gay. I am proud to be a Republican. But most of all I am proud to be an American. I don’t pretend to agree with every plank in our party’s platform; but fake culture wars only distract us from our economic decline, and nobody in this race is being honest about it except Donald Trump.\textsuperscript{10}

After Trump took office, Gregory T. Angelo, the head of the Log Cabin Republicans, taking advantage of Trump’s statements and Thiel’s sentiments, exulted: “I think this is a tremendous opportunity for LGBT Republicans. We really are in a unique position, because we are coming from a place of conversation, dialogue and advisement—as opposed to unrelenting opposition, which seems to be the battle cry of the LGBT left.”\textsuperscript{11}

Beginning the month after his inauguration, with the rescission of regulatory guidance protecting transgender kids,\textsuperscript{12} the record of the Trump Administration is one of unrelenting hostility toward the LGBTTQIAAP community, particularly towards the transgender community.\textsuperscript{13} This article examines some of the Trump Administration policies, currently targeting over one million transgender Americans. It then focuses on some successes

\textsuperscript{8} Id.

\textsuperscript{9} Id. Even then Trump was a character witness “on Cohn’s behalf at his 1986 disbarment hearing” and attended his funeral. Id.

\textsuperscript{10} Will Drabold, \textit{Read Peter Thiel’s Speech at the Republican National Convention}, \textit{TIME} (July 22, 3016), http://time.com/4417679/republican-convention-peter-thiel-transcript; see also Brian Schwartz, \textit{Billionaire Peter Thiel gives first six-figure donation of the midterm campaign cycle to the RNC}, \textit{CNBC} (Aug. 29, 2018) https://www.cnbc/2018/08/29/peter-thiel-gives-six-figures-to-republican-nationalcommittee.html (surely unrelated to this speaking invitation was the fact that Thiel “gave $1 million to Make America Number 1, a pro-Trump super PAC chaired by GOP conservative megadonor Rebekah Mercer. He also shelled out $250,000 to Trump Victory, a joint fundraising committee, and just over $230,000 to the RNC.”).


in federal court for transgender rights that are now at risk, given Trump’s recent socially-conservative federal judge nominations.\(^\text{14}\) Finally, it examines the transgender rights landscape throughout many states.

I. TRUMP’S ATTACKS ON THE TRANSGENDER COMMUNITY

On the same day the New York Times (hereinafter “Times”) published the Log Cabin Republicans’ praise for Trump, the administration rolled back “the Obama administration’s position that nondiscrimination laws require schools to allow transgender students to use the bathrooms of their choice.”\(^\text{15}\) According to the Times, the decision pitted “Education Secretary Betsy DeVos against Attorney General Jeff Sessions,” a longtime crusader against civil rights, who “took his objections to the White House because he could not go forward without her consent. Mr. Trump sided with his attorney general[].”\(^\text{16}\) Social conservatives “had argued that former President Barack Obama’s policy would allow potential sexual predators access to bathrooms and create an unsafe environment for children.”\(^\text{17}\)

The Times reported that “DeVos, who is quietly supportive of gay rights, was said to have voiced her concern about the high rates of suicide among transgender students. For example, in one 2016 study by the Cincinnati Children’s Hospital Medical Center, 30 percent reported a history of at least one suicide attempt.”\(^\text{18}\)


\(^{15}\) Trump Rescinds Rules on Bathrooms for Transgender Students, supra note 13.

\(^{16}\) Id.

\(^{17}\) Id. See also Idaho to Join Transgender Bathroom Lawsuit, IDAHO ST. J. (May 27, 2016), https://www.idahostatejournal.com/members/idaho-to-join-transgender-bathroom-lawsuit/article_5ac9239d-251f-5ef1-a7a3-25e40bafd638.html (This irrationality persists despite the lack of evidence to support it; Idaho, for example, sued to overturn the Obama Administration’s directive “despite the fact the Idaho School Board Association adopted guidelines in 2015 for gender identity and gender expression protections for lesbian, gay, bisexual and transgender students”); see also Idaho Leaders React to Transgender Bathroom mandate, KVPI (May 13, 2016), https://www.kpvi.com/news/idaho-leaders-react-to-transgender-bathroom-mandate/article_8cfd0e2-195a-11e6-b02e-7b5e6dc7dc.html (Republican Gov. C.L. “Butch” Otter had declared that “this offensive attempt at social engineering only harms our children.”).

\(^{18}\) Trump Rescinds Rules on Bathrooms for Transgender Students, supra note 11; see also Erica L. Green, Katie Benner & Robert Pear, ‘Transgender’ Could Be Defined Out of Existence Under Trump Administration, N.Y. TIMES (Oct. 21, 2018), https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html (There is some disconnect, given the DeVos family funding history. For example, Roger Severino is the director of the Office for Civil Rights for the U.S.
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Trump then turned his attention to the military: “As the sun was rising on July 26, 2017, President Donald Trump tweeted, ‘the United States Government will not accept or allow’ ‘Transgender individuals to serve in any capacity in the U.S. Military.’”

This announcement came as a surprise to the military. “After Trump’s surprise Twitter announcement, top Pentagon officials, including Marine Gen. Joseph Dunford, chairman of the Joint Chiefs of Staff, sought to reassure transgender troops already serving that they would not be discharged or denied medical care.” In August, Defense Secretary Jim Mattis announced that transgender troops would be allowed to stay in the ranks while experts studied issues surrounding their service.

This directive, perhaps originating sua sponte in a White House bathroom, was reduced to a formal document from the president, writing that the Obama “Administration dismantled the Departments’ established framework by permitting transgender individuals to serve openly in the military, authorizing the use of the Departments’ resources to fund sex-reassignment surgical procedures, and permitting accession of such individuals after July 1, 2017.”

Trump stated:

Department of Health and Human Services, and “while serving as the head of the DeVos Center for Religion and Civil Society at the Heritage Foundation, was among the conservatives who blanched at the Obama administration’s expansion of sex to include gender identity, which he called ‘radical gender ideology.’”).

19. Executive Power - Presidential Directives in Tweets: In Tweets, President Purports to Ban Transgender Servicemembers., 131 HARV. L. REV. 934 (Jan. 20, 2018) (footnotes omitted) (noting that “the tweets evaded typical processes of accountable, reasoned decision-making. Extensive dialogue with agencies and stakeholders usually precedes a final directive, and memoranda are often accompanied by detailed guidance and initial agency plans”); see also Michael D. Shear & Charlie Savage, In One Day, Trump Administration Lands 3 Punches Against Gay Rights, N.Y. TIMES (July 27, 2017), https://www.nytimes.com/2017/07/27/us/politics/white-house-lgbt-rights-military-civil-rights-act.html (which noted that “[f]or Mr. Trump, the issue of transgender service in the military affects a fraction of the population but may resonate with his core political supporters”).

20. Tom Vanden Brook, Court Blocks Trump’s Ban on Transgender troops, USA TODAY (Oct. 30, 2017) (reportedly the announcement came as a surprise to even Trump’s daughter, Ivanka, and his son-in-law, Jared Kushner); see also Annie Karni & Eliana Johnson, Ivanka and Jared find their limits in Trump’s White House, POLITICO (July 30, 2017), https://www.politico.com/story/2017/07/30/ivanka-trump-jared-kushner-241149 (“White House officials said the first daughter was surprised by her father’s posts; in the past, Trump has been a supporter of gay rights. Ivanka Trump, according to these officials, learned of the decision when she saw her father’s tweet on her phone.”).

In my judgment, the previous Administration failed to identify a sufficient basis to conclude that terminating the Departments’ longstanding policy and practice would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources, and there remain meaningful concerns that further study is needed to ensure that continued implementation of last year’s policy change would not have those negative effects.22

Defending this policy, Trump falsely exaggerated the costs of transgender personnel serving in the military, contradicting a 2016 RAND Corporation study which “[e]stimated that health care costs would rise $2.4 million to $8.4 million a year, representing an infinitesimal 0.04 to 0.13 percent increase in spending. It concluded that there were 2,000 to 11,000 active-duty troops who are transgender.” 23 The late Sen. John McCain (R., Ariz.), chair of the Senate Armed Services Committee, defended transgender military personnel against Trump’s attacks, gave the military cover to slow-walk Trump’s directive, and co-sponsored a bill to prevent military discrimination based upon gender identity. 24

As an Atlantic article noted, Trump’s “[t]weets, like Banquo’s ghost, returned to haunt him again, when Judge Colleen Kollar-Kotelly of the U.S. District Court for the District of Columbia cited them as among the reasons she was temporarily blocking Trump’s ban on enlisting and retaining transgender military personnel.” 25

22. Id.


24. Aric Jenkins, John McCain Is Co-Sponsoring a Bill to Block President Trump’s Transgender Military Ban, TIME (Sept. 15, 2017), http://time.com/4944393/john-mccain-transgender-ban-bill/ (Stated McCain: “any member of the military who meets the medical and readiness standards should be allowed to serve — including those who are transgender.”). As one scholar wrote, “levels of scrutiny are important for the future of gender discrimination claims. Under rational basis, can the government or military offer a rational reason for terminating someone based on their identity?” See Jennifer García, The Unequal Battlefield: How the Transgender Ban Would Affect One-Percent of the Armed Forces, 7 DEPAUL J. WOMEN, GENDER & L. 1, 23 (2018).

25. Garrett Epps, Trump’s Tweets Take Down His Military Ban on Trans People,
Finally, in March 2018, the Trump Administration announced a revised policy. “The policy recommendation that President Trump approved flatly states that ‘transgender persons who require or have undergone gender transition are disqualified from military service.’ But it also largely gives the Pentagon the ability to make exceptions where it sees fit.”26

No class of citizens is spared from the Trump Administration’s antagonism toward the transgender community.27 In May 2018, CNN reported: “Housing and Urban Development Secretary Ben Carson defended his agency’s delay in instituting regulations to protect transgender individuals in homeless shelters because ‘there are some women who said they were not comfortable with being in a shelter’ with “somebody who had a very different anatomy.”28

Similarly, in May 2018, the New York Times reported that the federal “Bureau of Prisons will now use an inmate’s biological sex to initially determine where that person will be housed and which bathroom the person will use, according to a policy change to the bureau’s Transgender Offender Manual[].”29

On October 21, 2018, the New York Times reported: “[t]he Trump administration is considering narrowly defining gender as a biological, immutable condition determined by genitalia at birth, the most drastic move yet in a governmentwide effort to roll back recognition and protections of transgender people under federal civil rights law.”30 The Times also accessed a memo showing “[t]he Department of Health and Human Services is spearheading an effort to establish a legal definition of sex under Title IX, the federal civil rights law that bans gender discrimination in education programs that receive government financial assistance” – the new policy


28. Id.


“would define sex as either male or female, unchangeable, and determined by the genitals that a person is born with, according to a draft reviewed by The Times. Genetic testing now needs to clarify any dispute about one’s sex.”

As the Times pointed out, “[t]he new definition would essentially eradicate federal recognition of the estimated 1.4 million Americans who have opted to recognize themselves — surgically or otherwise — as a gender other than the one they were born into.”

This policy change would contradict medical science. To quote one news account: “the reported move to change these rules comes at a time when the medical community is increasing efforts to close health disparities among trans people. Earlier this month, the American Academy of Pediatrics released new guidelines for pediatricians who treat young patients who identify as transgender or gender diverse.”

31. Id.
32. Id.
33. Id. Sarah Mervosh & Christine Hauser, Transgender People and Allies Protest Trump Plan at Rallies and on Social Media, N.Y. TIMES (Oct. 22, 2018), https://www.nytimes.com/2018/10/22/us/transgender-reaction-rally.html (After its Sunday story broke, the Times reported that “L.G.B.T. activists mobilized a fast and fierce campaign that included a protest outside the White House on Monday to say transgender people cannot be expunged from society[,]”); Isaac Stanley-Becker, As Trump Administration Eyes Writing Transgender People ‘Out of Existence,’ a Reckoning for a Transgender Republican, WASH. POST (Oct. 22, 2018), https://www.washingtonpost.com/nation/2018/10/22/trump-administration-eyes-writing-transgender-people-out-of-existence-moment-reckoning-transgender-republican/?utm_term=.3d28ea60e04a. It was unclear whether the enabling Log Cabin Republicans would consider the feelings of perhaps the nation’s only transgender elected Republican, Jordan Evans, “a town constable and an elected library trustee in Charlton, Mass.” To quote an article:

‘I am afraid,’ the Republican politician said in an interview. ‘I’m absolutely distraught.’ ‘Not so much afraid for me,’ clarified Evans, who has been embraced by those closest to her since she first came out as transgender in 2013 and began to medically transition in 2015. ‘I’m afraid for people who are younger than me — people who don’t have the kind of experiences in the world that I’ve had. They see this, and they’re rightfully terrified.’

Id. Somehow it was only upon this news that President Trump’s most prominent transgender supporter finally disavowed him; see also Caitlyn Jenner, Caitlyn Jenner: I thought Trump would help trans people. I was wrong., WASH. POST (Oct. 25, 2018), https://www.nbcnews.com/feature/nbc-out/i-was-wrong-about-trump-caitlyn-jenner-says-op-ed-n924531 (“[b]elieving that I could work with Trump and his administration to support our community was a mistake.”).
“What we’re calling for in that statement is for the same care that you would give to anybody else -- an environment that’s loving, nurturing, non-judgmental and developmentally appropriate,” Dr. Jason Rafferty, lead author of the guidelines and a pediatrician and child psychiatrist, told ABC News.

The guidelines note that discrimination and stigma in the environments where trans and gender diverse children are raised contribute to the health disparities they face, including high rates of HIV and STDs, substance abuse, physical violence (domestic and in the community) and mental health issues.  

II. TRANSGENDER RIGHTS IN THE FEDERAL COURTS

While those fighting infringements upon transgender rights achieved some success in federal court, President Trump’s socially-conservative appointments hindered that success.  

As the conservative *National Review* has noted:

> When President Trump took office, 14.3 percent of the positions on these life-tenured courts were vacant, much higher than under any of the previous five presidents. In his first 18 months in office, Trump’s nomination pace and the Senate Judiciary Committee’s hearing pace were each more than 40 percent faster than the average under those five predecessors during the same period in their presidencies.

One nominee, Jeff Mateer of Texas, “[d]escribed transgender children as evidence of ‘Satan’s plan,’” and “lamented that states were banning conversion therapy and argued that sanctioning same-sex marriage would lead to polygamy and bestiality.”

Mateer’s nomination stalled when his remarks came to light, despite Senator Ted Cruz’s (R., Tex.) continuing support.

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36. *Id.*


38. See Nicole Coble & Todd J. Gillman, *No judgeship for ‘Satan’s plan’ Texan, as*
In *Stone vs. Trump*, a number of transgender members of the U.S. military sued the Trump Administration in U.S. District Court over its discriminatory ban. Their dedication and valor seemed irrefutable. For example:

Kate Cole ("Cole") is 27 years old and has served in the United States Army for almost ten years, including a one-year deployment to Afghanistan where she served as a team leader and designated marksman. Cole is currently stationed at Fort Polk, Louisiana, working as a Cavalry Scout, where she operates with a tank unit. Since enlisting at age 17, Cole has received seven achievement medals and two Army commendation medals. She recently received orders to enroll in Drill Sergeant School starting on January 3, 2018, with an anticipated graduation date of March 7, 2018.

Cole had "been undergoing hormone therapy and was scheduled to receive medically-necessary surgery related to her gender transition[.]"*41*

The court held: "[t]here is no doubt that the Directives in the President’s Memorandum set apart transgender service members to be treated differently from all other military service members. Defendants argue that deference is owed to military personnel decisions and to the military’s policymaking process. The Court does not disagree."*42* Based upon the evidence, the court granted a preliminary injunction, preventing implementation of the policy, pending ongoing litigation. However, in January 2019, a 5-4 Supreme Court, lifted nationwide injunctions.*43*

The focus of federal litigation has been a right of access to restrooms matching one’s gender identity. A Montana newspaper editorialized it as: "Truth be told, transgender individuals use bathrooms designated for their adopted gender every day without anyone one the wiser and without incident. How is that a problem?"*44*


40. *Id.* at 758.

41. *Id.*

42. *Id.* at 768.

43. *See, e.g.*, Editorial, *Trump’s Transgender Military Ban Gets a Boost*, N.Y. TIMES (Jan. 23, 2019), https://www.nytimes.com/2019/01/23/opinion/trump-transgender-military-ban.html. (drawing a strong editorial disagreement from the New York Times: "The Supreme Court has decided that it’s so vital to let President Trump keep transgender people out of the military that it has allowed his ban on their service or enlistment to go forward before even hearing arguments[].")

This article does not examine all such cases but surveys a few key ones. At the threshold, there is no empirical evidence supporting individuals who claim fear based on those of non-binary gender using the same restroom.\textsuperscript{45} One academic study noted “the ‘gender panic’ people experience relating to transgender people. By focusing on public accommodations, the discourses focus on sex-segregated spaces in ways that exacerbate ‘gender panics,’ which would further lower the social valence of transgender people.”\textsuperscript{46} However, after studying actual crime data in Massachusetts following gender identity nondiscrimination legislation, the authors concluded that:

The results show that the passage of such nondiscrimination laws is not related to the number or frequency of criminal incidents in such public spaces. Additionally, the results show that reports of privacy and safety violations in public restrooms, locker rooms, and changing rooms were exceedingly rare and much lower than statewide rates of reporting violent crimes more generally.\textsuperscript{47}

In \textit{Dodds v. United States Department of Education},\textsuperscript{48} the 6\textsuperscript{th} Circuit Court of Appeals ruled in favor of a transgender girl’s right to use the girl’s restroom, holding:

\textit{[T]he record establishes that Doe, a vulnerable eleven year old with special needs, will suffer irreparable harm if prohibited from using the girls’ restroom. Her special education class, which previously used the nurse’s restroom to accommodate Doe, has started using the sex-separate multi-user restrooms now that Doe can use the girls’ restrooms. Highland’s exclusion of Doe from the girls’ restrooms has already had substantial and immediate adverse effects on the daily life and well-being of an eleven-year-old child (i.e. multiple suicide attempts prior to entry of the injunction). These are not distant or speculative injuries—staying the injunction would disrupt the significant improvement in Doe’s health and well-being that has resulted from the injunction, further confuse a young girl with special needs who would no longer be allowed to use the girls’ restroom, and subject her to further irreparable harm.}\textsuperscript{49} (emphasis added)

\textsuperscript{46} Id.
\textsuperscript{47} Id. at 11.
\textsuperscript{48} \textit{Dodds v. U. S. Dept. of Educ.}, 845 F.3d 217, 221 (6th Cir. 2016).
\textsuperscript{49} See id. (citing Equal Emp. Opportunity Comm’n v. R.G. &. G.R., 884 F.3d 560, 600 (6th Cir. 2018) \textit{cert. applied for}, No. 18-107 (U.S. July 20, 2018) (noting that elsewhere, the 6\textsuperscript{th} Circuit, in response to a suit brought by the Equal Employment Opportunity Commission on behalf of a transgender worker, has ruled: “[d]iscrimination
Reemphasizing the rights, emotional and physical well-being of the trans community demonstrates what is at stake here — for example, an 11-year-old with special needs had made “multiple suicide attempts” prior to her gender identity being accommodated in a way that could objectively bring no harm to other students.\textsuperscript{50}

However, conservative states\textsuperscript{51} went forum-shopping in 2016 and found Reed O’Connor, a conservative Texas U.S. District Court judge, who issued a preliminary injunction against the Obama Administration’s determination “[t]hat Title VII and Title IX require that all persons must be afforded the opportunity to have access to restrooms, locker rooms, showers, and other intimate facilities which match their gender identity rather than their biological sex.”\textsuperscript{52} Judge O’Connor found that the Obama Administration’s

against employees, either because of their failure to conform to sex stereotypes or their transgender and transitioning status, is illegal under Title VII.” In \textit{R.G. & G.R}, “a funeral director who had been known as Anthony Stephens wrote to colleagues at a Michigan funeral home, asking for patience and support” as she began life “as my true self, Aimee Australia Stephens, in appropriate business attire.”); \textit{see also} Adam Liptak, Can a Fired Transgender Worker Sue for Job Discrimination?, \textit{N.Y. TIMES} (Nov. 12, 2018), https://www.nytimes.com/2018/11/12/us/politics/transgender-job-discrimination.html. (stating that “two weeks after receiving the letter, though, the home’s owner, Thomas Rost, fired Ms. Stephens. Asked for the ‘specific reason that you terminated Stephens,’ Mr. Rost said: ‘Well, because he was no longer going to represent himself as a man. He wanted to dress as a woman.’”). \textit{Id.}

50. Repression of gender identity can be tough on kids even at the youngest ages. One mother of a transgender son whose assigned gender at birth was as a girl but who now lives as a boy wrote an open letter to her then 5-year-old son: “You never asked us to call you anything but Mia, your birth name, in the public arena. But our soothing acceptance never seemed to be enough. You became watchful and guarded at school and in public. At home, there were many occasions that you let go, hitting, kicking and punching, wailing and screaming: ‘Don’t talk to me!’ ‘Get away from me,’ and frequently, ‘You ruin everything!’ Your anger seemed atypical, in excess of the ordinary emotional vicissitudes of being 3.” Mimi Lemay, \textit{A Letter to My Son Jacob on His 5th Birthday}, (Feb. 26, 2015), https://www.boston.com/culture/parenting/2015/02/26/a-letter-to-my-son-jacob-on-his-5th-birthday. (Yet, “[w]ithin days of beginning life anew as Jacob, you began to stand up straight and look people in the eye. You stopped barking like a dog and running for cover. In allowing your transition, we were only hoping to help your spirit survive. We did not expect the seismic shift in your personality that we experienced.”).

51. The eleven states that were plaintiffs on the initial filing include: Alabama, Arizona, Georgia, Louisiana, Maine, Oklahoma, Tennessee, Texas, Utah, West Virginia and Wisconsin. \textit{See Lawsuit challenging Obama’s guidance on transgender facilities in schools}, \textit{WASH. POST} (May, 25, 2016), https://www.washingtonpost.com/apps/g/page/politics/lawsuit-challenging-obamas-guidance-on-transgender-facilities-in-schools/2040/.

“guidelines are, in practice, legislative rules—not just interpretations or policy statements because they set clear legal standards.” Judge O’Connor found that guidelines violated the Administration Procedure Act and then granted the injunction. After Trump became president, the Administration abandoned the injunction’s appeal to the 5th Circuit Court of Appeals.

It is unclear how the Trump Administration’s position on restroom policy will affect future cases. In G.G. ex rel. Grimm v. Gloucester County School Bd., the 4th Circuit Court of Appeals considered “[w]hether Title IX requires schools to provide transgender students access to restrooms congruent with their gender identity.” The court gave the Obama Administration deference to its guidelines, stating that “[i]n a case such as this, where there is no constitutional challenge to the regulation or agency interpretation, the weighing of privacy interests or safety concerns—fundamentally questions of policy—is a task committed to the agency, not to the courts.” The U.S. Supreme Court vacated the decision and remanded the case to the 4th Circuit for further consideration after the Trump Administration released a new guidance document and reversed the Obama Administration’s previous rule.

("[b]iological sex" is, itself, a judgmental term.)
53. Id. at 830.
54. See id. at 815 (citing Board of Educ. Of the Highland Loc. Sch. Dist. V. U.S. Dept. of Educ., 208 F.Supp.3d 850, 863, 879 (S.D. Ohio 2016)) (explaining another District Court’s disagreement: “[t]he Texas court’s analysis can charitably be described as cursory, as there is undoubtedly a profound difference between a discrimination victim’s right to sue in federal district court under Title IX and a school district’s right to challenge an agency interpretation in federal district court.” The Ohio District Court granted a preliminary injunction for a transgender girl: “[t]he Court orders School District officials to treat Jane Doe as the girl she is, including referring to her by female pronouns and her female name and allowing her to use the girls’ restroom at Highland Elementary School.”).
57. Id.
58. Id. at 723-24.
59. See Gloucester County School Bd. v. G. G. ex rel. Grimm, 136 S.Ct. 2442 (Mem.) (2016) (the student prevailed again at the trial court level upon remand); Matt Stevens, Transgender Student in Bathroom Dispute Wins Court Ruling, N.Y. TIMES
There is some reason to hope that not all of the Trump Administration’s anti-transgender regulatory changes will find federal court subservience. For example, in 2018, a U.S. District Court in Oregon ruled against plaintiffs arguing against having to share restrooms, locker rooms, and showers with transgender students. The court stated:

A court order directing District to require students to use only facilities that match their biological sex or to use gender-neutral alternative facilities would violate Title IX. Forcing transgender students to use facilities inconsistent with their gender identity would undoubtedly harm those students and prevent them from equally accessing educational opportunities and resources.60

In 2016, after the Obama Administration’s Department of Health & Human Services (HHS) promulgated an Affordable Care Act (ACA) regulation protecting transgender individuals, some states went back to the Texas District Court for an injunction.61 Judge O’Connor noted that “[t]he ACA forbids discriminating on the basis of sex.62 Pursuant to this statutory provision, Defendants enacted a regulation forbidding discrimination on the basis of ‘gender identity’ and ‘termination of pregnancy.’”63 He stated that “[b]ecause the Rule contains no age limitation, Plaintiffs are concerned it may require health insurance coverage of transitions for children and they note that transition-related procedures are viewed by many in the medical community as harmful[.]”64 Judge O’Connor issued the injunction, writing that “[e]ven if the Rule is valid, the injunction will merely delay its implementation, pending final review on the merits.”65 The assertion that the rule would be “merely delay[ed]” might have been a failed attempt at humor, as the decision was published December 31, 2016—and, as the judge knew, Donald Trump had been elected president in the preceding month.66

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62. Id. at 670.

63. Id. (footnote omitted).

64. Id. at 672.

65. Id. at 694.

66. As one columnist noted: “The judge, Reed O’Connor of Fort Worth, has been making a name for himself as a bulwark against LGBT rights, especially transgender rights.” Michael Hiltzik, A Texas Federal Judge OKs Nationwide Discrimination in Healthcare Against Transgender People, L.A. TIMES (Jan. 9, 2017), https://www.latimes
Despite the new HHS rule, there is growing recognition of health care rights for those who are transgender. In Prescott v. Rady Children’s Hospital–San Diego,\(^67\) a mother had taken her transgender son to a hospital following his suicidal ideation and self-inflicted lacerations.\(^68\) According to a California U.S. District Court opinion:

Despite knowing that Kyler was a “transgender boy in acute psychological distress,” “nursing and other RCHSD staff repeatedly addressed and referred to Kyler as a girl, using feminine pronouns.” Kyler complained to his mother during his stay that the staff referred to him with feminine pronouns, which caused him extreme distress.\(^69\)

The court noted that “[a]fter being discharged, Kyler continued to feel anxious and depressed as a result of RCHSD staff’s treatment during his stay. On May 18, 2015, Kyler died by suicide.”\(^70\) While the federal HHS regulation protecting transgender individuals under the ACA had not been promulgated, the court stated such discrimination violated the ACA’s language.\(^71\) The Court further explained that because it “[d]oes not rely on the HHS’s regulation in concluding that the claim survives under the plain language of the ACA, the Court need not decide whether the regulation applies retroactively.”\(^72\)

Similarly, in September 2018, a U.S. District Court in Minnesota ruled that the ACA “prohibits discrimination based on gender identity relies solely on the plain, unambiguous language of the statute.”\(^73\) The Court does not base its decision on the constitutionality of the DHHS regulation”—thus, it stated, “any potential, new proposed DHHS regulation will not affect the resolution of this matter.”\(^74\)

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\(^68\) Id.

\(^69\) Id. at 1097 (reference omitted).

\(^70\) Id. (references omitted).

\(^71\) Id.

\(^72\) Id. at 1098.


\(^74\) Id. at 16.
Health care is a fundamental right. As one writer notes:

While some procedures or treatments sought by transgender individuals have commonly been denied by insurers as “cosmetic,” these procedures are increasingly understood as medically necessary treatment for the alleviation of many patients’ gender dysphoria. These procedures include breast augmentation or reduction; facial modification; hair removal; and other interventions designed to bring physical appearance into alignment with a transgender individual’s gender identity. Although these procedures do affect outward appearance and are in that sense “cosmetic,” that does not preclude them from being “medically necessary.”

III. STATE-LEVEL ACTIVITY ON TRANSGENDER RIGHTS

As the Trump Administration continues to attack the rights of transgender individuals, many states are fighting back and enacting their own protections. Notably, in North Carolina, the legislature enacted the “bathroom bill” (House Bill 2) under a Republican governor. Following considerable backlash and threats of business boycotts, the bill was later partially-repealed by a Republican legislature under a new Democratic governor. In 2018, a New Hampshire Republican governor and legislature added “gender identity” to the list of state-recognized civil rights. Under the law:

75. Samuel Rosh, Beyond Categorical Exclusions: Access to Transgender Healthcare in State Medicaid Programs, 51 COLUM. J.L. & SOC. PROBS. 1, 6-7 (2017) (footnotes omitted). It is, however, important to note that – perhaps contrary to popular view – “[m]any people who identify as transgender have no desire to undergo sex reassignment surgery, regardless of the cost, and few wish to have the extent of surgery necessary to fully transform their anatomical sex.” Elise Holtzman, I am Cait, But it’s None of your Business: The problem of Invasive Transgender Policies and a Fourth Amendment Solution, 68 FLA. L. REV. 1943, 1968 (2016) (footnote omitted).

76. See, e.g., Lauren Horsch, A Year After HB2 Repeal, LGBT North Carolinians “Do Not Know Who Their Champions Are”, NEWS & OBSERVER (Mar. 30, 2018), https://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article207448554.html (the repeal left a lot of unanswered questions, however; Rep. Cecil Brockman, a Guilford County Democrat — who is bisexual had voted against the repeal having “noted that no LGBTQ residents or activists were involved in crafting the compromise bill.”); see also Jason Hanna, Madison Park & Elliott C. McLaughlin, North Carolina Repeals ‘Bathroom Bill’, CNN (Mar. 30, 2017), https://www.cnn.com/2017/03/30/politics/north-carolina-hb2-agreement/index.html (stating “[f]ierce criticism remains from LGBTQ groups, which say the new bill -- which eliminates rules about who can use which restroom but retains other features -- still allows for discrimination against transgender people.”).

77. See Kevin Landrigan, NH Senate OKs Transgender Rights Btransgender rights ill, UNION LEADER (May 3, 2018), https://www.unionleader.com/news/politics/state/nh-senate-oks-transgender-rights-bills/article_ebe8854-65be-5f38-9f4e-1fc56ade0d0d.html (noting “[s]enator Dan Innis, R-New Castle, an openly gay man, said it’s long past
“Gender identity” means a person’s gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person’s core identity provided, however, that gender-related identity shall not be asserted for any improper purpose.78

New Hampshire joined the 18 states and District of Columbia that, according to the American Civil Liberties Union, have laws prohibiting discrimination against those who are transgender.79

In Texas, on the eve of the 2018 election, far-right “Gov. Greg Abbott has changed his stance on a bill that seeks to limit transgender people’s access to bathrooms in public schools and government buildings, saying it was no longer a priority as he seeks re-election.”80 During the 2017 legislative session an article noted that “[b]usiness groups in Texas have lobbied hard against the measure.”81 Abbott even called “'[l]awmakers back to the Capitol for a special session of the Legislature in part to consider a bill that would reinforce the state’s effort to regulate bathroom use by transgender people in public buildings.”82

78. N.H. REV. STAT. ANN. § 354-A:2 (XIV-c) (2018). Though in 2019, the Union-Leader groused editorially about legislation allowing anyone to change their birth certificate from male or female to his or her preferred preference. This is attempting to alter public records and is a slippery a slope, similar to the insistence that there are more than two biological sexes. Editorial, Transgender agenda: Off the rails and down the slope we go, UNION LEADER (Feb. 19, 2019), https://www.unionleader.com/opinion/editorials/transgender-agenda-off-the-rails-and-down-the-slope-we/article_5a140b41-8016-51da-9196-e6686e652abd.html.


In Alabama, a bathroom bill called “[f]or the introduction of attendants in mixed-gender public bathrooms to guard against possible crimes such as molestation, assault and battery.” However, the “Alabama Privacy Act” stalled after it “[p]rompted several economic development groups to come out in strong opposition.” Among them were the Business Council of Alabama, the Coastal Alabama Partnership and the Economic Development Partnership of Alabama.

In Montana, a 2017 bill “[w]ould have set up a statewide vote on whether transgender people could use the bathrooms and locker rooms that match their gender identity, regardless of whether they match their gender at birth.” In the Republican House, the bill “[w]as killed with 11 members of the House Judiciary Committee voting against the bill, seven voting for it and one abstaining.”

2017/06/06/us/texas-bathroom-bill.html (noting that “the chief executives of more than a dozen companies, including Amazon, Apple, Microsoft and Facebook, warned Mr. Abbott in a letter that they were ‘gravely concerned’ that any bathroom-related legislation would hurt the state’s business-friendly reputation.”).


85. Id. (noting “the Oxford City Council voted to adopt a measure making it a crime for people to use a public bathroom or changing facility different from the one on their birth certificate. People deemed to be violating the law could be punished with up to six months behind bars or a $500 fine.”); Mark Berman, Alabama City Recalls ‘Bathroom Bill’ That Would Have Punished Violations With Up To Six Months in Jail, WASH. POST (May 4, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/05/04/alabama-city-may-reconsider-bathroom-bill-that-punishes-violations-with-up-to-six-months-in-jail/?utm_term=.99eb55e805f7. However, even this small Alabama city of “about 21,000 residents” repealed its handiwork after the resulting furor. See id. The ordinance was inspired by, of all things, a department store’s policy: “Steven Waits, president of the city council, read from a statement saying that it had been proposed in response to Target’s announcement that customers and employees were allowed to use a bathroom or fitting room ‘that corresponds with their gender identity.’ Oxford is home to a Target.” Id.


87. Id. Reporting noted that lawmakers who voted against the bill said it would devastate Montana’s economy, and referenced a report by the Associated Press that showed a similar bill passed in North Carolina, costing the state $3.76 billion. They
Though not a bathroom bill per se:

In 2016, the Mississippi Legislature passed the “Protecting Freedom of Conscience from Government Discrimination Act,” better known as HB 1523, authored by House Speaker Philip Gunn. A reaction to the U.S. Supreme Court’s ruling legalizing gay marriage nationwide, the Mississippi bill seeks to protect by law the belief that marriage is the union of one man and one woman and prevents government intervention when churches or businesses act “based upon or in a manner consistent with a sincerely held religious belief or moral conviction.”

In upholding the law against legal challenge, the conservative Fifth Circuit Court of Appeals noted that it “[a]lso protects any entity that establishes sex-specific standards for facilities such as locker rooms or restrooms.”

However, the trend seems to be against such active discrimination, as the

also discussed the high suicide and attempted suicide rate in the transgender community, saying the bill would further marginalize an already vulnerable community.


The bill explicitly protects an extraordinary range of discriminatory conduct, in spheres ranging from the conduct of wedding ceremonies and the provision of wedding-related services to the hiring and firing of employees, the rental or sale of housing, child placement services, psychological counseling, fertility or transition-related healthcare, and the restriction of access to shared facilities);


89. Barber v. Bryant, 860 F.3d 345, 352 (5th Cir. 2017) (noting that the law protects the belief that “Male (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth.”); *MISS. CODE. ANN. § 11-62-3(c) (2018)* (This is similar to what the Trump Administration is considering as a gender definition). President Trump’s appointments are shifting the Fifth Circuit further right. See Emma Platoff, *Trump-appointed judges are shifting the country’s most politically conservative circuit court further to the right*, TEX. TRIB. (Aug. 30, 2018), https://www.texastribune.org/2018/08/30/under-trump-5th-circuit-becoming-even-more-conservative/ (noting that “the 5th Circuit has been a focal point in Trump’s efforts: That court, considered the country’s most politically conservative, has already welcomed five new judges, more than any other circuit court in the country. Three of them have come from Texas.”).
results in conservative states like Alabama and Texas demonstrate. superscript 90 Wyoming is one of the nation’s most conservative states. superscript 91 For instance, a 2017 bill that later died, almost expanded the definition of public indecency by barring access to bathrooms on the basis of sex and “[p]eople convicted of using the wrong bathroom would be guilty of a misdemeanor punishable by up to six months imprisonment, a $750 fine or both.” superscript 92

In April 2018, “[v]oters in Anchorage rejected a controversial proposal . . . that would have banned transgender people from using bathrooms that correspond to their gender identity. The ‘bathroom bill,’ as it was called, mirrored legislation passed in North Carolina in 2016. The election result was a surprise to many and has implications for the upcoming midterm elections in other states.” superscript 93

In Massachusetts, voters in the November 2018 election, through Question 3, overwhelmingly approved the state’s 2016 transgender rights law. superscript 94 That law “[w]as passed by the state’s Democrat-controlled legislature, signed into law by Republican Gov. Charlie Baker, and applauded by a broad coalition of LGBT, business, and civil rights groups, as well as New England’s five major sports teams.” superscript 95 A campaign ad against the law “[d]epicted a man

90. See Herskovitz, supra note 82; see also Sharp, supra note 86.

91. See, e.g., Ramsey Scott, More Than 12,000 Wyo. Voters Switched Parties Around Primary, WYO. TRIB. EAGLE (Oct. 21, 2018), https://www.wyomingnews.com/news/local/news/more-than-wyo-voters-switched-parties-around-primary/article_a034fd9a-d4f6-11e8-b185-739ed0753a80.html (stating “[i]n the run-up to the state’s primary election Aug. 21, Wyoming saw thousands of voters change party affiliation, with the vast majority signing up under the Republican banner.”).


93. Id.

94. See Stephanie Ebbert, Voters Overwhelmingly Support Question 3 on Transgender Rights, BOSTON GLOBE (Nov. 6, 2018), https://www.bostonglobe.com/metro/2018/11/06/question-asks-voters-weigh-transgender-rights-public-places/JgXjOlfcnJgQnHf87Q0hJ/story.html (“[v]oting by a 2-1 ratio to uphold the 2016 state law that bars discrimination against them in such public places as restaurants, bars, and athletic facilities”).

hiding out in a bathroom stall while a teenage girl undresses." 96

CONCLUSION

Actions at the state level do not compare to the Trump Administration’s actively targeting transgender individuals using discriminatory policies regulating whether they attend schools, 97 seek shelter while unhoused, 98 need to obtain health care, 99 or wish to serve in the military. 100 To be sure, a state’s failure to pass a discriminatory “bathroom bill” is not tantamount to progress or an advancement of civil rights—but the avoidance of further legal censure. 101 Defining success through the avoidance of defeat offers little hope to transgender citizens. 102 For anyone, including this author, not being

96. Id.
97. See Trump Rescinds Rules on Bathrooms for Transgender Students, supra note 11.
98. See Hansler, supra note 27.
101. In the state of Washington, for example, a Democratic supermajority in the State House killed a Senate-passed sex education bill that, as one writer described it, would – among other things – teach kids about “the fact that trans people exist.” See Rich Smith, A House Democrat Is Trying to Kill a Comprehensive Sex Ed Bill For No Damn Reason, THE STRANGER (Mar. 27, 2019, 9:55 AM), https://www.thestranger.com/slog/2019/03/27/39732223/a-house-democrat-is-trying-to-kill-a-comprehensive-sex-ed-bill-for-no-damn-reason; Rich Smith, The Comprehensive Sex Ed Bill Is Basically Dead, THE STRANGER (Apr. 2, 2019, 1:34 PM), https://www.thestranger.com/slog/2019/04/02/39793912/the-comprehensive-sex-ed-bill-is-basically-dead (reporting, after the bill’s death, that one Republican was “screaming about sex ed promoting ‘the transsexual lifestyle,’ and that the Democratic House speaker reportedly stated he wouldn’t allow the bill a floor vote). If such bills cannot pass in liberal states, what hope do trans kids have?
102. In many places, as one trans author writes:

This isn’t just about cakes or bathrooms anymore. It’s about housing, and jobs and medical care. We can be rejected by an apartment complex because they don’t like that someone who’s tall, broad and has an Adam’s apple is wearing eye shadow and a skirt. We can lose our job because the hiring manager thinks that someone who has a uterus should use the women’s restroom, no matter what.

Chris Davis, We Are Fellow Humans: Respect Transgender Rights, SEATTLE TIMES (Nov. 1, 2018, 2:25 PM), https://www.seattletimes.com/opinion/we-are-fellow-humans-
in the position of those persecuted makes it impossible to imagine the pain these attempted attacks bring to those who are already marginalized by society.\textsuperscript{103} As Alexandra Billings wrote:

Being transgender in the 1980s in a small, mostly white suburb of Chicago was to be surrounded by the misinformed and the ignorant. I was chased and pushed and beaten and raped. I was called a liar and left unprotected and told to stop provoking people. I was part of a society that was, much like now, learning how to cope with newness. As we change, we all fight for what is familiar. Our old ways seem safest, and so we resist the new ones. However, some of us do it with ease, and others do it with violence.\textsuperscript{104}

Christine Hallquist, the 2018 Democratic nominee for Vermont governor, was the first major-party transgender gubernatorial nominee.\textsuperscript{105} She recalled the fact that “[c]lassmates mocked her for being feminine and the nuns at school beat her and recommended her parents treat her nonconformity with an exorcism;”\textsuperscript{106}

respect-transgender-rights.

\begin{itemize}
  \item \textsuperscript{103} Isaac Stanley-Becker, \textit{More Than Half of Transgender Male Adolescents Attempt Suicide, Study Says, WASH.} (Sept. 14, 2018), https://www.washingtonpost.com/news/morning-mix/wp/2018/09/14/more-than-half-of-transgender- male-adolescents-attempt-suicide/, study says/?noredirect=on (as it is already, a study found suicide attempts by 51\% of transgender male adolescents; 42\% of nonbinary adolescents (“who do not identify exclusively as male or female”); and 30\% of transgender female adolescents. The study “collected information from 120,617 young people, ages 11 to 19, across three years beginning in 2012.” These findings are high compared to the fact that of the entire group surveyed, “about 14 percent said they had attempted suicide[	extsuperscript{.]}”); see also Jason Rafferty, \textit{Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents}, 142 AM. ACAD. OF PEDIATRICS 1, 3, 10 (2018) (the American Academy of Pediatrics has stated that “[a]ny discrimination based upon gender identity, real or perceived, is damaging to the socioemotional health of children, families, and society.” It has noted that “many youth believe they must hide their gender identity and expression to avoid bullying, harassment, or victimization.”).
  \item \textsuperscript{104} Alexandra Billings, \textit{Dear Mr. Trump: I’m Transgender And I Have A Few Things I Want You To Know}, HUFFINGTON POST (Oct. 22, 2018, 12:35 PM), https://www.huffingtonpost.com/entry/alexandra-billings-donald-trump-transgender_us_5bede493e4b0a8f17eeee021.
  \item \textsuperscript{106} Id.; Julia Ioffe, \textit{Inside Christine Hallquist’s Battle to Become the Nation’s First Transgender Governor}, GQ (Oct. 29, 2018), https://www.gq.com/story/christine-hallquist-battle-to-become-transgender-governor-of-vermont (the former head of Vermont’s second-largest utility, “Hallquist doesn’t hide the fact that in 2016 she voted for Phil Scott for governor—the Republican she is now running to unseat.” Some on the left dismissed her as too conservative – perhaps a sign that we can someday, in less
In the face of such personal testimony, business group opposition of new anti-transgender state laws, on the basis of economic terms, is of small comfort to those who view such discrimination as immoral, even if the economic arguments are successful.\footnote{As Masha Gessen wrote in the \textit{New Yorker:}}

\begin{quote}
[F]or transgender and intersex people, having rights taken away is just not a return to a time before those rights were gained. It is worse. It is traumatic. It can have the effect of leaving people exposed because they don’t have a closet to return to. It can create absurd legal situations—if, for example, state-issued identity documents are not recognized by the federal government. The revocation of rights \textit{feels} violent because it \textit{is} violent, in part because the effort is aimed at preventing the rights from being reclaimed.\footnote{\textit{The Trauma of the Trump Administration’s Attacks on Transgender People}, \textit{New Yorker} (Oct. 22, 2018), https://www.newyorker.com/news/our-columnists/the-trauma-of-the-trump-administrations-attacks-on-transgender-people. Consider just one example of the enormous pain that gender identity persecution}
\end{quote}


107. As Indiana’s governor, Vice President Mike Pence had enacted the “Religious Freedom Restoration Act,” drawing a full-page, front-page editorial rebuke from the \textit{Indianapolis Star}: “Only bold action — action that sends an unmistakable message to the world that our state will not tolerate discrimination against any of its citizens — will be enough to reverse the damage.” Editorial, \textit{Gov. Pence, Fix ‘Religious Freedom’ Law Now, Indianapolis Star} (Mar. 30, 2015), https://www.indystar.com/story/opinion/2015/03/30/editorial-gov-pence-fix-religious-freedom-law-now/70698802/. As one article reported:

\begin{quote}
Business leaders, such as Apple CEO Tim Cook, Eli Lilly and Co. CEO John Lechleiter, and Angie’s List Co-founder and CEO Bill Oesterle took Indiana lawmakers to task and said RFRA would hurt their ability to recruit and retain world-class talent. Salesforce CEO Marc Benioff \textit{led Twitter opposition to the law} and threatened that the giant tech company would boycott the state. Oesterle b-lined his cancellation of a \textit{planned $40 million headquarters expansion} of his Indianapolis-based online ratings company on RFRA.
\end{quote}

\begin{quote}
\end{quote}

Nor can we just worry about the demonization of transgender individuals that later causes *self-harm*.

President Trump’s rhetoric inspires violence, and he applauds violence inflicted against those that disagree with his platform.

ciauses: shortly before ending her life on Wednesday morning, Ashley Hallstrom of Logan, Utah, went to her Facebook page to leave one final post.

> “From a very young age, I was told that people like me are freaks and abominations, that we are sick in the head and society hates us,” the 26-year-old wrote about her lifelong struggle with being transgender. “This made me hate who I was. I tried so hard to be just like everyone else but this isn’t something you can change. I can’t stand to live another day, so I’m committing suicide. Please share my final words. I believe my last words can help make the change that society needs to make so one day there will be no others like me.”


110. See, e.g., Jeff Zeleny & Jeremy Diamond, *An Aggrieved Trump Digs in After Pipe Bomb Scares*, CNN (Oct. 25, 2018), https://www.cnn.com/2018/10/25/politics/donald-trump-pipe-bombs-media-blame/index.html (stating “President Donald Trump believes he is being unfairly linked to the pipe bombs delivered to frequent targets of his acrimonious rhetoric and has watched with disdain as the national conversation has shifted to his role in shaping the divisive political environment.”); see also Felicia Sonmez & Paul Kane, *Trump Mocks Democratic Megadonor Tom Steyer, the Target of a Pipe Bomb, as ‘Stumbling Lunatic’*, WASH. POST (Oct. 28, 2018), https://www.washingtonpost.com/politics/trump-mocks-democratic-megadonor-ton-steyer-the-target-of-a-pipe-bomb-as-stumbling-lunatic/2018/10/28/d4ebbd0a-dad5-11e8-85df-7a6b4d25c9b2_story.html?utm_term=.d4e4e53e85a7 (noting that “President Trump on Sunday lashed out at billionaire Democratic activist Tom Steyer, ridiculing him as a ‘stumbling lunatic’ days after Steyer was targeted by one of more than a dozen pipe bombs sent to prominent critics of the president.”).

Yet polling shows growing acceptance.112 Socially-enlightened employers in the business community are helping with that trend—56 companies, including tech titans like Apple, Amazon, Facebook, Google and Uber, signed a joint letter to the Trump Administration opposing the definition of gender based on birth characteristics.113 In March 2019, for example, United Airlines became the first airline to offer non-binary gender identification for passengers.114

A November 2017 Pew Research Center survey of Americans found that “44% say someone can be a man or a woman even if that is different from the sex they were assigned at birth.”115 In the 2018 fall elections, issues regarding the treatment of gay, lesbian and transgender people increased for Democratic voters (an increase of 66% from 54% in 2016).116 One hopes

Rapids, Iowa, on the day of the Iowa caucuses, for instance, he told audience members he would pay their legal fees if they engaged in violence against protesters.”).


113. See Tony Romm, Apple, Facebook and Google Among 56 Businesses Telling Trump Not to Weaken Transgender Rights, WASH. POST (Nov. 1, 2018), https://www.washingtonpost.com/technology/2018/11/01/apple-facebook-google-among-businesses-telling-trump-not-weaken-transgender-rights/?utm_term=.c8161096fa0b (“[t]he companies said they ‘stand with the millions of people in America who identify as transgender, gender non-binary, or intersex, and call for all such people to be treated with the respect and dignity everyone deserves.’”).


116. See Voter Enthusiasm at Record High in Nationalized Midterm Environment, PEW RES. CTR. (Sept. 26, 2018), http://www.people-press.org/2018/09/26/voter-enthusiasm-at-record-high-in-nationalized-midterm-environment. The Pulitzer Prize-winning columnist Michael Hiltzik has a rational theory as to why discrimination against those who are transgender is still tolerable to some:

In its crass and cruel quest for targets to unite its base against, the right wing had run out of admissible candidates for discrimination and abuse. Open racism was no longer socially acceptable (though it has made a strong comeback in the Trump era). The roster of ethnic groups that could be stereotyped as undesirables had shrunk. It was no longer respectable to laugh at or denigrate the mentally ill, the homeless, the disabled. Gays and lesbians had moved into the mainstream of culture and society. Even conservative and Republican families were finding
that the Trump Administration’s discriminatory proposals against the transgender community will backfire,\textsuperscript{117} and engender support for those themselves accepting gay and lesbian siblings, children and parents as worthy of familial love and respect.

Michael Hiltzik, Here’s Why Trump Thinks It’s Still ‘Acceptable to Target Transgender People for Discrimination and Abuse, L.A. TIMES (Oct. 23, 2018), https://www.latimes.com/business/hiltzik/la-fi-hiltzik-trump-transgender-20181023-story.html. In contrast, he wrote: “Gender identity was (and still is) a perplexing topic for Americans.” Bryce Celotto, quoted in a New York Times article, supports the theory that discrimination against the transgender community is still politically-expedient: “[t]ransgender people are frequently used as political pawns; they say we’re monsters and we go into bathrooms and commit crimes and whatever else… It’s just like with immigrants or other marginalized communities: It is easy to throw us under the bus as a scare tactic.”

Liam Stack, Two Weeks Before Midterms, Transgender People Feel Like ‘Pawns’, N.Y. TIMES (Oct. 23, 2018), https://www.nytimes.com/2018/10/23/us/politics/transgender-laws-trump-midterm-elections.html (there is also an argument that those who are transgender are marginalized within the broader LGBTQ community); see also Evan Greer, Powerful Gay Rights Groups Excluded Trans People for Decades — Leaving Them Vulnerable to Trump’s Attack, WASH. POST (Oct. 29, 2018), https://www.washingtonpost.com/outlook/2018/10/29/trumps-attack-trans-people-should-be-wake-up-call-mainstream-gay-rights-movement/?utm_term=.62def4e33502 (citing history of trans people within broader gay rights movement, and stating “[t]he government made a cold calculation: an open attack on existing gay and lesbian rights might fall flat — even to their base — but history told them that targeting trans people, who have fewer legal protections and less public understanding and support, would instill division among LGBTQ people.”).

117. James Hamblin, a medical doctor, notes that the policy would effectively require a federal registry of infant genitalia. See James Hamblin, Against a Federal Registry of Genitals, ATLANTIC (Oct. 21, 2018), https://www.theatlantic.com/health/archive/2018/10/trump-defines-gender-hhs/573544/. He notes “there are many thousands of variables that affect gestation and fetal development—some influenced by epigenetic factors generations before conception—that lead to a spectrum of outcomes for any given infant.” Id. He writes that, instead of just rallying President Trump’s “base” supporters, “the policy could just as well raise objections among people concerned about ‘big government’ and defending individual rights. Scientific implausibility aside, this is a federal agency proposing widespread genetic testing and keeping records of citizens’ genitals.” Id. In New York City, under a 2018 law, “birth certificates can list gender as ‘male,’ ‘female’ or ‘X,’ allowing people who don’t identify as either male or female to better reflect their identities. Katie Honan, People Can Now Choose Male, Female or X on NYC Birth Certificates, WALL STREET J. (Oct. 9, 2018), https://www.wsj.com/articles/people-can-now-choose-male-female-or-x-on-nyc-birth-certificates-1539126365. “New York City joins other cities and states throughout the country that have a third gender option for official documents. Oregon, California, Washington state and New Jersey allow it on birth certificates.” Id.
under attack.\textsuperscript{118} It is not a fight they should have to wage alone.\textsuperscript{119}

