LGBTQ Rights

Reimagining Rights & Responsibilities in the U.S.
Reimagining Rights & Responsibilities in the United States: LGBTQ Rights

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I. OVERVIEW

Queer” people have always been here—since antiquity, they’ve lived across communities and intersections of every class, color, creed, condition, and country.1 Though not always marked as “deviant” or designated “illegal,” lesbian, gay, bisexual, transgender, and queer (LGBTQ) people have also more often than not been victims of personal prejudice, social and cultural stigma, and legal and political discrimination.2 This has certainly been the case in the modern era, the same time that “human rights” has gained currency and frequency as a rallying cry for various struggles and peoples seeking freedom, equality, and justice. That’s is not a coincidence: as the formal infrastructure of human rights and state-sanctioned homophobia expanded simultaneously in the middle of the 20th century,3 so, too, did the modern movement for LGBTQ+ rights in the United States first emerge. This “paradox of progress”—the persistent battle between progress and prejudice—is a key characteristic of the history of social justice movements, including those for queer liberation and rights.4

During this time, major advances in LGBTQ rights have been driven principally by queer people themselves—with the help of key allies—through community organizing, institution-building, and resource mobilization. Both major U.S. political parties—Democrats and Republicans—have long histories of advancing policies that are hostile to LGBTQ people and their rights, and only recently have Democrats begun to more fully embrace a pro-LGBTQ agenda. (President Barack Obama may well be remembered as the “LBJ of LGBTQ rights,” but he, too, had to be pushed to become the “Ally-in-Chief.”)

In the meantime, LGBTQ people have created change through a creative combination of “outside” politics—cultural work, public advocacy, and protest—that has changed over time; and “inside politics”—advocacy in legal, legislative, and electoral realms. The latter strategy, while sometimes successful, has also led to certain compromises that too often privilege the relatively privileged in the LGBTQ community and further marginalize the already marginalized. As for this chapter’s structure, Part One (“Overview”) provides a brief overview of modern LGBTQ history in the United States, with an emphasis on inter-generational differences in the community and movement since World War II. Part Two (“Achievements”) provides an overview of the major arenas and advances in LGBTQ rights, with a focus on “full wins” and “partial wins” in law and legislation. Part Three (“Current Struggles”) provides an overview of the current struggles for LGBTQ rights, with a focus on the issues and peoples that have been left behind, both by the queer community and movement and American society more broadly. We conclude with a concrete set of recommendations—urgent priority items—for the ongoing struggle for LGBTQ liberation, equality, and rights in the 21st century.

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) during its third


2. Language matters when it comes to LGBTQ history and identity, politics and policy, rights and the like. Though it’s beyond the scope of this chapter to trace this complex history, it’s worth noting that identity categories related to gender and sexuality have changed dramatically over time. Even the most common modern lexicon and taxonomy—lesbian, gay, bisexual, transgender, and queer—“LGBTQ” or “LGBTQ+”—is hotly debated and contested, both inside the United States and globally. For instance, “queer” itself—embraced far more frequently among younger generations than older ones—means different things to different people, and sometimes “Q” implies “questioning” or “queer and questioning.” The category of “transgender” or “trans” has its own history, including, at different times, people who were referred to (or referred to themselves) as “transsexual,” “transvestites,” “genderqueer,” “non-binary,” and other terms of designation and self-identification. Early gay and lesbian activists referred to their organizations as “homophile,” whereas members of the Stonewall generation talked of “Gay Liberation,” “Gay Power,” “Women-Identified Woman,” and the like. In the last generation or so, “equality” and “rights”—as opposed to “liberation” and “power”—have gained real currency in the larger LGBTQ movement and community. Debates about whether and how to include “intersex” and “asexual” individuals in “LGBTQ” are still ongoing. As you can imagine, these debates and differences with respect to language and identity have profound implications for rights-based advocacy and policy. That said, we mostly use “LGBTQ” in this chapter.


annual meeting in Paris, France. Though the UDHR does not specifically mention LGBTQ rights, its expansive articulation of “universal human rights” is now broadly interpreted, however implicitly, as including queer people. Earlier that same year, the groundbreaking sexologist Alfred Kinsey published *Sexual Behavior in the Human Male*, his then-controversial study that found that 4% of men identify as “homosexual” while 37% engaged in at least one “homosexual act.” Kinsey’s research induced something of a “heterosexual panic” that led to increased efforts to police, punish, and purge gay people. This was hardly the first time the United States had overseen efforts to discriminate against “homosexuals.” During World War II, the U.S. military issued thousands of “blue discharges” (so named because they were printed on blue paper) to gay and lesbian service members. At first, these discharges were based on the “sexual conduct” of individuals, but over time, “sexual orientation” became the more expansive criterion for dismissal, thus creating the basis for a new kind of discrimination against “homosexuals” as a class. In response to this—again, in 1948—a group of discharged veterans living in New York City organized the Veterans Benevolent Association (VBA) to provide legal assistance, employment support, and social outlets for gay and lesbian veterans discharged during or immediately after the war. The VBA was one of the first LGBTQ organizations in the United States. Of course, 1948 is a somewhat arbitrary point of departure, but it helps us to see the constantly contested relationship between progress and prejudice when it comes to LGBTQ human rights in the United States.

While the immediate postwar era was a period of dramatic change in the lives of LGBTQ people, many historians locate the “origin” of what we now call the modern LGBTQ movement in the United States in the Stonewall rebellion that exploded in late June 1969. Since then, there have been 3 interwoven generations of LGBTQ lived experiences that have profoundly shaped the movement—and vice versa.

- The first is the **Stonewall generation**, encompassing the late 1960s and 1970s when LGBTQ people became increasingly politicized in the face of more concerted and oppressive forms of discrimination. This was a period marked by protest and pride, when queer people fought back more forcefully against normative constraints on gender and sexuality, and came out more fully to celebrate their differences. These were the **politics of liberation.**

- The second is the **AIDS generation**, encompassing the 1980s and 1990s when LGBTQ life was dominated by the AIDS epidemic. This was a period marked by death and disease, when gay men, especially, were viewed as “deviant” and “dangerous,” a moral and mortal threat to mainstream America. It was also a time when the broader queer community came together to care for each other and mourn with one another and to act up and speak up in the face of the mounting death toll and its root causes. These were the **politics of loss.**

- The third is the **Marriage generation**, encompassing the 1990s to the present when the LGBTQ movement reoriented its work to focus on the struggle for equal rights through more formal, institutional channels. This has been a period marked by appeals to law and legislation, where many queer people have sought mainstream acceptance through a process of becoming “normal,” most especially around the struggle for “marriage equality.” These are the **politics of love.**

These three generations constitute somewhat distinct sets of lived experiences for LGBTQ people. Like all histories of “outsider” groups, this is a story about the tensions between rejection and acceptance, pride and prejudice, difference and assimilation, political power and second-class citizenship, the denial of and demand for equal rights. The following two sections explore the first two of these generations in detail, while the Marriage generation will be covered in the next part of the chapter.

**THE STONEWALL GENERATION**

Nearly 51 years ago, around 1:20 am on June 28, 1969, a group of plainclothes police officers raided the Stonewall Inn, a popular, mafia-owned gay bar located on Christopher Street in New York City’s West Village. The bar had been raided earlier that week—raids on gay bars were a common practice of surveillance and violence at that time—but this one lit the fire. Lucien Truscott, who covered the Stonewall rebellion for The Village Voice, characterized it this way: “The forces of faggotry, spurred by a Friday night raid on one of the city’s largest, most popular, and longest-lived gay bars, the Stonewall Inn, rallied Saturday night in an unprecedented protest against the raid and continued Sunday night to assert presence, possibility, and pride until the early hours of Monday morning. ‘I’m a faggot, and I’m proud of it!’ ‘Gay Power!’ ‘I like boys!’—these and other slogans were heard all around the then-quiet streets.”

6. In a May 28, 2020, webinar with the Harvard Gender and Sexuality Caucus, U.N. Independent Expert Victor Madrigal-Borloz discussed the tensions between “universal” and “particular” language in his global efforts to protect LGBTQ people against violence and discrimination based on sexual orientation and gender identity. He explained why the United Nations prefers to use the designation “SOGI” (“Sexual Orientation and Gender Identity”), as opposed to “LGBTQ.” It is worth noting that the UDHR framed “rights” in masculine terms (“he” and “him”), except in Article 16 on marriage rights, despite the fact that Eleanor Roosevelt, who had a long-term extra-marital relationship with a woman during and after her time as First Lady, played a major role in drafting the UDHR.


8. The NYC-based Quaker Emergency Committee’s Readjustment Center, a community center founded in 1945 to provide counseling and legal aid to young people arrested on charges of homosexuality, is widely believed to be the first formal LGBTQ organization in the United States.

9. We may well now be entering a 4th generation, which we refer to as the “Trans” Generation.
three nights as the show of force by the city’s finery met the force of the city’s finest. The result was a kind of liberation, as the gay brigade emerged from the bars, back rooms, and bedrooms of the Village and became street people. 

Stonewall was hardly the first confrontation between state authority and LGBTQ citizens. In many ways, however, it was the most spectacular and sustained, involving thousands of ordinary people—diverse in color, class, and conviction—who participated in 6 consecutive nights of violent resistance against police repression and so much else. As we have discussed, the foundations of what would become the LGBTQ movement were built during the decades preceding those fateful nights, but Stonewall was an unmistakably radical moment, one that helped to unleash a “fabulous new ferocity.”

As the pioneering gay historian Martin Duberman describes it, “Stonewall is the emblematic event in modern [queer] history...an empowering symbol of global proportions.”

THE AIDS GENERATION

For queer people, the 1980s and 1990s were the deadliest of decades, when the “AIDS plague,” as the late Larry Kramer prophetically put it, constituted a “Holocaust” for gay people. On June 5, 1981, the Centers for Disease Control (CDC) reported that in the period between October 1980 and May 1981, 5 homosexual men were treated for a rare combination of symptoms at 3 different hospitals in Los Angeles. On July 4, the CDC reported that over 30 months, 26 cases of Kaposi sarcoma had been reported among gay men; 8 of them had died without 24 months of diagnosis. On July 27, 1982, the term AIDS—“Acquired Immune Deficiency Syndrome”—was used for the first time to describe the growing health crisis: 463 known HIV/AIDS-related deaths in 1982.

To understand the full scope of the AIDS crisis, it helps to have a sense of its trajectory: 463 HIV/AIDS-related deaths reported the year the disease is named; 1,508 reported deaths reported in 1983, when HIV is first isolated by researchers in France; 3,505 reported deaths in 1984, when San Francisco officials close down the city’s bathhouses; 6,972 reported deaths in 1985, when the Food and Drug Administration licenses the first HIV test; 12,110 reported deaths in 1986, when Ronald Reagan first mentions AIDS in public, and when AZT, the first drug used to treat AIDS, begins clinical trials; 16,412 reported deaths in 1987, when AZT is first approved by the FDA, at a cost of $10,000 for a year’s supply, and when Ronald Reagan delivers his first full speech on AIDS; 21,119 reported deaths in 1988, when the AIDS Coalition to Unleash Power (ACT UP), founded the year before, ramps up its radical protests; 27,791 reported deaths in 1989, when the National Institutes of Health (NIH) finally invites AIDS activists to participate in discussions about AIDS research and treatment; and 31,538 reported deaths in 1990, when Ronald Reagan finally apologizes for his neglect of the epidemic during the 2 terms of his Presidency. The total number of reported deaths in the first decade of the HIV/AIDS epidemic was 121,318, and those numbers continued to climb during the 1990s. In 1995, the worst year of the crisis, 54,670 people died of AIDS.


14. When the virus was first reported, medical experts, journalists, and others referred to it as “GRIDS” (Gay-Related Immune Deficiency Syndrome); in 1982, AIDS became the official term of designation.

It is worth noting that the CDC was a voice in the wilderness in terms of its early public warnings about AIDS. Most of the medical establishment either dismissed the disease or denigrated its victims. One medical journal went so far as to suggest that "perhaps we’ve needed a situation like this to show us what we have known all along—depravity kills." The dean of UCSF—one of the most esteemed medical centers in the nation, where important early AIDS research was conducted—went on record saying this. "At least with AIDS, a lot of undesirable people will be eliminated." Reverend Jerry Falwell, Sr., co-founder of the Moral Majority and leader of the Religious Right, which helped fuel the rise of the Reagan Presidency, often repeated this popular refrain: "AIDS is the wrath of God upon homosexuals." And Reagan’s communications director, Patrick Buchanan, had his own version: "AIDS is nature’s revenge on gay men." It was this toxic climate of professional malpractice, religious mendacity, and political malfeasance that led LGBTQ activists to establish their own public health organizations—like the Gay Men’s Health Crisis, founded in New York City in 1982—to confront the growing crisis. In addition to Queer Nation and ACT UP—whose ubiquitous cry "Silence=Death" became a symbol of the age—the GMHC occupied the front lines of the increasingly lethal culture war that characterized the AIDS generation. It is not hyperbole to say that AIDS is one of the best examples—a dire warning with renewed meaning in the midst of the COVID pandemic—of just how lethal it is when prominent academics, religious leaders, political officials, and everyday citizens allow stigma and prejudice to infect their social conscience and public policy.

II. ACHIEVEMENTS

After centuries of discrimination and abuse dating back to Colonial America, the birth of LGBTQ activism in the 20th century secured fundamental rights and freedoms for LGBTQ people. This section outlines the principal achievements in expanding rights for LGBTQQ people, mapping out the major conflicts, campaigns, and changes that have taken place over time in the United States.

FULL ACHIEVEMENTS

1. THE RIGHT TO ADVOCATE FREELY

In the 1950s, magazines such as ONE and The Ladder began circulating nationwide, allowing the idea of an LGBTQ movement to reach every state in America. The magazines provided vital and unique resources for a community of people that were in hiding and yet needed to find each other to push forward. At the time, however, laws against obscenity were used to justify the silencing of early gay activists. When the Mattachine Society began publishing its pro-gay magazine "ONE: The Homosexual Magazine," the U.S. Post Office refused to distribute it and even confiscated issues that they deemed as indecent. After the publisher sued, in March 1956, U.S. District Court Judge Thurmond Clarke ruled that the magazine was not mailable because "its filthy and obscene materials was obviously calculated to estimate the lust of the homosexual reader," and declared that "the suggestion advanced that homosexuals should be recognized as segments of our people and be accorded special privileges as a class is rejected."

The Supreme Court, however, reversed this ruling in 1957, sending a powerful message to the nation: homosexuality was not unspeakable. As a result, the case, One, Inc. v. Olesen, constitutionally protected free speech regarding homosexuality; LGBTQ people gained the right of freedom of expression, and most notably, the right to engage in advocacy. The Supreme Court victory meant that gay people were able to communicate with each other in ways they never had before. The Right to Sexual Relations and Intimate Relationships

Until 1963, homosexual relations were criminalized in every state in the United States. Although these laws explicitly banned homosexual sex, their message was much broader—these laws declared homosexuality immoral and categorized homosexual relationships as crimes against nature. This stigma made pariahs of gays and lesbians in society, unable to come out of the closet without fear of losing their families, friends, and livelihood. Outlawing sex between homosexuals was a de facto criminalization of gay people in general; under these laws, the concept of a loving homosexual relationship (let alone gay families) was not only unthinkable, but it was also illegal. Although several states had begun repealing their sodomy laws by the mid-1970s (starting with Illinois in 1961), the existence of any such law in this country had harsh, real-life consequences for LGBTQ people everywhere. The federal government used these laws as excuses to deny employment and security clearances to gays and lesbians. LGBTQ people were often denied custody of their children, even when their children were put in danger for doing so. More importantly, even if few people were jailed under these laws after World War II, the stigmatization of LGBTQ people as criminals served to perpetuate the discrimination that often manifested itself as an eviction notice, a termination of employment, or a punch in the face.

Insulated from judicial review because they were seldomly enforced, sodomy laws were perfect anchors of stigma. Repealing these laws was the result of decades of struggle, advocacy, and organizing by LGBTQ activists. In 1972, Frank Kameny sent letters to the top 3 law enforcement officials in Washington DC inviting


19. Ibid.
The criminalization of gay relations had been the main method of codifying stigma against gays and lesbians dating back to 1075 BC.

them to engage in sodomy with him to incite an arrest that he could then challenge in court; the DC chief of police responded: “Sorry, I can’t accept your invitation because my wife would never stand for it.”20 Activists in Los Angeles also attempted such a ploy; attorney Albert Gordon enlisted the help of 3 couples who signed declarations confessing to engaging in sodomy and delivered them to the police station. Gordon informed the police that the couples would be available for arrest on June 13, 1974 at the Los Angeles Press Club. The police refused to arrest them, and the effort went nowhere.21 Similarly, gay activists in Virginia filed a class-action suit, which was dismissed by the U.S. District Court under the justification that sodomy laws helped discourage “conduct that is likely to end in a contribution to moral delinquency.” The Supreme Court upheld the decision.22 Opportunities to challenge sodomy laws were rare, but even then, the deep-rooted discrimination that existed in American society kept them firmly in place when they did come up for review at the Supreme Court. In Bowers v. Hardwick (1986), the Supreme Court upheld the constitutionality of sodomy laws as a legitimate tool to prevent an “infamous crime against nature” that was “a deeper malignity than rape.”23 It was the advocacy that LGBTQ rights activists engaged in from 1986 to 2003 that forced the court to reimagine sodomy laws as an afront the constitutional rights of LGBTQ people. Gay activism during this period decreased the number of sodomy laws in the nation to only 13.24,25

Finally, in Lawrence v. Texas (2003), the Supreme Court declared all sodomy laws in the United States unconstitutional by refusing to uphold sodomy laws as an appropriate exercise of authority in regulating morality. Speaking for the majority, Justice Anthony Kennedy stated that “when sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring.” His words signaled the legitimacy of homosexual relationships and affection to the nation and enshrined the right of LGBTQ families to be acknowledged and respected equally under the law.26

When Justice Antonin Scalia attempted to defend the Hardwick Decision on the grounds that Americans still found homosexuality to be morally unacceptable, the repeal of these laws across the nation was enough to undermine his claim.27 The court dignified and recognized the natural, personal bond between gay people and deemed the state out of bounds to interfere with it.28 The criminalization of gay relations had been the main method of codifying stigma against gays and lesbians dating back to 1075 BC.29 Gaining the right to intimate, sexual relationships is the crowning achievement in the fight against homophobia and a critical blow to the forces that entrenched LGBTQ discrimination in American society.

2. THE RIGHT TO SAME-SEX MARRIAGE

The idea of marriage equality was in the imaginations of activists as early as LGBTQ people in the United States began organizing. The August edition of ONE Magazine in 1953 bore the title “Homosexual Marriage?” on the cover; the idea of gay marriage was so shocking at the time that it was one of the issues the Post Office refused to deliver.30 Changing that viewpoint took 62 years of struggle that included defeats, partial victories, backlash, rollbacks, and eventually success.

In 1970, Richard Baker and James McConnell were denied a marriage license when the Minnesota Supreme Court ruled that they were unable to marry because they were of the same sex.

(Baker v. Nelson).\(^{31}\) When the couple appealed to the United States Supreme Court, the court ruled that because marriage was an institution regulated by the states, there was no federal standing for an appeal. The decision dashed hopes of a nation-wide decision and threw the fight to the state level. Attempts by other activists to marry were met with the same fate as the Baker decision, and states even began creating laws specifically defining marriage as the union between a man and woman starting with Maryland in 1973.\(^{32}\)

After decades of activism, legal recognition of same-sex couples began with domestic partnership rights in San Francisco (1989) and Washington DC (1992). In 1993, the Supreme Court in Hawaii ruled that denying same-sex couples marriage rights violated the Equal Protection Clause of the Constitution.\(^{33}\) The national backlash was swift; the United States Congress passed the Defense of Marriage Act (DOMA), and the bill was signed into law by President Bill Clinton in 1996. The law banned married, same-sex couples from receiving federal benefits of marriage. As a second blow, voters in Hawaii approved a constitutional amendment banning same-sex marriages in 1998 before any couple had a chance to wed.

In 2003, the Massachusetts Supreme Court legalized same-sex marriage in Goodridge v. Department of Public Health. In Massachusetts, Marriage equality activists and organizers mounted the first successful campaign to prevent the ruling from being rolled back by the legislature. In 2003, Evan Wolfson founded Freedom to Marry, an organization devoted to winning same-sex marriage rights in the United States, inciting many other national and state LGBTQ rights organizations to begin fighting for the cause. The national backlash to the Massachusetts decision was imminent nonetheless; in the 2004 and 2006 elections, 18 states passed constitutional bans on gay marriage.

LGBTQ activists began to turn the tide from 2008 to 2012 however, winning marriage equality in 10 states and the District of Columbia. Running for reelection in 2012, President Obama became the first sitting president to announce his support for same-sex marriage. In 2013, the Supreme Court ruled DOMA unconstitutional in the U.S. v. Windsor decision. The logic behind the DOMA ruling caused U.S. district judges to strike down same-sex marriage bans throughout the United States. The issue finally surfaced back at the Supreme Court in 2015\(^{34}\) when, in Obergefell v. Hodges (2015), the Supreme Court ruled that bans on same-sex marriage were unconstitutional, effectively making gay marriage legal in the United States. The right to same-sex marriage extends far beyond the legal benefits that the institution provides (those rights could have been granted through civil unions and other domestic partnership rights); the right to be acknowledged in marriage is the "status that everyone understands as ultimate expression of love and commitment."\(^{35}\) In their decision, the court sent a powerful moral signal of inclusion of gays and lesbians in society, recognizing the "equal dignity" of homosexual relationships.\(^{36}\)

3. THE RIGHT OF LGBTQ PEOPLE TO IMMIGRATE TO THE U.S.

Immigration into the United States is open to all LGBTQ people; in fact, the U.S. government will grant political asylum to LGBTQ people who fear persecution for their identity in their home country.\(^{37}\) This was not always the case, however; until 1990, the United States was the only country in the world that excluded visitors and potential migrants because of their sexual orientation. A provision in the Immigration and Nationality Act of 1952 allowed the U.S. Government to deny immigration rights to people afflicted with a "psychopathic personality." The term was used to deport, deny naturalization, and prohibit entry into the country to countless LGBTQ people. By the time the Immigration and Nationality Act was updated with a package of immigration reforms in 1990, gay activists mobilized their allies in Congress and the ban was removed.\(^{38}\) Even after this change, however, a similar ban disproportionately affecting LGBTQ people remained in place: the 1987 entry ban on HIV-positive travelers. Responding to advocates, that ban was repealed by President Barack Obama in January 2010.\(^{39}\) In addition, after the Supreme Court declared unconstitutional the sections of DOMA that prohibited federal recognition of same-sex marriages, United States citizens and Permanent Residents obtained the ability to petition adjusted immigration status for their same-sex spouses.\(^{40}\)


PARTIAL ACHIEVEMENTS

1. THE RIGHT TO BE PROTECTED FROM IDENTITY-BASED POLICE HARASSMENT

Today LGBTQ people in America do not have to fear being set up in a sting by a flirty stranger, arrested for walking into a gay bar, or apprehended for not following a strict gender dress code. These days officers may walk in Pride parades, but for much of the 20th century, the police were the LGBTQ community’s most harmful foe.

As LGBTQ people began to migrate to large cities in the United States in the 1900s and gay establishments began to pop up in these metropolitan areas, state and local governments put the police in charge of intimidating LGBTQ people back into anonymity and isolation. Laws criminalizing cross-dressing and “gender inappropriateness” spread to most of the country after the 1940s, and older laws that prevented “masquerading” were repurposed to outlaw dressing in drag. Similarly, states with growing LGBTQ populations began creating governmental bodies to shut down gay bars. In 1955, the California Department of Alcoholic Beverage Control was created specifically to shut down gay establishments; and in New York, the State Liquor Authority forbade bar owners from serving homosexuals.

Entrapment and witch hunts of gay people were dangerous police tactics that destroyed the lives of many LGBTQ people throughout the 1900s. In 1948, Professor E.K. Johnston, the Acting Dean of the University of Missouri School of Journalism, turned himself in to the police immediately after hosting the annual awards ceremony at the school. The police had discovered he was gay after dragging man after man into interrogations, where the men were intimidated under threat of perjury into disclosing the gay people they knew. After an exemplary career as an educator, Professor E.K. Johnston was named and jailed, fired, and publicly humiliated in the press because of these destructive police tactics. Similarly, plainclothes officers would often frequent gay establishments and cruising places to lure gay men into propositioning them, swiftly leading to an arrest. If such an arrest was made public, it was almost certain that these men would lose not only their jobs but also the love and support of their families.

Repealing these laws and practices came out of grassroots activism. In fact, many of the flashpoints that served as rallying calls for LGBTQ activists to organize more militantly happened as a result of police harassment. In 1952, Dale Jennings sued the L.A. police for inappropriate entrapment and won in court; and while these police tactics persisted after this verdict, the victory rallied LGBTQ people to unite against policing. In 1959, a late-night raid at Cooper’s Donuts, a late-night hangout for LGBTQ people in Los Angeles, sparked one of the first known riots against police overreach. In 1966, Dick Leitsch, the president of Mattachine New

York, organized “sip-in” in New York City protesting the ban on serving gays and brought up a complaint against the State Liquor Authority to the New York Commission on Human Rights and the New York State Appellate Court. The Commission declared that city ordinances against sex discrimination gave homosexuals the right to be served in any licensed bar, and the New York Appellate Court declared that the Constitution supported gay people’s right to assemble peacefully, thereby clearing the way for openly gay bars in New York to obtain state liquor licenses. Despite these wins, however, police raids of gay bars continued. Leitsch was, however, successful in ending police entrapment in New York City after holding a series of private meetings and community forums with Mayor Lindsay and his police commissioner in 1966.

The riots at the Stonewall Inn were a direct reaction to abusive policing against LGBTQ people in New York City. Bar goers rebelled against a police raid on the Stonewall Inn that night. The riots inspired a new generation of activism that saw groups like the Gay Liberation Front (GLA) and the Gay Activists Alliance (GAA) staging shocking public protests, or “Zaps,” against public figures while calling attention to LGBTQ issues and police harassment. After a 1970s raid on a gay bar called the Snake Pit caused a patron to leap out of the window to his death, the GAA made Mayor Lindsay the prime target of their Zap campaigns. Several GAA members handcuffed themselves to the gate of his office and interrupted his public appearances with outrageous antics. Soon after getting “zapped” Mayor Lindsay began working closely with gay activists to draft LGBTQ-inclusive protections.

Post-Stonewall groups like these formed throughout the United States, and they achieved remarkable success in ending entrapment and raid practices throughout the 1970s, 80s, and 90s. As police harassment of white LGBTQ people diminished during that time, gay organizing against abusive police practices slowly came to a stop. LGBTQ groups even began working with many police departments around the country, and many police units designated LGBTQ community liaisons. Nonetheless, while bar raids and entrapment have become practices of the past, police harassment of LGBTQ people continues to disproportionately affect transgender people of color. “Walking while trans” refers to police profiling transgender people of color as sex workers and arresting them. A 2014 study from Columbia University found that LGBTQ youth of color are “endemically profiled as being engaged in sex work, public lewdness, or other sexual offenses.”

2. THE RIGHT TO BE PROTECTED FROM HIV/AIDS

The U.S. government has made substantial investments in protecting the country from HIV/AIDS, a virus and disease that disproportionately impacts LGBTQ people. It wasn’t always this way, however. As the HIV/AIDS epidemic started to ravage the LGBTQ community in the United States, the first response from the Reagan administration was to make fun of the epidemic. In 1982, when a reporter first asked Larry Speakes, President Reagan’s Press Secretary, about the disease he with an air of homophobia asked the inquiring journalist if he had contracted the so-called “gay plague” himself. Two years later, after more than 4,000 people had died from the disease, Speakes once again joked that he was not paid enough to bring the subject up with the President. Meanwhile, thousands of mostly young gay men like 26-year-old Mike Petrelis in New York City were waking up to learn from their doctors that they had 6 months left to live because of the disease. President Reagan did not even mention the epidemic until 1985.

Enraged by the silence and indifference from the federal government, victims like Petrelis joined the AIDS Coalition to Unleash Power (ACT UP). These HIV/AIDS activists were relentless in bringing public attention to the epidemic and earned the attention of those responsible for public health policy in the federal government. ACT UP staged “death-ins” at the New York Stock Exchange and the Food and Drug Administration. Their actions were coupled with strategic outreach to leaders and doctors in the field. Their activism transformed the way that HIV/AIDS research was being conducted, giving advocates a seat at the tables where decisions about the response to the disease were being made. These advocates won access to experimental treatments and succeeded in pushing the government to form the basic governmental structure that would eventually mount the counteroffensive against HIV/AIDS.

Passed in 1990, the Ryan White CARE Act established programs that provide HIV/AIDS treatment to low-income, uninsured,

49. Ibid.
The United States is one of a few countries without a national paid family leave policy.

and underinsured people. The first National HIV/AIDS Strategy was released in 2010 and focused on reducing HIV infections, improving health outcomes of people living with HIV/AIDS, and addressing HIV-related inequities. Due mostly to government-funded research and testing, new medicines can suppress the virus to undetectable levels – allowing HIV-positive people to live healthy lives for many years. The HIV/AIDS National Strategy was revised in 2020 to include goals of expanding access to drugs that prevent the transmission between HIV-vulnerable populations and increased testing, among other priorities. In February 2020, the Trump administration launched the Ending the HIV Epidemic: A Plan for America, an initiative to reduce new HIV infections by 90% by 2030.

3. THE RIGHT TO BE PARTICIPATE IN POLITICAL LIFE

According to the Victory Institute’s Out for America project, there are 832 openly LGBTQ elected officials in the United States today, composing 0.16% of total elected officials nationwide; this list includes 2 governors, 9 members of Congress, 44 mayors, and 499 local officials. Expansion of LGBTQ rights has been almost entirely championed by the Democratic Party, which has also disproportionately elected LGBTQ officials to public office. Out of the 832 “out” elected officials, 79% are Democrats, 18% are Independents or affiliated with another party, and 3% are Republicans.

The inclusion of LGBTQ people in American politics was a hard-fought victory; before the energized activism of the 1970s, LGBTQ people were considered the “untouchables of society.” Gays and lesbians first began to exercise their political muscle in 1971 in San Francisco with the Alice B. Toklas LGBTQ Democratic Club founded by Del Martin and Phyllis Lyon; the club was the first of its kind get involved in local political affairs, and soon inspired similar political action and fundraising groups in California, Texas, and the East Coast.

During the 1972 Democratic National Convention, gay activists forced a vote to include discrimination protections on the basis of sexual orientation on the party platform. Although the move was rejected 54-34, the defeat afforded them an opportunity to speak on the convention floor. Members of the National Coalition of Gay Organizations managed to convince enough delegates to secure 20 minutes on televised convention time. Terrified, the Democratic party fit the speech at 5 am, a timeslot that minimized the airtime the LGBTQ activists would get. That convention became the first time that gays and lesbians began fighting for a place in the Democratic party. During that speech, Jim Foster asserted that “twenty million gay men and women are looking for a political party,” while Madeline Davis appealed that gays and lesbians “suffered the gamut of repression from being totally ignored to having our heads smashed our blood spilled in the streets.”

In 1974, Kathy Kozachenko became the first openly gay person to become an elected official in the United States by winning a spot in the Ann Arbor City Council. In 1977, Harvey Milk became the first elected official to win by running primarily on an LGBTQ rights platform for a seat in the San Francisco Board of Supervisors. In 1991, Joanne Marie Conte became the first openly transgender person to be elected to public office as a member of the Arvada, Colorado, City Council.

President Bill Clinton became the first president to appoint an openly LGBTQ person to serve in the Federal Government, totaling up to 140 openly LGBTQ appointees during his term. President George W. Bush appointed openly gay men to run the Office of National AIDS Policy and to serve as Ambassador to Romania. President Barack Obama appointed over 300 openly


LGBTQ people to positions, including Eric Fanning as Secretary of the Army. President Trump became the first president to appoint an openly LGBTQ person to a cabinet-level position by tapping Richard Grenell as Acting Director of National Intelligence.

In 2020, Pete Buttigieg became the first openly LGBTQ person to win a presidential contest for the Democratic presidential nomination. LGBTQ advocacy and lobbying organizations are a powerful force in American politics today; the largest of these organizations is the Human Rights Campaign with over 3 million members and supporters nationwide. Despite the gains in this area, LGBTQ individuals still face underrepresentation in our political system. By 2020, no openly transgender person has served as a member of Congress. No openly LGBTQ person has served as a secretary in the Cabinet of the United States, as a justice of the Supreme Court, nor as Vice President or President of the United States.

4. THE RIGHT TO BE PROTECTED AGAINST DISCRIMINATION

Across the United States, a patchwork of laws protects LGBTQ people against discrimination in over 400 cities and 23 states. The degree and domain of protections change drastically from one jurisdiction to another, especially in places without statewide protections. Twenty-two states and the District of Columbia protect LGBTQ people on the basis of both sexual orientation and gender identity; Wisconsin’s non-discrimination law includes sexual orientation but excludes transgender protections. Twenty-two states cover domains such as employment, housing, and public accommodations, while Utah lacks the public accommodations component. Across the country, some jurisdictions have also included protections in credit and education. For employees working for the federal government, President Obama and President Clinton signed executive orders, protecting civilian federal workers on the basis of sexual orientation and sexual identity, extending non-discrimination requirements to federal contractors as well. While those protections still stand, President Trump weakened the compliance requirements for federal contractors after taking office.

The first non-discrimination ordinance in the United States was passed in East Lansing, Michigan, in 1972. Activist groups such as the Gay Liberation Front fought for similar laws in Washington DC, Pennsylvania, California, and beyond. The passage of these laws saw the first organized backlash against explicit protections for LGBTQ people. In 1977, celebrity singer Anita Bryant started a national campaign to repeal non-discrimination protections in cities where they had been adopted. The movement was successful in repealing ordinances in Miami, FL, St. Paul, Minnesota, Wichita, Kansas, and Eugene, Oregon before being stopped in Seattle, Washington. Bryant’s campaign forced LGBTQ rights groups, who were sharply divided over identity and tactics, to unite against a common enemy. This political realignment made it possible for gays and lesbians to fight back against a proposed ban to keep gays and lesbians from teaching in public schools in California.

In 1992, the landmark Supreme Court case Romer v. Evans overturned an amendment to the Colorado state constitution that prevented gays, lesbians, and bisexual people from being protected by anti-discrimination law. Writing for the majority, Justice Anthony Kennedy stated that the amendment served no state purpose and was constructed solely on animosity against


71. President Clinton signed Executive Order 13087 which included sexual orientation to existing protection, and President Obama signed Executive Order 13672 which added gender identity into the protected categories and expanded the requirement to all federal contractors.


a class of people, with the intended purpose to “make them unequal to everyone else.” The Constitution, Kennedy concluded, protected LGBTQ people from such treatment. This language was a stunning reversal from the Bowers v. Hardwick decision 10 years earlier, which allowed sodomy laws to stand. The precedent set by Romer v. Evans paved the way for future wins at the Supreme Court. 81

A federal bill to protect LGBTQ people nationwide has yet to be signed into law. The long history of failed attempts to pass such bills starts in 1974 when Rep. Bella Abzug (D-NY) and Rep. Ed Koch (D-NY) introduced the Equality Act in the 93rd Congress. In 1994, Senator Ted Kennedy (D-MA) introduced the first Employment Non-discrimination Act (ENDA), where it failed. The bill was introduced year after year but never managed to go anywhere. In 2013, a trans-exclusive version of ENDA passed the Senate but died in the House. In 2019, the Equality Act—a trans-inclusive nondiscrimination bill in employment, housing, credit, education, public spaces and services, federally funded programs, and jury service—passed the House of Representatives, but has been refused to be debated by the Senate. 82

5. THE RIGHT TO PROTECTED FROM HATE CRIMES

On October 28, 2009, President Barack Obama signed the Matthew Sheppard and James Byrd Hate Crimes Prevention Act, which expanded the 1969 United States federal hate crimes law to include perceived gender, sexual orientation, gender identity, or disability. The bill provides funding and federal assistance to state, local, and tribal jurisdictions to investigate and prosecute hate crimes. 83 The law sends a clear signal to all jurisdictions in the United States that crimes against LGBTQ people deserve to be fully investigated and brought to justice; it broadcasts to the population that violence against LGBTQ people will not be met with impunity.

At the urging of the Human Rights Campaign, Parents and Friends of Lesbians and Gays (PFLAG), the National Gay and Lesbian Task Force, and Gay and Lesbian Alliance Against Defamation (GLAAD), Senator Ted Kennedy introduced a hate crimes prevention act in 1997 to address the increase of violent attacks against LGBTQ people. The bill did not make it out of committee. Then, the following year, the story of Mark Sheppard shook the country. Sheppard was targeted for being gay and beaten unconscious in a field in Wyoming before being left to die tied to a split rail fence. The story reenergized the issue, although Republicans still refused to support it. One Republican lawmaker even called the bill the “Pedophile Protection Act.” It was not until President Barack Obama was elected in 2009, 12 years after it was originally introduced, that the bill had enough support to pass. (See "Hate Crimes.")

6. RIGHT TO BE FREE FROM THE STIGMA OF MENTAL ILLNESS AND PROTECTED FROM CONVERSION THERAPY

In the United States, attitudes towards LGBTQ people are no longer tied to concerns that homosexuality or gender dysphoria are mental illnesses; the American Psychiatric Association (APA) removed those associations from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) in 1973 and 2012 respectively. 84, 85 Similarly, so-called conversion therapy, or practices that attempt to change someone’s sexual orientation or gender identity through psychological or spiritual interventions, has been banned in 20 states. 86

The stigma created by labeling LGBTQ people as mentally ill painted homosexuals as sick, disturbed, and pathological. It served as justification for many policies that prohibited LGBTQ advocacy, banned LGBTQ people from the workplace, and prevented the inclusion of LGBTQ people into everyday life. This designation also influenced many families to reject their own for being LGBTQ. With being called sick also came so-called treatments to try to “cure” the sexual orientation or gender identity of LGBTQ people. In the early 1900s, these treatments included torturous and immoral interventions like ice pick lobotomies, electroshock, chemical castration with hormonal treatment, and aversive conditioning. 87

In the late 1960s and 1970s, LGBTQ rights groups mounted a dedicated effort to change the designation of homosexuality in the mental illness handbook. Frank Kameny and Barbara Gittings organized protests at the APA national meetings until they were allowed to argue that gay people were not sick and instead were capable of living full and happy lives. They employed the help of a gay psychiatrist who testified in the 1973 APA national meeting (wearing a mask because the APA banned gay people from being analysts) who gave a shocking testimony asserting that much of what the APA thought about homosexuals was wrong. Shortly after, the APA voted to remove the designation out of the DSM-V. 88

Although the American Psychiatric Association stopped labeling gay people as sick, the practice of conversion therapy was widely used – and is still used – in many parts of the country. In 2012 California became the first state to ban such practices on minors after much advocacy from organizations like the Human Rights Campaign and the Trevor Project. Nonetheless, today, 30 states still allow such practices to continue.

7. THE RIGHT TO SERVE OPENLY IN THE MILITARY

Today, openly gay, lesbian, and bisexual people can serve in the military without fear of expulsion. These protections were secured after the repeal of "Don’t Ask, Don’t Tell" by President Obama in September 2011. Although in 2016, Secretary of Defense, Ash Carter, extended those protections to transgender Americans, President Trump announced that the military would no longer allow transgender people to serve openly.

In the United States, "homosexual acts" have served as justification for discharge from the military as far back as the Revolutionary War. After World War I, the military made gay sexual relationships punishable by a court-martial. In 1942, military regulation began listing homosexuality as an excludable characteristic because it had been classified as a mental disorder by psychiatrist organizations.

Before "Don’t Ask Don’t Tell," the military conducted intensive investigations to purge LGBTQ people from the military. Brave service members such as Leonard Matlovich challenged the discriminatory ban as far back as 1975 but were unable to secure a full reversal. In the 1980s alone, more than 17,000 men and women were discharged from the military because of their LGBTQ identity.

In 1992 campaign, Bill Clinton promised to let gay Americans serve openly in the military. Once in office, however, he received fierce opposition to removing the ban by the Chairman of the Joint Chiefs, Colin Powell. In 1993, a compromise between Powell and President Clinton resulted in "Don’t Ask, Don’t Tell," a policy that allowed gay Americans to serve as long as they did so in the closet. The new policy, however, continued the discriminatory persecution of LGBTQ people in the military; by 2009, 13,000 LGBTQ people had been kicked out of the military through the policy. "Don’t Ask, Don’t Tell" would stay in place until its repeal in 2011 by President Barack Obama.

8. THE RIGHT TO LGBTQ-INCLUSIVE EDUCATION

In July 2020, Illinois will become the 4th state to require schools to teach about LGBTQ history and contributions of LGBTQ people to other areas of study; California, New Jersey, and Colorado also have similar laws. The first law of this kind to pass in the nation was the FAIR Education Law in California, signed by Governor Jerry Brown in 2011. The erasure of LGBTQ history from textbooks is another symptom of the discrimination assaulting this community in the United States; this erasure robs LGBTQ people of their history and heroes. Nationwide, less than 25% of students say that they learn about LGBTQ-related topics during their school. In fact, 6 states have laws limiting LGBTQ education in the classroom.

III. CURRENT STRUGGLES

Despite legal, social, and political progress over the last 50 years, LGBTQ rights in the United States remains an ongoing and contested project. To this day, nearly two-thirds of LGBTQ residents across the country have reported experiences of discrimination. At the same time, a wide range of laws and policies (or a lack thereof) continue to restrict the civil rights of LGBTQ communities, while recent political and legal actions, particularly under the Trump administration, have resulted in a backsliding for LGBTQ rights.

Even though LGBTQ advocates have enjoyed several significant wins for LGBTQ rights nationwide, such as same-sex marriage and the decriminalization of homosexuality, there remains a dearth of robust federal policies supporting LGBTQ equality. States, cities, and towns have become battlegrounds for progress, resulting in a patchwork of LGBTQ rights across the country and leaving some LGBTQ people with fewer rights than others simply as a result of their zip code. The Movement Advancement Project’s Snapshot of LGBTQ Equality by State demonstrates this inconsistency.


90. Ibid.


94. “Snapshot: LGBTQ Equality by State.” Movement Advancement Project, https://www.lgbtmap.org/equality-maps/. Note: A state’s “policy tally” counts the number of laws and policies within the state that help drive equality for LGBTQ people. The major categories of laws covered by the policy tally include: Relationship & Parental Recognition, Non-discrimination, Religious Exemptions, LGBTQ Youth, Health Care, Criminal Justice, and Identity Documents.
In some cases, certain subpopulations of LGBTQ people are uniquely vulnerable to the current lack of protections, and they face additional and distinct barriers to equality. For instance, LGBTQ youth continue to risk exposure to “conversion therapy,” a harmful practice that remains legal in 29 states around the country. Transgender people are banned from openly serving in the military even after the hard-fought repeal of President Clinton’s “Don’t Ask Don’t Tell” policy. LGBTQ people of color, undocumented LGBTQ people, low-income LGBTQ people, and LGBTQ people living with disabilities face intersecting forms of discrimination that further threaten their health and well-being.

In addition to the unfinished work towards full equality for LGBTQ communities, ongoing assaults by civil society and government actors have eroded LGBTQ rights and rolled back progress that took decades to achieve. The Trump administration has repealed a number of policies and initiatives aimed at protecting LGBTQ populations. It has also withdrawn research, surveys, and other data collection initiatives that were designed to provide a better understanding of discrimination faced by LGBTQ communities. Additionally, as LGBTQ rights have advanced over the last century, they have faced pushback from some (though, not all) conservative leaders and religious communities. These leaders and communities often cite federal overreach, religious freedom, and the exercise of free speech as the basis for repealing or precluding LGBTQ rights.

Recently, vestiges of stigma and age-old anti-LGBTQ arguments, such as concerns about LGBTQ adults harming children, have been reinvigorated. These arguments have been especially levied against transgender and nonbinary communities, as rights for these communities have gained more visibility. While transgender and nonbinary communities carry a long legacy of advocacy and activism, these communities have at times been left out of mainstream LGBTQ organizing. One notable example of such exclusion occurred in 2007 when a weakened version of the Employment Non-Discrimination Act (ENDA, a precursor to the modern Equality Act) was introduced in hopes that narrowing its scope would make it more likely to pass Congress. The changes included the removal of protections on the basis of gender identity and expression while maintaining protections on the basis of sexual orientation. This change protected lesbian, gay, and bisexual people from discrimination, but left transgender and nonbinary people unprotected. Some LGBTQ advocacy organizations saw the move as a necessary short-term concession that would precede a fully inclusive bill once the political timing was right. Other organizations decried the move as leaving behind transgender and nonbinary communities.

The rest of this section provides a more in-depth look at the political and legal setbacks that have threatened LGBTQ rights in recent years, along with an assessment of the gaps that remain to be filled.

1. NONDISCRIMINATION

LGBTQ people are not protected from discrimination at the federal level and in most states. Only 23 states and Washington, D.C. explicitly include either or both sexual orientation and gender identity as protected characteristics in their nondiscrimination statutes. Further, these statutes vary widely in terms of what they cover. The more robust nondiscrimination statutes protect against discrimination across a range of areas, including employment, education, public accommodations, housing, and credit. However, not all statutes meet this benchmark.

The lack of a federal nondiscrimination law and the inconsistent patchwork of nondiscrimination protections at the state and local levels leaves millions of LGBTQ people unprotected from discrimination. The Williams Institute recently estimated that nearly half of all LGBTQ people in the U.S. lack protections from discrimination in employment, education, housing, public accommodations, and credit. Based on this estimate, 6.5 million LGBTQ people in the U.S. are not protected from discrimination. (The Williams Institute estimates that there are 13 million people ages 13 and older in the U.S. who identify as LGBTQ.)

Despite positive progress for LGBTQ rights within the last century, LGBTQ people continue to face high rates of discrimination across a range of areas, such as employment, housing, and health care. A 2015 survey by the HRC found that 63% of LGBTQ Americans report having experienced discrimination in their personal lives. For transgender and LGBTQ people of color, anti-transgender bias and racism compound this data.

99. Ibid.
100. Ibid.
Attacks and setbacks

Even though there is bipartisan support for LGBTQ nondiscrimination protections, the Equality Act has failed to pass Congress each year since its first iteration was introduced in 1974. On May 14, 2019, President Trump formally announced his opposition to the Equality Act.

LGBTQ nondiscrimination protections have also been threatened at the state and local levels. In 2015, Houston, Texas voters swiftly defeated a local ordinance that would introduce nondiscrimination protections based on 15 different protected characteristics, including sexual orientation and gender identity.

Particularly controversial has been the rights of transgender people to use public restrooms according to their gender. In 2016, North Carolina’s “House Bill 2” or “HB2” became the first state law to address restroom access for transgender people. The law required individuals to use restrooms that aligned with their sex assigned at birth and was a direct reaction to recently-passed Charlotte City Council Ordinance 7056, which allowed individuals to use the restroom that corresponded to their gender identity. HB2 was ultimately repealed after a national outcry from LGBTQ rights advocates and allies, including a letter from the Obama-era Department of Justice indicating that compliance with HB2 breached a number of federal civil rights laws. In 2018, anti-LGBTQ activists in Massachusetts were able to garner enough signatures to bring formerly passed gender identity protections, including the right to restroom access, to a referendum vote. The referendum ultimately passed, preserving gender identity as a protected characteristic within the state’s broader nondiscrimination law. However, almost one-third of voters (32.18%) voted in favor of repealing those protections.

Opponents of these so-called “bathroom bills” used fear to defeat them by asserting that these bills would allow men to enter women’s restrooms and assault women and girls. This argument has been extensively debunked by studies. For example, a 2018 study comparing localities in Massachusetts with and without transgender public accommodation ordinances found no link between the ordinances and reported incidences of sexual assault; in fact, it found that any incidence of sexual assault in bathrooms was “exceedingly rare.”

On the other hand, in another study, 1 in 4 transgender youth reported being sexually assaulted in the past year, with youth more likely to experience sexual assault when using bathrooms according to their sex assigned at birth rather than their sexual identity. A lack of public accommodation protections has been shown to have material impacts on the mental and physical health of transgender individuals. According to the 2015 U.S. Transgender Survey conducted by the National Center for Transgender Equality, 59% of transgender people avoided using a public restroom in the last year for fear of discrimination, and nearly one-third (32%) limited the amount they ate and drank to do so. In addition, 12% reported being verbally harassed in public restrooms during the past year, while 2% were physically or sexually assaulted.

Nevertheless, the “sexual predator” argument remains pervasive as a justification for discriminatory legislation against transgender and nonbinary people. Further, despite bipartisan support for LGBTQ nondiscrimination protections more broadly, there is a vast partisan divide when it comes to “bathroom bills”; 59% of Republicans are in favor of bills that require transgender individuals to use bathrooms that correspond with their sex

107. Ibid.
108. Ibid.
assigned at birth, with 36% of Republicans opposed to such bills. Among Democrats, only 30% are in favor of such bills, with 65% opposed.

In 2017, the longstanding tension between equality and liberty was thrust onto the national stage in the Supreme Court case Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission. A few years before the case, the owner of Masterpiece Cakeshop had refused to design and bake a cake for a gay couple, claiming that doing so violated his religious beliefs. The question in the case was presented as follows: "Whether applying Colorado’s public accommodations law to compel Phillips [the owner of Masterpiece Cakeshop] to create expression that violates his sincerely held religious beliefs about marriage violates the Free Speech or Free Exercise Clauses of the First Amendment." While the Supreme Court did not ultimately answer this question and instead ruled in favor of the baker on a technicality, the Trump administration made its opinion clear. The Department of Justice submitted an amicus brief in favor of the baker’s right to refuse service to LGBTQ people on the basis of religious beliefs.

Despite the frequent pitting of religious freedom against LGBTQ rights, data show that, for the most part, religiously identified individuals oppose the use of religious grounds as a basis for LGBTQ discrimination. However, the notable exception here is among White Evangelical Protestants, the majority of whom indicate otherwise.

### 16% of LGBTQ workers in the U.S. have reported losing a job because of their sexuality, gender identity, or gender expression.


115. Ibid.


121. Ibid.

122. Ibid.


### 2. EMPLOYMENT

LGBTQ people in the U.S. are not uniformly protected by employment nondiscrimination protections. Only 22 states in the country explicitly prohibit discrimination on the basis of sexual orientation and gender identity in their state employment nondiscrimination laws. In the other 28 states, it remains legal to fire a worker because of their LGBTQ status.

Data show the real impacts of LGBTQ discrimination in the workplace. Sixteen percent of LGBTQ workers in the U.S. have reported losing a job because of their sexuality, gender identity, or gender expression. Eighteen percent of LGB people and 30% of transgender people have reported being denied jobs or promotions due to their LGBTQ status.

### Attacks and setbacks

Under the Trump administration, employment protections for LGBTQ people have faced erosion. In August 2017, the Trump administration formally announced that it would block transgender people from serving in the military, reversing an Obama-era policy that lifted a longstanding ban on openly transgender service members. It is estimated that 15,000 transgender people serve in the military today. While many lawsuits and pieces of legislation have been filed challenging the ban, the Department of Defense moved forward with its implementation on April 12, 2019.

LGBTQ employment rights are also being contested more generally. On October 4, 2017, the Department of Justice released a memo that reversed an Obama-era interpretation of Title VII of
**LGBTQ youth are more likely to face adverse social outcomes than their non-LGBTQ peers.**

The Civil Rights Act of 1964. Under the Obama administration, the Department of Justice released guidelines that expressly interpreted gender identity as falling within sex discrimination under Title VII. The Supreme Court is currently hearing 3 landmark cases, Altitude Express Inc. v. Zarda, Bostock v. Clayton County, and R.G. & G.R. Harris Funeral Homes v. EEOC, that ask whether sexual orientation and gender identity are protected under existing federal laws prohibiting sex discrimination. For each of these 3 cases, the Department of Justice filed briefs arguing that sex discrimination does not include discrimination on the basis of sexual orientation and gender identity.\(^\text{128}\)

In accordance with this reinterpretation of Title VII, the Office of Personnel Management removed guidance for managers at federal agencies on how to support their transgender staff. The Office of Personnel Management replaced the guidance with links to the Department of Justice’s reinterpretation of Title VII, leaving agency managers with fewer tools to adequately support their staff and removing a barrier to potential discrimination against transgender employees.\(^\text{130}\)

Under the Trump administration, both the Department of Justice and the Department of Labor have cited religious liberties as a basis to justify limiting LGBTQ employment rights. In October 2017, the Department of Justice released guidance that interpreted religious liberty protections as exempting federal agencies and contractors from LGBTQ nondiscrimination laws. In August 2018, the Department of Labor issued a directive exempting contractors from federal nondiscrimination laws if they conflict with their religious beliefs.\(^\text{133}\)

### 3. PROTECTIONS FOR LGBTQ YOUTH IN HEALTH AND EDUCATION

LGBTQ youth are more likely to face adverse social outcomes than their non-LGBTQ peers. These outcomes include elevated rates of depression, suicidality, homelessness, and victimization. The 2016 Youth Risk Behavior Survey\(^\text{134}\) found that LGBTQ youth are almost 3 times more likely to seriously contemplate suicide than their heterosexual peers, and almost 5 times more likely to attempt suicide.\(^\text{135}\) A 2018 study found that transgender youth are at significantly higher risks of suicidality, with almost 1 in 2 transgender youth reporting that they have attempted a suicide attempt in the past year.\(^\text{136}\) The Trevor Project recently found that the majority of LGBTQ youth (71%) report experiencing discrimination based on their sexual orientation or gender identity, and LGBTQ youth are over twice as likely (2.2x) than their non-LGBTQ peers to experience homelessness.\(^\text{137, 138}\)

LGBTQ youth are also susceptible to hostile conditions in their school and home lives. In their 2017 National School Climate Survey, GLSEN found that nearly all LGBTQ students heard homophobic or transphobic remarks at school. About 60% of LGBTQ students reported experiencing LGBTQ-related

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129. Ibid.

130. Ibid.


134. A school-based survey administered by the Center for Disease Control every 2 years.


discriminatory policies at school. Examples of such policies included LGBTQ students who were prevented from wearing clothes considered “inappropriate” based on their legal sex, LGBTQ students who were prohibited from discussing or writing about LGBTQ topics in school assignments, and transgender and nonbinary students who were required to use a bathroom of their legal sex.\(^\text{139}\)

In addition to hostile school climates, LGBTQ youth are also at risk of experiencing so-called “conversion therapy.” Conversion therapy is the harmful and debunked practice of attempting to change an LGBTQ person’s sexual orientation or gender identity.\(^\text{140}\) This practice is grounded in the belief that being LGBTQ is abnormal and something that should be cured, even though the APA removed homosexuality as a mental illness in 1973. The Williams Institute estimates that in the 32 states that do not ban conversion therapy, 16,000 LGBTQ youth (ages 13-17) will be subjected to the practice by a licensed health care professional before they reach the age of 18.\(^\text{141}\)

Many reports and studies have documented the link between adverse outcomes for LGBTQ youth and conversion therapy and hostile school climates.\(^\text{142, 143, 144}\) As such, many LGBTQ youth organizations have been championing policy priorities related to these areas. Examples of these priorities include banning conversion therapy nationwide (the practice remains legal in 29 states), abolishing “no promo homo” laws\(^\text{145}\) (which currently exist in 5 states), making school curricula LGBTQ-inclusive,\(^\text{146}\) and expanding anti-bullying and nondiscrimination protections for LGBTQ students, in particular transgender and nonbinary students (29 states do not have a law protecting LGBTQ students).\(^\text{147, 148}\)

There is precedent for these types of rights nationwide in other countries. For example, in May 2020, Germany became the fifth country to outlaw conversion therapy for minors, following Malta, Ecuador, Brazil, and Taiwan.\(^\text{149}\) In 2018, Scotland became the first country to mandate LGBTQ-inclusive education in all public schools across the country.\(^\text{150}\)

Comprehensive sex education that is inclusive of LGBTQ youth is a priority for many LGBTQ advocates because LGBTQ youth face disparate adverse sexual health outcomes as compared to their non-LGBTQ peers. For instance, LGBTQ youth experience disproportionately high rates of HIV and other sexually transmitted diseases (STDs), and lesbian and bisexual cisgender youth are more likely to have ever been pregnant.\(^\text{151}\) At the same time, many LGBTQ youth lack the same access to adequate sex education as their non-LGBTQ peers. Only 15 states and the District of Columbia offer comprehensive sex education across the majority of their schools.\(^\text{152}\)

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145. Laws that restrict the inclusion of LGBTQ topics in schools.


Attacks and setbacks

Despite the need for continued legal and political action to support LGBTQ youth, the Trump administration has taken actions to roll back policies aimed at protecting this population. In 2017, the U.S. Departments of Justice and Education rescinded Obama-era guidance on Title IX of the Education Amendments of 1972. The Obama-era guidance summarized over a decade of case law that interpreted discrimination on the basis of sex to include gender identity. This meant that under Title IX, transgender students have the right to be treated according to their gender identity, including accessing bathrooms, participating in dress codes, and using their correct name and pronouns. As the National Center for Transgender equality explains, rescinding the guidance does not change the law, but it “will likely make school harder for many students.”

The Trump administration has taken other actions to weaken the rights of LGBTQ youth. In 2018, the Department of Education stated that it would no longer be investigating complaints from transgender students who were unable to access the bathroom aligned with their gender identity. In 2020, the Department’s Office for Civil Rights concluded that a transgender-inclusive athletic policy in Connecticut violated civil rights law, effectively using Title IX to prohibit transgender youth from participating in sports. In 2017, the Department of Housing and Urban Development formally withdrew an effort to evaluate the impact of the LGBTQ Youth Homelessness Prevention Initiative, which piloted strategies in 2 cities to ensure no LGBTQ young person experiences homelessness because of their sexual orientation or gender identity. The rights of LGBTQ youth are also being threatened at the state level. The Equality Federation, which is currently tracking 226 anti-LGBTQ bills across the country, found that many of these bills can be traced back to an organization called Freedom for All (formerly known as Project Blitz). Freedom for All is a conservative organization known for providing state legislatures with templates and strategies for passing anti-LGBTQ legislation. The majority of these bills specifically target transgender youth and make it more difficult for these youth to access medically necessary health care. For example, conservative lawmakers in Colorado, Missouri, Oklahoma, Florida, South Carolina, and South Dakota have all introduced legislation that would ban health care providers from providing transition-related care, such as puberty blockers, to young transgender people. These laws effectively remove the ability for health care providers to determine what is in the best interest for the health of their transgender patients and instead transfer this power to the government. A 2020 study in the journal Pediatrics added to a growing evidence base linking gender-affirming care for transgender youth to lower rates of suicide. Notably, these bills do not apply equally to all youth; they still allow cisgender youth to receive puberty blockers to treat conditions like early-onset puberty.

4. HEALTH, HEALTH CARE, AND HUMAN SERVICES

LGBTQ people face a range of health disparities beyond those we describe above for LGBTQ youth. The National LGBT Health Education Center cites a number of additional examples:

- Gay men and other men who have sex with men (MSM) are at higher risk of HIV and STDs, especially among communities of color.


154. Ibid.


159. Ibid.

160. Ibid.


162. Ibid.

• LGBT people are much more likely to smoke than others; they also have higher rates of alcohol use, other drug use, depression, and anxiety.

• LGBT people are less likely to get preventive services for cancer.

• LGBT people have higher rates of behavioral health issues.

• Transgender individuals experience a high prevalence of HIV and STDs, victimization, and suicide.

• Elderly LGBT individuals face additional barriers to health care because of isolation, diminished family supports, and reduced availability of social services. Some report discrimination from their peers when living in communal elderly housing.

Importantly, as the National LGBT Health Education Center explains, “there are no LGBT-specific diseases or illnesses...these health issues are mostly related to the stigma and discrimination experienced by LGBT people in their daily lives—including at school or work, in public spaces, or at health care settings.”  

Several studies corroborate this statement.  

Research has shown that LGBTQ people in the U.S. encounter significant barriers to accessing health care. These barriers to care are a result of discrimination, and they include difficulty finding providers who are knowledgeable about LGBTQ health care needs, discriminatory treatment from providers or insurers, and foregoing care altogether for fear of mistreatment. The 2015 U.S. Transgender Survey found that one-third (33%) of transgender people who saw a health care provider had at least one negative experience related to being transgender, such as being verbally harassed or refused treatment because of their gender identity. A 2014 report by Lambda Legal found that more than half of LGB survey respondents had experienced discrimination while seeking care.

LGBTQ people also experience discrimination in human and social services settings. According to the 2015 U.S. Transgender Survey, 7 out of 10 (70%) respondents who stayed in a shelter in the past year reported some form of mistreatment, including being harassed, sexually or physically assaulted, or kicked out because of being transgender. In 11 states around the country, state-licensed child welfare agencies are legally permitted to refuse to place children with LGBTQ foster parents if doing so conflicts with their religious beliefs.

**Attacks and setbacks**

Despite the substantial evidence of anti-LGBTQ discrimination in health care and human services settings, the Trump administration has made it easier for providers and insurers to discriminate on the basis of sexual orientation and gender identity.

In 2019, the U.S. Department of Health and Human Services proposed a rule that would roll back Obama-era regulations protecting LGBTQ people from discrimination by federally funded health providers, programs, and insurers. The Obama-era regulations explicitly stated that discrimination on the basis of sex stereotyping and gender identity was prohibited under Section 1557, the nondiscrimination provision of the Affordable Care Act (ACA). The ACA was a significant development in healthcare legislation not only because it provided health insurance to so many otherwise uncovered Americans, but also because it was the first law to apply broad-based nondiscrimination protections to healthcare providers and insurers. It filled important gaps in nondiscrimination law. While longstanding case law (Prescott v. Rady Children’s Hospital, Flack v. Wisconsin Dept. of Health Services, Boyden v. Conlin, and Tovar v. Essentia Health) affirms that sex stereotyping and gender identity nondiscrimination protections are inherent to Section 1557, HHS’ recent rule change threatens these protections.

164. Ibid.


That same year, HHS proposed a "conscience" rule that expanded protections for health care providers who refused to provide certain services to patients, including abortion and gender-affirming care, if doing so violated their religious beliefs.\(^{174}\) A federal district court in New York blocked the rule in November 2019, citing violations of the Administrative Procedure Act and the Constitution, as well as inconsistencies with other federal laws.\(^{175}\)

The Trump administration has also threatened LGBTQ rights in human and social services settings. In 2019, HUD revealed its plans to eliminate Obama-era nondiscrimination protections for transgender people in shelters.\(^{176}\) That same year, HHS proposed a new rule that would permit federally funded adoption and foster care agencies to reject LGBTQ people, including same-sex couples.\(^{177}\)

5. CRIMINAL JUSTICE, VIOLENCE, AND IMMIGRATION

LGBTQ people, in particular transgender people of color, are disproportionately likely to face victimization and violence. Data from the Federal Bureau of Investigation also show that anti-LGBTQ hate crimes have been on the rise.\(^{178}\) Despite the passage of the federal Matthew Sheppard and James Byrd Hate Crimes Prevention Act in 2009, state-level hate crimes legislation remains a patchwork across the country: 14 states do not enumerate sexual orientation and gender identity in their hate crimes statutes, and 3 have no statutes at all.\(^{179}\) Importantly, there is no consensus around the efficacy of hate crimes laws in preventing bias-motivated crimes, and some LGBTQ advocates oppose the use of such crimes because research has suggested that they disproportionately target communities of color.\(^{180}\)

Some areas of the country still allow the use of "gay/trans panic defenses" to justify anti-LGBTQ violence. According to the American Bar Association, these defenses "seek to partially or completely excuse crimes such as murder and assault on the grounds that the victim's sexual orientation or gender identity is to blame for the defendant's violent reaction."\(^{181}\) These defenses are fiercely condemned by LGBTQ rights advocates, and they remain legal in 40 states in the U.S.\(^{182}\)

Many LGBTQ people also face violence from state and local institutions. As previously mentioned, transgender women of color are disproportionately profiled and targeted by police under loitering laws that criminalize sex work, charges sometimes referred to as "walking while trans." A 2020 report published by the ACLU, the HRC, the National LGBTQ Task Force, and 21 other human rights-based organizations called for decriminalizing sex work.\(^{183}\) Gay and transgender people, specifically transgender people, also face heightened violence in prisons and jails. Transgender people are more likely than cisgender people to be assaulted in prison, and they are more likely to be assigned to solitary confinement as a result.\(^{184}\) Solitary confinement has been linked to serious psychological health consequences.\(^{185}\) Research has also documented the increased risk that transgender people face in sex-segregated facilities. According to a 2019 literature review, several studies show that transgender women who are incarcerated in male settings are at heightened risk of rape and sexual assault as a result of their gender identity.\(^{186}\)


180. Ibid.


The right to be fully and equally seen, counted, and identified remains a gap in the advancement of LGBTQ rights.

Attacks and setbacks

Under the Trump administration, the Federal Bureau of Prisons approved new guidelines instructing staff to house inmates according to their biological sex. These guidelines reverse Obama-era guidelines that encouraged staff to rely on gender identity instead, and when appropriate.

Many LGBTQ advocacy organizations have also raised concerns about the Trump administration’s anti-immigration policies. These groups argue that policies that restrict immigration into the U.S. have an outsized effect on LGBTQ people who are fleeing violence from other countries.

Demographic data collection on LGBTQ people is widely inconsistent across the U.S. and within state and local settings. For example, the Behavioral Risk Factor Surveillance Survey, the largest health survey in the world, only includes LGBTQ demographic questions in 32 states. LGBTQ advocates have long argued for inclusive data collection as a critical tool for quantifying and addressing disparities among LGBTQ communities.

Transgender and nonbinary people who seek to change their names and gender markers are frequently subjected to excessive requirements to do so. Eleven states require individuals to formally publish a name change announcement, often in a local newspaper. This outdated practice exposes transgender people to potential harassment and violence by making their gender transition public. Some states allow individuals to petition to waive this requirement, and others have eliminated the name change announcement. The ability to update gender markers is equally inconsistent. Many states place extensive burdens on transgender and nonbinary individuals to change their gender marker, including the provision of a court order, a letter from a medical provider, and proof of surgery. Advocates have fought for and won “self-attestation” policies in many states across the U.S., arguing that existing policies violate the individual’s right to privacy. All people need access to accurate identification to participate in modern life. Further, the lack of accurate identification for transgender and nonbinary people has been associated with a range of negative outcomes, such as the denial of employment and housing.

6. INCLUSION, DATA, AND IDENTITY DOCUMENTATION

The right to be fully and equally seen, counted, and identified remains a gap in the advancement of LGBTQ rights.

Despite the clear progress made in positive LGBTQ representation in nearly every sector, LGBTQ people remain underrepresented in public office and our courtrooms. As of 2019, less than 1% of sitting federal judges self-identify as LGBTQ, and there are no federal judges who self-identify as transgender.

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Attacks and setbacks

A number of attacks in recent years threaten LGBTQ inclusion and representation. Under the Trump administration, the Census Bureau removed proposed questions to collect LGBTQ demographic data in the 2020 American Community Survey.\(^{196}\) According to ProPublica, several federal agencies and LGBTQ advocates favored the inclusion of these questions to better understand the needs of LGBTQ communities.\(^{197}\) Under the Trump administration, HHS also removed a proposed question about sexual orientation from its Administration for Community Living survey. This survey helps inform federal funding for programs for people with disabilities. Many critics, including Senator Susan Collins (R-Maine), condemned the move.\(^{198}\)

Shortly after President Trump took office, his administration began systematically removing references to LGBTQ communities and initiatives from some federal websites. The Web Integrity found that under the Trump administration, LGBTQ-related terms appear on federal webpages less often and that there has been a significant increase in terms like “religious freedom” and “conscience protection.”\(^{199}\)

The Trump administration has also seen the appointment of a number of federal judges known to be hostile to LGBTQ rights. According to a 2019 report by Lambda Legal, one-third (36%) of President Trump’s circuit court nominees have a demonstrated history of anti-LGBTQ bias.\(^{200}\)

IV. POLICY RECOMMENDATIONS

HOW TO REIMAGINE RIGHTS & RESPONSIBILITIES:

• **Enact the Equality Act.** Ban discrimination against LGBTQ people nationwide. The Equality Act would amend existing civil rights laws to provide consistent and explicit protections for LGBTQ people in employment, housing, credit, education, public spaces and services, federally funded programs, and jury service. By explicitly including sexual orientation and gender identity in federal civil rights law, LGBTQ people will be afforded the same protection as race, sex, and other explicitly covered characteristics.

• **Provide Military Service Opportunities and Appoint Federal Officials.** Allow transgender people to enter and serve in the U.S. military, make efforts to appoint openly LGBTQ people to serve in Presidential cabinet-level positions, and nominate openly LGBTQ and LGBTQ-friendly Supreme Court justices and federal judges.

• **End Family and Health Care Discrimination.** Require federally funded adoption agencies to provide service to LGBTQ couples and families, expand existing resources to support LGBTQ elders and people living with HIV/AIDS, and expand the Affordable Care Act to fully cover LGBTQ-related health needs, including HIV/AIDS medication, hormone treatment and sex-reassignment surgery, mental health services, and elder care.

• **End Employment and Workplace Discrimination.** Enact the Do No Harm Act which amends the Religious Freedom Restoration Act to clarify that discrimination on the basis of race, sex, or LGBTQ status by individuals or organizations claiming infringement of their religious liberty is prohibited. In addition, reinstate LGBTQ non-discrimination requirements in federal contracting.

• **End Discrimination in Schools.** Require public schools to prohibit discrimination against LGBTQ students, issue clear federal and state mandates and guidelines for LGBTQ-inclusive curriculum, ensure that transgender students are protected from bullying and allowed access to bathrooms and other facilities consistent with their gender identity, and require that the history and practice of the “gender binary tradition” are addressed explicitly in schools so that gender diversity is fully accepted and no longer considered “abnormal.”

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198. Ibid.

