



SUBMISSION TO THE U.N. HUMAN RIGHTS COMMITTEE CONCERNING LGBTQI+ RIGHTS IN THE UNITED STATES

INTRODUCTION

This shadow report serves to update the List of Issues Prior to Reporting submitted by the Human Rights Campaign to the U.N. Human Rights Committee (the “Human Rights Committee”) in 2019. We issue this update in anticipation of an upcoming review of responses submitted by the United States government (the “Government”) through its Fifth Periodic Report pursuant to its obligations under the International Covenant on Civil and Political Rights.

The Human Rights Campaign (HRC) is the largest civil rights organization working to achieve equality for lesbian, gay, bisexual, transgender and queer (LGBTQ+) people in the United States. By inspiring and engaging individuals and communities, HRC strives to end discrimination against LGBTQ+ people and realize a world that achieves fundamental fairness and equality for all, without exception.

Our previous submission provided both the Human Rights Committee and the Government with information about significant issues faced by LGBTQ+ people in the U.S. While the current U.S. presidential administration is poised to present on the Government’s Fifth Periodic Report, we note that the previous administration was charged with and ultimately responsible for that submission. Throughout his current term, President Biden has demonstrated his commitment to advancing equality for LGBTQ+ people, including by issuing the most substantive, wide-ranging executive order concerning sexual orientation and gender identity ever issued by a United States president on his first day in office.¹ As the most pro-equality administration in U.S. history, the Biden Administration has been a strong ally to LGBTQ+ people both domestically and internationally and has actively advocated for the acceptance and safety of LGBTQ+ communities around the world.² Unfortunately, under the Trump Administration, the Fifth Periodic Report was not issued in the same spirit, and instead often downplays the extent to which the law protects LGBTQ+ people, as well as the ways in which the Government was exacerbating harm against LGBTQ+ people by actively altering regulations to remove protections and repeatedly failing to adequately address the challenges faced by our communities.

This submission therefore intends to not only summarize our past submission and the relevant responses submitted by the Government, but also to supplement the Government’s reporting by providing more comprehensive information where appropriate alongside discussion on significant developments that have occurred since 2021. We also provide additional questions and recommendations for the Government that we hope will allow for a more thorough review of the Government’s responses and plans for future action given an increasingly hostile climate faced by LGBTQ+ people in the U.S.



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As indeed, we recently, and for the first time in our nearly half-century history, declared a national state of emergency for LGBTQ+ people across the country.³ Our emergency declaration is neither exaggeration nor dramatization, but a sober reflection of the dire circumstances currently faced by the LGBTQ+ community in the U.S. This declaration follows an unprecedented spike in anti-LGBTQ+ legislative assaults, violent threats, and political extremism, which is resulting in a health and safety crisis for LGBTQ+ Americans and causing countless families to reconsider whether they want to live and work in the states they call home.

Since 2015—when *Obergefell v. Hodges* was decided by the U.S. Supreme Court and extended marriage equality to same-sex couples—state lawmakers have introduced and enacted increasing numbers and types of legislation that would stymie continued gains in lived or legal equality for LGBTQ+ people. These bills have sought to restrict the areas of public life where LGBTQ+ people can freely and openly participate as our true selves, with many being specifically targeted against transgender youth. Together, these bills signal a desire to completely sever transgender and LGBTQ+ people more broadly from the protection of the law, as well as from their parents, doctors, teachers, guidance counselors, classmates, coaches, and teammates, alongside erasing them from the books they read and the history they learn.

Anti-LGBTQ+ lawmakers introduced 115 of these bills across the country in 2015, a record at the time.⁴ That trajectory has continued exponentially: 2023 shattered previous records with over 525 anti-LGBTQ+ bills introduced.⁵ In fact, since 2015, anti-equality lawmakers have introduced over 2,000 anti-LGBTQ+ bills across the states and with increasing success: of the anti-LGBTQ+ bills introduced during states' 2023 sessions, 77 have been signed into law so far.⁶ In every corner of our country, LGBTQ+ people are currently living in fear, with parents and children, teachers and nurses, community leaders, and small business owners left afraid and feeling targeted.

We urge the Government to continue fulfilling its demonstrated commitment to the rights of LGBTQ+ people by quickly and adequately responding to these threats to ensure that the safety and dignity of every LGBTQ+ person in this country is respected and protected.

NON-DISCRIMINATION AND EQUAL RIGHTS OF MEN AND WOMEN (ARTS. 2, 3 AND 26)

A. RELEVANT QUESTIONS IN LIST OF ISSUES

The Human Rights Committee presented the following questions in its list of issues on this subject:

10. Please explain measures adopted by the State party to combat physical and sexual violence against women in schools and institutions of higher learning and in the United States Armed Forces.



11. Please provide 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, such as unjust dismissal from employment, eviction from housing or refusal of services because of their sexual orientation or gender identity. In addition, provide information on the mechanisms available to transgender individuals to protect them from discrimination in schools, prisons and jails, and the United States Armed Forces.

B. SUMMARY OF RESPONSE BY THE U.S. GOVERNMENT

Within its response to the questions presented in paragraph 11:

- The Government acknowledged the U.S. Supreme Court’s then-recent decision in *Bostock v. Clayton County*, which found that “the prohibition of sex discrimination in employment under Title VII of the Civil Rights Act of 1964 encompasses discrimination based on sexual orientation and gender identity.”
- While the Government’s response referenced protections against housing discrimination via the Fair Housing Act and discrimination within schools and institutions of higher education via Title IX of the Education Amendments of 1972 being available to all people, including LGBTQ+ people, it did not include sexual orientation or gender identity within its list of protected classes encompassed by either statute.
- The Government also noted that “[s]ome state and local governments have elected to provide specific statutory protections for discrimination on the basis of sexual orientation or gender identity in employment and public accommodations” and referenced the U.S. Supreme Court’s decision in *Masterpiece Cakeshop Ltd v. Colorado Civil Rights Commission*.
- Finally, the Government represented that with respect to transgender people wishing to serve as part of the United States Armed Forces, “DoD Instruction 130028[] provides that service in the military is open to all persons who can meet the high standards for military service and readiness without special accommodations. . . . all persons are subject to the standard, requirement, or policy associated with their biological sex. Transgender persons may seek waivers or exceptions to the requirements on the same terms as any other person.”

Within its response to the question presented in paragraph 10, the Government additionally stated that, “[i]n 2020, the Department of Education issued final Title IX regulations that . . . expressly define sexual harassment—including sexual assault, dating violence, domestic violence, and stalking—as unlawful sex discrimination.”



C. DISCUSSION OF ISSUE

Despite longstanding protections under the law, Americans from all walks of life continue to experience discrimination, violence, and other forms of harassment in their public lives. However, LGBTQ+ people uniquely experience stigma based on their sexual orientation and gender identity, which research demonstrates has often led to disparate experiences with violence, discrimination, and harassment when compared to their non-LGBTQ+ counterparts.⁷ Unfortunately, recent studies indicate that these experiences persist to the present day, with LGBTQ+ people continuing to report these experiences across a wide range of contexts, including while in school;⁸ at their places of work;⁹ when seeking housing including while unhoused;¹⁰ within public accommodations;¹¹ and while seeking medical care.¹²

Discrimination Protections at the Federal Level

As we previously reported, federal courts have trended towards interpreting the sex nondiscrimination provisions of federal civil rights laws to apply to discrimination against LGBTQ+ people, and therefore provide legal recourse against these heinous acts, for more than two decades. And the Government is correct that in 2020, the U.S. Supreme Court affirmed in *Bostock* that Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits employment discrimination on the basis of sexual orientation and gender identity.¹³ However, we note that the Government failed to note the full impact of the *Bostock* decision. While it was indeed an employment discrimination case, *Bostock* was decided using generally applicable principles of statutory interpretation that apply to other civil rights laws long read to be consistent with Title VII. As anticipated by members of the Court, *Bostock*’s reasoning has since been extended to apply nondiscrimination protections for LGBTQ+ people in education (Title IX of the Education Amendments of 1972 (“Title IX”)), housing (Fair Housing Act), health care (Section 1557 of the Affordable Care Act), and various other contexts at both at the state and federal levels, even despite these laws having yet to be updated to expressly provide those protections.¹⁴

In 2019—and again in 2021—a bipartisan majority of the U.S. House of Representatives successfully passed the Equality Act, a comprehensive piece of legislation that would amend existing federal civil rights laws to explicitly protect against sexual orientation and gender identity discrimination. Importantly, the Equality Act if fully enacted would also amend laws, like those in public accommodations, that currently lack protections against sex discrimination and therefore cannot be read to protect LGBTQ+ people as part of the Government’s implementation of the *Bostock* decision. Unfortunately, however, the U.S. Senate did not take up the bill during either legislative session. The bill was reintroduced as part of the current session, but the changing political climate in the U.S. and current composition of the House of Representatives suggest this legislation may face continued challenges in being enacted.

Unfortunately, the Government’s response also fails to properly characterize the previous administration’s significant rulemakings impacting its interpretation and enforcement of Title IX in schools and institutions of higher education. Those rulemakings, rather than enshrining and implementing Title IX’s guarantees against various forms of sex-based discrimination and harassment, dismantled several existing and meaningful protections for students; created uncertainty as to whether LGBTQ+ people could avail themselves of Title IX’s protections; undermined the safety and security of survivors of sexual violence;



and in many cases pivoted to creating a variety of requirements that would *encourage* discrimination and harassment, including that schools effectively provide exemptions to student groups and others who, on the basis of their religious beliefs, may wish to engage in discrimination against students with protected characteristics under the law. While the Biden Administration has since worked to rescind these rules and repromulgate new regulations that would restore the previous administration’s implementation of Title IX and even provide additional clarity as to its available protections for LGBTQ+ and other students, these new rules have yet to be finalized—leaving current students and schools in a state of uncertainty as they face growing efforts to exclude LGBTQ+ people from educational spaces and cause them harm.

Discrimination Protections at the State Level

It remains the case from our previous submission that despite recent gains toward full legal equality for LGBTQ+ people, many LGBTQ+ Americans continue to lack basic protections in the states where they live. Americans are currently living with a patchwork of LGBTQ+-inclusive civil rights laws that provides protections for millions of people, but nonetheless leaves millions more subject to potential discrimination without proper recourse. The Government’s response acknowledges this reality, with recent developments creating significant uncertainty as to whether that patchwork can be improved in the near future.

For example, equal numbers of states—22 to be exact—have now passed discriminatory laws restricting whether and how transgender children can participate in school sports consistent with their gender identity as have those with express LGBTQ+ nondiscrimination protections.¹⁵ And alarmingly, those 22 pro-LGBTQ+ bills took lawmakers decades to pass, while we saw the 22 anti-LGBTQ+ bans pass in only the last three years. Additionally, many lawmakers have begun moving to undermine existing state-level protections for LGBTQ+ people through what we have dubbed “LGBTQ+ Erasure” laws. These bills adopt a discriminatory, bioessentialist definition of sex that reduces people to their reproductive abilities and could eliminate a broad array of protections for LGBTQ+ people and women alike that are already embedded throughout state law if enacted.

These coordinated efforts to undermine nondiscrimination protections will likely continue given the relative success of their efforts within statehouses, through agency action, and even within the courts. For example, while limited to businesses that provide original, custom goods and services, the U.S. Supreme Court in *303 Creative v. Elenis* recently upheld a free speech-based challenge to a state’s LGBTQ+-inclusive nondiscrimination law. Notably, this case was based on a hypothetical set of facts, but will nonetheless lead to a continued dismantling of the essential systems designed and maintained to remedy the ongoing effects of racism, sexism, homophobia, and transphobia in the U.S.

New religious refusal bills have also been quietly introduced and enacted across the states, with the aim of creating major LGBTQ+-specific loopholes to important existing nondiscrimination protections. In many cases, these bills seek to codify misunderstandings over recent U.S. Supreme Court decisions that have proliferated in recent years. One such case is the *Masterpiece Cakeshop* matter noted by the Government in its response, which we would note did *not* hold that nondiscrimination laws could be disregarded when compliance would violate one’s religious views as



suggested by the Government's response. In fact, the Court in *Masterpiece Cakeshop* acknowledged that LGBTQ+ people have a right to live free from the indignity of discrimination and held that state laws can continue to prohibit same. The Court's very narrow ruling was instead premised on the state's enforcement of that civil rights law and found in favor of the challenging baker based on perceived hostility toward their religious beliefs by the Colorado Civil Rights Commission during its adjudication of a discrimination claim against that baker.

Ban on Military Service by Transgender People

Finally, we note that the Government's response obfuscated the fact that it had taken steps to disallow transgender people from serving in the United States Armed Forces. Under the Government's policy at the time, a medically designated need to transition gender was a basis for discharge and denial of accession, even if the servicemember could still meet general standards for readiness and deployment.

We commend the Biden Administration for its prompt efforts to undo this arbitrary and discriminatory ban. However, threats against the ability of transgender people to serve openly, free of discrimination, persist. For example, ongoing efforts within the U.S. House of Representatives seek to attach a ban on the provision of gender-affirming care for LGBTQ+ servicemembers and their families to our yearly appropriations bill that provides critical funding for national defense.

D. ADDITIONAL RECOMMENDED QUESTIONS

1. What measures does the Government plan to continue taking to more fully implement the *Bostock* decision by federal agencies enforcing civil rights laws with sex nondiscrimination provisions?
2. How many complaints of discrimination on the basis of sexual orientation and gender identity have been received by each agency with a mechanism for reporting or investigating discrimination, including the Department of Justice, the Department of Education, the Department of Health and Human Services, and the Equal Employment Opportunity Commission? What is the nature of those complaints? How is each agency responding to complaints of discrimination by LGBTQ+ people? What steps are being taken to ensure that the Government's collections of data are properly equipped to gather information on discrimination against LGBTQ+ people?
3. Are federal funds continuing to be provided to entities that have policies that are discriminatory towards LGBTQ+ people, either as employees, program participants, and/or recipients of services? Are federal funds continuing to be provided to entities that have complaints of discrimination on the basis of sexual orientation and/ or gender identity lodged against them? If so, does that continuation of funding differ from decisions made regarding continuing of funding for entities with complaints of discrimination lodged against them for other protected characteristics such as race or disability?



4. Have any entities requested permission or a waiver to be able to discriminate against LGBTQ+ people and continue to receive federal funds? If so, how many and what type of entities? Was permission or a waiver granted?
5. What steps is the Government taking to protect and advocate for the rights of LGBTQ+ people in states where legislation and other policies are being enacted to limit their rights under existing law and reduce their visibility in public life?

E. SUGGESTED RECOMMENDATIONS

The Government should continue working to fully implement the U.S. Supreme Court's decision in *Bostock* and ensure that all existing laws are enforced to protect LGBTQ+ people from discrimination to the greatest extent possible. This should include ensuring there are comprehensive regulations and processes that provide LGBTQ+ people who have experienced discrimination with proper recourse, including when involving recipients of federal funding.

The Government should advocate for the passage of legislation like the Equality Act that would enshrine explicit protections against sexual orientation and gender identity discrimination within all federal civil rights laws, including in areas where such protections against sex discrimination do not currently exist (e.g., in public accommodations).

The Government should continue working to ensure every qualified individual maintains their equal right to serve, including by advocating against efforts that would make the Armed Services an unwelcome place for LGBTQ+ people and their families.

PROHIBITION OF TORTURE AND CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT, RIGHT TO LIBERTY AND SECURITY OF A PERSON, AND TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY (ARTS. 7, 9, 10 AND 14)

A. RELEVANT QUESTIONS IN LIST OF ISSUES

The Human Rights Committee presented the following question in its list of issues on this subject:

16. With reference to the Committee's previous concluding observations (para. 12), please provide updated information on measures taken to criminalize torture and provide a comprehensive definition of torture at the federal level. In addition, provide information on the admissibility of evidence obtained through torture or "enhanced interrogation techniques", including those pursuant to the Military Commissions Act of 2009. Describe steps taken to impose strict limits nationwide, in prisons and detention facilities, on the use of solitary confinement, and to abolish the practice for anyone under the age of 18 or living with a serious mental health condition.



B. SUMMARY OF RESPONSE BY THE U.S. GOVERNMENT

Within its response to this question, the Government focuses on summarizing the “results of a review of use of restrictive housing in American prisons[,]” which the Government advises “concluded that there are occasions when correctional officials have no choice but to segregate inmates from the general population, typically when it is the only way to ensure the safety of inmates, staff, and the public. But as a matter of policy, the study noted that this practice should be used rarely, applied fairly, and subjected to reasonable constraints.”

C. DISCUSSION OF ISSUE

As we previously reported, LGBTQ+ people are particularly vulnerable to harm and abuse when they enter institutionalized and carceral settings. The Government’s response, including its additional materials on its aforementioned study, failed to touch on any aspects of how its continued practices in those spaces help facilitate harm against LGBTQ+ and other people, despite LGBTQ+ people often bearing the brunt of observed disparities.

For example, we previously noted that the Department of Justice’s Bureau of Justice Statistics has found that 12.2% of LGB prisoners reported sexual victimization by another inmate, and 5.4% reported sexual victimization by staff. For transgender prisoners, the reported rates were 24.1% and 16.7%, respectively. In contrast, among non-LGBTQ+ prisoners, 1.2% reported sexual victimization by another inmate and 2.1% reported sexual victimization by staff. We note that the most common response to sexual violence in these facilities is to place the *victim* in administrative segregation or protective custody, further entrenching the risk that LGBTQ+ people will be disproportionately subjected to inhumane treatment while incarcerated.

We also previously noted that various agencies, including U.S. Immigration and Customs Enforcement (ICE), a division of the Department of Homeland Security, and the Bureau of Prisons (BOP), a division of the Department of Justice, have all established standards of treatment for transgender detainees and prisoners. However, neither ICE nor BOP consistently provide proper medical treatment to transgender detainees who wish to begin or to continue lifesaving gender-affirming care. In addition, transgender detainees and prisoners are not consistently housed consistent with their gender identity in sex-segregated facilities, even under the current administration.

D. ADDITIONAL RECOMMENDED QUESTIONS

1. What measures are being taken to reduce rates of violence against LGBTQ+ people in institutionalized and carceral settings?
2. At what rates are LGBTQ+ people placed into administrative segregation and protective custody compared to the prison population as a whole? Please disaggregate the data based on sexual orientation and gender identity where possible. What steps is the Government taking to collect these data, if they do not exist? What policies have been put in place to reduce these rates of administrative segregation?



3. What policies is the Government currently enforcing regarding the housing of transgender people in institutionalized settings? If distinctions are being drawn between transgender and cisgender people for housing determinations, what formal or informal policies and guidance are being used to make those determinations?
4. What steps are being taken to ensure that transgender prisoners and detainees have access to both non-medical and medical interventions for gender dysphoria and related conditions? What formal or informal policies or guidance are in place for making relevant determinations about transition-related care?

E. SUGGESTED RECOMMENDATIONS

The Government should establish and enforce clearer standards of humane treatment for transgender and other LGBTQ+ detainees, including appropriate housing in accordance with their gender identity and prevention of sexual abuse and assault.

The Government should ensure that transition-related care is considered medically necessary care, and that all incarcerated transgender people are allowed to begin, to continue, and to progress with their medical care.

FREEDOM OF EXPRESSION (ART. 19)

A. RELEVANT QUESTIONS IN LIST OF ISSUES

The Human Rights Committee presented the following question in its list of issues on this subject:

24. Please provide information on measures taken to address violent acts of discrimination against those belonging to racial and other minorities, and to ensure that the right to freedom of expression and association and the right to peaceful assembly are not exercised by certain groups, including white supremacists and homophobic groups, to promote hate speech and hate crimes.

B. SUMMARY OF RESPONSE BY THE U.S. GOVERNMENT

The Government's responses to this question note the existence of "robust protections for human rights, including freedom of expression for all (including minority individuals), robust anti-discrimination laws and enforcement of these laws, and governmental outreach to members of minority communities[]" and that the Department of Justice "several criminal statutes that prohibit acts of violence or intimidation motivated by race, religion, color, ethnicity, gender, sexual orientation, gender identity, or disability, as well as statutes that prohibit violence or intimidation directed against those participating in certain protected activities such as housing, employment, voting, and the use of public services." The Government's response continues by outlining its collections of data, reporting, grantmaking, training, and prosecutions related to hate crimes. Importantly, it notes that, "[i]n 2019, there were 7,103 single-bias incidents involving 8,552 victims . . . 16.7 percent were victimized because of the offenders'



sexual-orientation bias; 2.7 percent were targeted because of the offenders' gender identity bias[.]”

C. DISCUSSION OF ISSUE

As the data in the Government’s response reflects, facing hate-fueled violence has long been a lived experience of LGBTQ+ people in the U.S. However, as noted above, we have seen an escalation of hate against LGBTQ+ people and their families and allies in the U.S. since 2020. Unfortunately, this has not been limited to political and legislative assaults but has also included threats—and realized acts—of violence, which we anticipate will be reflected in both existing and future hate crimes data. For example, last year we released a report identifying 24 different hospitals and medical providers across 22 states who were directly attacked online merely for offering best-practice, evidence-based, age-appropriate medical care to transgender, non-binary, and questioning youth following harassing, inflammatory, and misleading posts by anti-LGBTQ+ campaigns.¹⁶

Alongside LGBTQ+ people themselves, pro-equality lawmakers and businesses have faced exponentially increasing numbers of violent threats over the last few years, months, and even weeks, often with anti-LGBTQ+ extremists’ false rhetoric on our communities allegedly promoting pedophilia and grooming being invoked as justification. Late last year at Club Q in Colorado Springs, we lost five members of our community and allies to gun violence. This attack at one of our safe spaces, a place of love and joy, sought to disrupt our sense of community—and such assaults have only escalated in the time since. Pride and related events and resources at public school board meetings, public libraries, community centers, and even restaurants, stores, and other private establishments are being increasingly threatened and in turn removed or cancelled, all for merely daring to affirm LGBTQ+ people. This is happening in every corner of the U.S., including in states that have not actively considered any anti-LGBTQ+ legislation.

The current, growing wave of homophobia and transphobia puts the safety of all of us at risk and cannot be understated or underestimated, and we commend the Government for its ongoing efforts to respond to these violent acts and exclusionary rhetoric. For example, the Department of Justice recently announced that a Montana man was sentenced to 18 years in prison after he shot into the home of a lesbian woman in the hopes of not only “rid[ding] the town” of its LGBTQ+ residents, but also to inspire others across the country to do the same.¹⁷ However, this environment of violent hatred shows no indication of ending soon, suggesting more must be done to ensure LGBTQ+ people are not forced back into the shadows.

D. ADDITIONAL RECOMMENDED QUESTIONS

1. What recent data does the Government have regarding hate crimes and other forms of violence motivated by one’s actual or perceived sexual orientation and gender identity?
2. What efforts is the Government taking to protect the right of LGBTQ+ people and their allies to peacefully assemble and have access to resources in the face of growing violent threats?



E. SUGGESTED RECOMMENDATIONS

The Government should work to identify solutions to the root causes of anti-transgender and anti-LGBTQ+ violence and develop a plan to implement policy changes, including through its response to violence being encouraged by state law- and policymakers.

The Government should intensify efforts to encourage local law enforcement to report hate crimes statistics annually. In addition, the Government should expand educational and training initiatives to address discrimination in communities and expand the convening of hate crimes forums across the country to engage community leaders and citizens in ways to effectively prevent and respond to hate crimes.

ADDITIONAL SUBJECTS RAISED IN OUR PRIOR REPORT

Finally, we note that our prior reporting touched on two aspects of health and well-being—the persistence of health disparities generally, and about HIV/AIDS specifically—that were not covered in the Human Rights Commission’s List of Issues or the Government’s Fifth Period Report.

It continues to be the case that LGBTQ+ people in the U.S. face stark health disparities as a result of systemic discrimination and increased risk for poverty leading to difficulties in accessing care. We would encourage review of our prior submission for more information on the longstanding body of research speaking to this issue. Additionally, we would note that the Government’s reporting did not reflect its efforts to remove all explicit protections in health care for LGBTQ+ people that were originally put in place in 2016. While the Government has since worked to rescind those amended regulations and implement new robust rules that build on the 2016 rules’ framework, those rulemakings have yet to be completed, leaving LGBTQ+ people to continue grappling with the impact of the previous rule changes.

Alongside the current state of our health care regulations, LGBTQ+ people in the U.S. have faced continued threats to their health and well-being directly tied to the growing wave of anti-LGBTQ+ sentiment in this country. Indeed, some of the most successful efforts to stymie the rights and visibility of LGBTQ+ people have taken the form of bans on the provision of best practice, age-appropriate, medically necessary health care for minors simply because they are transgender that even provide for civil, criminal, and even professional penalties against the families and doctors of these youth. So far this year, 20 states have enacted such bills, joining another two states who did the same in their 2022 sessions.¹⁸ In addition, multiple states have enacted laws that impact the ability of adults to receive gender-affirming care, largely through limitations on public funding being used to cover such treatment, those who are incarcerated, or those enrolled in health benefit plans for employees of the state, public colleges, universities, or hospitals, and municipalities. In fact, we estimate that almost one-third (30.9%) of all transgender youth ages 13–17 are now living in states where their access to gender-affirming medical care has been banned through bills and/or administrative action.¹⁹ Insidiously, some of these efforts would call for transgender youth to immediately detransition, while some mandate timelines for weaning transgender minors off puberty blockers and hormone therapy. For



those states where treatment remains allowed under some circumstances, many individuals are finding barriers to actually continuing care like individual providers and clinics shutting down their practices to avoid potential legal action.²⁰

Likewise, we have seen an increase in efforts to undermine available resources in our continued shared fight against the HIV epidemic tied to the growing and increasingly politicized wave of anti-LGBTQ+ rhetoric in the U.S. For example, a federal court recently ruled in favor of a lawsuit aiming to reduce access to the HIV prevention medication known as PrEP (pre-exposure prophylaxis) by arguing that federal statutory mandates that same be provided to individuals without payments or cost-sharing fees are an unconstitutional burden on their religious freedom. Similarly, while the President's Emergency Plan for AIDS Relief had previously been quickly funded each year since its introduction in 2003, funding for this year and into the future remains unclear despite a looming deadline for its reauthorization at the end of this month.

A. ADDITIONAL RECOMMENDED QUESTIONS

1. What measures have been taken to reduce health care disparities for LGBTQ+ people?
2. What is the status of and plan for implementing regulations that clarify protections against nondiscrimination for LGBTQ+ people in health care?
3. How many and what nature of complaints have been submitted to the U.S. Department of Health and Human Services (HHS) by LGBTQ+ people experiencing discrimination in health care? How has HHS responded to these complaints?
4. What steps is the Government taking to help ensure individuals can continue to meaningfully access gender-affirming care?
5. What plans does the Government have to ensure continued access to PrEP and other HIV-related resources?

B. SUGGESTED RECOMMENDATIONS

The Government should quickly finalize its pending regulations implementing prohibitions against sexual orientation and gender identity discrimination in health care that are already in place under existing federal law. The Government should accompany these regulations with sufficient resources to ensure providers and patients are aware of relevant legal requirements and processes in the event unlawful discrimination occurs.

The Government should continue its efforts to protect continued, cost-free access to HIV prevention tools like PrEP. Additionally, it should ensure that providers are aware of their obligation to provide complete information regarding preventive care including PrEP and other proven HIV and STI prevention tools to their patients.