



Human Rights Violations against Transgender Communities in the United States

**Shadow Report to the
United Nations Human Rights Committee
For the United States Review**

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I. Introduction

“Trans people are humans too and deserve to live in this country.”

- Nico Watson, Teacher¹

1. In the 2019 list of issues for the United States's (U.S.) fifth periodic review for compliance with the International Covenant on Civil and Political Rights (ICCPR), this Committee requested information on the “legislative and judicial protections and remedial avenues available to lesbian, gay, bisexual and transgender individuals who have been subjected to discriminatory practices.”² Moreover, this Committee specifically sought information on the “mechanisms available to transgender individuals to protect them from discrimination.”³
2. In response, the U.S. provided this Committee with updates concerning protections from discrimination against lesbian, gay, bisexual, transgender, and queer (LGBTQ+) individuals in employment, housing, and military service.⁴ While some positive steps have been made since the development of this Committee's list of issues in 2019, discrimination against LGBTQ+ people, and particularly transgender people, in the U.S. remains widespread and has arguably worsened significantly. States have increasingly passed legislation limiting the rights of transgender individuals, with lawmakers bringing forth hundreds of bills in just the last year.⁵ The result is an environment where transgender people, particularly transgender children, encounter state-sponsored discrimination in many different areas of their lives, raising safety concerns.⁶ As of August 2023, 11 states limit discussions of LGBTQ+ issues in schools, and in 5 states, schools with such curricula must inform parents beforehand and allow them to opt their children out of receiving that information.⁷ Twenty-two states ban at least some forms of gender-affirming health care for children, and five of these states punish gender-affirming care as a felony.⁸ In nine states, transgender individuals are prohibited from using the bathroom that

¹ Interview with Nico Watson, trans resident of Florida (Mar. 15, 2023).

² Hum. Rts Committee, *List of issues prior to submission of the fifth periodic report of the United States of America*, ¶ 11, U.N. Doc. CCPR/C/USA/QPR/5 (Apr. 18, 2019).

³ *Id.*

⁴ Hum. Rts. Committee, *Fifth periodic report submitted by the United States of America under article 40 of the Covenants pursuant to the optional reporting procedure, due in 2020*, ¶ 28-31, U.N. Doc. CCPR/C/USA/5 (Nov. 11, 2021).

⁵ Susan Miller, “War” on LGBTQ Existence: 8 Ways the Record Onslaught of 650 Bills Targets the Community, USA TODAY (April 5, 2023), <https://www.usatoday.com/story/news/nation/2023/03/31/650-anti-lgbtq-bills-introduced-us/11552357002>; *Snapshot: LGBTQ Equality by State*, Movement Advancement Project (accessed July 30, 2023), <https://www.mapresearch.org/equality-maps> (The Movement Advancement Project tracks laws and policies related to LGBTQ+ rights in the U.S. Their interactive map allows you to sort by issue, and each state is graded on a point scale depending on how positively or negatively their laws and policies impact transgender people.)

⁶ Associated Press, *Canada issues travel advisory warning over U.S. states’ LGBTQ+ laws*, NPR (Sep. 1, 2023) <https://www.npr.org/2023/09/01/1197169683/canada-issues-travel-advisory-warning-over-u-s-states-lgbtq-laws>.

⁷ Movement Advancement Project, *LGBTQ Curricular Laws* (accessed Aug. 17, 2023), https://www.mapresearch.org/equality-maps/curricular_laws.

⁸ Movement Advancement Project, *Bans on Best Practice Medical Care for Transgender Youth* (accessed Aug. 17, 2023), https://www.lgbtmap.org/equality-maps/healthcare/youth_medical_care_bans. Proponents of these bans tend to sensationalize gender-affirming care for children by emphasizing surgical interventions, which are exceedingly rare and not generally recommended for children. The bans themselves sweep much more broadly, barring access to

corresponds with their gender identity in schools and in some instances other public spaces.⁹ In 23 states, transgender students are banned from participating in school sports consistent with their gender identity.¹⁰ Such laws are just a small portion of increasing discrimination since 2019, as transgender people have become an area of fixation for political opponents.¹¹ This discrimination does not only affect those who identify as transgender, but also those who are gender non-conforming or who face scrutiny, harassment, or violence because of their gender expression. Additionally, laws such as Title IX, which prohibits discrimination based on sex (including discrimination based on gender identity) in education programs that receive federal funding, lack robust enforcement. To date, for example, not a single educational institution has been denied federal funding as a result of noncompliance even where there are flagrant violations of Title IX.¹²

3. These provisions attacking transgender people violate the fundamental right to equality and non-discrimination under the ICCPR,¹³ which prohibits discrimination on the basis of both sexual orientation and gender identity.¹⁴ As the Human Rights Council has explained, “Application of international human rights law is guided by the fundamental principles of universality, equality, and non-discrimination. All human beings, irrespective of their sexual

more typical interventions like puberty blockers that delay the onset of puberty to allow children time to explore and confirm their gender identity. See Orion Rummmler & Kate Sosin, *Everything You Need to know About Gender-Affirming Care*, THE 19TH (June 21, 2023), <https://19thnews.org/2023/06/everything-to-know-about-gender-affirming-care>. Moreover, these bills prohibiting gender-affirming care for children typically contain exceptions allowing genital surgeries on intersex children, including medically unnecessary surgeries on intersex infants that jeopardize their human rights. See Human Rights Watch & InterACT, *“I Want to Be Like Nature Made Me: Medically Unnecessary Surgeries on Intersex Children in the US”* (2017), <https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us>.

⁹ Movement Advancement Project, *Bans on Transgender People Using Bathrooms and Facilities According to Their Gender Identity* (accessed Aug. 17, 2023), https://www.lgbtmap.org/equality-maps/youth/school_bathroom_bans. In Florida, these bans reach farther by banning trans adults from using the bathroom corresponding to their gender identity in correctional and detention facilities, a wide range of educational institutions, and public buildings owned or leased by state and municipal governments. Facility Requirements Based on Sex, CS/CS/HB 1521, FLA. STAT. § 553.865.

¹⁰ *Bans on Transgender Youth Participation in Sports*, Movement Advancement Project (accessed Aug. 17, 2023), https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans.

¹¹ Hum. Rts. Council, *Mandate of the United Nations Independent Expert on Protection from Violence and Discrimination based on Sexual Orientation and Gender Identity*, Victor Madrigal-Borloz, *Country Visit to the United States of America: Preliminary Observations*, ¶ 47, IE-SOGI-EOM-US (2022). Please see maps indicating the states with discriminatory laws targeting transgender people in the Appendix.

¹² *Title IX and College Sports*, JUSTIA (last updated July 2023), <https://www.justia.com/sports-law/title-ix-and-college-sports>.

¹³ International Covenant on Civil and Political Rights, art. 2, *ratified* Jun. 8, 1992, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); *Id.* at art. 26 “[T]he law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”)

¹⁴ *Toonen v. Australia*, U.N. GAOR Hum. Rts. Comm., 50th Sess., U.N. Doc. CCPR/C/50/D/488/1992, para. 8.7 (1994) (finding that the ICCPR prohibits discrimination based on sexual orientation); *G v. Australia*, U.N. GAOR Hum. Rts. Comm., 119th Sess., U.N. Doc. CCPR/C/119/D/2172/2012, para. 7.12 (2017) (finding that the ICCPR prohibits discrimination based on gender identity).

orientation and gender identity, are entitled to enjoy the protection of international human rights law.”¹⁵

4. Transgender people in the U.S. face intersectional discrimination based on gender, race, socioeconomic status, and other factors. While 30% of transgender respondents to one large-scale survey reported experiencing homelessness at some point in their lives, 51% of Black transgender women, 59% of Native American transgender women, and 51% of multiracial transgender women surveyed had experienced homelessness.¹⁶ Of transgender people murdered since 2013, more than 85% were people of color, and more than 85% were transgender women.¹⁷ Discrimination in employment, education, and housing exacerbates high rates of poverty in transgender communities in the U.S., which in turn forces many transgender people into precarious living situations and limits their options when they face harassment and violence.¹⁸
5. State governments have further mobilized discrimination against transgender individuals for political purposes, promoting dehumanizing and discriminatory rhetoric.¹⁹ As the Independent Expert on Sexual Orientation and Gender Identity recently suggested in a country visit to the U.S., “these actions rely on prejudiced and stigmatizing views of LGBT persons, in particular transgender children and youth, and seek to leverage their lives as props for political profit.”²⁰
6. This submission addresses egregious violations of transgender people’s rights to freedom of expression and to physical and mental integrity. It focuses primarily on restrictions on transgender rights in Florida, which has enacted some of the most comprehensive and extreme restrictions on transgender rights in the U.S.²¹ Violations of the rights of transgender people further contribute to animosity against transgender communities, resulting in additional abuses.

¹⁵ Hum. Rts. Council, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, ¶ 9, U.N. Doc. A/HRC/29/23 (2015); see also OHCHR, *Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People* (Sep. 2015) (joint statement endorsed by 12 UN entities that brings attention to the link between human rights abuses against LGBTQIA+ people and discrimination, asking states to protect individuals from violence, repeal discriminatory laws, and protect individuals from discrimination).

¹⁶ JAMES, S. E., HERMAN, J. L., RANKIN, S., KEISLING, M., MOTTET, L., & ANAFI, M., NAT’L CTR. FOR TRANSGENDER EQUALITY, *THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY* 180 (2016). ADAM ROMERO, ET AL., UCLA SCH. L. WILLIAMS INST., *LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS* 15 (April 2020), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

¹⁷ Human Rights Campaign, *An Epidemic of Violence 2022: Fatal Violence Against Transgender and Gender Non-Conforming People in the United States in 2022*, at 35, (Dec. 5, 2022) https://reports.hrc.org/an-epidemic-of-violence-2022?_ga=2.100110878.1450449445.1690741453-19676876.1690741453.

¹⁸ “*I Just Try to Make it Home Safe*”: *Violence and the Human Rights of Transgender People in the United States*, Human Rights Watch, at 33 (Nov. 18, 2021), <https://www.hrw.org/report/2021/11/18/i-just-try-make-it-home-safe/violence-and-human-rights-transgender-people-united>.

¹⁹ E. Bradner, S. Contorno, K. Sullivan, *Republicans Ramp Up Attacks on Transgender People, In Statehouses and on the Campaign Trail*, CNN (Apr. 30, 2023) <https://www.cnn.com/2023/04/30/politics/republicans-transgender-attacks-statehouse-haley-trump/index.html>.

²⁰ Hum. Rts. Council, *Mandate of the United Nations Independent Expert on Protection from Violence and Discrimination based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, Country Visit to the United States of America: Preliminary Observations*, ¶ 47, IE-SOGI-EOM-US (2022).

²¹ Ryan Thoreson, *Florida and the New Assault on LGBT Rights*, VERFASSUNGSBLOG (May 23, 2023), <https://verfassungsblog.de/florida-and-the-new-assault-on-lgbt-rights>.

II. Violations of the Right to Freedom of Expression against Transgender Communities

“It's like walking through a hailstorm. It's not like any one piece of hail that gets you, it's all the hail together.”

- Polly R., parent of a gender nonconforming child²²

7. In recent years, right-wing activists and lawmakers have sought to ban educational materials and books addressing topics like race, gender, and sexuality, both in school curricula and in libraries where materials are available to students or the public for free. These discriminatory bans violate the “freedom to seek, receive and impart information and ideas of all kinds” in terms of the right to freedom of expression under the ICCPR and erase the visibility of transgender communities.²³ At the same time, lawmakers in many states have attempted to prohibit transgender people from expressing their gender identity by prohibiting them from sharing their pronouns, restricting discussions of gender identity, and proposing sweeping bans on drag performance that threaten transgender people’s participation in public life, violating the right to freedom of expression under the ICCPR.²⁴ As the Special Rapporteur on Freedom of Opinion and Expression has explained, protected speech cannot be used for “discrimination, hostility, or violence,” where such language “can intimidate vulnerable communities into silence.”²⁵
8. According to the American Library Association, attempts to ban or restrict books doubled from 2021 to 2022, and 45.5% of books at threat of being banned were written by or about LGBTQ+ individuals.²⁶ As the Special Rapporteur on the Right to Freedom of Opinion and Expression has observed, “banning of books is an undemocratic practice in any part of the world.”²⁷

²² “*Like Walking Through a Hailstorm*”: *Discrimination Against LGBT Youth in US Schools*, Human Rights Watch (Dec. 7, 2016), <https://www.hrw.org/report/2016/12/07/walking-through-hailstorm/discrimination-against-lgbt-youth-us-schools>.

²³ ICCPR *supra* note 13, art. 19; *see e.g.*, Hum. Rts. Committee, *Concluding observations on the eighth periodic report of the Russian Federation*, ¶ 13, U.N. Doc. CCPR/C/RUS/CO/8 (Dec. 1, 2022) (indicating that states should repeal laws “banning the dissemination of ‘propaganda’ on nontraditional sexual relations among minors and any other legislation stigmatizing or discriminating against lesbian, gay, bisexual and transgender persons”).

²⁴ ICCPR *supra* note 13, art. 19 (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”). These also violate rights guaranteed by the Convention on the Rights of the Child (CRC). *See* Convention on the Rights of the Child art. 13, *signed* Feb. 16, 1995, 1577 U.N.T.S. 3 (“The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.”) [hereinafter CRC]. While the U.S. is the only country to have not ratified the CRC, it has signed it and cannot go against its “object and purpose.” RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 (AM. LAW INST. 2018); *What is the Difference Between Signing, Ratification and Accession of UN Treaties?* Dag Hammarskjöld Libr. (July 20, 2022), <https://ask.un.org/faq/14594>.

²⁵ Hum. Rts. Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression*, ¶ 56, U.N. Doc. A/HRC/74/496 (Oct. 9, 2019).

²⁶ *2022 Book Ban Data*, American Library Association (Mar. 20, 2023), <https://www.ala.org/advocacy/bbooks/book-ban-data>.

²⁷ Frank La Rue, *Full text of the press statement delivered by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, after the conclusion of his visit to*

9. A flurry of “Don’t Say LGBTQ+” laws and restrictions in school districts and schools have been sweeping the country, preventing classroom discussions on sexual orientation and gender identity and even the use of transgender students’ names and pronouns, violating the right to freedom of expression. The Yogyakarta Principles, guidance on the application of international human rights law to sexual orientation and gender identity developed by an international group of experts, explain that the right to freedom of expression “includes the expression of identity or personhood through . . . choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity.”²⁸

10. Florida’s Parental Rights in Education Act (or “Don’t Say LGBTQ+” Act), enacted in 2022 and expanded in 2023, has served as a template for similar acts enacted in other states.²⁹ The “Don’t Say LGBTQ+” Act prohibits classroom instruction on sexual orientation or gender identity from kindergarten to eighth grade or in any grade if it is not deemed “age-appropriate,” but fails to clarify what constitutes classroom instruction on sexual orientation or gender identity or define what is “age appropriate,” broadly chilling speech.³⁰ For instance, the State of Florida has launched an investigation against a teacher for showing fifth graders an animated Disney film that depicts an LGBTQ+ character.³¹

11. In addition, the expansion of Florida’s “Don’t Say LGBTQ+” Act in 2023 prevents educators from using personal pronouns other than those that match their sex assigned at birth or asking students about their preferred pronouns.³² The law provides that educators who do not comply can have their education certificate revoked, and Florida’s attorney general can file a civil lawsuit against schools not in compliance for damages up to \$10,000.³³ Further, the law provides parents with a private right of action to sue the school district for violating the “Don’t Say LGBTQ+” Act, and this threat of legal action can significantly chill speech.³⁴ These laws have resulted in teachers quitting or leaving to more accepting states.³⁵

the Republic of Korea (May 17, 2010), <https://www2.ohchr.org/english/issues/opinion/docs/ROK-Pressstatement17052010.pdf> (last accessed Aug. 25, 2023).

²⁸ *The Yogyakarta Principles - Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, Principle 19 (Mar. 2007), http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf [hereinafter Yogyakarta Principles].

²⁹ Dustin Jones & Jonathan Franklin, *Not Just Florida. More Than a Dozen States Propose So-Called ‘Don’t Say Gay’ Bills*, NPR (April 10, 2022), <https://www.npr.org/2022/04/10/1091543359/15-states-dont-say-gay-anti-transgender-bills>.

³⁰ Parental Rights in Education Act, CS/CS/HB1557, FLA. STAT. § 1001.42 (8)(c)1.

³¹ Joe Hernandez, *Florida is Investigating a Teacher who Showed a Disney Movie with a Gay Character*, NPR (May 16, 2023), <https://www.npr.org/2023/05/16/1176334055/florida-investigating-teacher-disney-movie-gay-character-desantis>.

³² Parental Rights in Education Act, CS/CS/HB1069, *Laws of Florida*, Ch. 2023-105.

³³ Molly Bohannon, *Florida School District Bars Preferred Pronouns for Students and Staff to Comply with State Law*, FORBES (Aug. 8, 2023), <https://www.forbes.com/sites/mollybohannon/2023/08/08/florida-school-district-bars-preferred-pronouns-for-students-and-staff-to-comply-with-state-law/?sh=3522357f1a76>.

³⁴ Parental Rights in Education Act, CS/CS/HB1557, FLA. STAT. § 1001.42 (8)(c)(7)(II).

³⁵ Danielle Prieur, *In Florida, teachers are quitting over anti-LGBTQ laws*, WUSF PUBLIC MEDIA, (Jun. 30, 2023), <https://wusfnews.wusf.usf.edu/education/2023-06-30/florida-teachers-quitting-anti-lgbtq-laws>.

12. These restrictions on expression are not justifiable. While Article 19(3) of the ICCPR provides a framework for when restricting freedom of expression is permissible, this Committee has stated that “when a State Party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”³⁶ Limitations on accessing information about sexual orientation and gender identity or expressing one’s gender identity go directly against this principle. This Committee has also stated that “any such limitations [on the freedom of expression] must be understood in the light of universality of human rights and the principle of non-discrimination.”³⁷ Restrictions on the right to expression based on sexual orientation or gender identity are discriminatory and have been used in practice to dampen and overtly limit discussions of LGBTQ+ identities and communities. These laws not only deprive children, including LGBTQ+ children, of access to information they need, but limits the freedom of expression of educators, including LGBTQ+ educators who face sanctions if they share the same information about themselves and their families that their heterosexual, cisgender counterparts share. While proponents frame these restrictions on teaching and expression in the classroom as an exercise of “parental rights,” they in practice censor instruction for all students, even those whose parents might support a more inclusive education, and function to deprive others of their freedom of expression.

III. Violations of the Rights to Physical and Mental Integrity against Transgender Communities

“I can say that if I hadn't sought gender-affirming care, I wouldn't be here now.”

- Nico Watson, *Teacher*³⁸

“[Gender-affirming care bans] will leave us incapable of treating a large number of patients. It never occurred to me when I became a doctor that I would ever, in this country, be forced to withhold care of a treatable condition.”

- Dr. Sara Danker, *Assistant Professor of Surgery, University of Miami Miller School of Medicine*³⁹

13. Denial of gender-affirming care, discrimination in antiviolenence services, and bans from bathrooms and other gendered spaces corresponding to one’s gender identity violate the

³⁶ Hum. Rts. Comm., *General Comment No. 34: Freedoms of Opinion and Expression*, ¶ 21, U.N. Doc. CCPR/C/34 (Sep. 12, 2011).

³⁷ Hum. Rts. Comm., *General Comment No. 22: Freedoms of Opinion and Expression*, ¶ 32, U.N. Doc. CCPR/C/34 (Sep. 12, 2011) [hereinafter HRC General Comment No. 22].

³⁸ Interview with Nico Watson, trans resident of Florida (Mar. 15, 2023).

³⁹ Interview with Doctor Sara Danker, Assistant Professor, Division of Plastic Surgery, University of Miami Miller School of Medicine (Oct. 21, 2022).

overarching rights to physical and mental integrity,⁴⁰ consisting of the rights to privacy,⁴¹ to security of person,⁴² and to life,⁴³ as well as the freedom from cruel, inhuman, and degrading treatment under the ICCPR.⁴⁴

14. As discussed above, 22 states ban gender-affirming health care for children, and 5 of these states punish gender-affirming care as a felony.⁴⁵ Florida has been a hotspot for attacks against transgender care. In August of 2022, the Florida Agency for Healthcare Administration banned Medicaid coverage for gender-affirming care,⁴⁶ and in February of 2023, the Florida Boards of Medicine effectively banned gender-affirming care for children; any physician in violation would be subject to their license being revoked.⁴⁷ After these initial steps, Governor Ron DeSantis signed into law SB 254, which not only banned gender-affirming care for children, but also gave the state temporary emergency jurisdiction to modify out-of-state custody orders to favor non-affirming parents who oppose their child receiving gender-affirming care.⁴⁸ SB 254 further targets transgender adults by restricting access to gender-affirming care.⁴⁹

⁴⁰ OHCHR, *International standards on the right to physical and mental health*, Special Rapporteur on the Right to Health, <https://www.ohchr.org/en/special-procedures/sr-health/international-standards-right-physical-and-mental-health> (last accessed Aug. 24, 2023). This grouping of rights includes the rights to privacy, security, life, and freedom from torture, because of the overlap and intersections between these rights. *See also The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, Principle 32, The Right to Bodily and Mental Integrity (Nov. 10, 2017).

⁴¹ ICCPR *supra* note 13, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”).

⁴² ICCPR *supra* note 13, art. 9 (“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”).

⁴³ ICCPR *supra* note 13, art. 6 (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”).

⁴⁴ ICCPR *supra* note 13, art. 17 (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”); *see also* Yogyakarta Principles Plus 10, Principle 32 (noting that “[e]veryone has the right to bodily and mental integrity and self-determination irrespective of sexual orientation, gender identity, gender expressions or sex characteristics,” Which requires states to “[g]uarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and self-determination.”).

⁴⁵ Ryan Thoreson, *This Pride Month, Support LGBTQ+ People*, THE MESSENGER (Jun. 1, 2023), <https://themessenger.com/opinion/this-pride-month-support-lgbtq-people>.

⁴⁶ Florida Agency for Healthcare Administration, *General Medicaid Policy*, Rule 59G-1.050 7(a), F.A.C. (Aug. 21, 2022). Medicaid is a program that provides health insurance to low-income individuals, with states playing a role in determining some aspects of coverage. On June 21, 2023, the U.S. District Court in the Northern District of Florida ruled the exclusion of gender-affirming care from Medicaid coverage in Florida violated the Medicaid statute, the Constitution’s Equal Protection Clause, and the Affordable Care Act’s prohibition of sex discrimination. The case is now on appeal. *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243 (N.D. Fla. June 21, 2023).

⁴⁷ Florida Boards of Medicine and Osteopathic Medicine, *Practice Standards for the Treatment of Gender Dysphoria*, Rules 64B8-9.019 & 64B15-14.014, F.A.C. (Nov. 4, 2022).

⁴⁸ Treatments for Sex Reassignment, SB 254, (2023) <https://www.flsenate.gov/Session/Bill/2023/254/BillText/er/PDF>.

⁴⁹ *Id.*

15. Denial of gender-affirming care forces incongruence with one’s gender identity, including for individuals with gender dysphoria,⁵⁰ violating the rights to privacy, security of person, life, and freedom from cruel and degrading treatment. Yogyakarta Principle 6, which examines the right to privacy, specifically calls on states to “[r]epeal any law. . . that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity.”⁵¹ The American Medical Association,⁵² American Academy of Pediatrics,⁵³ American Psychological Association,⁵⁴ American Academy of Child and Adolescent Psychiatry,⁵⁵ and World Professional Association for Transgender Health (WPATH)⁵⁶ have all published guidelines and policy statements on the provision of appropriate gender-affirming care, including care that is essential in treating gender dysphoria.⁵⁷ “[M]ore than a dozen studies of more than 30,000 transgender and gender-diverse young people consistently show that access to gender-affirming care is associated with better mental health outcomes.”⁵⁸ In fact, impeding access to

⁵⁰ Gender dysphoria refers to severe distress due to a discrepancy between a person’s gender identity and that person’s sex assigned at birth.

⁵¹ Yogyakarta Principles, Principle 6(D).

⁵² Amer. Med. Ass’n, *AMA Reinforces Opposition to Restrictions on Transgender Medical Care* (2021), <https://www.ama-assn.org/press-center/press-releases/ama-reinforces-opposition-restrictions-transgender-medical-care>; Amer. Med. Ass’n, *March 26, 2021: State Advocacy Update* (Mar. 26, 2021), <https://www.ama-assn.org/health-care-advocacy/advocacy-update/march-26-2021-state-advocacy-update>.

⁵³ Amer. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents* (Oct. 1, 2018), <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for>.

⁵⁴ Amer. Psychol. Ass’n, *APA President Condemns Texas Governor’s Directive to Report Parents of Transgender Minors* (Feb. 24, 2022), <https://www.apa.org/news/press/releases/2022/02/report-parents-transgender-children>; Amer. Psychol. Ass’n, *Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools* (2020), <https://www.apa.org/pi/lgbt/resources/policy/gender-diverse-children>.

⁵⁵ Amer. Acad. of Child and Adolescent Psychiatry, *AACAP Statement Responding to Efforts to Ban Evidence-Based Care for Transgender and Gender Diverse Youth* (Nov. 8, 2019), https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx.

⁵⁶ WPATH, *STANDARDS OF CARE FOR HEALTH OF TRANSGENDER AND GENDER DIVERSE PEOPLE*, version 8 (2022), <https://www.tandfonline.com/doi/full/10.1080/26895269.2022.2100644>.

⁵⁷ Please find additional statements in support of gender affirming care by leading medical organizations, including the American Academy of Family Physicians and the American College of Obstetricians and Gynecologists, at <https://transhealthproject.org/resources/medical-organization-statements/>. The American Medical Association notes, “Every major medical association in the United States . . . recognizes the medical necessity of transition-related care for improving the physical and mental health of transgender people.” See Amer. Med. Ass’n, *March 26, 2021: State Advocacy Update* (Mar. 26, 2021), <https://www.ama-assn.org/health-care-advocacy/advocacy-update/march-26-2021-state-advocacy-update>.

⁵⁸ Heather Boerner, *What the Science on Gender-Affirming Care for Transgender Kids Really Shows*, SCIENTIFIC AMERICAN (May 12, 2022) <https://www.scientificamerican.com/article/what-the-science-on-gender-affirming-care-for-transgender-kids-really-shows>; see also Jack Turban, *The Evidence for Trans Youth Gender-Affirming Care*, PSYCHOL. TODAY (Jan. 24, 2022), <https://www.psychologytoday.com/us/blog/political-minds/202201/the-evidence-trans-youth-gender-affirming-medical-care> (describing the studies).

medically necessary treatment to alleviate gender dysphoria causes higher rates of depression, anxiety, and suicidality,⁵⁹ jeopardizing the right to life under the ICCPR.⁶⁰

16. Because of the gendered nature of many homelessness and antiviolence services, many of these services are not accessible to unhoused transgender people and transgender survivors, further violating rights to privacy, security of person, life, and freedom from cruel and degrading treatment. According to Human Rights Watch, “many religiously affiliated providers [will] not shelter or counsel people” if they are transgender.⁶¹ In one survey of more than 27,000 transgender respondents in the United States, 12% of transgender people experienced homelessness because of anti-transgender bias in the past year alone.⁶² Six percent of those who experienced homelessness and sought shelter were denied access to one or more shelters.⁶³ Another 26% did not seek shelter in the first place out of fear of being mistreated.⁶⁴ Of those who did find shelter, 70% reported a negative experience like harassment, assault, or being forced out of the shelter because they were transgender.⁶⁵ Transgender individuals facing intimate partner violence often also encounter uncertainty and discrimination when trying to access gendered antiviolence services, including refusals of service or harassment.⁶⁶ In many instances, too, law enforcement fails to take seriously the violence transgender people experience. Transgender individuals report poor treatment and intentional misgendering, which is exacerbated for trans women of color.⁶⁷ When transgender people are unable to access legal services and their experiences are largely dismissed, their right to an effective remedy, also protected under the ICCPR, is jeopardized.⁶⁸
17. Exclusion from gendered spaces is not limited to shelters and other crisis services. In nine states across the U.S., restrictions on bathroom access have been enacted in violation of the rights to privacy, security of person, life, and freedom from cruel and degrading treatment for

⁵⁹ Amer. Med. Ass’n, *Health Insurance Coverage for Gender-Affirming Care of Transgender Patients* (2019), <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf>; see also Heather Boerner, *What the Science on Gender-Affirming Care for Transgender Kids Really Shows*, SCIENTIFIC AMERICAN (May 12, 2022) <https://www.scientificamerican.com/article/what-the-science-on-gender-affirming-care-for-transgender-kids-really-shows>.

⁶⁰ ICCPR *supra* note 13, art. 6.

⁶¹ “*I Just Try to Make it Home Safe*”: *Violence and the Human Rights of Transgender People in the United States*, Human Rights Watch (Nov. 18, 2021), <https://www.hrw.org/report/2021/11/18/i-just-try-make-it-home-safe/violence-and-human-rights-transgender-people-united>.

⁶² JAMES, S. E., HERMAN, J. L., RANKIN, S., KEISLING, M., MOTTET, L., & ANAFI, M., NAT’L CTR. FOR TRANSGENDER EQUALITY, *THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY* 178 (2016).

⁶³ *Id.* at 180.

⁶⁴ *Id.*⁶⁵ *Id.* at 181.

⁶⁵ *Id.* at 181.

⁶⁶ “*I Just Try to Make it Home Safe*”: *Violence and the Human Rights of Transgender People in the United States*, Human Rights Watch (Nov. 18, 2021), <https://www.hrw.org/report/2021/11/18/i-just-try-make-it-home-safe/violence-and-human-rights-transgender-people-united>.

⁶⁷ “*I Just Try to Make it Home Safe*”: *Violence and the Human Rights of Transgender People in the United States*, Human Rights Watch (Nov. 18, 2021), <https://www.hrw.org/report/2021/11/18/i-just-try-make-it-home-safe/violence-and-human-rights-transgender-people-united>.

⁶⁸ ICCPR *supra* note 13, art. 2(3).

transgender and gender non-conforming people.⁶⁹ The most extreme of them is Florida’s HB 1521, which prescribes punishments, including criminal trespass charges, for transgender individuals who use a bathroom consistent with their gender identity in educational institutions, correctional and detention facilities, and public buildings.⁷⁰ Forcing transgender and gender non-conforming people, including students, to use a bathroom inconsistent with their gender identity and expression intrudes on their privacy and threatens their safety.⁷¹ Transgender students who are compelled by law to use restrooms inconsistent with their gender identity are significantly more likely to experience sexual assault, with one study showing that 36% of trans students who were forced to use bathrooms inconsistent with their gender identity experienced sexual assault.⁷² As activist and journalist Erin Reed explains, “If transgender people do comply with the law, they may be read as the opposite sex and therefore reported to authorities. Transgender people could therefore come under investigation regardless of which bathroom they use.”⁷³

IV. The Development of Targeted Animosity against Transgender Communities

“What scares me the most is the misinformation surrounding trans people. I wish they had a better understanding of what transness is. We are not groomers or transitioning for attention.”

- Emmitt Williams, Actor⁷⁴

18. Transgender people in the U.S. are victims of targeted animosity, which has often been endorsed and encouraged by government officials. In many instances, government officials have used the term “groomer” to cast members of LGBTQ+ communities as a sexual danger to children, a demeaning and inaccurate stereotype that normalizes discrimination and violence toward these groups.⁷⁵ For instance, in hearings for Florida’s bill banning transgender people from using restrooms consistent with their gender identity, state representative Webster

⁶⁹ *Bans on Transgender People Using Bathrooms and Facilities According to Their Gender Identity*, Movement Advancement Project, https://www.mapresearch.org/equality-maps/nondiscrimination/bathroom_bans (accessed Aug. 19, 2023).

⁷⁰ Facility Requirements Based on Sex, HB 1251 (enacted May 18, 2023) The law prescribes a code of conduct violation for students or inmates and disciplinary action for teachers or employees, as well as criminal trespass charges for other individuals found to violate the law’s terms in these facilities.

⁷¹ Human Rights Watch, *Shut Out: Restrictions on Bathroom and Locker Room Access for Transgender Youth in U.S. Schools*, Section I: Safety, (Sep. 14, 2016) (including testimony of several trans students who experienced extreme bullying and harassment when forced to use bathrooms inconsistent with their gender identity).

⁷² Dr. Edith Bracho-Sanchez, *Transgender teens in schools with bathroom restrictions are at higher risk of sexual assault, study says*, CNN (May 6, 2019), <https://www.cnn.com/2019/05/06/health/trans-teens-bathroom-policies-sexual-assault-study/index.html>.

⁷³ Erin Reed, *Florida Bathroom Ban Now In Effect: Enforcement Likely To Be A Disaster*, ERIN IN THE MORNING (Jul. 1, 2023), <https://www.erininthemorning.com/p/florida-bathroom-ban-now-in-effect>.

⁷⁴ Interview with Emmitt Williams, trans resident of Florida (Mar. 14, 2023).

⁷⁵ Anti-Defamation League, *What is “Grooming?” The Truth Behind the Dangerous, Bigoted Lie Targeting the LGBTQ+ Community* (Sep. 16, 2022) <https://www.adl.org/resources/blog/what-grooming-truth-behind-dangerous-bigoted-lie-targeting-lgbtq-community>.

Barnaby referred to transgender opponents of the bill as “demons,” “imps,” and “mutants.”⁷⁶ This inflammatory language is dehumanizing and incites “discrimination, hostility, or violence,” which the Special Rapporteur on Freedom of Opinion and Expression has warned “can intimidate vulnerable communities into silence.”⁷⁷ Meanwhile, LGBTQ+ and allied state representatives who have spoken out against discriminatory bills have been silenced by their peers. In Montana, for example, when state representative and trans woman Zooney Zephyr spoke out against a bill that would ban gender-affirming care, other lawmakers banned her from the chamber for the rest of the legislative session.⁷⁸

19. Many transgender residents do not feel safe or welcome in a country that promotes hatred towards them. In 2022, there were at least 38 documented murders of trans people in the country.⁷⁹ In his 2022 visit to the U.S., the Independent Expert on Sexual Orientation and Gender Identity found that over 20% of all violent hate crimes documented in the U.S. related to gender-identity or sexual orientation.⁸⁰ Yogyakarta Principle 5, applying the right to security of the person, calls on states to “[u]ndertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.”⁸¹
20. This climate of animosity, coupled with discriminatory laws, erodes the dignity and quality of life of transgender people, impacting every aspect of daily existence, including education,⁸² employment,⁸³ and housing.⁸⁴ This threatens the right to life with dignity under the ICCPR.⁸⁵ As this Committee has explained, “the right to life is a right that should not be interpreted narrowly. It concerns the entitlement of individuals . . . to enjoy a life with dignity.”⁸⁶ Thus,

⁷⁶ E. Bradner, S. Contorno, K. Sullivan, *Republicans Ramp Up Attacks on Transgender People, In Statehouses and on the Campaign Trail*, CNN (Apr. 30, 2023) <https://www.cnn.com/2023/04/30/politics/republicans-transgender-attacks-statehouse-haley-trump/index.html>.

⁷⁷ U.N. General Assembly, 74th Session, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, ¶ 56, UN Doc. A/74/486 (Oct. 9, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/308/13/PDF/N1930813.pdf?OpenElement>.

⁷⁸ E. Bradner, S. Contorno, K. Sullivan, *Republicans Ramp Up Attacks on Transgender People, In Statehouses and on the Campaign Trail*, CNN (Apr. 30, 2023) <https://www.cnn.com/2023/04/30/politics/republicans-transgender-attacks-statehouse-haley-trump/index.html>.

⁷⁹ Human Rights Campaign, *Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2022* (2022), <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2022> (accessed Aug. 19, 2023).

⁸⁰ Hum. Rts. Council, *Mandate of the United Nations Independent Expert on Protection from Violence and Discrimination based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, Country Visit to the United States of America: Preliminary Observations*, ¶ 32, IE-SOGI-EOM-US (2022).

⁸¹ Yogyakarta Principles, Principle 5.

⁸² U.S. Department of Education, *Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students*, at 27-28 (June. 9, 2021) (identifying a lack of safety, mental health concerns, missing school, avoiding restrooms, and homelessness as particular concerns for LGBTQ+ students, even prior to the COVID-19 pandemic).

⁸³ National Center for Transgender Equality, *Employment*, <https://transequality.org/issues/employment> (accessed Aug. 8, 2023).

⁸⁴ National Center for Transgender Equality, *Housing and Homelessness*, <https://transequality.org/issues/housing-homelessness> (accessed Aug. 8, 2023).

⁸⁵ ICCPR *supra* note 13, art. 6.

⁸⁶ Hum. Rt. Comm., *General Comment No. 36: Article 6: Right to Life*, ¶ 3, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019); *see also Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, ¶ 21, U.N. Doc.

states must “take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”⁸⁷

V. Proposed Questions to the U.S. Government

1. What steps does the U.S. plan to take at the federal, state, and local levels to prevent freedom of expression violations, including book bans and restrictions on gender expression?
2. What efforts will the U.S. implement to ensure access for transgender people to necessary health care and social services, particularly in contexts where state and local officials are limiting access?
3. What steps does the U.S. plan to take to combat growing animosity against trans communities?

VI. Recommendations

“I remember watching the leader of the board at the hearing talk to the people protesting, and he said, ‘you can be as loud as you want but you're not going to change anything anyway.’”

- Erin Reed, Journalist and Activist⁸⁸

1. The U.S. should enact comprehensive legislation to expressly prohibit any discrimination based on sexual orientation and gender identity in areas such as education, health care, housing, and public accommodations.
2. The U.S. should utilize tools, such as Title IX, to incentivize compliance with non-discrimination requirements on the basis of gender identity and sexual orientation.
3. The U.S. should ensure that transgender individuals are fully covered under public programs and services, such as Medicaid and programs under the Family Violence Prevention and Services Act, without discrimination or denials of benefits because of their gender identity.
4. Through the Office of the Surgeon General or the Department of Health and Human Services, the U.S. should provide detailed guidance to states on medical best practices and the provision of gender-affirming care.
5. Individual states should enact legislation expressly prohibiting discrimination based on sexual orientation or gender identity.

A/HRC/69/182 (2016) (emphasizing that the right to life “is not merely a right to continued physical existence [], but rather that what is protected is dignified life.”).

⁸⁷ Hum. Rt. Comm., *General Comment No. 36: Article 6: Right to Life*, ¶ 26, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019).

⁸⁸ Interview with Erin Reed, journalist covering anti-trans legislation in the U.S. (Apr. 18, 2023).

6. States should lift bans on books with LGBTQ+ themes and content, and further prohibit such bans by school districts, to ensure an equitable and rights-respecting environment for all students.
7. States should lift bans on classroom instruction on sexual orientation and gender identity and allow educators to discuss age-appropriate issues related to these topics.
8. States should create safeguards that ensure transgender people, including children, will have access to necessary gender-affirming care.⁸⁹ States should rely on the evidence-based, best practice standards for transgender health established by WPATH and other professional organizations and lift barriers to medically prescribed gender-affirming care.⁹⁰
9. Federal, state, and local actors should ensure that transgender people have adequate access to shelters that serve people experiencing homelessness and intimate partner violence, as well as equal and meaningful access to the justice system. Transgender people must be able to seek remedy and redress when they experience violence.
10. States should repeal discriminatory laws targeting individuals based on their sexual orientation or gender identity and should enact comprehensive protections prohibiting discrimination on those grounds.

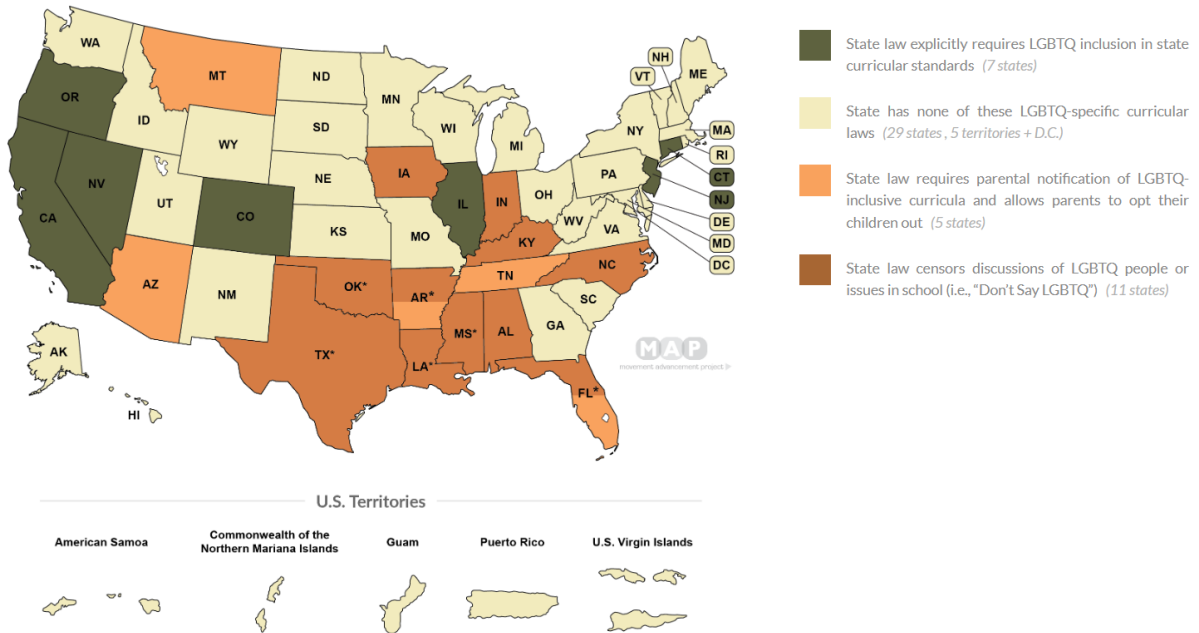
Please direct any inquiries to Nic Stelter at n.stelter-clinic@law.miami.edu.

⁸⁹ Following a model adopted in California and other states, states may enact legislation to act as a safe haven for trans individuals and families by prohibiting law enforcement from cooperating in the arrest or extradition of someone facing criminal charges for receiving or providing gender-affirming care. Movement Advancement Project, *Transgender Healthcare “Shield” Laws*, https://www.lgbtmap.org/equality-maps/healthcare/trans_shield_laws (accessed Aug. 19, 2023).

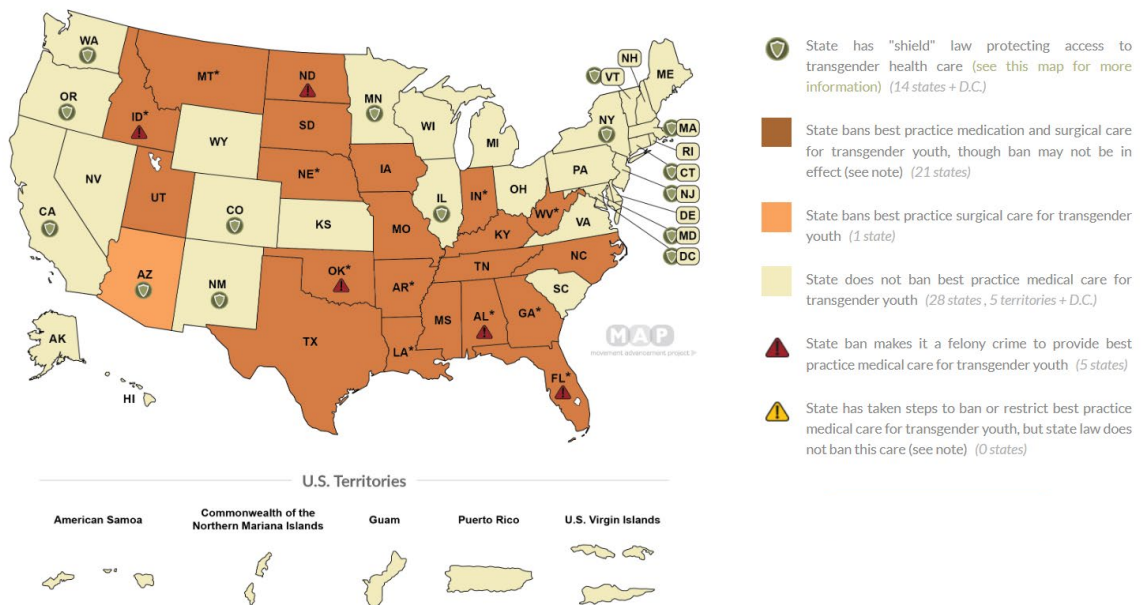
⁹⁰ WPATH, *STANDARDS OF CARE FOR HEALTH OF TRANSGENDER AND GENDER DIVERSE PEOPLE*, version 8 (2022), <https://www.tandfonline.com/doi/full/10.1080/26895269.2022.2100644>; *see also* Meredith McNamara et al., Yale School of Medicine, *A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria* (July 8, 2022), https://medicine.yale.edu/lgbtqi/research/gender-affirming-care/florida%20report%20final%20july%202022%20accessible_443048_284_55174_v3.pdf.

Appendix:

Map tracking "Don't Say LGBTQ+" style legislation in the U.S.⁹¹



Map tracking gender-affirming care bans for youth.⁹²



⁹¹ Movement Advancement Project, *LGBTQ Curricular Laws*, https://www.lgbtmap.org/equality-maps/curricular_laws (accessed Sep. 4, 2023).

⁹² Movement Advancement Project, *Bans on Best Practice Medical Care for Transgender Youth*, Movement Advancement Project, https://www.lgbtmap.org/equality-maps/healthcare/youth_medical_care_bans (accessed Sep. 4, 2023).