Session CLE 306 | The Ongoing Attack Against Trans Youth, including AAPI Trans Youth in 2022 and Beyond

Asian American, South Asian, Southeast Asian and Pacific Islander (AAPI) transgender and gender non-conforming people face some of the highest levels of employment, educational, and healthcare discrimination and disparities. Instead of trying to solve these inequities, state legislatures across the country have recently unleashed attacks on trans youth. These lawmakers have advanced bills banning transgender students from participating in school sports, banning transgender youth from accessing gender-affirming health services, and banning education on LGBTQ+ history and stories.

The same state legislatures have long worked to take away fundamental decisions related to reproductive health. And this June, in Dobbs v. Jackson Women's Health Organization, the Supreme Court overturned Roe v. Wade finding that there is no constitutional right to an abortion. That decision not only marked the first time that the Supreme Court has taken away a fundamental right, but it also overturned 50 years of precedent on the basis of a state’s rights issue. Dobbs thus invites challenges to undermine and overturn other important decisions impacting LGBTQ+ people and youth and access to reproductive health care, including contraception, abortion, assisted reproductive services, HIV care, pregnancy care, parenting resources, and more. The decision has led to some states enacting bans outlawing abortion and encouraging a full-fledged attack on bodily autonomy, including the denial of health care to women and those that can become pregnant (including trans and non-binary people).

During this panel discussion, attendees will learn more about the startling levels of discrimination against AAPI trans folks; the barrage of attacks against transgender youth, specifically transgender AAPI youth; the inextricable connection between the attacks on reproductive freedom and the attacks against trans youth; and how to combat these attacks by elevating this issue in our local communities.

Moderator:
Peggy Li, Director of Chapters, American Constitution Society

Speakers:
Alexander L. Chen, Founding Director of the LGBTQ+ Advocacy Clinic and Lecturer on Law, Harvard Law School
Kris Hayashi, Executive Director, Transgender Law Center
Jenny Ma, Senior Staff Attorney, Center for Reproductive Rights; Lecturer-in-Law of the Sexuality and Gender Law Clinic, Columbia Law School
### I. Introducing the Topic


### II. Discrimination Against Asian American, South Asian, Southeast Asian and Pacific Islander Transgender People


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Transgender Day of Visibility exists to celebrate our existence – and to fight for our rights

Visibility brings joy and community, but it’s not a panacea. We cannot take anything for granted.

Transgender and nonbinary people are growing more and more visible with each passing year.

Just in the last year, Elliot Page let the world know he’s a trans man and appeared on the cover of Time magazine, while shows like "Pose" earned critical acclaim and popularity with an incredible cast of trans
actors. Trans community advocates also garnered attention in the mainstream media, including Oluchi Omeoga, a Black trans leader with Black Lives in Minneapolis and an organizer with the Black LGBTQIA Migrant Project, who was on the cover of The New York Times Magazine; and Cheyenne Dorsow, the executive director of GLITS Inc. was profiled in Time.

Related

And trans and nonbinary elected officials, including Minneapolis City Council Members Andrea Jenkins and Philippe Cunningham, Delaware state Sen. Sara McBride, Virginia Del. Danica Roem and Oklahoma Rep. Mauree Turner, continue to make political history.

Our community has also won groundbreaking legal and policy victories. Last year, the U.S. Supreme Court ruled in Bostock v. Clayton County that trans people are protected from discrimination in employment. (This case built on years of strategic litigation, including the Transgender Law Center’s 2012 case Macy v. Holder and decades of organizing by trans leaders across the country to assert our humanity.)

This year, there have been over 100 anti-trans bills proposed in state legislatures across the country, which is more than we have ever seen in one year.

Yet we cannot truly honor the Transgender Day of Visibility this year without acknowledging the work left to do.

The majority of trans people – particularly those who are Black, Indigenous and people of color, trans women and femmes, our elders, our youth, trans people living with HIV, trans people with disabilities, trans sex workers and migrants who are trans – are struggling to survive. These groups experience ongoing violence, harassment and discrimination in addition to the high rates of poverty and homelessness facing the trans community.

And, in 2020, at least 44 trans and nonbinary people were killed, most of whom were Black trans women and femmes.
Amid this violence, political attacks on trans people have escalated in recent years. It started with a wave of “bathroom bills” around 2015, attempting to criminalize which bathrooms trans people use, and intensified under the Trump administration’s relentless campaign to roll back the few rights and protections trans people do have and deny our very humanity – but it hasn't stopped. Even with a new White House and a new Congress, these attacks have continued and will continue.

This year, there have been over 100 anti-trans bills proposed in state legislatures across the country, which is more than we have ever seen in one year. Most of the proposed legislation targets trans youth, both their access to life-saving health care and their ability to play sports as their true selves. Just this week, Arkansas became the first state to ban young trans people from accessing health care. Mississippi, Arkansas and Tennessee have already passed laws this year restricting trans kids from playing sports, and South Dakota Gov. Kristi Noem, a Republican, signed executive orders this week to do the same.

But in the face of these attacks and worsening conditions, trans people are doing what we have always done: We are keeping each other safe.

Long before visibility, and before we had any legal protections, Black and brown trans women – many of whom were sex workers and often living with disabilities – took care of their communities without institutional support. They housed one another and kept each other safe.
We saw this tradition continue over the last year, as trans people across the country became visible leaders in both fighting for our legal rights and humanity, and in providing aid, shelter and housing for one another during the Covid-19 pandemic.

Trans and nonbinary organizers developed solutions to keep one another safe when it was clear that the police and carceral systems never could. We also continued to dream up and create our own solutions to the problems our community faces. Last year, for instance, the Transgender Law Center (TLC) worked with a national coalition of majority Black and brown trans women to launch the Trans Agenda for Liberation to serve as a community-led guide toward the world trans and gender nonconforming people deserve.

And while there are still many people espousing hate and intolerance, there are so many more who support trans communities. Corporations have made — and continue to make — powerful and visible stances of support. For instance, nearly 400 large businesses, including Starbucks, American Express, General Mills and Amazon, have joined efforts to support the Equality Act.

We know on this day that greater visibility alone does not translate into justice and equity.

These stances are obviously not enough: We need businesses and donors to provide ongoing and consistent support to trans-led organizations. Grants from Gilead Sciences’ TRANScend Community Impact Fund (a unique national program that supports the safety, health and wellness of the trans community to help reduce the impact of HIV) and from the Levi Strauss Foundation’s Strategic Response Fund for vulnerable communities are vital to the community building work we do at TLC. It’s not just our organization that benefits from these collaborations. Estée Lauder, for example, also not only funds our work but uses TLC materials to educate their employees about the issues facing the trans community nationwide.

But more broadly today, only 0.03 percent of all foundation funding each year goes to trans-led organizations across the country. Corporations and individuals interested in contributing don’t have to look
We know on this day that greater visibility alone does not translate into justice and equity. The hate, intolerance and white supremacy that was emboldened over the last five years have not gone silent again. We can't just “return to normal.” We must create a “new normal” where we embrace the leadership of BIPOC trans women and trans-led organizations, strengthen the alliances and partnerships that we have built up across movements and industries, and work to create a world where we are all alive, thriving and fighting for the liberation of us all.

Kris Hayashi

Kris Hayashi is the executive director of the Transgender Law Center.
Introduction to Transgender Rights in the United States

Transgender is a term used to describe people whose gender identity does not match the gender they were assigned at birth. It is an umbrella term that encompasses nonbinary and genderqueer people, or people whose gender do not fall on the male/female spectrum, as well. In the United States, it is estimated that 1.4 million adults identify as transgender.

Unsurprisingly, transgender rights in the U.S. vary from state to state. To date there has been only one Supreme Court case regarding the rights of the transgender population. The transgender community has historically been discriminated against in the realm of employment, marriage, medicine, incarceration, and the military, along with many other aspects of life considered normal for cisgender, or non-transgender, people. Transgender people are many times more likely to experience homelessness, unemployment, and mental illness than their cisgender counterparts. The U.S. court system has offered sparse legal protections for transgender individuals and has in fact, invalidated the lived experiences of almost every trans person who has sought restitution for discrimination.

In 2020, the Supreme Court held that title VII’s employment protections extends to transgender individuals.

Notable Supreme Court Cases and Executive Policies


- **Obergefell v. Hodges, 576 US 644 (2015)** - the Supreme Court ruled that people have a right to marry regardless of sex. While this case was understood to permanently allow same sex marriages, it means that a person’s sex, regardless of what it was assigned at birth, cannot ban one person from marrying another person. The validity of transgender marriages specifically has not been decided by the Supreme Court but on a state by state basis. New Jersey was the first state that determined that post-operative trans people may marry in their post-operative sex in 1976.

- Historically, military personnel who transitioned in the military were discharged. However, in 2015, the Obama Administration removed a ban allowing transgender members of the military to serve openly. As of July 2017 the Trump Administration severely degraded the rights of transgender individuals in the military. Trump’s ban and policies make it so transgender people are not afforded equal protections in the military and are banned from military service unless they enlist under the gender they were assigned at birth.

Selected Library Resources:


Additional Resources:

- Pronouns Chart
- Glossary of Gender ID Terms

A short history of trans people’s long fight for equality by Sammy Nour Youmes
Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

BOSTOCK v. CLAYTON COUNTY, GEORGIA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 17–1618. Argued October 8, 2019—Decided June 15, 2020*

In each of these cases, an employer allegedly fired a long-time employee simply for being homosexual or transgender. Clayton County, Georgia, fired Gerald Bostock for conduct “unbecoming” a county employee shortly after he began participating in a gay recreational softball league. Altitude Express fired Donald Zarda days after he mentioned being gay. And R. G. & G. R. Harris Funeral Homes fired Aimee Stephens, who presented as a male when she was hired, after she informed her employer that she planned to “live and work full-time as a woman.” Each employee sued, alleging sex discrimination under Title VII of the Civil Rights Act of 1964. The Eleventh Circuit held that Title VII does not prohibit employers from firing employees for being gay and so Mr. Bostock’s suit could be dismissed as a matter of law. The Second and Sixth Circuits, however, allowed the claims of Mr. Zarda and Ms. Stephens, respectively, to proceed.

Held: An employer who fires an individual merely for being gay or transgender violates Title VII. Pp. 4–33.

(a) Title VII makes it “unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual’s race, color, religion, sex, or national origin.” 42 U. S. C. §2000e–2(a)(1). The straightforward application of Title VII’s terms interpreted in accord

Syllabus

with their ordinary public meaning at the time of their enactment resolves these cases. Pp. 4–12.

(1) The parties concede that the term “sex” in 1964 referred to the biological distinctions between male and female. And “the ordinary meaning of ‘because of’ is ‘by reason of’ or ‘on account of,’” University of Tex. Southwestern Medical Center v. Nassar, 570 U. S. 338, 350. That term incorporates the but-for causation standard, id., at 346, 360, which, for Title VII, means that a defendant cannot avoid liability just by citing some other factor that contributed to its challenged employment action. The term “discriminate” meant “[t]o make a difference in treatment or favor (of one as compared with others).” Webster’s New International Dictionary 745. In so-called “disparate treatment” cases, this Court has held that the difference in treatment based on sex must be intentional. See, e.g., Watson v. Fort Worth Bank & Trust, 487 U. S. 977, 986. And the statute’s repeated use of the term “individual” means that the focus is on “[a] particular being as distinguished from a class.” Webster’s New International Dictionary, at 1267. Pp. 4–9.

(2) These terms generate the following rule: An employer violates Title VII when it intentionally fires an individual employee based in part on sex. It makes no difference if other factors besides the plaintiff’s sex contributed to the decision or that the employer treated women as a group the same when compared to men as a group. A statutory violation occurs if an employer intentionally relies in part on an individual employee’s sex when deciding to discharge the employee. Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII. There is no escaping the role intent plays: Just as sex is necessarily a but-for cause when an employer discriminates against homosexual or transgender employees, an employer who discriminates on these grounds inescapably intends to rely on sex in its decisionmaking. Pp. 9–12.

(b) Three leading precedents confirm what the statute’s plain terms suggest. In Phillips v. Martin Marietta Corp., 400 U. S. 542, a company was held to have violated Title VII by refusing to hire women with young children, despite the fact that the discrimination also depended on being a parent of young children and the fact that the company favored hiring women over men. In Los Angeles Dept. of Water and Power v. Manhart, 435 U. S. 702, an employer’s policy of requiring women to make larger pension fund contributions than men because women tend to live longer was held to violate Title VII, notwithstanding the policy’s evenhandedness between men and women as groups.
And in Oncale v. Sundowner Offshore Services, Inc., 523 U. S. 75, a male plaintiff alleged a triable Title VII claim for sexual harassment by co-workers who were members of the same sex.

The lessons these cases hold are instructive here. First, it is irrelevant what an employer might call its discriminatory practice, how others might label it, or what else might motivate it. In Manhart, the employer might have called its rule a “life expectancy” adjustment, and in Phillips, the employer could have accurately spoken of its policy as one based on “motherhood.” But such labels and additional intentions or motivations did not make a difference there, and they cannot make a difference here. When an employer fires an employee for being homosexual or transgender, it necessarily intentionally discriminates against that individual in part because of sex. Second, the plaintiff’s sex need not be the sole or primary cause of the employer’s adverse action. In Phillips, Manhart, and Oncale, the employer easily could have pointed to some other, nonprotected trait and insisted it was the more important factor in the adverse employment outcome. Here, too, it is of no significance if another factor, such as the plaintiff’s attraction to the same sex or presentation as a different sex from the one assigned at birth, might also be at work, or even play a more important role in the employer’s decision. Finally, an employer cannot escape liability by demonstrating that it treats males and females comparably as groups. Manhart is instructive here. An employer who intentionally fires an individual homosexual or transgender employee in part because of that individual’s sex violates the law even if the employer is willing to subject all male and female homosexual or transgender employees to the same rule. Pp. 12–15.
(c) The employers do not dispute that they fired their employees for being homosexual or transgender. Rather, they contend that even intentional discrimination against employees based on their homosexual or transgender status is not a basis for Title VII liability. But their statutory text arguments have already been rejected by this Court’s precedents. And none of their other contentions about what they think the law was meant to do, or should do, allow for ignoring the law as it is. Pp. 15–33.
(1) The employers assert that it should make a difference that plaintiffs would likely respond in conversation that they were fired for being gay or transgender and not because of sex. But conversational conventions do not control Title VII’s legal analysis, which asks simply whether sex is a but-for cause. Nor is it a defense to insist that intentional discrimination based on homosexuality or transgender status is not intentional discrimination based on sex. An employer who discriminates against homosexual or transgender employees necessarily and intentionally applies sex-based rules. Nor does it make a difference
that an employer could refuse to hire a gay or transgender individual without learning that person’s sex. By intentionally setting out a rule that makes hiring turn on sex, the employer violates the law, whatever he might know or not know about individual applicants. The employers also stress that homosexuality and transgender status are distinct concepts from sex, and that if Congress wanted to address these matters in Title VII, it would have referenced them specifically. But when Congress chooses not to include any exceptions to a broad rule, this Court applies the broad rule. Finally, the employers suggest that because the policies at issue have the same adverse consequences for men and women, a stricter causation test should apply. That argument unavoidably comes down to a suggestion that sex must be the sole or primary cause of an adverse employment action under Title VII, a suggestion at odds with the statute. Pp. 16–23.

(2) The employers contend that few in 1964 would have expected Title VII to apply to discrimination against homosexual and transgender persons. But legislative history has no bearing here, where no ambiguity exists about how Title VII’s terms apply to the facts. See Milner v. Department of Navy, 562 U. S. 562, 574. While it is possible that a statutory term that means one thing today or in one context might have meant something else at the time of its adoption or might mean something different in another context, the employers do not seek to use historical sources to illustrate that the meaning of any of Title VII’s language has changed since 1964 or that the statute’s terms ordinarily carried some missed message. Instead, they seem to say when a new application is both unexpected and important, even if it is clearly commanded by existing law, the Court should merely point out the question, refer the subject back to Congress, and decline to enforce the law’s plain terms in the meantime. This Court has long rejected that sort of reasoning. And the employers’ new framing may only add new problems and leave the Court with more than a little law to overturn. Finally, the employers turn to naked policy appeals, suggesting that the Court proceed without the law’s guidance to do what it thinks best. That is an invitation that no court should ever take up. Pp. 23–33.

No. 17–1618, 723 Fed. Appx. 964, reversed and remanded; No. 17–1623, 883 F. 3d 100, and No. 18–107, 884 F. 3d 560, affirmed.

GORSUCH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which THOMAS, J., joined. KAVANAUGH, J., filed a dissenting opinion.
Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 17–1618, 17–1623 and 18–107

GERALD LYNN BOSTOCK, PETITIONER
17–1618

v.

CLAYTON COUNTY, GEORGIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ALTITUDE EXPRESS, INC., ET AL., PETITIONERS
17–1623

v.

MELISSA ZARDA AND WILLIAM ALLEN MOORE, JR., CO-INDEPENDENT EXECUTORS OF THE ESTATE OF DONALD ZARDA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

R.G. & G.R. HARRIS FUNERAL HOMES, INC., PETITIONER
18–107

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 15, 2020]

JUSTICE GORSUCH delivered the opinion of the Court.
Opinion of the Court

Sometimes small gestures can have unexpected consequences. Major initiatives practically guarantee them. In our time, few pieces of federal legislation rank in significance with the Civil Rights Act of 1964. There, in Title VII, Congress outlawed discrimination in the workplace on the basis of race, color, religion, sex, or national origin. Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.

Those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result. Likely, they weren’t thinking about many of the Act’s consequences that have become apparent over the years, including its prohibition against discrimination on the basis of motherhood or its ban on the sexual harassment of male employees. But the limits of the drafters’ imagination supply no reason to ignore the law’s demands. When the express terms of a statute give us one answer and extratextual considerations suggest another, it’s no contest. Only the written word is the law, and all persons are entitled to its benefit.

I

Few facts are needed to appreciate the legal question we face. Each of the three cases before us started the same way: An employer fired a long-time employee shortly after the employee revealed that he or she is homosexual or transgender—and allegedly for no reason other than the employee’s homosexuality or transgender status.

Gerald Bostock worked for Clayton County, Georgia, as a child welfare advocate. Under his leadership, the county won national awards for its work. After a decade with the
Opinion of the Court

county, Mr. Bostock began participating in a gay recreational softball league. Not long after that, influential members of the community allegedly made disparaging comments about Mr. Bostock’s sexual orientation and participation in the league. Soon, he was fired for conduct “unbecoming” a county employee.

Donald Zarda worked as a skydiving instructor at Altitude Express in New York. After several seasons with the company, Mr. Zarda mentioned that he was gay and, days later, was fired.

Aimee Stephens worked at R. G. & G. R. Harris Funeral Homes in Garden City, Michigan. When she got the job, Ms. Stephens presented as a male. But two years into her service with the company, she began treatment for despair and loneliness. Ultimately, clinicians diagnosed her with gender dysphoria and recommended that she begin living as a woman. In her sixth year with the company, Ms. Stephens wrote a letter to her employer explaining that she planned to “live and work full-time as a woman” after she returned from an upcoming vacation. The funeral home fired her before she left, telling her “this is not going to work out.”

While these cases began the same way, they ended differently. Each employee brought suit under Title VII alleging unlawful discrimination on the basis of sex. 78 Stat. 255, 42 U. S. C. §2000e–2(a)(1). In Mr. Bostock’s case, the Eleventh Circuit held that the law does not prohibit employers from firing employees for being gay and so his suit could be dismissed as a matter of law. 723 Fed. Appx. 964 (2018). Meanwhile, in Mr. Zarda’s case, the Second Circuit concluded that sexual orientation discrimination does violate Title VII and allowed his case to proceed. 883 F. 3d 100 (2018). Ms. Stephens’s case has a more complex procedural history, but in the end the Sixth Circuit reached a decision along the same lines as the Second Circuit’s, holding that Title VII bars employers from firing employees because of
their transgender status. 884 F. 3d 560 (2018). During the course of the proceedings in these long-running disputes, both Mr. Zarda and Ms. Stephens have passed away. But their estates continue to press their causes for the benefit of their heirs. And we granted certiorari in these matters to resolve at last the disagreement among the courts of appeals over the scope of Title VII’s protections for homosexual and transgender persons. 587 U. S. ___ (2019).

II

This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people’s representatives. And we would deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations. See New Prime Inc. v. Oliveira, 586 U. S. ___, ___–___ (2019) (slip op., at 6–7).

With this in mind, our task is clear. We must determine the ordinary public meaning of Title VII’s command that it is “unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” §2000e–2(a)(1). To do so, we orient ourselves to the time of the statute’s adoption, here 1964, and begin by examining the key statutory terms in turn before assessing their impact on the cases at hand and then confirming our work against this Court’s precedents.
The only statutorily protected characteristic at issue in today’s cases is “sex”—and that is also the primary term in Title VII whose meaning the parties dispute. Appealing to roughly contemporaneous dictionaries, the employers say that, as used here, the term “sex” in 1964 referred to “status as either male or female [as] determined by reproductive biology.” The employees counter by submitting that, even in 1964, the term bore a broader scope, capturing more than anatomy and reaching at least some norms concerning gender identity and sexual orientation. But because nothing in our approach to these cases turns on the outcome of the parties’ debate, and because the employees concede the point for argument’s sake, we proceed on the assumption that “sex” signified what the employers suggest, referring only to biological distinctions between male and female.

Still, that’s just a starting point. The question isn’t just what “sex” meant, but what Title VII says about it. Most notably, the statute prohibits employers from taking certain actions “because of” sex. And, as this Court has previously explained, “the ordinary meaning of ‘because of’ is ‘by reason of’ or ‘on account of.’” University of Tex. Southwestern Medical Center v. Nassar, 570 U. S. 338, 350 (2013) (citing Gross v. FBL Financial Services, Inc., 557 U. S. 167, 176 (2009); quotation altered). In the language of law, this means that Title VII’s “because of” test incorporates the “‘simple’ and ‘traditional’ standard of but-for causation. Nassar, 570 U. S., at 346, 360. That form of causation is established whenever a particular outcome would not have happened “but for” the purported cause. See Gross, 557 U. S., at 176. In other words, a but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause.

This can be a sweeping standard. Often, events have multiple but-for causes. So, for example, if a car accident
occurred both because the defendant ran a red light and because the plaintiff failed to signal his turn at the intersection, we might call each a but-for cause of the collision. Cf. *Burrage v. United States*, 571 U. S. 204, 211–212 (2014). When it comes to Title VII, the adoption of the traditional but-for causation standard means a defendant cannot avoid liability just by citing some other factor that contributed to its challenged employment decision. So long as the plaintiff’s sex was one but-for cause of that decision, that is enough to trigger the law. See *ibid.; Nassar*, 570 U. S., at 350.

No doubt, Congress could have taken a more parsimonious approach. As it has in other statutes, it could have added “solely” to indicate that actions taken “because of” the confluence of multiple factors do not violate the law. Cf. 11 U. S. C. §525; 16 U. S. C. §511. Or it could have written “primarily because of” to indicate that the prohibited factor had to be the main cause of the defendant’s challenged employment decision. Cf. 22 U. S. C. §2688. But none of this is the law we have. If anything, Congress has moved in the opposite direction, supplementing Title VII in 1991 to allow a plaintiff to prevail merely by showing that a protected trait like sex was a “motivating factor” in a defendant’s challenged employment practice. Civil Rights Act of 1991, §107, 105 Stat. 1075, codified at 42 U. S. C. §2000e–2(m). Under this more forgiving standard, liability can sometimes follow even if sex wasn’t a but-for cause of the employer’s challenged decision. Still, because nothing in our analysis depends on the motivating factor test, we focus on the more traditional but-for causation standard that continues to afford a viable, if no longer exclusive, path to relief under Title VII. §2000e–2(a)(1).

As sweeping as even the but-for causation standard can be, Title VII does not concern itself with everything that happens “because of” sex. The statute imposes liability on
employers only when they "fail or refuse to hire," "discharge," "or otherwise . . . discriminate against" someone because of a statutorily protected characteristic like sex. Ibid. The employers acknowledge that they discharged the plaintiffs in today’s cases, but assert that the statute’s list of verbs is qualified by the last item on it: “otherwise . . . discriminate against.” By virtue of the word otherwise, the employers suggest, Title VII concerns itself not with every discharge, only with those discharges that involve discrimination.

Accepting this point, too, for argument’s sake, the question becomes: What did “discriminate” mean in 1964? As it turns out, it meant then roughly what it means today: “To make a difference in treatment or favor (of one as compared with others).” Webster’s New International Dictionary 745 (2d ed. 1954). To “discriminate against” a person, then, would seem to mean treating that individual worse than others who are similarly situated. See Burlington N. & S. F. R. Co. v. White, 548 U. S. 53, 59 (2006). In so-called “disparate treatment” cases like today’s, this Court has also held that the difference in treatment based on sex must be intentional. See, e.g., Watson v. Fort Worth Bank & Trust, 487 U. S. 977, 986 (1988). So, taken together, an employer who intentionally treats a person worse because of sex—such as by firing the person for actions or attributes it would tolerate in an individual of another sex—discriminates against that person in violation of Title VII.

At first glance, another interpretation might seem possible. Discrimination sometimes involves “the act, practice, or an instance of discriminating categorically rather than individually.” Webster’s New Collegiate Dictionary 326 (1975); see also post, at 27–28, n. 22 (ALITO, J., dissenting). On that understanding, the statute would require us to consider the employer’s treatment of groups rather than individuals, to see how a policy affects one sex as a whole versus the other as a whole. That idea holds some intuitive appeal
too. Maybe the law concerns itself simply with ensuring that employers don’t treat women generally less favorably than they do men. So how can we tell which sense, individual or group, “discriminate” carries in Title VII?

The statute answers that question directly. It tells us three times—including immediately after the words “discriminate against”—that our focus should be on individuals, not groups: Employers may not “fail or refuse to hire or . . . discharge any individual, or otherwise . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” §2000e–2(a)(1) (emphasis added). And the meaning of “individual” was as uncontroversial in 1964 as it is today: “A particular being as distinguished from a class, species, or collection.” Webster’s New International Dictionary, at 1267. Here, again, Congress could have written the law differently. It might have said that “it shall be an unlawful employment practice to prefer one sex to the other in hiring, firing, or the terms or conditions of employment.” It might have said that there should be no “sex discrimination,” perhaps implying a focus on differential treatment between the two sexes as groups. More narrowly still, it could have forbidden only “sexist policies” against women as a class. But, once again, that is not the law we have.

The consequences of the law’s focus on individuals rather than groups are anything but academic. Suppose an employer fires a woman for refusing his sexual advances. It’s no defense for the employer to note that, while he treated that individual woman worse than he would have treated a man, he gives preferential treatment to female employees overall. The employer is liable for treating this woman worse in part because of her sex. Nor is it a defense for an employer to say it discriminates against both men and women because of sex. This statute works to protect individuals of both sexes from discrimination, and does so
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equally. So an employer who fires a woman, Hannah, because she is insufficiently feminine and also fires a man, Bob, for being insufficiently masculine may treat men and women as groups more or less equally. But in both cases the employer fires an individual in part because of sex. Instead of avoiding Title VII exposure, this employer doubles it.

B

From the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex. It doesn’t matter if other factors besides the plaintiff’s sex contributed to the decision. And it doesn’t matter if the employer treated women as a group the same when compared to men as a group. If the employer intentionally relies in part on an individual employee’s sex when deciding to discharge the employee—put differently, if changing the employee’s sex would have yielded a different choice by the employer—a statutory violation has occurred. Title VII’s message is “simple but momentous”: An individual employee’s sex is “not relevant to the selection, evaluation, or compensation of employees.” *Price Waterhouse v. Hopkins*, 490 U. S. 228, 239 (1989) (plurality opinion).

The statute’s message for our cases is equally simple and momentous: An individual’s homosexuality or transgender status is not relevant to employment decisions. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the
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male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee’s sex plays an unmistakable and impermissible role in the discharge decision.

That distinguishes these cases from countless others where Title VII has nothing to say. Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team. Assuming the employer would not have tolerated the same trait in a man, Title VII stands silent. But unlike any of these other traits or actions, homosexuality and transgender status are inextricably bound up with sex. Not because homosexuality or transgender status are related to sex in some vague sense or because discrimination on these bases has some disparate impact on one sex or another, but because to discriminate on these grounds requires an employer to intentionally treat individual employees differently because of their sex.

Nor does it matter that, when an employer treats one employee worse because of that individual’s sex, other factors may contribute to the decision. Consider an employer with a policy of firing any woman he discovers to be a Yankees fan. Carrying out that rule because an employee is a woman and a fan of the Yankees is a firing “because of sex” if the employer would have tolerated the same allegiance in a male employee. Likewise here.
When an employer fires an employee because she is homosexual or transgender, two causal factors may be in play—both the individual’s sex and something else (the sex to which the individual is attracted or with which the individual identifies). But Title VII doesn’t care. If an employer would not have discharged an employee but for that individual’s sex, the statute’s causation standard is met, and liability may attach.

Reframing the additional causes in today’s cases as additional intentions can do no more to insulate the employers from liability. Intentionally burning down a neighbor’s house is arson, even if the perpetrator’s ultimate intention (or motivation) is only to improve the view. No less, intentional discrimination based on sex violates Title VII, even if it is intended only as a means to achieving the employer’s ultimate goal of discriminating against homosexual or transgender employees. There is simply no escaping the role intent plays here: Just as sex is necessarily a but-for cause when an employer discriminates against homosexual or transgender employees, an employer who discriminates on these grounds inescapably intends to rely on sex in its decisionmaking. Imagine an employer who has a policy of firing any employee known to be homosexual. The employer hosts an office holiday party and invites employees to bring their spouses. A model employee arrives and introduces a manager to Susan, the employee’s wife. Will that employee be fired? If the policy works as the employer intends, the answer depends entirely on whether the model employee is a man or a woman. To be sure, that employer’s ultimate goal might be to discriminate on the basis of sexual orientation. But to achieve that purpose the employer must, along the way, intentionally treat an employee worse based in part on that individual’s sex.

An employer musters no better a defense by responding that it is equally happy to fire male and female employees who are homosexual or transgender. Title VII liability is
not limited to employers who, through the sum of all of their employment actions, treat the class of men differently than the class of women. Instead, the law makes each instance of discriminating against an individual employee because of that individual’s sex an independent violation of Title VII. So just as an employer who fires both Hannah and Bob for failing to fulfill traditional sex stereotypes doubles rather than eliminates Title VII liability, an employer who fires both Hannah and Bob for being gay or transgender does the same.

At bottom, these cases involve no more than the straightforward application of legal terms with plain and settled meanings. For an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex. That has always been prohibited by Title VII’s plain terms—and that “should be the end of the analysis.” 883 F. 3d, at 135 (Cabranes, J., concurring in judgment).

C

If more support for our conclusion were required, there’s no need to look far. All that the statute’s plain terms suggest, this Court’s cases have already confirmed. Consider three of our leading precedents.

In Phillips v. Martin Marietta Corp., 400 U. S. 542 (1971) (per curiam), a company allegedly refused to hire women with young children, but did hire men with children the same age. Because its discrimination depended not only on the employee’s sex as a female but also on the presence of another criterion—namely, being a parent of young children—the company contended it hadn’t engaged in discrimination “because of” sex. The company maintained, too, that it hadn’t violated the law because, as a whole, it tended to favor hiring women over men. Unsurprisingly by now,
these submissions did not sway the Court. That an employer discriminates intentionally against an individual only in part because of sex supplies no defense to Title VII. Nor does the fact an employer may happen to favor women as a class.

In *Los Angeles Dept. of Water and Power v. Manhart*, 435 U. S. 702 (1978), an employer required women to make larger pension fund contributions than men. The employer sought to justify its disparate treatment on the ground that women tend to live longer than men, and thus are likely to receive more from the pension fund over time. By everyone’s admission, the employer was not guilty of animosity against women or a “purely habitual assumptio[n] about a woman’s inability to perform certain kinds of work”; instead, it relied on what appeared to be a statistically accurate statement about life expectancy. *Id.*, at 707–708. Even so, the Court recognized, a rule that appears evenhanded at the group level can prove discriminatory at the level of individuals. True, women as a class may live longer than men as a class. But “[t]he statute’s focus on the individual is unambiguous,” and any individual woman might make the larger pension contributions and still die as early as a man. *Id.*, at 708. Likewise, the Court dismissed as irrelevant the employer’s insistence that its actions were motivated by a wish to achieve classwide equality between the sexes: An employer’s intentional discrimination on the basis of sex is no more permissible when it is prompted by some further intention (or motivation), even one as prosaic as seeking to account for actuarial tables. *Ibid.* The employer violated Title VII because, when its policy worked exactly as planned, it could not “pass the simple test” asking whether an individual female employee would have been treated the same regardless of her sex. *Id.*, at 711.

In *Oncale v. Sundowner Offshore Services, Inc.*, 523 U. S. 75 (1998), a male plaintiff alleged that he was singled out by his male co-workers for sexual harassment. The Court
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held it was immaterial that members of the same sex as the victim committed the alleged discrimination. Nor did the Court concern itself with whether men as a group were subject to discrimination or whether something in addition to sex contributed to the discrimination, like the plaintiff’s conduct or personal attributes. “[A]ssuredly,” the case didn’t involve “the principal evil Congress was concerned with when it enacted Title VII.” Id., at 79. But, the Court unanimously explained, it is “the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” Ibid. Because the plaintiff alleged that the harassment would not have taken place but for his sex—that is, the plaintiff would not have suffered similar treatment if he were female—a triable Title VII claim existed.

The lessons these cases hold for ours are by now familiar. First, it’s irrelevant what an employer might call its discriminatory practice, how others might label it, or what else might motivate it. In Manhart, the employer called its rule requiring women to pay more into the pension fund a “life expectancy” adjustment necessary to achieve sex equality. In Phillips, the employer could have accurately spoken of its policy as one based on “motherhood.” In much the same way, today’s employers might describe their actions as motivated by their employees’ homosexuality or transgender status. But just as labels and additional intentions or motivations didn’t make a difference in Manhart or Phillips, they cannot make a difference here. When an employer fires an employee for being homosexual or transgender, it necessarily and intentionally discriminates against that individual in part because of sex. And that is all Title VII has ever demanded to establish liability.

Second, the plaintiff’s sex need not be the sole or primary cause of the employer’s adverse action. In Phillips, Manhart, and Oncale, the defendant easily could have pointed to some other, nonprotected trait and insisted it was the
more important factor in the adverse employment outcome. So, too, it has no significance here if another factor—such as the sex the plaintiff is attracted to or presents as—might also be at work, or even play a more important role in the employer’s decision.

Finally, an employer cannot escape liability by demonstrating that it treats males and females comparably as groups. As Manhart teaches, an employer is liable for intentionally requiring an individual female employee to pay more into a pension plan than a male counterpart even if the scheme promotes equality at the group level. Likewise, an employer who intentionally fires an individual homosexual or transgender employee in part because of that individual’s sex violates the law even if the employer is willing to subject all male and female homosexual or transgender employees to the same rule.

III

What do the employers have to say in reply? For present purposes, they do not dispute that they fired the plaintiffs for being homosexual or transgender. Sorting out the true reasons for an adverse employment decision is often a hard business, but none of that is at issue here. Rather, the employers submit that even intentional discrimination against employees based on their homosexuality or transgender status supplies no basis for liability under Title VII.

The employers’ argument proceeds in two stages. Seeking footing in the statutory text, they begin by advancing a number of reasons why discrimination on the basis of homosexuality or transgender status doesn’t involve discrimination because of sex. But each of these arguments turns out only to repackage errors we’ve already seen and this Court’s precedents have already rejected. In the end, the employers are left to retreat beyond the statute’s text, where they fault us for ignoring the legislature’s purposes
in enacting Title VII or certain expectations about its operation. They warn, too, about consequences that might follow a ruling for the employees. But none of these contentions about what the employers think the law was meant to do, or should do, allow us to ignore the law as it is.

A

Maybe most intuitively, the employers assert that discrimination on the basis of homosexuality and transgender status aren’t referred to as sex discrimination in ordinary conversation. If asked by a friend (rather than a judge) why they were fired, even today’s plaintiffs would likely respond that it was because they were gay or transgender, not because of sex. According to the employers, that conversational answer, not the statute’s strict terms, should guide our thinking and suffice to defeat any suggestion that the employees now before us were fired because of sex. Cf. *post*, at 3 (ALITO, J., dissenting); *post*, at 8–13 (KAVANAUGH, J., dissenting).

But this submission rests on a mistaken understanding of what kind of cause the law is looking for in a Title VII case. In conversation, a speaker is likely to focus on what seems most relevant or informative to the listener. So an employee who has just been fired is likely to identify the primary or most direct cause rather than list literally every but-for cause. To do otherwise would be tiring at best. But these conversational conventions do not control Title VII’s legal analysis, which asks simply whether sex was a but-for cause. In *Phillips*, for example, a woman who was not hired under the employer’s policy might have told her friends that her application was rejected because she was a mother, or because she had young children. Given that many women could be hired under the policy, it’s unlikely she would say she was not hired because she was a woman. But the Court did not hesitate to recognize that the employer in *Phillips* discriminated against the plaintiff because of her sex. Sex
wasn’t the only factor, or maybe even the main factor, but it was one but-for cause—and that was enough. You can call the statute’s but-for causation test what you will—expansive, legalistic, the dissents even dismiss it as wooden or literal. But it is the law.

Trying another angle, the defendants before us suggest that an employer who discriminates based on homosexuality or transgender status doesn’t *intentionally* discriminate based on sex, as a disparate treatment claim requires. See *post*, at 9–12 (ALITO, J., dissenting); *post*, at 12–13 (KAVANAUGH, J., dissenting). But, as we’ve seen, an employer who discriminates against homosexual or transgender employees necessarily and intentionally applies sex-based rules. An employer that announces it will not employ anyone who is homosexual, for example, intends to penalize male employees for being attracted to men and female employees for being attracted to women.

What, then, do the employers mean when they insist intentional discrimination based on homosexuality or transgender status isn’t intentional discrimination based on sex? Maybe the employers mean they don’t intend to harm one sex or the other as a class. But as should be clear by now, the statute focuses on discrimination against individuals, not groups. Alternatively, the employers may mean that they don’t perceive themselves as motivated by a desire to discriminate based on sex. But nothing in Title VII turns on the employer’s labels or any further intentions (or motivations) for its conduct beyond sex discrimination. In *Manhart*, the employer intentionally required women to make higher pension contributions only to fulfill the further purpose of making things more equitable between men and women as groups. In *Phillips*, the employer may have perceived itself as discriminating based on motherhood, not sex, given that its hiring policies as a whole favored women. But in both cases, the Court set all this aside as irrelevant. The employers’ policies involved intentional discrimination
because of sex, and Title VII liability necessarily followed. Aren’t these cases different, the employers ask, given that an employer could refuse to hire a gay or transgender individual without ever learning the applicant’s sex? Suppose an employer asked homosexual or transgender applicants to tick a box on its application form. The employer then had someone else redact any information that could be used to discern sex. The resulting applications would disclose which individuals are homosexual or transgender without revealing whether they also happen to be men or women. Doesn’t that possibility indicate that the employer’s discrimination against homosexual or transgender persons cannot be sex discrimination?

No, it doesn’t. Even in this example, the individual applicant’s sex still weighs as a factor in the employer’s decision. Change the hypothetical ever so slightly and its flaws become apparent. Suppose an employer’s application form offered a single box to check if the applicant is either black or Catholic. If the employer refuses to hire anyone who checks that box, would we conclude the employer has complied with Title VII, so long as it studiously avoids learning any particular applicant’s race or religion? Of course not: By intentionally setting out a rule that makes hiring turn on race or religion, the employer violates the law, whatever he might know or not know about individual applicants.

The same holds here. There is no way for an applicant to decide whether to check the homosexual or transgender box without considering sex. To see why, imagine an applicant doesn’t know what the words homosexual or transgender mean. Then try writing out instructions for who should check the box without using the words man, woman, or sex (or some synonym). It can’t be done. Likewise, there is no way an employer can discriminate against those who check the homosexual or transgender box without discriminating in part because of an applicant’s sex. By discriminating against homosexuals, the employer intentionally penalizes
men for being attracted to men and women for being attracted to women. By discriminating against transgender persons, the employer unavoidably discriminates against persons with one sex identified at birth and another today. Any way you slice it, the employer intentionally refuses to hire applicants in part because of the affected individuals’ sex, even if it never learns any applicant’s sex.

Next, the employers turn to Title VII’s list of protected characteristics—race, color, religion, sex, and national origin. Because homosexuality and transgender status can’t be found on that list and because they are conceptually distinct from sex, the employers reason, they are implicitly excluded from Title VII’s reach. Put another way, if Congress had wanted to address these matters in Title VII, it would have referenced them specifically. Cf. post, at 7–8 (ALITO, J., dissenting); post, at 13–15 (KAVANAUGH, J., dissenting).

But that much does not follow. We agree that homosexuality and transgender status are distinct concepts from sex. But, as we’ve seen, discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second. Nor is there any such thing as a “canon of donut holes,” in which Congress’s failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception. Instead, when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule. And that is exactly how this Court has always approached Title VII. “Sexual harassment” is conceptually distinct from sex discrimination, but it can fall within Title VII’s sweep. Oncale, 523 U. S., at 79–80. Same with “motherhood discrimination.” See Phillips, 400 U. S., at 544. Would the employers have us reverse those cases on the theory that Congress could have spoken to those problems more specifically? Of course not. As enacted, Title VII prohibits all forms of discrimination because of sex, however
they may manifest themselves or whatever other labels might attach to them.

The employers try the same point another way. Since 1964, they observe, Congress has considered several proposals to add sexual orientation to Title VII’s list of protected characteristics, but no such amendment has become law. Meanwhile, Congress has enacted other statutes addressing other topics that do discuss sexual orientation. This postenactment legislative history, they urge, should tell us something. Cf. *post*, at 2, 42–43 (ALITO, J., dissenting); *post*, at 4, 15–16 (KAVANAUGH, J., dissenting).

But what? There’s no authoritative evidence explaining why later Congresses adopted other laws referencing sexual orientation but didn’t amend this one. Maybe some in the later legislatures understood the impact Title VII’s broad language already promised for cases like ours and didn’t think a revision needed. Maybe others knew about its impact but hoped no one else would notice. Maybe still others, occupied by other concerns, didn’t consider the issue at all. All we can know for certain is that speculation about why a later Congress declined to adopt new legislation offers a “particularly dangerous” basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt. *Pension Benefit Guaranty Corporation v. LTV Corp.*, 496 U. S. 633, 650 (1990); see also *United States v. Wells*, 519 U. S. 482, 496 (1997); *Sullivan v. Finkelstein*, 496 U. S. 617, 632 (1990) (Scalia, J., concurring) (“Arguments based on subsequent legislative history . . . should not be taken seriously, not even in a footnote”).

That leaves the employers to seek a different sort of exception. Maybe the traditional and simple but-for causation test should apply in all other Title VII cases, but it just doesn’t work when it comes to cases involving homosexual and transgender employees. The test is too blunt to capture the nuances here. The employers illustrate their concern with an example. When we apply the simple test to Mr.
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Bostock—asking whether Mr. Bostock, a man attracted to other men, would have been fired had he been a woman—we don’t just change his sex. Along the way, we change his sexual orientation too (from homosexual to heterosexual). If the aim is to isolate whether a plaintiff’s sex caused the dismissal, the employers stress, we must hold sexual orientation constant—meaning we need to change both his sex and the sex to which he is attracted. So for Mr. Bostock, the question should be whether he would’ve been fired if he were a woman attracted to women. And because his employer would have been as quick to fire a lesbian as it was a gay man, the employers conclude, no Title VII violation has occurred.

While the explanation is new, the mistakes are the same. The employers might be onto something if Title VII only ensured equal treatment between groups of men and women or if the statute applied only when sex is the sole or primary reason for an employer’s challenged adverse employment action. But both of these premises are mistaken. Title VII’s plain terms and our precedents don’t care if an employer treats men and women comparably as groups; an employer who fires both lesbians and gay men equally doesn’t diminish but doubles its liability. Just cast a glance back to Manhart, where it was no defense that the employer sought to equalize pension contributions based on life expectancy. Nor does the statute care if other factors besides sex contribute to an employer’s discharge decision. Mr. Bostock’s employer might have decided to fire him only because of the confluence of two factors, his sex and the sex to which he is attracted. But exactly the same might have been said in Phillips, where motherhood was the added variable.

Still, the employers insist, something seems different here. Unlike certain other employment policies this Court has addressed that harmed only women or only men, the employers’ policies in the cases before us have the same adverse consequences for men and women. How could sex be
necessary to the result if a member of the opposite sex might face the same outcome from the same policy?

What the employers see as unique isn’t even unusual. Often in life and law two but-for factors combine to yield a result that could have also occurred in some other way. Imagine that it’s a nice day outside and your house is too warm, so you decide to open the window. Both the cool temperature outside and the heat inside are but-for causes of your choice to open the window. That doesn’t change just because you also would have opened the window had it been warm outside and cold inside. In either case, no one would deny that the window is open “because of” the outside temperature. Our cases are much the same. So, for example, when it comes to homosexual employees, male sex and attraction to men are but-for factors that can combine to get them fired. The fact that female sex and attraction to women can also get an employee fired does no more than show the same outcome can be achieved through the combination of different factors. In either case, though, sex plays an essential but-for role.

At bottom, the employers’ argument unavoidably comes down to a suggestion that sex must be the sole or primary cause of an adverse employment action for Title VII liability to follow. And, as we’ve seen, that suggestion is at odds with everything we know about the statute. Consider an employer eager to revive the workplace gender roles of the 1950s. He enforces a policy that he will hire only men as mechanics and only women as secretaries. When a qualified woman applies for a mechanic position and is denied, the “simple test” immediately spots the discrimination: A qualified man would have been given the job, so sex was a but-for cause of the employer’s refusal to hire. But like the employers before us today, this employer would say not so fast. By comparing the woman who applied to be a mechanic to a man who applied to be a mechanic, we’ve quietly
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changed two things: the applicant’s sex and her trait of failing to conform to 1950s gender roles. The “simple test” thus overlooks that it is really the applicant’s bucking of 1950s gender roles, not her sex, doing the work. So we need to hold that second trait constant: Instead of comparing the disappointed female applicant to a man who applied for the same position, the employer would say, we should compare her to a man who applied to be a secretary. And because that jobseeker would be refused too, this must not be sex discrimination.

No one thinks that, so the employers must scramble to justify deploying a stricter causation test for use only in cases involving discrimination based on sexual orientation or transgender status. Such a rule would create a curious discontinuity in our case law, to put it mildly. Employer hires based on sexual stereotypes? Simple test. Employer sets pension contributions based on sex? Simple test. Employer fires men who do not behave in a sufficiently masculine way around the office? Simple test. But when that same employer discriminates against women who are attracted to women, or persons identified at birth as women who later identify as men, we suddenly roll out a new and more rigorous standard? Why are these reasons for taking sex into account different from all the rest? Title VII’s text can offer no answer.

B

Ultimately, the employers are forced to abandon the statutory text and precedent altogether and appeal to assumptions and policy. Most pointedly, they contend that few in 1964 would have expected Title VII to apply to discrimination against homosexual and transgender persons. And whatever the text and our precedent indicate, they say, shouldn’t this fact cause us to pause before recognizing liability?

It might be tempting to reject this argument out of hand.
This Court has explained many times over many years that, when the meaning of the statute’s terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration. See, e.g., Carcieri v. Salazar, 555 U. S. 379, 387 (2009); Connecticut Nat. Bank v. Germain, 503 U. S. 249, 253–254 (1992); Rubin v. United States, 449 U. S. 424, 430 (1981). Of course, some Members of this Court have consulted legislative history when interpreting ambiguous statutory language. Cf. post, at 40 (ALITO, J., dissenting). But that has no bearing here. “Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it.” Milner v. Department of Navy, 562 U. S. 562, 574 (2011).

And as we have seen, no ambiguity exists about how Title VII’s terms apply to the facts before us. To be sure, the statute’s application in these cases reaches “beyond the principal evil” legislators may have intended or expected to address. Oncale, 523 U. S., at 79. But “the fact that [a statute] has been applied in situations not expressly anticipated by Congress” does not demonstrate ambiguity; instead, it simply “demonstrates [the] breadth” of a legislative command. Sedima, S. P. R. L. v. Imrex Co., 473 U. S. 479, 499 (1985). And “it is ultimately the provisions of” those legislative commands “rather than the principal concerns of our legislators by which we are governed.” Oncale, 523 U. S., at 79; see also A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 101 (2012) (noting that unexpected applications of broad language reflect only Congress’s “presumed point [to] produce general coverage—not to leave room for courts to recognize ad hoc exceptions”).

Still, while legislative history can never defeat unambiguous statutory text, historical sources can be useful for a different purpose: Because the law’s ordinary meaning at the time of enactment usually governs, we must be sensitive to the possibility a statutory term that means one thing
today or in one context might have meant something else at the time of its adoption or might mean something different in another context. And we must be attuned to the possibility that a statutory phrase ordinarily bears a different meaning than the terms do when viewed individually or literally. To ferret out such shifts in linguistic usage or subtle distinctions between literal and ordinary meaning, this Court has sometimes consulted the understandings of the law's drafters as some (not always conclusive) evidence. For example, in the context of the National Motor Vehicle Theft Act, this Court admitted that the term “vehicle” in 1931 could literally mean “a conveyance working on land, water or air.” *McBoyle v. United States*, 283 U. S. 25, 26 (1931). But given contextual clues and “everyday speech” at the time of the Act’s adoption in 1919, this Court concluded that “vehicles” in that statute included only things “moving on land,” not airplanes too. *Ibid*. Similarly, in *New Prime*, we held that, while the term “contracts of employment” today might seem to encompass only contracts with employees, at the time of the statute’s adoption the phrase was ordinarily understood to cover contracts with independent contractors as well. 586 U. S., at ___–___ (slip op., at 6–9). Cf. *post*, at 7–8 (KAVANAUGH, J., dissenting) (providing additional examples).

The employers, however, advocate nothing like that here. They do not seek to use historical sources to illustrate that the meaning of any of Title VII’s language has changed since 1964 or that the statute’s terms, whether viewed individually or as a whole, ordinarily carried some message we have missed. To the contrary, as we have seen, the employers agree with our understanding of all the statutory language—“discriminate against any individual . . . because of such individual’s . . . sex.” Nor do the competing dissents offer an alternative account about what these terms mean either when viewed individually or in the ag-
aggregate. Rather than suggesting that the statutory language bears some other meaning, the employers and dissenters merely suggest that, because few in 1964 expected today’s result, we should not dare to admit that it follows ineluctably from the statutory text. When a new application emerges that is both unexpected and important, they would seemingly have us merely point out the question, refer the subject back to Congress, and decline to enforce the plain terms of the law in the meantime.

That is exactly the sort of reasoning this Court has long rejected. Admittedly, the employers take pains to couch their argument in terms of seeking to honor the statute’s “expected applications” rather than vindicate its “legislative intent.” But the concepts are closely related. One could easily contend that legislators only intended expected applications or that a statute’s purpose is limited to achieving applications foreseen at the time of enactment. However framed, the employer’s logic impermissibly seeks to displace the plain meaning of the law in favor of something lying beyond it.

If anything, the employers’ new framing may only add new problems. The employers assert that “no one” in 1964 or for some time after would have anticipated today’s result. But is that really true? Not long after the law’s passage, gay and transgender employees began filing Title VII complaints, so at least some people foresaw this potential application. See, e.g., Smith v. Liberty Mut. Ins. Co., 395 F. Supp. 1098, 1099 (ND Ga. 1975) (addressing claim from 1969); Holloway v. Arthur Andersen & Co., 566 F. 2d 659, 661 (CA9 1977) (addressing claim from 1974). And less than a decade after Title VII’s passage, during debates over the Equal Rights Amendment, others counseled that its language—which was strikingly similar to Title VII’s—might also protect homosexuals from discrimination. See, e.g., Note, The Legality of Homosexual Marriage, 82 Yale L. J. 573, 583–584 (1973).
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Why isn’t that enough to demonstrate that today’s result isn’t totally unexpected? How many people have to foresee the application for it to qualify as “expected”? Do we look only at the moment the statute was enacted, or do we allow some time for the implications of a new statute to be worked out? Should we consider the expectations of those who had no reason to give a particular application any thought or only those with reason to think about the question? How do we account for those who change their minds over time, after learning new facts or hearing a new argument? How specifically or generally should we frame the “application” at issue? None of these questions have obvious answers, and the employers don’t propose any.

One could also reasonably fear that objections about unexpected applications will not be deployed neutrally. Often lurking just behind such objections resides a cynicism that Congress could not possibly have meant to protect a disfavored group. Take this Court’s encounter with the Americans with Disabilities Act’s directive that no “public entity” can discriminate against any “qualified individual with a disability.” Pennsylvania Dept of Corrections v. Yeskey, 524 U. S. 206, 208 (1998). Congress, of course, didn’t list every public entity the statute would apply to. And no one batted an eye at its application to, say, post offices. But when the statute was applied to prisons, curiously, some demanded a closer look: Pennsylvania argued that “Congress did not ‘envisio[n] that the ADA would be applied to state prisoners.’” Id., at 211–212. This Court emphatically rejected that view, explaining that, “in the context of an unambiguous statutory text,” whether a specific application was anticipated by Congress “is irrelevant.” Id., at 212. As Yeskey and today’s cases exemplify, applying protective laws to groups that were politically unpopular at the time of the law’s passage—whether prisoners in the 1990s or homosexual and transgender employees
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in the 1960s—often may be seen as unexpected. But to refuse enforcement just because of that, because the parties before us happened to be unpopular at the time of the law's passage, would not only require us to abandon our role as interpreters of statutes; it would tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the law's terms. Cf. post, at 28–35 (ALITO, J., dissenting); post, at 21–22 (KAVANAUGH, J., dissenting).

The employer's position also proves too much. If we applied Title VII's plain text only to applications some (yet-to-be-determined) group expected in 1964, we'd have more than a little law to overturn. Start with Oncale. How many people in 1964 could have expected that the law would turn out to protect male employees? Let alone to protect them from harassment by other male employees? As we acknowledged at the time, "male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII." 523 U. S., at 79. Yet the Court did not hesitate to recognize that Title VII's plain terms forbade it. Under the employer's logic, it would seem this was a mistake.

That's just the beginning of the law we would have to unravel. As one Equal Employment Opportunity Commission (EEOC) Commissioner observed shortly after the law's passage, the words of "the sex provision of Title VII [are] difficult to . . . control." Franklin, Inventing the "Traditional Concept" of Sex Discrimination, 125 Harv. L. Rev. 1307, 1338 (2012) (quoting Federal Mediation Service To Play Role in Implementing Title VII, [1965–1968 Transfer Binder] CCH Employment Practices ¶8046, p. 6074). The "difficult[y]" may owe something to the initial proponent of the sex discrimination rule in Title VII, Representative Howard Smith. On some accounts, the congressman may have wanted (or at least was indifferent to the possibility
of) broad language with wide-ranging effect. Not necessarily because he was interested in rooting out sex discrimination in all its forms, but because he may have hoped to scuttle the whole Civil Rights Act and thought that adding language covering sex discrimination would serve as a poison pill. See C. Whalen & B. Whalen, The Longest Debate: A Legislative History of the 1964 Civil Rights Act 115–118 (1985). Certainly nothing in the meager legislative history of this provision suggests it was meant to be read narrowly.

Whatever his reasons, thanks to the broad language Representative Smith introduced, many, maybe most, applications of Title VII’s sex provision were “unanticipated” at the time of the law’s adoption. In fact, many now-obvious applications met with heated opposition early on, even among those tasked with enforcing the law. In the years immediately following Title VII’s passage, the EEOC officially opined that listing men’s positions and women’s positions separately in job postings was simply helpful rather than discriminatory. Franklin, 125 Harv. L. Rev., at 1340 (citing Press Release, EEOC (Sept. 22, 1965)). Some courts held that Title VII did not prevent an employer from firing an employee for refusing his sexual advances. See, e.g., Barnes v. Train, 1974 WL 10628, *1 (D DC, Aug. 9, 1974). And courts held that a policy against hiring mothers but not fathers of young children wasn’t discrimination because of sex. See Phillips v. Martin Marietta Corp., 411 F. 2d 1 (CA5 1969), rev’d, 400 U. S. 542 (1971) (per curiam).

Over time, though, the breadth of the statutory language proved too difficult to deny. By the end of the 1960s, the EEOC reversed its stance on sex-segregated job advertising. See Franklin, 125 Harv. L. Rev., at 1345. In 1971, this Court held that treating women with children differently from men with children violated Title VII. Phillips, 400 U. S., at 544. And by the late 1970s, courts began to recognize that sexual harassment can sometimes amount to sex discrimination. See, e.g., Barnes v. Castle, 561 F. 2d 983,
990 (CADC 1977). While to the modern eye each of these examples may seem “plainly [to] constitute[e] discrimination because of biological sex,” post, at 38 (ALITO, J., dissenting), all were hotly contested for years following Title VII’s enactment. And as with the discrimination we consider today, many federal judges long accepted interpretations of Title VII that excluded these situations. Cf. post, at 21–22 (KAVANAUGH, J., dissenting) (highlighting that certain lower courts have rejected Title VII claims based on homosexuality and transgender status). Would the employers have us undo every one of these unexpected applications too?

The weighty implications of the employers’ argument from expectations also reveal why they cannot hide behind the no-elephants-in-mouseholes canon. That canon recognizes that Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions.” Whitman v. American Trucking Assns., Inc., 531 U. S. 457, 468 (2001). But it has no relevance here. We can’t deny that today’s holding—that employers are prohibited from firing employees on the basis of homosexuality or transgender status—is an elephant. But where’s the mousehole? Title VII’s prohibition of sex discrimination in employment is a major piece of federal civil rights legislation. It is written in starkly broad terms. It has repeatedly produced unexpected applications, at least in the view of those on the receiving end of them. Congress’s key drafting choices—to focus on discrimination against individuals and not merely between groups and to hold employers liable whenever sex is a but-for cause of the plaintiff’s injuries—virtually guaranteed that unexpected applications would emerge over time. This elephant has never hidden in a mousehole; it has been standing before us all along.

With that, the employers are left to abandon their concern for expected applications and fall back to the last line
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of defense for all failing statutory interpretation arguments: naked policy appeals. If we were to apply the statute’s plain language, they complain, any number of undesirable policy consequences would follow. Cf. post, at 44–54 (ALITO, J., dissenting). Gone here is any pretense of statutory interpretation; all that’s left is a suggestion we should proceed without the law’s guidance to do as we think best. But that’s an invitation no court should ever take up. The place to make new legislation, or address unwanted consequences of old legislation, lies in Congress. When it comes to statutory interpretation, our role is limited to applying the law’s demands as faithfully as we can in the cases that come before us. As judges we possess no special expertise or authority to declare for ourselves what a self-governing people should consider just or wise. And the same judicial humility that requires us to refrain from adding to statutes requires us to refrain from diminishing them.

What are these consequences anyway? The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind. The only question before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual “because of such individual’s sex.” As used in Title VII, the term “‘discriminate against’” refers to “distinctions or differences in treatment that injure protected individuals.” Burlington N. & S. F. R., 548 U. S., at 59. Firing employees because of a statutorily protected trait surely counts. Whether other policies and practices
might or might not qualify as unlawful discrimination or find justifications under other provisions of Title VII are questions for future cases, not these.

Separately, the employers fear that complying with Title VII’s requirement in cases like ours may require some employers to violate their religious convictions. We are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society. But worries about how Title VII may intersect with religious liberties are nothing new; they even predate the statute’s passage. As a result of its deliberations in adopting the law, Congress included an express statutory exception for religious organizations. §2000e–1(a). This Court has also recognized that the First Amendment can bar the application of employment discrimination laws “to claims concerning the employment relationship between a religious institution and its ministers.” Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 565 U. S. 171, 188 (2012). And Congress has gone a step further yet in the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, codified at 42 U. S. C. §2000bb et seq. That statute prohibits the federal government from substantially burdening a person’s exercise of religion unless it demonstrates that doing so both furthers a compelling governmental interest and represents the least restrictive means of furthering that interest. §2000bb–1. Because RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII’s commands in appropriate cases. See §2000bb–3.

But how these doctrines protecting religious liberty interact with Title VII are questions for future cases too. Harris Funeral Homes did unsuccessfully pursue a RFRA-based defense in the proceedings below. In its certiorari petition, however, the company declined to seek review of that adverse decision, and no other religious liberty claim is now
before us. So while other employers in other cases may raise free exercise arguments that merit careful consideration, none of the employers before us today represent in this Court that compliance with Title VII will infringe their own religious liberties in any way.

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Some of those who supported adding language to Title VII to ban sex discrimination may have hoped it would derail the entire Civil Rights Act. Yet, contrary to those intentions, the bill became law. Since then, Title VII’s effects have unfolded with far-reaching consequences, some likely beyond what many in Congress or elsewhere expected.

But none of this helps decide today’s cases. Ours is a society of written laws. Judges are not free to overlook plain statutory commands on the strength of nothing more than suppositions about intentions or guesswork about expectations. In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee’s sex when deciding to fire that employee. We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law.

The judgments of the Second and Sixth Circuits in Nos. 17–1623 and 18–107 are affirmed. The judgment of the Eleventh Circuit in No. 17–1618 is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.
Justice Alito, with whom Justice Thomas joins, dissenting.

There is only one word for what the Court has done today: legislation. The document that the Court releases is in the form of a judicial opinion interpreting a statute, but that is deceptive.
Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on any of five specified grounds: “race, color, religion, sex, [and] national origin.” 42 U. S. C. §2000e–2(a)(1). Neither “sexual orientation” nor “gender identity” appears on that list. For the past 45 years, bills have been introduced in Congress to add “sexual orientation” to the list,1 and in recent years, bills have included “gender identity” as well.2 But to date, none has passed both Houses.

Last year, the House of Representatives passed a bill that would amend Title VII by defining sex discrimination to include both “sexual orientation” and “gender identity,” H. R. 5, 116th Cong., 1st Sess. (2019), but the bill has stalled in the Senate. An alternative bill, H. R. 5331, 116th Cong., 1st Sess. (2019), would add similar prohibitions but contains provisions to protect religious liberty.3 This bill remains before a House Subcommittee.

Because no such amendment of Title VII has been enacted in accordance with the requirements in the Constitution (passage in both Houses and presentment to the President, Art. I, §7, cl. 2), Title VII’s prohibition of

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discrimination because of “sex” still means what it has always meant. But the Court is not deterred by these constitutional niceties. Usurping the constitutional authority of the other branches, the Court has essentially taken H. R. 5’s provision on employment discrimination and issued it under the guise of statutory interpretation. 4 A more brazen abuse of our authority to interpret statutes is hard to recall.

The Court tries to convince readers that it is merely enforcing the terms of the statute, but that is preposterous. Even as understood today, the concept of discrimination because of “sex” is different from discrimination because of “sexual orientation” or “gender identity.” And in any event, our duty is to interpret statutory terms to “mean what they conveyed to reasonable people at the time they were written.” A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 16 (2012) (emphasis added). If every single living American had been surveyed in 1964, it would have been hard to find any who thought that discrimination because of sex meant discrimination because of sexual orientation—not to mention gender identity, a concept that was essentially unknown at the time.

The Court attempts to pass off its decision as the inevitable product of the textualist school of statutory interpretation championed by our late colleague Justice Scalia, but no one should be fooled. The Court’s opinion is like a pirate ship. It sails under a textualist flag, but what it actually represents is a theory of statutory interpretation that Justice Scalia excoriated—the theory that courts should “update” old statutes so that they better reflect the current values of society. See A. Scalia, A Matter of Interpretation 22

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4 Section 7(b) of H. R. 5 strikes the term “sex” in 42 U. S. C. §2000e–2 and inserts: “SEX (INCLUDING SEXUAL ORIENTATION AND GENDER IDENTITY).”
Many will applaud today’s decision because they agree on policy grounds with the Court’s updating of Title VII. But the question in these cases is not whether discrimination because of sexual orientation or gender identity should be outlawed. The question is whether Congress did that in 1964. It indisputably did not.

I

A

Title VII, as noted, prohibits discrimination “because of . . . sex,” §2000e–2(a)(1), and in 1964, it was as clear as clear could be that this meant discrimination because of the genetic and anatomical characteristics that men and women have at the time of birth. Determined searching has not found a single dictionary from that time that defined “sex” to mean sexual orientation, gender identity, or “transgender status.”

5 That is what Judge Posner did in the Seventh Circuit case holding that Title VII prohibits discrimination because of sexual orientation. See Hively v. Ivy Tech Community College of Ind., 853 F. 3d 339 (2017) (en banc). Judge Posner agreed with that result but wrote: “I would prefer to see us acknowledge openly that today we, who are judges rather than members of Congress, are imposing on a half-century-old statute a meaning of ‘sex discrimination’ that the Congress that enacted it would not have accepted.” Id., at 357 (concurring opinion) (emphasis added).

6 The Court does not define what it means by “transgender status,” but the American Psychological Association describes “transgender” as “[a]n umbrella term encompassing those whose gender identities or gender roles differ from those typically associated with the sex they were assigned at birth.” A Glossary: Defining Transgender Terms, 49 Monitor on Psychology 32 (Sept. 2018), https://www.apa.org/monitor/2018/09/consumer/privacy. It defines “gender identity” as “[a]n internal sense of being male, female or something else, which may or may not correspond
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this opinion includes the full definitions of “sex” in the unabridged dictionaries in use in the 1960s.)

In all those dictionaries, the primary definition of “sex” was essentially the same as that in the then-most recent edition of Webster’s New International Dictionary 2296 (def. 1) (2d ed. 1953): “[o]ne of the two divisions of organisms formed on the distinction of male and female.” See also American Heritage Dictionary 1187 (def. 1(a)) (1969) (“The property or quality by which organisms are classified according to their reproductive functions”); Random House Dictionary of the English Language 1307 (def. 1) (1966) (Random House Dictionary) (“the fact or character of being either male or female”); 9 Oxford English Dictionary 577 (def. 1) (1933) (“Either of the two divisions of organic beings distinguished as male and female respectively”).

The Court does not dispute that this is what “sex” means in Title VII, although it coyly suggests that there is at least some support for a different and potentially relevant definition. Ante, at 5. (I address alternative definitions below. See Part I–B–3, infra.) But the Court declines to stand on that ground and instead “proceed[s] on the assumption that ‘sex’ . . . refer[s] only to biological distinctions between male and female.” Ante, at 5.

If that is so, it should be perfectly clear that Title VII does not reach discrimination because of sexual orientation or gender identity. If “sex” in Title VII means biologically male or female, then discrimination because of sex means discrimination because the person in question is biologically male or biologically female, not because that person is sexually attracted to members of the same sex or identifies as a member of a particular gender.

How then does the Court claim to avoid that conclusion? To an individual’s sex assigned at birth or sex characteristics.” Ibid. Under these definitions, there is no apparent difference between discrimination because of transgender status and discrimination because of gender identity.
The Court tries to cloud the issue by spending many pages discussing matters that are beside the point. The Court observes that a Title VII plaintiff need not show that “sex” was the sole or primary motive for a challenged employment decision or its sole or primary cause; that Title VII is limited to discrimination with respect to a list of specified actions (such as hiring, firing, etc.); and that Title VII protects individual rights, not group rights. See ante, at 5–9, 11.

All that is true, but so what? In cases like those before us, a plaintiff must show that sex was a “motivating factor” in the challenged employment action, 42 U. S. C. §2000e–2(m), so the question we must decide comes down to this: if an individual employee or applicant for employment shows that his or her sexual orientation or gender identity was a “motivating factor” in a hiring or discharge decision, for example, is that enough to establish that the employer discriminated “because of . . . sex”? Or, to put the same question in different terms, if an employer takes an employment action solely because of the sexual orientation or gender identity of an employee or applicant, has that employer necessarily discriminated because of biological sex?

The answers to those questions must be no, unless discrimination because of sexual orientation or gender identity inherently constitutes discrimination because of sex. The Court attempts to prove that point, and it argues, not merely that the terms of Title VII can be interpreted that way but that they cannot reasonably be interpreted any other way. According to the Court, the text is unambiguous. See ante, at 24, 27, 30.

The arrogance of this argument is breathtaking. As I will show, there is not a shred of evidence that any Member of Congress interpreted the statutory text that way when Title VII was enacted. See Part III–B, infra. But the Court apparently thinks that this was because the Members were not “smart enough to realize” what its language means.
Hively v. Ivy Tech Community College of Ind., 853 F. 3d 339, 357 (CA7 2017) (Posner, J., concurring). The Court seemingly has the same opinion about our colleagues on the Courts of Appeals, because until 2017, every single Court of Appeals to consider the question interpreted Title VII’s prohibition against sex discrimination to mean discrimination on the basis of biological sex. See Part III–C, infra. And for good measure, the Court’s conclusion that Title VII unambiguously reaches discrimination on the basis of sexual orientation and gender identity necessarily means that the EEOC failed to see the obvious for the first 48 years after Title VII became law.7 Day in and day out, the Commission enforced Title VII but did not grasp what discrimination “because of . . . sex” unambiguously means. See Part III–C, infra.

The Court’s argument is not only arrogant, it is wrong. It fails on its own terms. “Sex,” “sexual orientation,” and “gender identity” are different concepts, as the Court concedes. Ante, at 19 (“homosexuality and transgender status are distinct concepts from sex”). And neither “sexual orientation” nor “gender identity” is tied to either of the two biological sexes. See ante, at 10 (recognizing that “discrimination on these bases” does not have “some disparate impact on one sex or another”). Both men and women may be attracted to members of the opposite sex, members of the same sex, or members of both sexes.8 And individuals who are born with


8 “Sexual orientation refers to a person’s erotic response tendency or sexual attractions, be they directed toward individuals of the same sex (homosexual), the other sex (heterosexual), or both sexes (bisexual).” 1 B.
the genes and organs of either biological sex may identify with a different gender.9

Using slightly different terms, the Court asserts again and again that discrimination because of sexual orientation or gender identity inherently or necessarily entails discrimination because of sex. See ante, at 2 (When an employer “fires an individual for being homosexual or transgender,” “[s]ex plays a necessary and undisguisable role in the decision”); ante, at 9 (“[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex”); ante, at 11 (“[W]hen an employer discriminates against homosexual or transgender employees, [the] employer . . . inescapably intends to rely on sex in its decisionmaking”); ante, at 12 (“For an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex”); ante, at 14 (“When an employer fires an employee for being homosexual or transgender, it necessarily and intentionally discriminates against that individual in part because of sex”); ante, at 19 (“[D]iscrimination based on homosexuality or transgender status necessarily entails discrimination based on sex”). But repetition of an assertion does not make it so, and the Court’s repeated assertion is demonstrably untrue.

Contrary to the Court’s contention, discrimination because of sexual orientation or gender identity does not in

Sadock, V. Sadock, & P. Ruiz, Comprehensive Textbook of Psychiatry 2061 (9th ed. 2009); see also American Heritage Dictionary 1607 (5th ed. 2011) (defining “sexual orientation” as “[t]he direction of a person’s sexual interest, as toward people of the opposite sex, the same sex, or both sexes”); Webster’s New College Dictionary 1036 (3d ed. 2008) (defining “sexual orientation” as “[t]he direction of one’s sexual interest toward members of the same, opposite, or both sexes”).

9See n. 6, supra; see also Sadock, supra, at 2063 (“transgender” refers to “any individual who identifies with and adopts the gender role of a member of the other biological sex”)

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and of itself entail discrimination because of sex. We can see this because it is quite possible for an employer to discriminate on those grounds without taking the sex of an individual applicant or employee into account. An employer can have a policy that says: “We do not hire gays, lesbians, or transgender individuals.” And an employer can implement this policy without paying any attention to or even knowing the biological sex of gay, lesbian, and transgender applicants. In fact, at the time of the enactment of Title VII, the United States military had a blanket policy of refusing to enlist gays or lesbians, and under this policy for years thereafter, applicants for enlistment were required to complete a form that asked whether they were “homosexual.” Appendix D, infra, at 88, 101.

At oral argument, the attorney representing the employees, a prominent professor of constitutional law, was asked if there would be discrimination because of sex if an employer with a blanket policy against hiring gays, lesbians, and transgender individuals implemented that policy without knowing the biological sex of any job applicants. Her candid answer was that this would “not” be sex discrimination.10 And she was right.

The attorney’s concession was necessary, but it is fatal to the Court’s interpretation, for if an employer discriminates against individual applicants or employees without even knowing whether they are male or female, it is impossible to argue that the employer intentionally discriminated because of sex. Contra, ante, at 19. An employer cannot intentionally discriminate on the basis of a characteristic of which the employer has no knowledge. And if an employer does not violate Title VII by discriminating on the basis of

10See Tr. of Oral Arg. in Nos. 17–1618, 17–1623, pp. 69–70 (“If there was that case, it might be the rare case in which sexual orientation discrimination is not a subset of sex”); see also id., at 69 (“Somebody who comes in and says I’m not going to tell you what my sex is, but, believe me, I was fired for my sexual orientation, that person will lose”).
sexual orientation or gender identity without knowing the sex of the affected individuals, there is no reason why the same employer could not lawfully implement the same policy even if it knows the sex of these individuals. If an employer takes an adverse employment action for a perfectly legitimate reason—for example, because an employee stole company property—that action is not converted into sex discrimination simply because the employer knows the employee’s sex. As explained, a disparate treatment case requires proof of intent—i.e., that the employee’s sex motivated the firing. In short, what this example shows is that discrimination because of sexual orientation or gender identity does not inherently or necessarily entail discrimination because of sex, and for that reason, the Court’s chief argument collapses.

Trying to escape the consequences of the attorney’s concession, the Court offers its own hypothetical:

“Suppose an employer’s application form offered a single box to check if the applicant is either black or Catholic. If the employer refuses to hire anyone who checks that box, would we conclude the employer has complied with Title VII, so long as it studiously avoids learning any particular applicant’s race or religion? Of course not.” Ante, at 18.

How this hypothetical proves the Court’s point is a mystery. A person who checked that box would presumably be black, Catholic, or both, and refusing to hire an applicant because of race or religion is prohibited by Title VII. Rejecting applicants who checked a box indicating that they are homosexual is entirely different because it is impossible to tell from that answer whether an applicant is male or female.

The Court follows this strange hypothetical with an even stranger argument. The Court argues that an applicant
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could not answer the question whether he or she is homosexual without knowing something about sex. If the applicant was unfamiliar with the term “homosexual,” the applicant would have to look it up or ask what the term means. And because this applicant would have to take into account his or her sex and that of the persons to whom he or she is sexually attracted to answer the question, it follows, the Court reasons, that an employer could not reject this applicant without taking the applicant’s sex into account. See ante, at 18–19.

This is illogical. Just because an applicant cannot say whether he or she is homosexual without knowing his or her own sex and that of the persons to whom the applicant is attracted, it does not follow that an employer cannot reject an applicant based on homosexuality without knowing the applicant’s sex.

While the Court’s imagined application form proves nothing, another hypothetical case offered by the Court is telling. But what it proves is not what the Court thinks. The Court posits:

“Imagine an employer who has a policy of firing any employee known to be homosexual. The employer hosts an office holiday party and invites employees to bring their spouses. A model employee arrives and introduces a manager to Susan, the employee’s wife. Will that employee be fired? If the policy works as the employer intends, the answer depends entirely on whether the model employee is a man or a woman.” Ante, at 11.

This example disproves the Court’s argument because it is perfectly clear that the employer’s motivation in firing the female employee had nothing to do with that employee’s sex. The employer presumably knew that this employee was a woman before she was invited to the fateful party. Yet the employer, far from holding her biological sex
against her, rated her a “model employee.” At the party, the employer learned something new, her sexual orientation, and it was this new information that motivated her discharge. So this is another example showing that discrimination because of sexual orientation does not inherently involve discrimination because of sex.

In addition to the failed argument just discussed, the Court makes two other arguments, more or less in passing. The first of these is essentially that sexual orientation and gender identity are closely related to sex. The Court argues that sexual orientation and gender identity are “inextricably bound up with sex,” ante, at 10, and that discrimination on the basis of sexual orientation or gender identity involves the application of “sex-based rules,” ante, at 17. This is a variant of an argument found in many of the briefs filed in support of the employees and in the lower court decisions that agreed with the Court’s interpretation. All these variants stress that sex, sexual orientation, and gender identity are related concepts. The Seventh Circuit observed that “[i]t would require considerable calisthenics to remove ‘sex’ from ‘sexual orientation.’” Hively, 853 F. 3d, at 350. The Second Circuit wrote that sex is necessarily “a factor in sexual orientation” and further concluded that “sexual orientation is a function of sex.” 883 F. 3d 100, 112–113 (CA2 2018) (en banc). Bostock’s brief and those of amici supporting his position contend that sexual orientation is “a sex-based consideration.” Other briefs state that sexual orientation is “a function of sex” or is “intrinsically related to

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11 See also Brief for William N. Eskridge Jr. et al. as Amici Curiae 2 (“[T]here is no reasonable way to disentangle sex from same-sex attraction or transgender status”).
12 Brief for Petitioner in No. 17–1618, at 14; see also Brief for Southern Poverty Law Center et al. as Amici Curiae 7–8.
Similarly, Stephens argues that sex and gender identity are necessarily intertwined: “By definition, a transgender person is someone who lives and identifies with a sex different than the sex assigned to the person at birth.”

It is curious to see this argument in an opinion that purports to apply the purest and highest form of textualism because the argument effectively amends the statutory text. Title VII prohibits discrimination because of sex itself, not everything that is related to, based on, or defined with reference to, “sex.” Many things are related to sex. Think of all the nouns other than “orientation” that are commonly modified by the adjective “sexual.” Some examples yielded by a quick computer search are “sexual harassment,” “sexual assault,” “sexual violence,” “sexual intercourse,” and “sexual content.”

Does the Court really think that Title VII prohibits discrimination on all these grounds? Is it unlawful for an employer to refuse to hire an employee with a record of sexual harassment in prior jobs? Or a record of sexual assault or violence?

To be fair, the Court does not claim that Title VII prohibits discrimination because of everything that is related to sex. The Court draws a distinction between things that are “inextricably” related and those that are related in “some vague sense.” Ante, at 10. Apparently the Court would graft onto Title VII some arbitrary line separating the things that are related closely enough and those that are not. And it would do this in the name of high textualism.

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14 Brief for American Psychological Association et al. as Amici Curiae 11.
15 Reply Brief for Respondent Aimee Stephens in No. 18–107, p. 5.
16 Notably, Title VII itself already suggests a line, which the Court ignores. The statute specifies that the terms “because of sex” and “on the basis of sex” cover certain conditions that are biologically tied to sex,
An additional argument made in passing also fights the text of Title VII and the policy it reflects. The Court proclaims that “[a]n individual’s homosexuality or transgender status is not relevant to employment decisions.” *Ante*, at 9. That is the policy view of many people in 2020, and perhaps Congress would have amended Title VII to implement it if this Court had not intervened. But that is not the policy embodied in Title VII in its current form. Title VII prohibits discrimination based on five specified grounds, and neither sexual orientation nor gender identity is on the list. As long as an employer does not discriminate based on one of the listed grounds, the employer is free to decide for itself which characteristics are “relevant to [its] employment decisions.” *Ibid.* By proclaiming that sexual orientation and gender identity are “not relevant to employment decisions,” the Court updates Title VII to reflect what it regards as 2020 values.

The Court’s remaining argument is based on a hypothetical that the Court finds instructive. In this hypothetical, an employer has two employees who are “attracted to men,” and “to the employer’s mind” the two employees are “materially identical” except that one is a man and the other is a woman. *Ante*, at 9 (emphasis added). The Court reasons that if the employer fires the man but not the woman, the employer is necessarily motivated by the man’s biological sex. *Ante*, at 9–10. After all, if two employees are identical in every respect but sex, and the employer fires only one, what other reason could there be?

The problem with this argument is that the Court loads the dice. That is so because in the mind of an employer who does not want to employ individuals who are attracted to

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namely, “pregnancy, childbirth, [and] related medical conditions.” 42 U. S. C. §2000e(k). This definition should inform the meaning of “because of sex” in Title VII more generally. Unlike pregnancy, neither sexual orientation nor gender identity is biologically linked to women or men.
members of the same sex, these two employees are not materially identical in every respect but sex. On the contrary, they differ in another way that the employer thinks is quite material. And until Title VII is amended to add sexual orientation as a prohibited ground, this is a view that an employer is permitted to implement. As noted, other than prohibiting discrimination on any of five specified grounds, “race, color, religion, sex, [and] national origin.” 42 U. S. C. §2000e–2(a)(1), Title VII allows employers to decide whether two employees are “materially identical.” Even idiosyncratic criteria are permitted; if an employer thinks that Scorpios make bad employees, the employer can refuse to hire Scorpios. Such a policy would be unfair and foolish, but under Title VII, it is permitted. And until Title VII is amended, so is a policy against employing gays, lesbians, or transgender individuals.

Once this is recognized, what we have in the Court’s hypothetical case are two employees who differ in two ways—sex and sexual orientation—and if the employer fires one and keeps the other, all that can be inferred is that the employer was motivated either entirely by sexual orientation, entirely by sex, or in part by both. We cannot infer with any certainty, as the hypothetical is apparently meant to suggest, that the employer was motivated even in part by sex. The Court harps on the fact that under Title VII a prohibited ground need not be the sole motivation for an adverse employment action, see ante, at 10–11, 14–15, 21, but its example does not show that sex necessarily played any part in the employer’s thinking.

The Court tries to avoid this inescapable conclusion by arguing that sex is really the only difference between the two employees. This is so, the Court maintains, because both employees “are attracted to men.” Ante, at 9–10. Of course, the employer would couch its objection to the man differently. It would say that its objection was his sexual orientation. So this may appear to leave us with a battle of
labels. If the employer’s objection to the male employee is characterized as attraction to men, it seems that he is just like the woman in all respects except sex and that the employer’s disparate treatment must be based on that one difference. On the other hand, if the employer’s objection is sexual orientation or homosexuality, the two employees differ in two respects, and it cannot be inferred that the disparate treatment was due even in part to sex.

The Court insists that its label is the right one, and that presumably is why it makes such a point of arguing that an employer cannot escape liability under Title VII by giving sex discrimination some other name. See ante, at 14, 17. That is certainly true, but so is the opposite. Something that is not sex discrimination cannot be converted into sex discrimination by slapping on that label. So the Court cannot prove its point simply by labeling the employer’s objection as “attract[ion] to men.” Ante, at 9–10. Rather, the Court needs to show that its label is the correct one.

And a labeling standoff would not help the Court because that would mean that the bare text of Title VII does not unambiguously show that its interpretation is right. The Court would have no justification for its stubborn refusal to look any further.

As it turns out, however, there is no standoff. It can easily be shown that the employer’s real objection is not “attract[ion] to men” but homosexual orientation.

In an effort to prove its point, the Court carefully includes in its example just two employees, a homosexual man and a heterosexual woman, but suppose we add two more individuals, a woman who is attracted to women and a man who is attracted to women. (A large employer will likely have applicants and employees who fall into all four categories, and a small employer can potentially have all four as well.) We now have the four exemplars listed below, with the discharged employees crossed out:
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Man attracted to men
Woman attracted to men
Woman attracted to women
Man attracted to women

The discharged employees have one thing in common. It is not biological sex, attraction to men, or attraction to women. It is attraction to members of their own sex—in a word, sexual orientation. And that, we can infer, is the employer’s real motive.

In sum, the Court’s textual arguments fail on their own terms. The Court tries to prove that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex,” ante, at 9, but as has been shown, it is entirely possible for an employer to do just that. “[H]omosexuality and transgender status are distinct concepts from sex,” ante, at 19, and discrimination because of sexual orientation or transgender status does not inherently or necessarily constitute discrimination because of sex. The Court’s arguments are squarely contrary to the statutory text.

But even if the words of Title VII did not definitively refute the Court’s interpretation, that would not justify the Court’s refusal to consider alternative interpretations. The Court’s excuse for ignoring everything other than the bare statutory text is that the text is unambiguous and therefore no one can reasonably interpret the text in any way other than the Court does. Unless the Court has met that high standard, it has no justification for its blinkered approach. And to say that the Court’s interpretation is the only possible reading is indefensible.

B

Although the Court relies solely on the arguments discussed above, several other arguments figure prominently in the decisions of the lower courts and in briefs submitted
by or in support of the employees. The Court apparently finds these arguments unpersuasive, and so do I, but for the sake of completeness, I will address them briefly.

1

One argument, which relies on our decision in Price Waterhouse v. Hopkins, 490 U. S. 228 (1989) (plurality opinion), is that discrimination because of sexual orientation or gender identity violates Title VII because it constitutes prohibited discrimination on the basis of sex stereotypes. See 883 F. 3d, at 119–123; Hively, 853 F. 3d, at 346; 884 F. 3d 560, 576–577 (CA6 2018). The argument goes like this. Title VII prohibits discrimination based on stereotypes about the way men and women should behave; the belief that a person should be attracted only to persons of the opposite sex and the belief that a person should identify with his or her biological sex are examples of such stereotypes; therefore, discrimination on either of these grounds is unlawful.

This argument fails because it is based on a faulty premise, namely, that Title VII forbids discrimination based on sex stereotypes. It does not. It prohibits discrimination because of “sex,” and the two concepts are not the same. See Price Waterhouse, 490 U. S., at 251. That does not mean, however, that an employee or applicant for employment cannot prevail by showing that a challenged decision was based on a sex stereotype. Such evidence is relevant to prove discrimination because of sex, and it may be convincing where the trait that is inconsistent with the stereotype is one that would be tolerated and perhaps even valued in a person of the opposite sex. See ibid.

Much of the plaintiff’s evidence in Price Waterhouse was of this nature. The plaintiff was a woman who was passed over for partnership at an accounting firm, and some of the adverse comments about her work appeared to criticize her for being forceful and insufficiently “feminin[e].” Id., at 235–236.
The main issue in *Price Waterhouse*—the proper allocation of the burdens of proof in a so-called mixed motives Title VII case—is not relevant here, but the plurality opinion, endorsed by four Justices, commented on the issue of sex stereotypes. The plurality observed that “sex stereotypes do not inevitably prove that gender played a part in a particular employment decision” but “can certainly be evidence that gender played a part.” *Id.*, at 251. And the plurality made it clear that “[t]he plaintiff must show that the employer actually relied on her gender in making its decision.” *Ibid.*

Plaintiffs who allege that they were treated unfavorably because of their sexual orientation or gender identity are not in the same position as the plaintiff in *Price Waterhouse*. In cases involving discrimination based on sexual orientation or gender identity, the grounds for the employer’s decision—that individuals should be sexually attracted only to persons of the opposite biological sex or should identify with their biological sex—apply equally to men and women. “[H]eterosexuality is not a female stereotype; it not a male stereotype; it is not a sex-specific stereotype at all.” *Hively*, 853 F. 3d, at 370 (Sykes, J., dissenting).

To be sure, there may be cases in which a gay, lesbian, or transgender individual can make a claim like the one in *Price Waterhouse*. That is, there may be cases where traits or behaviors that some people associate with gays, lesbians, or transgender individuals are tolerated or valued in persons of one biological sex but not the other. But that is a

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17 Two other Justices concurred in the judgment but did not comment on the issue of stereotypes. See *id.*, at 258–261 (opinion of White, J.); *id.*, at 261–279 (opinion of O’Connor, J.). And Justice Kennedy reiterated on behalf of the three Justices in dissent that “Title VII creates no independent cause of action for sex stereotyping,” but he added that “[e]vidence of use by decisionmakers of sex stereotypes is, of course, quite relevant to the question of discriminatory intent.” *Id.*, at 294.
different matter.

2

A second prominent argument made in support of the result that the Court now reaches analogizes discrimination against gays and lesbians to discrimination against a person who is married to or has an intimate relationship with a person of a different race. Several lower court cases have held that discrimination on this ground violates Title VII. See, e.g., Holcomb v. Iona College, 521 F. 3d 130 (CA2 2008); Parr v. Woodmen of World Life Ins. Co., 791 F. 2d 888 (CA11 1986). And the logic of these decisions, it is argued, applies equally where an employee or applicant is treated unfavorably because he or she is married to, or has an intimate relationship with, a person of the same sex.

This argument totally ignores the historically rooted reason why discrimination on the basis of an interracial relationship constitutes race discrimination. And without taking history into account, it is not easy to see how the decisions in question fit the terms of Title VII.

Recall that Title VII makes it unlawful for an employer to discriminate against an individual “because of such individual’s race.” 42 U. S. C. §2000e–2(a) (emphasis added). So if an employer is happy to employ whites and blacks but will not employ any employee in an interracial relationship, how can it be said that the employer is discriminating against either whites or blacks “because of such individual’s race”? This employer would be applying the same rule to all its employees regardless of their race.

The answer is that this employer is discriminating on a ground that history tells us is a core form of race discrimination.18 “It would require absolute blindness to the history

18 Notably, Title VII recognizes that in light of history distinctions on the basis of race are always disadvantageous, but it permits certain dis-
of racial discrimination in this country not to understand what is at stake in such cases . . . . A prohibition on ‘race-mixing’ was . . . grounded in bigotry against a particular race and was an integral part of preserving the rigid hierarchical distinction that denominated members of the black race as inferior to whites.” 883 F. 3d, at 158–159 (Lynch, J., dissenting).

Discrimination because of sexual orientation is different. It cannot be regarded as a form of sex discrimination on the ground that applies in race cases since discrimination because of sexual orientation is not historically tied to a project that aims to subjugate either men or women. An employer who discriminates on this ground might be called “homophobic” or “transphobic,” but not sexist. See Wittmer v. Phillips 66 Co., 915 F. 3d 328, 338 (CA5 2019) (Ho, J., concurring).

The opinion of the Court intimates that the term “sex” was not universally understood in 1964 to refer just to the categories of male and female, see ante, at 5, and while the Court does not take up any alternative definition as a ground for its decision, I will say a word on this subject.

As previously noted, the definitions of “sex” in the unabridged dictionaries in use in the 1960s are reproduced in Appendix A, infra. Anyone who examines those definitions can see that the primary definition in every one of them refers to the division of living things into two groups, male and female, based on biology, and most of the definitions further down the list are the same or very similar. In addition, some definitions refer to heterosexual sex acts. See
Random House Dictionary 1307 ("coitus," "sexual intercourse" (defs. 5–6)); American Heritage Dictionary, at 1187 ("sexual intercourse" (def. 5)).

Aside from these, what is there? One definition, “to neck passionately,” Random House Dictionary 1307 (def. 8), refers to sexual conduct that is not necessarily heterosexual. But can it be seriously argued that one of the aims of Title VII is to outlaw employment discrimination against employees, whether heterosexual or homosexual, who engage in necking? And even if Title VII had that effect, that is not what is at issue in cases like those before us.

That brings us to the two remaining subsidiary definitions, both of which refer to sexual urges or instincts and their manifestations. See the fourth definition in the American Heritage Dictionary, at 1187 ("the sexual urge or instinct as it manifests itself in behavior"), and the fourth definition in both Webster’s Second and Third ("[p]henomena of sexual instincts and their manifestations," Webster’s New International Dictionary, at 2296 (2d ed.); Webster’s Third New International Dictionary 2081 (1966)). Since both of these come after three prior definitions that refer to men and women, they are most naturally read to have the same association, and in any event, is it plausible that Title VII prohibits discrimination based on any sexual urge or instinct and its manifestations? The urge to rape?

Viewing all these definitions, the overwhelming impact is that discrimination because of “sex” was understood during the era when Title VII was enacted to refer to men and women. (The same is true of current definitions, which are reproduced in Appendix B, infra.) This no doubt explains why neither this Court nor any of the lower courts have tried to make much of the dictionary definitions of sex just

II
A

So far, I have not looked beyond dictionary definitions of “sex,” but textualists like Justice Scalia do not confine their inquiry to the scrutiny of dictionaries. See Manning, Textualism and the Equity of the Statute, 101 Colum. L. Rev. 1, 109 (2001). Dictionary definitions are valuable because they are evidence of what people at the time of a statute’s enactment would have understood its words to mean. Ibid. But they are not the only source of relevant evidence, and what matters in the end is the answer to the question that the evidence is gathered to resolve: How would the terms of a statute have been understood by ordinary people at the time of enactment?

Justice Scalia was perfectly clear on this point. The words of a law, he insisted, “mean what they conveyed to reasonable people at the time.” Reading Law, at 16 (emphasis added).20

Leading proponents of Justice Scalia’s school of textualism have expounded on this principle and explained that it is grounded on an understanding of the way language works. As Dean John F. Manning explains, “the meaning of language depends on the way a linguistic community uses words and phrases in context.” What Divides Textualists From Purposivists? 106 Colum. L. Rev. 70, 78 (2006). “[O]ne can make sense of others’ communications only by placing them in their appropriate social and linguistic context,” id., at 79–80, and this is no less true of statutes than any other verbal communications. “[S]tatutes convey meaning only because members of a relevant linguistic

20See also Chisom v. Roemer, 501 U. S. 380, 405 (1991) (Scalia, J., dissenting) (“We are to read the words of [a statutory] text as any ordinary Member of Congress would have read them . . . and apply the meaning so determined”).
community apply shared background conventions for understanding how particular words are used in particular contexts.” Manning, The Absurdity Doctrine, 116 Harv. L. Rev. 2387, 2457 (2003). Therefore, judges should ascribe to the words of a statute “what a reasonable person conversant with applicable social conventions would have understood them to be adopting.” Manning, 106 Colum. L. Rev., at 77. Or, to put the point in slightly different terms, a judge interpreting a statute should ask “‘what one would ordinarily be understood as saying, given the circumstances in which one said it.’” Manning, 116 Harv. L. Rev., at 2397–2398.

Judge Frank Easterbrook has made the same points:

“Words are arbitrary signs, having meaning only to the extent writers and readers share an understanding. . . . Language in general, and legislation in particular, is a social enterprise to which both speakers and listeners contribute, drawing on background understandings and the structure and circumstances of the utterance.” Herrmann v. Cencom Cable Assocs., Inc., 978 F. 2d 978, 982 (CA7 1992).

Consequently, “[s]licing a statute into phrases while ignoring . . . the setting of the enactment . . . is a formula for disaster.” Ibid.; see also Continental Can Co. v. Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund, 916 F. 2d 1154, 1157 (CA7 1990) (“You don’t have to be Ludwig Wittgenstein or Hans-Georg Gadamer to know that successful communication depends on meanings shared by interpretive communities”).

Thus, when textualism is properly understood, it calls for an examination of the social context in which a statute was enacted because this may have an important bearing on what its words were understood to mean at the time of enactment. Textualists do not read statutes as if they were messages picked up by a powerful radio telescope from a
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distant and utterly unknown civilization. Statutes consist of communications between members of a particular linguistic community, one that existed in a particular place and at a particular time, and these communications must therefore be interpreted as they were understood by that community at that time.

For this reason, it is imperative to consider how Americans in 1964 would have understood Title VII’s prohibition of discrimination because of sex. To get a picture of this, we may imagine this scene. Suppose that, while Title VII was under consideration in Congress, a group of average Americans decided to read the text of the bill with the aim of writing or calling their representatives in Congress and conveying their approval or disapproval. What would these ordinary citizens have taken “discrimination because of sex” to mean? Would they have thought that this language prohibited discrimination because of sexual orientation or gender identity?

B

The answer could not be clearer. In 1964, ordinary Americans reading the text of Title VII would not have dreamed that discrimination because of sex meant discrimination because of sexual orientation, much less gender identity. The ordinary meaning of discrimination because of “sex” was discrimination because of a person’s biological sex, not sexual orientation or gender identity. The possibility that discrimination on either of these grounds might fit within some exotic understanding of sex discrimination would not have crossed their minds.

1

In 1964, the concept of prohibiting discrimination “because of sex” was no novelty. It was a familiar and well-understood concept, and what it meant was equal treatment for men and women.
Long before Title VII was adopted, many pioneering state and federal laws had used language substantively indistinguishable from Title VII’s critical phrase, “discrimination because of sex.” For example, the California Constitution of 1879 stipulated that no one, “on account of sex, [could] be disqualified from entering upon or pursuing any lawful business, vocation, or profession.” Art. XX, §18 (emphasis added). It also prohibited a student’s exclusion from any state university department “on account of sex.” Art. IX, §9; accord, Mont. Const., Art. XI, §9 (1889).

Wyoming’s first Constitution proclaimed broadly that “[b]oth male and female citizens of this state shall equally enjoy all civil, political and religious rights and privileges,” Art. VI, §1 (1890), and then provided specifically that “[i]n none of the public schools . . . shall distinction or discrimination be made on account of sex,” Art. VII, §10 (emphasis added); see also §16 (the “university shall be equally open to students of both sexes”). Washington’s Constitution likewise required “ample provision for the education of all children . . . without distinction or preference on account of . . . sex.” Art. IX, §1 (1889) (emphasis added).

The Constitution of Utah, adopted in 1895, provided that the right to vote and hold public office “shall not be denied or abridged on account of sex.” Art. IV, §1 (emphasis added). And in the next sentence it made clear what “on account of sex” meant, stating that “[b]oth male and female citizens . . . shall enjoy equally all civil, political and religious rights and privileges.” Ibid.

The most prominent example of a provision using this language was the Nineteenth Amendment, ratified in 1920, which bans the denial or abridgment of the right to vote “on account of sex.” U. S. Const., Amdt. 19. Similar language appeared in the proposal of the National Woman’s Party for an Equal Rights Amendment. As framed in 1921, this proposal forbade all “political, civil or legal disabilities or inequalities on account of sex, [o]r on account of marriage.”
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Similar terms were used in the precursor to the Equal Pay Act. Introduced in 1944 by Congresswoman Winifred C. Stanley, it proclaimed that “[d]iscrimination against employees, in rates of compensation paid, on account of sex” was “contrary to the public interest.” H. R. 5056, 78th Cong., 2d Sess.

In 1952, the new Constitution for Puerto Rico, which was approved by Congress, 66 Stat. 327, prohibited all “discrimination . . . on account of . . . sex,” Art. II, Bill of Rights §1 (emphasis added), and in the landmark Immigration and Nationality Act of 1952, Congress outlawed discrimination in naturalization “because of . . . sex.” 8 U. S. C. §1422 (emphasis added).

In 1958, the International Labour Organisation, a United Nations agency of which the United States is a member, recommended that nations bar employment discrimination “made on the basis of . . . sex.” Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation, Art. 1(a), June 25, 1958, 362 U. N. T. S. 32 (emphasis added).

In 1961, President Kennedy ordered the Civil Service Commission to review and modify personnel policies “to assure that selection for any career position is hereinafter made solely on the basis of individual merit and fitness, without regard to sex.”21 He concurrently established a “Commission on the Status of Women” and directed it to recommend policies “for overcoming discriminations in government and private employment on the basis of sex.” Exec. Order No. 10980, 3 CFR 138 (1961 Supp.) (emphasis added).

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In short, the concept of discrimination “because of,” “on account of,” or “on the basis of” sex was well understood. It was part of the campaign for equality that had been waged by women’s rights advocates for more than a century, and what it meant was equal treatment for men and women.\footnote{Analysis of the way Title VII’s key language was used in books and articles during the relevant time period supports this conclusion. A study searched a vast database of documents from that time to determine how the phrase “discriminate against . . . because of [some trait]” was used. Phillips, The Overlooked Evidence in the Title VII Cases: The Linguistic (and Therefore Textualist) Principle of Compositionality (manuscript, at 3) (May 11, 2020) (brackets in original), https://ssrn.com/abstract=3585940. The study found that the phrase was used to denote discrimination against “someone . . . motivated by prejudice, or biased ideas or attitudes . . . directed at people with that trait in particular.” Id., at 7 (emphasis deleted). In other words, “discriminate against” was “associated with negative treatment directed at members of a discrete group.” Id., at 5. Thus, as used in 1964, “discrimination because of sex” would have been understood to mean discrimination against a woman or a man based on “unfair beliefs or attitudes” about members of that particular sex. Id., at 7.}

Discrimination “because of sex” was not understood as having anything to do with discrimination because of sexual orientation or transgender status. Any such notion would have clashed in spectacular fashion with the societal norms of the day.

For most 21st-century Americans, it is painful to be reminded of the way our society once treated gays and lesbians, but any honest effort to understand what the terms of Title VII were understood to mean when enacted must take into account the societal norms of that time. And the plain truth is that in 1964 homosexuality was thought to be a mental disorder, and homosexual conduct was regarded as morally culpable and worthy of punishment.
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In its then-most recent Diagnostic and Statistical Manual of Mental Disorders (1952) (DSM–I), the American Psychiatric Association (APA) classified same-sex attraction as a “sexual deviation,” a particular type of “sociopathic personality disturbance,” id., at 38–39, and the next edition, issued in 1968, similarly classified homosexuality as a “sexual deviati[n],” Diagnostic and Statistical Manual of Mental Disorders 44 (2d ed.) (DSM–II). It was not until the sixth printing of the DSM–II in 1973 that this was changed.23

Society’s treatment of homosexuality and homosexual conduct was consistent with this understanding. Sodomy was a crime in every State but Illinois, see W. Eskridge, Dishonorable Passions 387–407 (2008), and in the District of Columbia, a law enacted by Congress made sodomy a felony punishable by imprisonment for up to 10 years and permitted the indefinite civil commitment of “sexual psychopath[s],” Act of June 9, 1948, §§104, 201–207, 62 Stat. 347–349.24

23 APA, Homosexuality and Sexual Orientation Disturbance: Proposed Change in DSM–II, 6th Printing, p. 44 (APA Doc. Ref. No. 730008, 1973) (reclassifying “homosexuality” as a “[s]exual orientation disturbance,” a category “for individuals whose sexual interests are directed primarily toward people of the same sex and who are either disturbed by . . . or wish to change their sexual orientation,” and explaining that “homosexuality . . . by itself does not constitute a psychiatric disorder”); see also APA, Diagnostic and Statistical Manual of Mental Disorders 281–282 (3d ed. 1980) (DSM–III) (similarly creating category of “Ego-dystonic Homosexuality” for “homosexuals for whom changing sexual orientation is a persistent concern,” while observing that “homosexuality itself is not considered a mental disorder”); Obergefell v. Hodges, 576 U. S. 644, 661 (2015).


In 1964, individuals who were known to be homosexual could not obtain security clearances, and any who possessed clearances were likely to lose them if their orientation was discovered. A 1953 Executive Order provided that background investigations should look for evidence of “sexual perversion,” as well as “[a]ny criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct.” Exec. Order No. 10450, §8(a)(1)(iii), 3 CFR 938 (1949–1953 Comp.). “Until about 1991, when agencies began to change their security policies and practices regarding sexual orientation, there were a number of documented cases where defense civilian or contractor employees’ security clearances were denied or revoked because of their sexual orientation.” GAO, Security Clearances, at 2. See, e.g., Adams v. Laird, 420 F. 2d 230, 240 (CADC 1969) (upholding denial of security clearance to defense contractor employee because he had “engaged in repeated homosexual acts”); see also Webster v. Doe, 486 U. S. 592, 595, 601 (1988) (concluding that decision to fire a particular individual because he was homosexual fell within the “discretion” of the Director of Central Intelligence under the National Security Act of 1947 and thus was unreviewable under the APA).

The picture in state employment was similar. In 1964, it was common for States to bar homosexuals from serving as teachers. An article summarizing the situation 15 years after Title VII became law reported that “[a]ll states have statutes that permit the revocation of teaching certificates
(or credentials) for immorality, moral turpitude, or unprofessionalism,” and, the survey added, “[h]omosexuality is considered to fall within all three categories.”


In Florida, the legislature enacted laws authorizing the revocation of teaching certificates for “misconduct involving moral turpitude,” Fla. Stat. Ann. §229.08(16) (1961), and this law was used to target homosexual conduct. In 1964, a legislative committee was wrapping up a 6-year campaign to remove homosexual teachers from public schools and state universities. As a result of these efforts, the state board of education apparently revoked at least 71 teachers’ certificates and removed at least 14 university professors. Eskridge, Dishonorable Passions, at 103.

Individuals who engaged in homosexual acts also faced the loss of other occupational licenses, such as those needed to work as a “lawyer, doctor, mortician, [or] beautician.” See, e.g., Florida Bar v. Kay, 232 So. 2d 378 (Fla. 1970) (attorney disbarred after conviction for homosexual conduct in

In 1964 and for many years thereafter, homosexuals were barred from the military. See, e.g., Army Reg. 635–89, §I(2)(a) (July 15, 1966) (“Personnel who voluntarily engage in homosexual acts, irrespective of sex, will not be permitted to serve in the Army in any capacity, and their prompt separation is mandatory”); Army Reg. 600–443, §I(2) (April 10, 1953) (similar). Prohibitions against homosexual conduct by members of the military were not eliminated until 2010. See Don’t Ask, Don’t Tell Repeal Act of 2010, 124 Stat. 3515 (repealing 10 U. S. C. §654, which required members of the Armed Forces to be separated for engaging in homosexual conduct).

Homosexuals were also excluded from entry into the United States. The Immigration and Nationality Act of 1952 (INA) excluded aliens “afflicted with psychopathic personality.” 8 U. S. C. §1182(a)(4) (1964 ed.). In Boutilier v. INS, 387 U. S. 118, 120–123 (1967), this Court, relying on the INA’s legislative history, interpreted that term to encompass homosexuals and upheld an alien’s deportation on that ground. Three Justices disagreed with the majority’s interpretation of the phrase “psychopathic personality.”27 But it apparently did not occur to anyone to argue that the Court’s interpretation was inconsistent with the INA’s express prohibition of discrimination “because of sex.” That was how our society—and this Court—saw things a half century ago. Discrimination because of sex and discrimination because of sexual orientation were viewed as two entirely different concepts.

To its credit, our society has now come to recognize the injustice of past practices, and this recognition provides the impetus to “update” Title VII. But that is not our job. Our

27 Justices Douglas and Fortas thought that a homosexual is merely “one, who by some freak, is the product of an arrested development.” Boutilier, 387 U. S., at 127 (Douglas, J., dissenting); see also id., at 125 (Brennan, J., dissenting) (based on lower court dissent).
duty is to understand what the terms of Title VII were understood to mean when enacted, and in doing so, we must take into account the societal norms of that time. We must therefore ask whether ordinary Americans in 1964 would have thought that discrimination because of “sex” carried some exotic meaning under which private-sector employers would be prohibited from engaging in a practice that represented the official policy of the Federal Government with respect to its own employees. We must ask whether Americans at that time would have thought that Title VII banned discrimination against an employee for engaging in conduct that Congress had made a felony and a ground for civil commitment.

The questions answer themselves. Even if discrimination based on sexual orientation or gender identity could be squeezed into some arcane understanding of sex discrimination, the context in which Title VII was enacted would tell us that this is not what the statute’s terms were understood to mean at that time. To paraphrase something Justice Scalia once wrote, “our job is not to scavenge the world of English usage to discover whether there is any possible meaning” of discrimination because of sex that might be broad enough to encompass discrimination because of sexual orientation or gender identity. Chisom v. Roemer, 501 U. S. 380, 410 (1991) (dissenting opinion). Without strong evidence to the contrary (and there is none here), our job is to ascertain and apply the “ordinary meaning” of the statute. Ibid. And in 1964, ordinary Americans most certainly would not have understood Title VII to ban discrimination because of sexual orientation or gender identity.

The Court makes a tiny effort to suggest that at least some people in 1964 might have seen what Title VII really means. Ante, at 26. What evidence does it adduce? One complaint filed in 1969, another filed in 1974, and arguments made in the mid-1970s about the meaning of the Equal Rights Amendment. Ibid. To call this evidence
merely feeble would be generous.

C

While Americans in 1964 would have been shocked to learn that Congress had enacted a law prohibiting sexual orientation discrimination, they would have been bewildered to hear that this law also forbids discrimination on the basis of “transgender status” or “gender identity,” terms that would have left people at the time scratching their heads. The term “transgender” is said to have been coined “in the early 1970s,”28 and the term “gender identity,” now understood to mean “[a]n internal sense of being male, female or something else,”29 apparently first appeared in an academic article in 1964.30 Certainly, neither term was in common parlance; indeed, dictionaries of the time still primarily defined the word “gender” by reference to grammatical classifications. See, e.g., American Heritage Dictionary, at 548 (def. 1(a)) (“Any set of two or more categories, such as masculine, feminine, and neuter, into which words are divided . . . and that determine agreement with or the

28 Drescher, Transsexualism, Gender Identity Disorder and the DSM, 14 J. Gay & Lesbian Mental Health 109, 110 (2010).
29 American Psychological Association, 49 Monitor on Psychology, at 32.
30 Green, Robert Stoller’s Sex and Gender: 40 Years On, 39 Archives Sexual Behav. 1457 (2010); see Stoller, A Contribution to the Study of Gender Identity, 45 Int’l J. Psychoanalysis 220 (1964). The term appears to have been coined a year or two earlier. See Haig, The Inexorable Rise of Gender and the Decline of Sex: Social Change in Academic Titles, 1945–2001, 33 Archives Sexual Behav. 87, 93 (2004) (suggesting the term was first introduced at 23rd International Psycho-Analytical Congress in Stockholm in 1963); J. Meyerowitz, How Sex Changed 213 (2002) (referring to founding of “Gender Identity Research Clinic” at UCLA in 1962). In his book, Sex and Gender, published in 1968, Robert Stoller referred to “gender identity” as “a working term” “associated with” his research team but noted that they were not “fixed on copyrighting the term or on defending the concept as one of the splendors of the scientific world.” Sex and Gender, p. viii.
selection of modifiers, referents, or grammatical forms").

While it is likely true that there have always been individuals who experience what is now termed “gender dysphoria,” i.e., “[d]iscomfort or distress related to an incongruence between an individual’s gender identity and the gender assigned at birth,” the current understanding of the concept postdates the enactment of Title VII. Nothing resembling what is now called gender dysphoria appeared in either DSM–I (1952) or DSM–II (1968). It was not until 1980 that the APA, in DSM–III, recognized two main psychiatric diagnoses related to this condition, “Gender Identity Disorder of Childhood” and “Transsexualism” in adolescents and adults, DSM–III, at 261–266.

The first widely publicized sex reassignment surgeries in the United States were not performed until 1966, and the great majority of physicians surveyed in 1969 thought that an individual who sought sex reassignment surgery was either “‘severely neurotic’” or “‘psychotic.’”

It defies belief to suggest that the public meaning of discrimination because of sex in 1964 encompassed discrimination on the basis of a concept that was essentially unknown to the public at that time.

The Court’s main excuse for entirely ignoring the social context in which Title VII was enacted is that the meaning of Title VII’s prohibition of discrimination because of sex is

31 American Psychological Association, 49 Monitor on Psychology, at 32.
32 See Drescher, supra, at 112.
34 Drescher, supra, at 112 (quoting Green, Attitudes Toward Transsexualism and Sex-Reassignment Procedures, in Transsexualism and Sex Reassignment 241–242 (R. Green & J. Money eds. 1969)).
clear, and therefore it simply does not matter whether people in 1964 were “smart enough to realize” what its language means. Hively, 853 F. 3d, at 357 (Posner, J., concurring). According to the Court, an argument that looks to the societal norms of those times represents an impermissible attempt to displace the statutory language. Ante, at 25–26.

The Court’s argument rests on a false premise. As already explained at length, the text of Title VII does not prohibit discrimination because of sexual orientation or gender identity. And what the public thought about those issues in 1964 is relevant and important, not because it provides a ground for departing from the statutory text, but because it helps to explain what the text was understood to mean when adopted.

In arguing that we must put out of our minds what we know about the time when Title VII was enacted, the Court relies on Justice Scalia’s opinion for the Court in Oncale v. Sundowner Offshore Services, Inc., 523 U. S. 75 (1998). But Oncale is nothing like these cases, and no one should be taken in by the majority’s effort to enlist Justice Scalia in its updating project.

The Court’s unanimous decision in Oncale was thoroughly unremarkable. The Court held that a male employee who alleged that he had been sexually harassed at work by other men stated a claim under Title VII. Although the impetus for Title VII’s prohibition of sex discrimination was to protect women, anybody reading its terms would immediately appreciate that it applies equally to both sexes, and by the time Oncale reached the Court, our precedent already established that sexual harassment may constitute sex discrimination within the meaning of Title VII. See Meritor Savings Bank, FSB v. Vinson, 477 U. S. 57 (1986). Given these premises, syllogistic reasoning dictated the holding.
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What today’s decision latches onto are Oncale’s comments about whether “‘male-on-male sexual harassment’” was on Congress’s mind when it enacted Title VII. Ante, at 28 (quoting 523 U. S., at 79). The Court in Oncale observed that this specific type of behavior “was assuredly not the principal evil Congress was concerned with when it enacted Title VII,” but it found that immaterial because “statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” 523 U. S., at 79 (emphasis added).

It takes considerable audacity to read these comments as committing the Court to a position on deep philosophical questions about the meaning of language and their implications for the interpretation of legal rules. These comments are better understood as stating mundane and uncontroversial truths. Who would argue that a statute applies only to the “principal evils” and not lesser evils that fall within the plain scope of its terms? Would even the most ardent “purposivists” and fans of legislative history contend that congressional intent is restricted to Congress’s “principal concerns”?

Properly understood, Oncale does not provide the slightest support for what the Court has done today. For one thing, it would be a wild understatement to say that discrimination because of sexual orientation and transgender status was not the “principal evil” on Congress’s mind in 1964. Whether we like to admit it now or not, in the thinking of Congress and the public at that time, such discrimination would not have been evil at all.

But the more important difference between these cases and Oncale is that here the interpretation that the Court adopts does not fall within the ordinary meaning of the statutory text as it would have been understood in 1964. To
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decide for the defendants in Oncale, it would have been necessary to carve out an exception to the statutory text. Here, no such surgery is at issue. Even if we totally disregard the societal norms of 1964, the text of Title VII does not support the Court’s holding. And the reasoning of Oncale does not preclude or counsel against our taking those norms into account. They are relevant, not for the purpose of creating an exception to the terms of the statute, but for the purpose of better appreciating how those terms would have been understood at the time.

2

The Court argues that two other decisions—Phillips v. Martin Marietta Corp., 400 U. S. 542 (1971) (per curiam), and Los Angeles Dept. of Water and Power v. Manhart, 435 U. S. 702 (1978)—buttress its decision, but those cases merely held that Title VII prohibits employer conduct that plainly constitutes discrimination because of biological sex. In Phillips, the employer treated women with young children less favorably than men with young children. In Manhart, the employer required women to make larger pension contributions than men. It is hard to see how these holdings assist the Court.

The Court extracts three “lessons” from Phillips, Manhart, and Oncale, but none sheds any light on the question before us. The first lesson is that “it’s irrelevant what an employer might call its discriminatory practice, how others might label it, or what else might motivate it.” Ante, at 14. This lesson is obviously true but proves nothing. As to the label attached to a practice, has anyone ever thought that the application of a law to a person’s conduct depends on how it is labeled? Could a bank robber escape conviction by saying he was engaged in asset enhancement? So if an employer discriminates because of sex, the employer is liable no matter what it calls its conduct, but if the employer’s
conduct is not sex discrimination, the statute does not apply. Thus, this lesson simply takes us back to the question whether discrimination because of sexual orientation or gender identity is a form of discrimination because of biological sex. For reasons already discussed, see Part I–A, supra, it is not.

It likewise proves nothing of relevance here to note that an employer cannot escape liability by showing that discrimination on a prohibited ground was not its sole motivation. So long as a prohibited ground was a motivating factor, the existence of other motivating factors does not defeat liability.

The Court makes much of the argument that “[i]n Phillips, the employer could have accurately spoken of its policy as one based on ‘motherhood.’” Ante, at 14; see also ante, at 16. But motherhood, by definition, is a condition that can be experienced only by women, so a policy that distinguishes between motherhood and parenthood is necessarily a policy that draws a sex-based distinction. There was sex discrimination in Phillips, because women with children were treated disadvantageously compared to men with children.

Lesson number two—“the plaintiff’s sex need not be the sole or primary cause of the employer’s adverse action,” ante, at 14—is similarly unhelpful. The standard of causation in these cases is whether sex is necessarily a “motivating factor” when an employer discriminates on the basis of sexual orientation or gender identity. 42 U. S. C. §2000e–2(m). But the essential question—whether discrimination because of sexual orientation or gender identity constitutes sex discrimination—would be the same no matter what causation standard applied. The Court’s extensive discussion of causation standards is so much smoke.

Lesson number three—“an employer cannot escape liability by demonstrating that it treats males and females comparably as groups,” ante, at 15, is also irrelevant. There
is no dispute that discrimination against an individual employee based on that person's sex cannot be justified on the ground that the employer's treatment of the average employee of that sex is at least as favorable as its treatment of the average employee of the opposite sex. Nor does it matter if an employer discriminates against only a subset of men or women, where the same subset of the opposite sex is treated differently, as in Phillips. That is not the issue here. An employer who discriminates equally on the basis of sexual orientation or gender identity applies the same criterion to every affected individual regardless of sex. See Part I–A, supra.

III

A

Because the opinion of the Court flies a textualist flag, I have taken pains to show that it cannot be defended on textualist grounds. But even if the Court's textualist argument were stronger, that would not explain today's decision. Many Justices of this Court, both past and present, have not espoused or practiced a method of statutory interpretation that is limited to the analysis of statutory text. Instead, when there is ambiguity in the terms of a statute, they have found it appropriate to look to other evidence of "congressional intent," including legislative history.

So, why in these cases are congressional intent and the legislative history of Title VII totally ignored? Any assessment of congressional intent or legislative history seriously undermines the Court's interpretation.

B

As the Court explained in General Elec. Co. v. Gilbert, 429 U. S. 125, 143 (1976), the legislative history of Title VII’s prohibition of sex discrimination is brief, but it is nevertheless revealing. The prohibition of sex discrimination was "added to Title VII at the last minute on the floor of the
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House of Representatives,” *Meritor Savings Bank*, 477 U. S., at 63, by Representative Howard Smith, the Chairman of the Rules Committee. See 110 Cong. Rec. 2577 (1964). Representative Smith had been an ardent opponent of the civil rights bill, and it has been suggested that he added the prohibition against discrimination on the basis of “sex” as a poison pill. See, *e.g.*, *Ulane v. Eastern Airlines, Inc.*, 742 F. 2d 1081, 1085 (CA7 1984). On this theory, Representative Smith thought that prohibiting employment discrimination against women would be unacceptable to Members who might have otherwise voted in favor of the bill and that the addition of this prohibition might bring about the bill’s defeat. But if Representative Smith had been looking for a poison pill, prohibiting discrimination on the basis of sexual orientation or gender identity would have been far more potent. However, neither Representative Smith nor any other Member said one word about the possibility that the prohibition of sex discrimination might have that meaning. Instead, all the debate concerned discrimination on the basis of biological sex. See 110 Cong. Rec. 2577–2584.

Representative Smith’s motivations are contested, 883 F. 3d, at 139–140 (Lynch, J., dissenting), but whatever they

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36 Recent scholarship has linked the adoption of the Smith Amendment to the broader campaign for women’s rights that was underway at the time. *E.g.*, Osterman, *supra*; Freeman, How Sex Got Into Title VII: Persistent Opportunism as a Maker of Public Policy, 9 L. & Ineq. 163 (1991); Barzilay, Parenting Title VII: Rethinking the History of the Sex Discrimination Provision, 28 Yale J. L. & Feminism 55 (2016); Gold, A Tale of Two Amendments: The Reasons Congress Added Sex to Title VII and Their Implication for the Issue of Comparable Worth, 19 Duquesne L. Rev. 453 (1981). None of these studies has unearthed evidence that the amendment was understood to apply to discrimination because of sexual orientation or gender identity.
were, the meaning of the adoption of the prohibition of sex discrimination is clear. It was no accident. It grew out of “a long history of women’s rights advocacy that had increasingly been gaining mainstream recognition and acceptance,” and it marked a landmark achievement in the path toward fully equal rights for women. Id., at 140. “Discrimination against gay women and men, by contrast, was not on the table for public debate . . . [i]n those dark, pre-Stonewall days.” Ibid.

For those who regard congressional intent as the touchstone of statutory interpretation, the message of Title VII’s legislative history cannot be missed.

C

Post-enactment events only clarify what was apparent when Title VII was enacted. As noted, bills to add “sexual orientation” to Title VII’s list of prohibited grounds were introduced in every Congress beginning in 1975, see supra, at 2, and two such bills were before Congress in 1991\(^{37}\) when it made major changes in Title VII. At that time, the three Courts of Appeals to reach the issue had held that Title VII does not prohibit discrimination because of sexual orientation,\(^{38}\) two other Circuits had endorsed that interpretation in dicta,\(^{39}\) and no Court of Appeals had held otherwise. Similarly, the three Circuits to address the application of Title VII to transgender persons had all rejected the argument


that it covered discrimination on this basis.\(^{40}\) These were also the positions of the EEOC.\(^{41}\) In enacting substantial changes to Title VII, the 1991 Congress abrogated numerous judicial decisions with which it disagreed. If it also disagreed with the decisions regarding sexual orientation and transgender discrimination, it could have easily overruled those as well, but it did not do so.\(^{42}\)

After 1991, six other Courts of Appeals reached the issue of sexual orientation discrimination, and until 2017, every single Court of Appeals decision understood Title VII’s prohibition of “discrimination because of sex” to mean discrimination because of biological sex. See, e.g., Higgins v. New Balance Athletic Shoe, Inc., 194 F. 3d 252, 259 (CA1 1999); Simonton v. Runyon, 232 F. 3d 33, 36 (CA2 2000); Bibby v. Philadelphia Coca Cola Bottling Co., 260 F. 3d 257, 261 (CA3 2001), cert. denied, 534 U. S. 1155 (2002); Wrightson v. Pizza Hut of Am., Inc., 99 F. 3d 138, 143 (CA4 1996); Hamm v. Weyauwega Milk Products, Inc., 332 F. 3d 1058, 1062 (CA7 2003); Medina v. Income Support Div., N. M., 413 F. 3d 1131, 1135 (CA10 2005); Evans v. Georgia Regional Hospital, 850 F. 3d 1248, 1255 (CA11), cert. denied, 583 U. S. ___ (2017). Similarly, the other Circuit to formally address whether Title VII applies to claims of discrimination based on transgender status had also rejected the argument, creating unanimous consensus prior to the Sixth Circuit’s decision below. See Etsitty v. Utah Transit Authority, 502 F. 3d 1215, 1220–1221 (CA10


\(^{42}\)In more recent legislation, when Congress has wanted to reach acts committed because of sexual orientation or gender identity, it has referred to those grounds by name. See, e.g., 18 U. S. C. §249(a)(2)(A) (hate crimes) (enacted 2009); 34 U. S. C. §12291(b)(15)(A) (certain federally funded programs) (enacted 2013).
The Court observes that “[t]he people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms,” ante, at 24, but it has no qualms about disregarding over 50 years of uniform judicial interpretation of Title VII’s plain text. Rather, the Court makes the jaw-dropping statement that its decision exemplifies “judicial humility.” Ante, at 31. Is it humble to maintain, not only that Congress did not understand the terms it enacted in 1964, but that all the Circuit Judges on all the pre-2017 cases could not see what the phrase discrimination “because of sex” really means? If today’s decision is humble, it is sobering to imagine what the Court might do if it decided to be bold.

IV

What the Court has done today—interpreting discrimination because of “sex” to encompass discrimination because of sexual orientation or gender identity—is virtually certain to have far-reaching consequences. Over 100 federal statutes prohibit discrimination because of sex. See Appendix C, infra; e.g., 20 U. S. C. §1681(a) (Title IX); 42 U. S. C. §3631 (Fair Housing Act); 15 U. S. C. 1691(a)(1) (Equal Credit Opportunity Act). The briefs in these cases have called to our attention the potential effects that the Court’s reasoning may have under some of these laws, but the Court waves those considerations aside. As to Title VII itself, the Court dismisses questions about “bathrooms, locker rooms, or anything else of the kind.” Ante, at 31. And it declines to say anything about other statutes whose terms mirror Title VII’s.

The Court’s brusque refusal to consider the consequences of its reasoning is irresponsible. If the Court had allowed the legislative process to take its course, Congress would have had the opportunity to consider competing interests and might have found a way of accommodating at least
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some of them. In addition, Congress might have crafted special rules for some of the relevant statutes. But by intervening and proclaiming categorically that employment discrimination based on sexual orientation or gender identity is simply a form of discrimination because of sex, the Court has greatly impeded—and perhaps effectively ended—any chance of a bargained legislative resolution. Before issuing today’s radical decision, the Court should have given some thought to where its decision would lead.

As the briefing in these cases has warned, the position that the Court now adopts will threaten freedom of religion, freedom of speech, and personal privacy and safety. No one should think that the Court’s decision represents an unalloyed victory for individual liberty.

I will briefly note some of the potential consequences of the Court’s decision, but I do not claim to provide a comprehensive survey or to suggest how any of these issues should necessarily play out under the Court’s reasoning.43

“[B]athrooms, locker rooms, [and other things] of [that] kind.” The Court may wish to avoid this subject, but it is a matter of concern to many people who are reticent about disrobing or using toilet facilities in the presence of individuals whom they regard as members of the opposite sex. For some, this may simply be a question of modesty, but for others, there is more at stake. For women who have been victimized by sexual assault or abuse, the experience of seeing an unclothed person with the anatomy of a male in a confined and sensitive location such as a bathroom or locker room can cause serious psychological harm.44

Under the Court’s decision, however, transgender persons will be able to argue that they are entitled to use a bathroom or locker room that is reserved for persons of the

43 Contrary to the implication in the Court’s opinion, I do not label these potential consequences “undesirable.” Ante, at 31. I mention them only as possible implications of the Court’s reasoning.

sex with which they identify, and while the Court does not define what it means by a transgender person, the term may apply to individuals who are “gender fluid,” that is, individuals whose gender identity is mixed or changes over time. Thus, a person who has not undertaken any physical transitioning may claim the right to use the bathroom or locker room assigned to the sex with which the individual identifies at that particular time. The Court provides no clue why a transgender person’s claim to such bathroom or locker room access might not succeed.

A similar issue has arisen under Title IX, which prohibits sex discrimination by any elementary or secondary school and any college or university that receives federal financial assistance. In 2016, a Department of Justice advisory warned that barring a student from a bathroom assigned to individuals of the gender with which the student identifies constitutes unlawful sex discrimination, and some lower court decisions have agreed. See Whitaker v. Kenosha Unified School Dist. No. 1 Bd. of Ed., 858 F. 3d 1034, 1049 (CA7 2017); G. G. v. Gloucester Cty. School Bd., 822 F. 3d 709, 715 (CA4 2016), vacated and remanded, 580 U. S. ___ (2017); Adams v. School Bd. of St. Johns Cty., 318 F. Supp. 3d 1293, 1325 (MD Fla. 2018); cf. Doe v. Boyertown Area

45See 1 Sadock, Comprehensive Textbook of Psychiatry, at 2063 (explaining that “gender is now often regarded as more fluid” and “[t]hus, gender identity may be described as masculine, feminine, or somewhere in between”).

46Title IX makes it unlawful to discriminate on the basis of sex in education: “No person in the United States shall, on the basis of sex, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U. S. C. §1681(a).

Women’s sports. Another issue that may come up under both Title VII and Title IX is the right of a transgender individual to participate on a sports team or in an athletic competition previously reserved for members of one biological sex.\textsuperscript{48} This issue has already arisen under Title IX, where it threatens to undermine one of that law’s major achievements, giving young women an equal opportunity to participate in sports. The effect of the Court’s reasoning may be to force young women to compete against students who have a very significant biological advantage, including students who have the size and strength of a male but identify as female and students who are taking male hormones in order to transition from female to male. See, e.g., Complaint in Soule v. Connecticut Assn. of Schools, No. 3:20–cv–00201 (D Conn., Apr. 17, 2020) (challenging Connecticut policy allowing transgender students to compete in girls’ high school sports); Complaint in Hecox v. Little, No. 1:20–cv–00184 (D Idaho, Apr. 15, 2020) (challenging state law that bars transgender students from participating in school sports in accordance with gender identity). Students in these latter categories have found success in athletic competitions reserved for females.\textsuperscript{49}

\textsuperscript{48}A regulation allows single-sex teams, 34 CFR §106.41(b) (2019), but the statute itself would of course take precedence.

\textsuperscript{49}“[S]ince 2017, two biological males [in Connecticut] have collectively won 15 women’s state championship titles (previously held by ten different Connecticut girls) against biologically female track athletes.” Brief for Independent Women’s Forum et al. as Amici Curiae in No. 18–107, pp. 14–15.

At the college level, a transgendered woman (biological male) switched from competing on the men’s Division II track team to the women’s Division II track team at Franklin Pierce University in New Hampshire after taking a year of testosterone suppressants. While this student had placed “eighth out of nine male athletes in the 400 meter hurdles the
The logic of the Court’s decision could even affect professional sports. Under the Court’s holding that Title VII prohibits employment discrimination because of transgender status, an athlete who has the physique of a man but identifies as a woman could claim the right to play on a women’s professional sports team. The owners of the team might try to claim that biological sex is a bona fide occupational qualification (BFOQ) under 42 U. S. C. §2000e–2(e), but the BFOQ exception has been read very narrowly. See Dothard v. Rawlinson, 433 U. S. 321, 334 (1977).

**Housing.** The Court’s decision may lead to Title IX cases against any college that resists assigning students of the opposite biological sex as roommates. A provision of Title IX, 20 U. S. C. §1686, allows schools to maintain “separate living facilities for the different sexes,” but it may be argued that a student’s “sex” is the gender with which the student identifies. Similar claims may be brought under the Fair Housing Act. See 42 U. S. C. §3604.

**Employment by religious organizations.** Briefs filed by a wide range of religious groups—Christian, Jewish, and Muslim—express deep concern that the position now adopted by the Court “will trigger open conflict with faith-
based employment practices of numerous churches, synagogues, mosques, and other religious institutions.”

They argue that “[r]eligious organizations need employees who actually live the faith,” and that compelling a religious organization to employ individuals whose conduct flouts the tenets of the organization’s faith forces the group to communicate an objectionable message.

This problem is perhaps most acute when it comes to the employment of teachers. A school’s standards for its faculty “communicate a particular way of life to its students,” and a “violation by the faculty of those precepts” may undermine the school’s “moral teaching.” Thus, if a religious school teaches that sex outside marriage and sex reassignment procedures are immoral, the message may be lost if the school employs a teacher who is in a same-sex relationship or has undergone or is undergoing sex reassignment. Yet today’s decision may lead to Title VII claims by such teachers and applicants for employment.

At least some teachers and applicants for teaching positions may be blocked from recovering on such claims by the “ministerial exception” recognized in Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 565 U. S. 171 (2012). Two cases now pending before the Court present the question whether teachers who provide religious instruction can be considered to be “ministers.” But even if teachers with those responsibilities qualify, what about other very visible school employees who may not qualify for

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51 Brief for National Association of Evangelicals et al. as Amici Curiae 3; see also Brief for United States Conference of Catholic Bishops et al. as Amici Curiae in No. 18–107, pp. 8–18.

52 Brief for National Association of Evangelicals et al. as Amici Curiae 7.


the ministerial exception? Provisions of Title VII provide exemptions for certain religious organizations and schools “with respect to the employment of individuals of a particular religion to perform work connected with the carrying on” of the “activities” of the organization or school, 42 U. S. C. §2000e–1(a); see also §2000e–2(e)(2), but the scope of these provisions is disputed, and as interpreted by some lower courts, they provide only narrow protection.55

Healthcare. Healthcare benefits may emerge as an intense battleground under the Court’s holding. Transgender employees have brought suit under Title VII to challenge employer-provided health insurance plans that do not cover costly sex reassignment surgery.56 Similar claims have been brought under the Affordable Care Act (ACA), which broadly prohibits sex discrimination in the provision of healthcare.57

55 See, e.g., EEOC v. Kamehameha Schools/Bishop Estate, 990 F. 2d 458, 460 (CA9 1993); EEOC v. Fremont Christian School, 781 F. 2d 1362, 1365–1367 (CA9 1986); Rayburn v. General Conference of Seventh-day Adventists, 772 F. 2d 1164, 1166 (CA4 1985); EEOC v. Mississippi College, 626 F. 2d 477, 484–486 (CA5 1980); see also Brief for United States Conference of Catholic Bishops et al. as Amici Curiae in No. 18–107, at 30, n. 28 (discussing disputed scope). In addition, 42 U. S. C. §2000e–2(e)(1) provides that religion may be a BFOQ, and allows religious schools to hire religious employees, but as noted, the BFOQ exception has been read narrowly. See supra, at 48.


Such claims present difficult religious liberty issues because some employers and healthcare providers have strong religious objections to sex reassignment procedures, and therefore requiring them to pay for or to perform these procedures will have a severe impact on their ability to honor their deeply held religious beliefs.

Freedom of speech. The Court’s decision may even affect the way employers address their employees and the way teachers and school officials address students. Under established English usage, two sets of sex-specific singular personal pronouns are used to refer to someone in the third person (he, him, and his for males; she, her, and hers for females). But several different sets of gender-neutral pronouns have now been created and are preferred by some individuals who do not identify as falling into either of the two traditional categories.\textsuperscript{58} Some jurisdictions, such as

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\textsuperscript{58} See, \textit{e.g.}, University of Wisconsin Milwaukee Lesbian, Gay, Bisexual, Transgender, Queer Plus (LGBTQ+) Resource Center, Gender Pronouns (2020), https://uwm.edu/lgbtrc/support/gender-pronouns/ (listing six new categories of pronouns: (f)ae, (f)aer, (f)aers; e/ey, em, eir, eirs; per, pers;
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New York City, have ordinances making the failure to use an individual’s preferred pronoun a punishable offense, and some colleges have similar rules. After today’s decision, plaintiffs may claim that the failure to use their preferred pronoun violates one of the federal laws prohibiting sex discrimination. See Prescott v. Rady Children’s Hospital San Diego, 265 F. Supp. 3d 1090, 1098–1100 (SD Cal. 2017) (hospital staff’s refusal to use preferred pronoun violates ACA).

The Court’s decision may also pressure employers to suppress any statements by employees expressing disapproval of same-sex relationships and sex reassignment procedures. Employers are already imposing such restrictions voluntarily, and after today’s decisions employers will fear

ve, ver, vis; xe, xem, xyr, xyrs; ze/zie, hir, hirs).

59 See 47 N. Y. C. R. R. §2–06(a) (2020) (stating that a “deliberate refusal to use an individual’s self-identified name, pronoun and gendered title” is a violation of N. Y. C. Admin. Code §8–107 “where the refusal is motivated by the individual’s gender”); see also N. Y. C. Admin. Code §§8–107(1), (4), (5) (2020) (making it unlawful to discriminate on the basis of “gender” in employment, housing, and public accommodations); cf. D. C. Mun. Regs., tit. 4, §801.1 (2020) (making it “unlawful . . . to discriminate . . . on the basis of . . . actual or perceived gender identity or expression” in “employment, housing, public accommodations, or educational institutions” and further proscribing “engaging in verbal . . . harassment”).

60 See University of Minn., Equity and Access: Gender Identity, Gender Expression, Names, and Pronouns, Administrative Policy (Dec. 11, 2019), https://policy.umn.edu/operations/genderequity (“University members and units are expected to use the names, gender identities, and pronouns specified to them by other University members, except as legally required”); Meriwether v. Trustees of Shawnee State Univ., 2020 WL 704615, *1 (SD Ohio, Feb. 12, 2020) (rejecting First Amendment challenge to university’s nondiscrimination policy brought by evangelical Christian professor who was subjected to disciplinary actions for failing to use student’s preferred pronouns).

61 Cf. Notice of Removal in Vlaming v. West Point School Board, No. 3:19–cv–00773 (ED Va., Oct. 22, 2019) (contending that high school teacher’s firing for failure to use student’s preferred pronouns was based on nondiscrimination policy adopted pursuant to Title IX).
that allowing employees to express their religious views on these subjects may give rise to Title VII harassment claims.

Constitutional claims. Finally, despite the important differences between the Fourteenth Amendment and Title VII, the Court’s decision may exert a gravitational pull in constitutional cases. Under our precedents, the Equal Protection Clause prohibits sex-based discrimination unless a “heightened” standard of review is met. *Sessions v. Morales-Santana*, 582 U. S. ___, ___ (2017) (slip op., at 8); *United States v. Virginia*, 518 U. S. 515, 532–534 (1996). By equating discrimination because of sexual orientation or gender identity with discrimination because of sex, the Court’s decision will be cited as a ground for subjecting all three forms of discrimination to the same exacting standard of review.

Under this logic, today’s decision may have effects that extend well beyond the domain of federal anti-discrimination statutes. This potential is illustrated by pending and recent lower court cases in which transgender individuals have challenged a variety of federal, state, and local laws and policies on constitutional grounds. See, e.g., Complaint in *Hecox*, No. 1: 20–CV–00184 (state law prohibiting transgender students from competing in school sports in accordance with their gender identity); Second Amended Complaint in *Karnoski v. Trump*, No. 2:17–cv–01297 (WD Wash., July 31, 2019) (military’s ban on transgender members); *Kadel v. Folwell*, ___ F. Supp. 3d ___, ___–___, 2020 WL 1169271, *10–*11 (MDNC, Mar. 11, 2020) (state health plan’s exclusion of coverage for sex reassignment procedures); Complaint in *Gore v. Lee*, No. 3:19–cv–00328 (MD Tenn., Mar. 3, 2020) (change of gender on birth certificates); Brief for Appellee in *Grimm v. Gloucester Cty. School Bd.*, No. 19–1952 (CA4, Nov. 18, 2019) (transgender student forced to use gender neutral bathrooms at school); Complaint in *Corbitt v. Taylor*, No. 2:18–cv–00091 (MD Ala.,
Although the Court does not want to think about the consequences of its decision, we will not be able to avoid those issues for long. The entire Federal Judiciary will be mired for years in disputes about the reach of the Court's reasoning.

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The updating desire to which the Court succumbs no doubt arises from humane and generous impulses. Today, many Americans know individuals who are gay, lesbian, or transgender and want them to be treated with the dignity, consideration, and fairness that everyone deserves. But the authority of this Court is limited to saying what the law is.

The Court itself recognizes this:

"The place to make new legislation . . . lies in Congress. When it comes to statutory interpretation, our role is limited to applying the law's demands as faithfully as we can in the cases that come before us." Ante, at 31.

It is easy to utter such words. If only the Court would live by them.

I respectfully dissent.
APPENDIXES

A

Webster’s New International Dictionary 2296 (2d ed. 1953):

sex (sēks), n. [F. sexe, fr. L. sexus; prob. orig., division, and akin to L. secare to cut. See SECTION.] 1. One of the two divisions of organisms formed on the distinction of male and female; males or females collectively. 2. The sum of the peculiarities of structure and function that distinguish a male from a female organism; the character of being male or female, or of pertaining to the distinctive function of the male or female in reproduction. Conjugation, or fertilization (union of germplasm of two individuals), a process evidently of great but not readily explainable importance in the perpetuation of most organisms, seems to be the function of differentiation of sex, which occurs in nearly all organisms at least at some stage in their life history. Sex is manifested in the conjugating cells by the larger size, abundant food material, and immobility of the female gamete (egg, egg cell, or ovum), and the small size and the locomotive power of the male gamete (spermatozoon or spermatozoid), and in the adult organisms often by many structural, physiological, and (in higher forms) psychological characters, aside from the necessary modification of the reproductive apparatus. Cf. hermaphrodite, 1. In botany the term sex is often extended to the distinguishing peculiarities of staminate and pistillate flowers, and hence in dioecious plants to the individuals bearing them.

In many animals and plants the body and germ cells have been shown to contain one or more chromosomes of a special kind (called sex chromosomes; idiochromosomes; accessory chromosomes) in addition to the ordinary paired autosomes. These special chromosomes serve to
determine sex. In the simplest case, the male germ cells are of two types, one with and one without a single extra chromosome (X chromosome, or monosome). The egg cells in this case all possess an X chromosome, and on fertilization by the two types of sperm, male and female zygotes result, of respective constitution X, and XX. In many other animals and plants (probably including man) the male organism produces two types of gametes, one possessing an X chromosome, the other a Y chromosome, these being visibly different members of a pair of chromosomes present in the diploid state. In this case also, the female organism is XX, the eggs X, and the zygotes respectively male (XY) and female (XX). In another type of sex determination, as in certain moths and possibly in the fowl, the female produces two kinds of eggs, the male only one kind of sperm. Each type of egg contains one member of a pair of differentiated chromosomes, called respectively Z chromosomes and W chromosomes, while all the sperm cells contain a Z chromosome. In fertilization, union of a Z with a W gives rise to a female, while union of two Z chromosomes produces a male. Cf. SECONDARY SEX CHARACTER.

3. a The sphere of behavior dominated by the relations between male and female. b Psychoanalysis. By extension, the whole sphere of behavior related even indirectly to the sexual functions and embracing all affectionate and pleasure-seeking conduct.

4. Phenomena of sexual instincts and their manifestations.

5. Sect;—a confused use.

Syn.—SEX, GENDER. SEX refers to physiological distinctions; GENDER, to distinctions in grammar.

—the sex. The female sex; women, in general.

sex, adj. Based on or appealing to sex.

sex, v. t. To determine the sex of, as skeletal remains.
Appendix A to opinion of ALITO, J.

Webster’s Third New International Dictionary 2081 (1966):

1sex \sex\ n –ES often attrib [ME, fr. L sexus; prob. akin to L secare to cut—more at SAW] 1: one of the two divisions of organic esp. human beings respectively designated male or female <a member of the opposite ~> 2: the sum of the morphological, physiological, and behavioral peculiarities of living beings that subserves biparental reproduction with its concomitant genetic segregation and recombination which underlie most evolutionary change, that in its typical dichotomous occurrence is usu. genetically controlled and associated with special sex chromosomes, and that is typically manifested as maleness and femaleness with one or the other of these being present in most higher animals though both may occur in the same individual in many plants and some invertebrates and though no such distinction can be made in many lower forms (as some fungi, protozoans, and possibly bacteria and viruses) either because males and females are replaced by mating types or because the participants in sexual reproduction are indistinguishable—compare HETEROTHALLIC, HOMOTHALLIC; FERTILIZATION, MEIOSIS, MENDEL’S LAW; FREEMARTIN, HERMAPHRODITE, INTERSEX 3: the sphere of interpersonal behavior esp. between male and female most directly associated with, leading up to, substituting for, or resulting from genital union <agree that the Christian’s attitude toward ~ should not be considered apart from love, marriage, family—M. M. Forney> 4: the phenomena of sexual instincts and their manifestations <with his customary combination of philosophy, insight, good will toward the world, and entertaining interest in ~—Allen Drury> <studying and assembling what modern scientists have discovered about ~—Time>; specif: SEXUAL INTERCOURSE <an old law imposing death for ~ outside marriage—William
Empson>

2

sex \"\" vt –ED\/-ING\/-ES 1: to determine the sex of (an organic being) <it is difficult to ~ the animals at a distance—E. A. Hooton>—compare AUTOSEXING 2 a: to increase the sexual appeal or attraction of—usu. used with up <titles must be ~ed up to attract 56 million customers—Time> b: to arouse the sexual instincts or desires of—usu. used with up <watching you ~ing up that bar kitten—Oakley Hall>

9 Oxford English Dictionary 577–578 (1933):

Sex (seks), sb. Also 6–7 sexe, (6 seex, 7 pl. sexe, 8 poss. sexe’s). [ad. L. sexus (u-stem), whence also F. sexe (12th c.), Sp., Pg. sexo, It. sesso. Latin had also a form secur neut. (indeclinable).]

1. Either of the two divisions of organic beings distinguished as male and female respectively; the males or the females (of a species, etc., esp. of the human race) viewed collectively.

1382 Wyclif Gen. vi. 19 Of alle thingis hauynge sowle of ony flehs, two thow shalt brynge into the ark, that maal sex and femaal lyuen with thee. 1532 More Confut. Tindale II. 152, I had as leue he bare them both a bare cheryte, as wyth the frayle feminyne sexe fall to far in loue. 1559 Alymer Harboure E 4 b, Neither of them debarred the heires female .. as though it had ben .. vnnatural for that sexe to gouern. 1576 Gascoigne Philomene xcviii, I speake against my sex. a 1586 Sidney Arcadia II. (1912) 158 The sexe of womankind of all other is most bound to have regardfull eie to mens judgements. 1600 Nash Summer’s Last Will F 3 b, A woman they imagine her to be, Because that sexe keepes nothing close they heare. 1615 Crooke Body of Man 274 If wee respect the .. conformation of both the Sexes, the Male is sooner perfected .. in the wombe. 1634 Sir T. Herbert Trav. 19 Both sexe goe naked. 1667 Milton P. L. IX. 822 To add what wants In Femal Sex. 1671—Same son 774 It was a weakness In me, but incident to all our sex. 1679 Dryden Troilus & Cr. I. ii, A strange dissemplying sex we women are. 1711 Addison Spect. No. 10 ¶ 6 Their Amusements .. are more adapted to the Sex than to the Species. 1730 Swift Let. to Mrs. Whiteway 28 Dec., You have neither the scrawl nor the spelling of your sex. 1742 Gray Properties II. 73 She .. Condemns her fickle Sexe’s fond Mistake. 1763 G. Williams in Jesse Selcyn & Contemp. (1843) I. 265 It would
astonish you to see the mixture of sexes at this place. 1780 Bentham Princ. Legisl. VI. §35
The sensibility of the female sex appears .. to be greater than that of the male. 1814 Scott
Ld. of Isles VI. iii, Her sex’s dress regain’d. 1856 Thirlwall Greece xi. II. 51 Solon also made
regulations for the government of the other sex. 1846 Ecclesiologist Feb. 41 The necessity
and necessity of dividing the sexes during the publick offices of the Church. 1848 Thackeray Van.
Fair xxv. She was by no means so far superior to her sex as to be above jealousy. 1856 Dickens
Mut. Fr. II. i. It was a school for both sexes. 1886 Mabel Collins Prettiest Woman ii, Zadwiga
had not yet given any serious attention to the other sex.

b. collect. followed by plural verb. rare.
1768 Goldsm. Good. n. Man IV. (Globe) 6322/2 Our sex are like poor tradesmen. 1839 Malcom
Trav. (1840) 40/I Neither sex tattoo any part of their bodies.

c. The fair(er), gentle(r), soft(er), weak(er) sex; the devout
sex; the second sex; † the woman sex: the female sex, women.
The † better, sterner sex: the male sex, men.
[1583 Stubbes Anat. Abus. E vij b, Ye magnificency & liberalitie of that gentle sex. 1613
Purchas Pilgrimage (1614) 38 Strong Sampson and wise Solomon are witnesses, that the
strong men are slain by this weaker sexe.]

1641 Brome Jocial Crew III. (1652) H 4, I am bound by a strong vow to kisse all of the
woman sex I meet this morning. 1648 J. Beaumont Psyche XIV. I, The softer sex, attending
Him And his still-growing woes. 1665 Sir T. Herbert Trav. (1677) 22 Whiles the better sex
seek prey abroad, the women (therein like themselves) keep home and spin. 1665 Boyle Oc-
cas. Refl. v. ix. 176 Persons of the fairer Sex. a 1700 Evelyn Diary 12 Nov. an. 1644, The
Pillar .. at which the devout sex are always rubbing their chaplets. 1701 Stanshope St. Aug.
Medit. I. xxxv. (1704) 82, I may .. not suffer my self to be outdone by the weaker Sex. 1732
[see Fair a. i b]. 1753 Hogarth Anal. Beauty x. 65 An elegant degree of plumpness peculiar
to the skin of the softer sex. 1820 Byron Juan IV. cviii, Benign Ceruleans of the second sex!
Who advertise new poems by your looks. 1838 Murray’s Hand-bk. N. Germ. 430 It is much
frequented by the fair sex. 1894 C. D. Tyler in Geog. Jrnl. III. 479 They are beardless, and
usually wear a shock of un Kemp hair, which is somewhat finer in the gentler sex.

¶d. Used occas. with extended notion. The third sex: eunuchs. Also sarcastically (see quot. 1873).
1820 Byron Juan IV. lxxvi. From all the Pope makes yearly, ’twould perplex To find three
perfect pipes of the third sex. Ibid. V. xxvi, A black old neutral personage Of the third sex
stept up. [1873 Ld. Houghton Monogr. 280 Sydney Smith .. often spoke with much bitterness
of the growing belief in three Sexes of Humanity—Men, Women, and Clergymen.]

e. The sex: the female sex. [F. le sexe.] Now rare.
Appendix A to opinion of ALITO, J.

1589 PUTTENHAM Eng. Poesie III. xix. (Arb.) 235 As he that had told a long tale before certaine noble women, of a matter somewhat in honour touching the Sex.

1608 D. T[UVILL] Ess. Pol. & Mor. 101 b, Not yet weighing with himselfe, the weaknesse and imbecillitie of the sex.

1631 MASSINGER Emperor East I. ii, I am called The Squire of Dames, or Servant of the Sex.

1697 VANBRUGH Prov. Wife II. ii, He has a strange penchant to grow fond of me, in spite of his aversion to the sex.

1760-2 GOLDMS. Cit. W. xcix, The men of Asia behave with more deference to the sex than you seem to imagine.

1792 A. YOUNG Trav. France I. 220 The sex of Venice are undoubtedly of a distinguished beauty.

1823 BYRON Juan XIII. lxxix, We give the sex the pas.

1863 R. F. BURTON W. Africa I. 22 Going 'up stairs', as the sex says, at 5 a.m. on the day after arrival, I cast the first glance at Funchal.

f. Without the, in predicative quasi-adj. use=feminine. rare.

a 1700 DRYDEN Cymon & Iph. 368 She hugg'd th' Offender, and forgave th' Offence, Sex to the last!

2. Quality in respect of being male or female.

a. With regard to persons or animals.

1526 Pilgr. Perf. (W. de. W. 1531) 282 b, Ye bee, whiche neuer gendreth with ony make of his kynde, nor yet hath ony distinct sex.

1577 T. KENDALL Flowers of Epigr. 71 b, If by corps supposd may be her sex, then sure a virgin she.

1616 T. SCOTT Philomythie I. (ed. 2) A 3 Euen as Hares change shape and sex, some say Once evry yeare.

1658 SR T. BROWNE Hydriot. iii. 18 A critical view of bones makes a good distinction of sexes.

1665 DIBY Chym. Secrets (1682) II. 225 Persons of all Ages and Sexes.

1667 MILTON P. L. I. 424 For Spirits when they please can either Sex assume, or both.

1710-11 SWIFT Jnl. to Stella 7 Mar., I find I was mistaken in the sex, 'tis a boy.

1757 SMOLLETT Reprisal IV. v, As for me, my sex protects me.

17812 SMELLIE Hist. India I. 349 When persons of different sexes walk together, the woman always follows the man.

1825 SCOTT Betrothed xiii, I am but a poor and neglected woman, feeble both from sex and age.

1841 ELPHINSTONE Hist. India I. 349 When persons of different sexes walk together, the woman always follows the man.

b. With regard to plants (see FEMALE a. 2, MALE a. 2).

1567 MAPLET Gr. Forest 28 Some seeme to hauve both sexes and kindes: as the Oke, the Lawrell and such others.

1631 WIDOWES Nat. Philos. (ed. 2) 49 There be sexes of hearbes .. namely, the Male or Female.

1720 P. BLAIR Bot. Ess. iv. 237 These being very evident Proofs of a necessity of two Sexes in Plants as well as in Animals.

1790 SMELLIE Philos. Nat. Hist. I. 245 There is not a notion more generally adopted, that that vegetables have the distinction of sexes.

1848 LINDLEY Introd. Bot. (ed. 4) II. 80 Change of Sex under the influence of external causes.
Appendix A to opinion of ALITO, J.

3. The distinction between male and female in general. In recent use often with more explicit notion: The sum of those differences in the structure and function of the reproductive organs on the ground of which beings are distinguished as male and female, and of the other physiological differences consequent on these; the class of phenomena with which these differences are concerned.

*Organs of sex*: the reproductive organs in sexed animals or plants.

- **1631** DONNE Songs & Sons., The Printrose Poems 1912 I. 61 Should she be more then woman, she would get above All thought of sexe, and think to move My heart to study her, and not to love.
- **1643** CARTWRIGHT Sedge III. vi, My Soul’s As Male as yours; there’s no Sex in the mind.
- **1748** MELMOTH Fitzosborne Lett. lxii. (1749) II. 119 There may be a kind of sex in the very soul.
- **1751** HARRIS Hermes Wks. (1841) 129 Besides number, another characteristic, visible in substances, is that of sex.
- **1878** GLADSTONE Prim. Homer 68 Athené .. has nothing of sex except the gender, nothing of the woman except the form.
- **1887** K. PEARSON Eth. Freethought xv. (1888) 429 What is the true type of social (moral) action in matters of sex?
- **1895** CRACKANTHORPE in 19th Cent. Apr. 607 (art.) Sex in modern literature.

The writers and readers who have strenuously refused to allow to sex its place in creative art.

1912 H. G. WELLS Marriage ii. § 6. 72 The young need .. to be told .. all we know of three fundamental things; the first of which is God, .. and the third Sex.

¶ 4. Used, by confusion, in senses of *sect* (q. v. I, 4 b, 7, and cf. I d note).

1575-85 ABP. SANDYS Serm. xx. 358 So are all sexes and sorts of people called vpon. 1583 MELBANCKE Philotimus L iiij b, Whether thinkest thou better sporte & more absord, to see an Asse play on an harpe contrary to his sex, or heare [etc.]. 1586 J. HOOKER Hist. Irel. 180/2 in Holinshed, The whole sex of the Oconhours. 1586 T. B. La Primaud. Fr. Acad. I. 359 O detestable furie, not to be found in most cruell beasts, which spare the blood of their sexe. 1704 T BROWN Dial. Dead, Friendship Wks. 1711 IV. 56 We have had enough of these Christians, and sure there can be no worse among the other Sex of Mankind [i.e. Jews and Turks]?

1707 ATTERBURY Large Vind. Doctr. 47 Much less can I imagine, why a Jewish Sex (whether of Pharisees or Saduues) should be represented, as [etc.].

5. attrib. and Comb., as *sex-distinction, function, etc.; sex-abusing, transforming* adjs.; *sex-cell*, a reproductive cell, with either male or female function; a sperm-cell or an egg-cell.

1642 H. MORE Song of Soul I. lxxi, Mad-making waters, sex trans-forming springs.
Sex (seks), v. [f. sex sb.] trans. To determine the sex of, by anatomical examination; to label as male or female.


sex, n. Being male or female or hermaphrodite (what is its ~?; ~ does not matter; without distinction of age or ~), whence ~LESS a., ~LESSNESS n., ~v.2 a., immoderately concerned with ~; males or females collectively (all ranks & both ~es; the fair, gentle, softer, weaker, ~, & joc. the ~, women; the sterner ~, men; is the fairest of her ~); (attrib.) arising from difference, or consciousness, of ~ (~ antagonism, ~ instinct, ~ urge); ~ appeal, attractiveness arising from difference of ~. [f. L sexus –ūs; partly thr. F]

Random House Dictionary of the English Language 1307 (1966):

sex (seks), n. 1. The fact or character of being either male or female: persons of different sex. 2. either of the two groups of persons exhibiting this character: the stronger sex; the gentle sex. 3. the sum of the structural and functional differences by which the male and female are distinguished, or the phenomena or behavior dependent on these differences. 4. the instinct or attraction drawing one sex toward another, or its manifestation in life and
Appendix B to opinion of ALITO, J.

conduct. 5. coitus. 6. to have sex, Informal. to engage in sexual intercourse. —v.t. 7. to ascertain the sex of, esp. of newly hatched chicks. 8. sex it up, Slang. to neck passionately: They were really sexing it up last night. 9. sex up, Informal. a. to arouse sexually: She certainly knows how to sex up the men. b. to increase the appeal of; to make more interesting, attractive, or exciting: We’ve decided to sex up the movie with some battle scenes. [ME < L sex(us), akin to secus, deriv. of secâre to cut, divide; see SECTION]


sex (sēks) n. 1. a. The property or quality by which organisms are classified according to their reproductive functions. b. Either of two divisions, designated male and female, of this classification. 2. Males or females collectively. 3. The condition or character of being male or female; the physiological, functional, and psychological differences that distinguish the male and the female. 4. The sexual urge or instinct as it manifests itself in behavior. 5. Sexual intercourse. —tr.v. sexed, sexing, sexes. To determine the sex of (young chickens). [Middle English, from Old French sexe, from Latin sexus†.]

Webster’s Third New International Dictionary 2081 (2002):

¹sex \\seks\ n —ES often attrib [ME, fr. L sexus; prob. akin to L secare to cut—more at SAW] 1: one of the two divisions of organic esp. human beings respectively designated male or female <a member of the opposite >> 2: the sum of the morphological, physiological, and behavioral
peculiarities of living beings that subserves biparental reproduction with its concomitant genetic segregation and recombination which underlie most evolutionary change, that in its typical dichotomous occurrence is usu. genetically controlled and associated with special sex chromosomes, and that is typically manifested as maleness and femaleness with one or the other of these being present in most higher animals though both may occur in the same individual in many plants and some invertebrates and though no such distinction can be made in many lower forms (as some fungi, protozoans, and possibly bacteria and viruses) either because males and females are replaced by mating types or because the participants in sexual reproduction are indistinguishable—compare HETEROTHALLIC, HOMOTHALLIC; FERTILIZATION, MEIOSIS, MENDEL’S LAW; FREEMARTIN, HERMAPHRODITE, INTERSEX

3: the sphere of interpersonal behavior esp. between male and female most directly associated with, leading up to, substituting for, or resulting from genital union <agree that the Christian’s attitude toward ~ should not be considered apart from love, marriage, family—M. M. Forney> 4: the phenomena of sexual instincts and their manifestations <with his customary combination of philosophy, insight, good will toward the world, and entertaining interest in ~—Allen Drury> <studying and assembling what modern scientists have discovered about ~—Time>; specif: SEXUAL INTERCOURSE <an old law imposing death for ~ outside marriage—William Empson>

sex \[^v^t–e^d/D–im\]–ing–es 1: to determine the sex of (an organic being) <it is difficult to ~ the animals at a distance—E. A. Hooton>—compare AUTOSEXING 2 a: to increase the sexual appeal or attraction of—usu. used with up <titles must be ~ed up to attract 56 million customers—Time> b: to arouse the sexual instincts or desires of—usu. used with up <watching you ~ing up that bar kitten—Oakley Hall>
Appendix B to opinion of ALITO, J.

**Random House Webster’s Unabridged Dictionary 1754 (2d ed. 2001):**

**Sex (seks), n.** 1. either the male or female division of a species, esp. as differentiated with reference to the reproductive functions. 2. the sum of the structural and functional differences by which the male and female are distinguished, or the phenomena or behavior dependent on these differences. 3. the instinct or attraction drawing one sex toward another, or its manifestation in life and conduct. 4. coitus. 5. genitalia. 6. to have sex, to engage in sexual intercourse. — v.t. 7. to ascertain the sex of, esp. of newly-hatched chicks. 8. sex up, Informal. a. to arouse sexually: *The only intent of that show was to sex up the audience.* b. to increase the appeal of; to make more interesting, attractive, or exciting: *We’ve decided to sex up the movie with some battle scenes.* [1350–1400; ME < L *Sexus*, perh. akin to *secāre* to divide (see SECTION)]

**American Heritage Dictionary 1605 (5th ed. 2011):**

**Sex (seks) n.** 1a. Sexual activity, especially sexual intercourse: *hasn’t had sex in months.* b. The sexual urge or instinct as it manifests itself in behavior: *motivated by sex.* 2a. Either of the two divisions, designated female and male, by which most organisms are classified on the basis of their reproductive organs and functions: *How do you determine the sex of a lobster?* b. The fact or condition of existing in these two divisions, especially the collection of characteristics that distinguish female and male: *the evolution of sex in plants; a study that takes sex into account.* See Usage Note at gender. 3. Females or males considered as a group: *dormitories that house only one sex.* 4. One’s identity as either female or male. 5. The genitals. + tr.v. sexed, sex-ing, sex-es 1. To determine the sex of (an organism). 2. Slang a. To arouse sexually. Often used with *up.* b. To increase the
appeal or attractiveness of. Often used with *up* [Middle English < Latin *sexus.*]

C

Statutes Prohibiting Sex Discrimination

- 2 U. S. C. §658a(2) (Congressional Budget and Fiscal Operations; Federal Mandates)
- 2 U. S. C. §1311(a)(1) (Congressional Accountability; Extension of Rights and Protections)
- 2 U. S. C. §1503(2) (Unfunded Mandates Reform)
- 3 U. S. C. §411(a)(1) (Presidential Offices; Employment Discrimination)
- 5 U. S. C. §2301(b)(2) (Merit System Principles)
- 5 U. S. C. §7103(a)(4)(A) (Labor-Management Relations; Definitions)
- 5 U. S. C. §7201(b) (Antidiscrimination Policy; Minority Recruitment Program)
Appendix C to opinion of ALITO, J.

- 5 U. S. C. §7204(b) (Antidiscrimination; Other Prohibitions)
- 6 U. S. C. §488f(b) (Secure Handling of Ammonium Nitrate; Protection From Civil Liability)
- 7 U. S. C. §2020(c)(1) (Supplemental Nutrition Assistance Program)
- 8 U. S. C. §1152(a)(1)(A) (Immigration; Numerical Limitations on Individual Foreign States)
- 8 U. S. C. §1187(c)(6) (Visa Waiver Program for Certain Visitors)
- 10 U. S. C. §932(b)(4) (Uniform Code of Military Justice; Article 132 Retaliation)
- 10 U. S. C. §1034(j)(3) (Protected Communications; Prohibition of Retaliatory Personnel Actions)
- 12 U. S. C. §302 (Directors of Federal Reserve Banks; Number of Members; Classes)
- 12 U. S. C. §1735f–5(a) (Prohibition Against Discrimination on Account of Sex in Extension of Mortgage Assistance)
 Appendix C to opinion of ALITO, J.

- 12 U. S. C. §1823(d)(3)(D)(iv) (Federal Deposit Insurance Corporation; Corporation Moneys)
- 12 U. S. C. §2277a–10c(b)(13)(E)(iv) (Farm Credit System Insurance Corporation; Corporation as Conservator or Receiver; Certain Other Powers)
- 12 U. S. C. §3015(a)(4) (National Consumer Cooperative Bank; Eligibility of Cooperatives)
- 12 U. S. C. §§3106a(1)(B ) and (2)(B) (Foreign Bank Participation in Domestic Markets)
- 12 U. S. C. §4545(1) (Fair Housing)
- 15 U. S. C. §719 (Alaska Natural Gas Transportation; Civil Rights)
- 15 U. S. C. §775 (Federal Energy Administration; Sex Discrimination; Enforcement; Other Legal Remedies)
Appendix C to opinion of ALITO, J.

- 15 U. S. C. §3151(a) (Full Employment and Balanced Growth; Nondiscrimination)
- 18 U. S. C. §246 (Deprivation of Relief Benefits)
- 18 U. S. C. §3593(f) (Special Hearing To Determine Whether a Sentence of Death Is Justified)
- 20 U. S. C. §1011(a) (Higher Education Resources and Student Assistance; Antidiscrimination)
- 20 U. S. C. §1011f(h)(5)(D) (Disclosures of Foreign Gifts)
- 20 U. S. C. §1066c(d) (Historically Black College and University Capital Financing; Limitations on Federal Insurance Bonds Issued by Designated Bonding Authority)
- 20 U. S. C. §1071(a)(2) (Federal Family Education Loan Program)
- 20 U. S. C. §1078(c)(2)(F) (Federal Payments To Reduce Student Interest Costs)
- 20 U. S. C. §1087–1(e) (Federal Family Education Loan Program; Special Allowances)
Appendix C to opinion of ALITO, J.

- 20 U. S. C. §1087–2(e) (Student Loan Marketing Association)
- 20 U. S. C. §1087tt(c) (Discretion of Student Financial Aid Administrators)
- 20 U. S. C. §1231e(b)(2) (Education Programs; Use of Funds Withheld)
- 20 U. S. C. §1681 (Title IX of the Education Amendments of 1972)
- 20 U. S. C. §1701(a)(1) (Equal Educational Opportunities; Congressional Declaration of Policy)
- 20 U. S. C. §1702(a)(1) (Equal Educational Opportunities; Congressional Findings)
- 20 U. S. C. §1703 (Denial of Equal Educational Opportunity Prohibited)
- 20 U. S. C. §1705 (Assignment on Neighborhood Basis Not a Denial of Equal Educational Opportunity)
- 20 U. S. C. §1715 (District Lines)
- 20 U. S. C. §1720 (Equal Educational Opportunities; Definitions)
Appendix C to opinion of ALITO, J.

- 20 U. S. C. §1756 (Remedies With Respect to School District Lines)
- 20 U. S. C. §2396 (Career and Technical Education; Federal Laws Guaranteeing Civil Rights)
- 20 U. S. C. §3401(2) (Department of Education; Congressional Findings)
- 20 U. S. C. §7231d(b)(2)(C) (Magnet Schools Assistance; Applications and Requirements)
- 20 U. S. C. §7914 (Strengthening and Improvement of Elementary and Secondary Schools; Civil Rights)
- 22 U. S. C. §262p–4n (Foreign Relations and Intercourse; Equal Employment Opportunities)
- 22 U. S. C. §2314(g) (Furnishing of Defense Articles or Related Training or Other Defense Service on Grant Basis)
- 22 U. S. C. §2504(a) (Peace Corps Volunteers)
- 22 U. S. C. §2661a (Foreign Contracts or Arrangements; Discrimination)
Appendix C to opinion of ALITO, J.

- 22 U. S. C. §2755 (Discrimination Prohibited if Based on Race, Religion, National Origin, or Sex)
- 22 U. S. C. §3901(b)(2) (Foreign Service; Congressional Findings and Objectives)
- 22 U. S. C. §3905(b)(1) (Foreign Service; Personnel Actions)
- 22 U. S. C. §4102(11)(A) (Foreign Service; Definitions)
- 22 U. S. C. §4115(b)(4) (Foreign Service; Unfair Labor Practices)
- 22 U. S. C. §8303(c)(2) (Office of Volunteers for Prosperity)
- 23 U. S. C. §140(a) (Federal-Aid Highways; Nondiscrimination)
- 23 U. S. C. §324 (Highways; Prohibition of Discrimination on the Basis of Sex)
- 25 U. S. C. §4223(d)(2) (Housing Assistance for Native Hawaiians)
- 26 U. S. C. §7471(a)(6)(A) (Tax Court; Employees)
Appendix C to opinion of ALITO, J.

- 28 U. S. C. §994(d) (Duties of the United States Sentencing Commission)
- 28 U. S. C. §1862 (Trial by Jury; Discrimination Prohibited)
- 28 U. S. C. §1867(e) (Trial by Jury; Challenging Compliance With Selection Procedures)
- 29 U. S. C. §§2601(a)(6) and (b)(4) (Family and Medical Leave; Findings and Purposes)
- 29 U. S. C. §2651(a) (Family and Medical Leave; Effect on Other Laws)
- 29 U. S. C. §3248 (Workforce Development Opportunities; Nondiscrimination)
- 30 U. S. C. §1222(c) (Research Funds to Institutes)
- 31 U. S. C. §6711 (Federal Payments; Prohibited Discrimination)
- 31 U. S. C. §6720(a)(8) (Federal Payments; Definitions, Application, and Administration)
Appendix C to opinion of ALITO, J.

- 34 U. S. C. §10228(c) (Prohibition of Federal Control Over State and Local Criminal Justice Agencies; Prohibition of Discrimination)
- 34 U. S. C. §11133(a)(16) (Juvenile Justice and Delinquency Prevention; State Plans)
- 34 U. S. C. §12161(g) (Community Schools Youth Services and Supervision Grant Program)
- 34 U. S. C. §12361 (Violent Crime Control and Law Enforcement; Civil Rights for Women)
- 34 U. S. C. §20110(e) (Crime Victims Fund; Administration Provisions)
- 34 U. S. C. §50104(a) (Emergency Federal Law Enforcement Assistance)
- 36 U. S. C. §20204(b) (Air Force Sergeants Association; Membership)
- 36 U. S. C. §20205(c) (Air Force Sergeants Association; Governing Body)
- 36 U. S. C. §21004(b) (American GI Forum of the United States; Membership)
- 36 U. S. C. §21005(c) (American GI Forum of the United States; Governing Body)
Appendix C to opinion of ALITO, J.

- 36 U. S. C. §21704A (The American Legion)
- 36 U. S. C. §22703(c) (Amvets; Membership)
- 36 U. S. C. §22704(d) (Amvets; Governing Body)
- 36 U. S. C. §60104(b) (82nd Airborne Division Association, Incorporated; Membership)
- 36 U. S. C. §60105(c) (82nd Airborne Division Association, Incorporated; Governing Body)
- 36 U. S. C. §70104(b) (Fleet Reserve Association; Membership)
- 36 U. S. C. §70105(c) (Fleet Reserve Association; Governing Body)
- 36 U. S. C. §140704(b) (Military Order of the World Wars; Membership)
- 36 U. S. C. §140705(c) (Military Order of the World Wars; Governing Body)
- 36 U. S. C. §154704(b) (Non Commissioned Officers Association of the United States of America, Incorporated; Membership)
- 36 U. S. C. §154705(c) (Non Commissioned Officers Association of the United States of America, Incorporated; Governing Body)
- 36 U. S. C. §190304(b) (Retired Enlisted Association, Incorporated; Membership)
Appendix C to opinion of ALITO, J.

- 36 U. S. C. §190305(c) (Retired Enlisted Association, Incorporated; Governing Body)

- 36 U. S. C. §220522(a)(8) and (9) (United States Olympic Committee; Eligibility Requirements)

- 36 U. S. C. §230504(b) (Vietnam Veterans of America, Inc.; Membership)

- 36 U. S. C. §230505(c) (Vietnam Veterans of America, Inc.; Governing Body)

- 40 U. S. C. §122(a) (Federal Property and Administrative Services; Prohibition on Sex Discrimination)

- 40 U. S. C. §14702 (Appalachian Regional Development; Nondiscrimination)

- 42 U. S. C. §213(f) (Military Benefits)

- 42 U. S. C. §290cc–33(a) (Projects for Assistance in Transition From Homelessness)

- 42 U. S. C. §290ff–1(e)(2)(C) (Children With Serious Emotional Disturbances; Requirements With Respect to Carrying Out Purpose of Grants)

- 42 U. S. C. §295m (Public Health Service; Prohibition Against Discrimination on Basis of Sex)
Appendix C to opinion of ALITO, J.

- 42 U. S. C. §296g (Public Health Service; Prohibition Against Discrimination by Schools on Basis of Sex)

- 42 U. S. C. §300w–7(a)(2) (Preventive Health and Health Services Block Grants; Nondiscrimination Provisions)

- 42 U. S. C. §300x–57(a)(2) (Block Grants Regarding Mental Health and Substance Abuse; Nondiscrimination)

- 42 U. S. C. §603(a)(5)(I)(iii) (Block Grants to States for Temporary Assistance for Needy Families)

- 42 U. S. C. §708(a)(2) (Maternal and Child Health Services Block Grant; Nondiscrimination Provisions)

- 42 U. S. C. §1975a(a) (Duties of Civil Rights Commission)

- 42 U. S. C. §2000c(b) (Civil Rights; Public Education; Definitions)

- 42 U. S. C. §2000c–6(a)(2) (Civil Rights; Public Education; Civil Actions by the Attorney General)

Appendix C to opinion of ALITO, J.

- 42 U. S. C. §2000e–3(b) (Equal Employment Opportunities; Other Unlawful Employment Practices)


- 42 U. S. C. §2000h–2 (Intervention by Attorney General; Denial of Equal Protection on Account of Race, Color, Religion, Sex or National Origin)

- 42 U. S. C. §3123 (Discrimination on Basis of Sex Prohibited in Federally Assisted Programs)

- 42 U. S. C. §3604 (Fair Housing Act; Discrimination in the Sale or Rental of Housing and Other Prohibited Practices)

- 42 U. S. C. §3605 (Fair Housing Act; Discrimination in Residential Real Estate-Related Transactions)

- 42 U. S. C. §3606 (Fair Housing Act; Discrimination in the Provision of Brokerage Services)

- 42 U. S. C. §3631 (Fair Housing Act; Violations; Penalties)
• 42 U. S. C. §4701 (Intergovernmental Personnel Program; Congressional Findings and Declaration of Policy)

• 42 U. S. C. §5057(a)(1) (Domestic Volunteer Services; Nondiscrimination Provisions)

• 42 U. S. C. §5151(a) (Nondiscrimination in Disaster Assistance)

• 42 U. S. C. §5309(a) (Community Development; Nondiscrimination in Programs and Activities)

• 42 U. S. C. §5891 (Development of Energy Sources; Sex Discrimination Prohibited)

• 42 U. S. C. §6709 (Public Works Employment; Sex Discrimination; Prohibition; Enforcement)

• 42 U. S. C. §6727(a)(1) (Public Works Employment; Nondiscrimination)

• 42 U. S. C. §6870(a) (Weatherization Assistance for Low-Income Persons)

• 42 U. S. C. §8625(a) (Low-Income Home Energy Assistance; Nondiscrimination Provisions)

• 42 U. S. C. §9821 (Community Economic Development; Nondiscrimination Provisions)

• 42 U. S. C. §9849 (Head Start Programs; Nondiscrimination Provisions)
Appendix C to opinion of ALITO, J.

- 42 U. S. C. §9918(c)(1) (Community Services Block Grant Program; Limitations on Use of Funds)

- 42 U. S. C. §10406(c)(2)(B)(i) (Family Violence Prevention and Services; Formula Grants to States)

- 42 U. S. C. §11504(b) (Enterprise Zone Development; Waiver of Modification of Housing and Community Development Rules in Enterprise Zones)

- 42 U. S. C. §12635(a)(1) (National and Community Service State Grant Program; Nondiscrimination)

- 42 U. S. C. §12832 (Investment in Affordable Housing; Nondiscrimination)

- 43 U. S. C. §1747(10) (Loans to States and Political Subdivisions; Discrimination Prohibited)

- 43 U. S. C. §1863 (Outer Continental Shelf Resource Management; Unlawful Employment Practices; Regulations)

- 47 U. S. C. §151 (Federal Communications Commission)

• 47 U. S. C. §§554(b) and (c) (Cable Communications; Equal Employment Opportunity)

• 47 U. S. C. §555a(c) (Cable Communications; Limitation of Franchising Authority Liability)

• 48 U. S. C. §1542(a) (Virgin Islands; Voting Franchise; Discrimination Prohibited)

• 48 U. S. C. §1708 (Discrimination Prohibited in Rights of Access to, and Benefits From, Conveyed Lands)

• 49 U. S. C. §306(b) (Duties of the Secretary of Transportation; Prohibited Discrimination)

• 49 U. S. C. §5332(b) (Public Transportation; Nondiscrimination)

• 49 U. S. C. §40127 (Air Commerce and Safety; Prohibitions on Discrimination)

• 49 U. S. C. §47123(a) (Airport Improvement; Nondiscrimination)

• 50 U. S. C. §3809(b)(3) (Selective Service System)

Appendix D to opinion of ALITO, J.
III. VERIFICATION OF PERSONAL DATA

23. If Preferred Enlistment Name (name given in block 1) is not the same as on your birth certificate and has not been changed by legal procedure prescribed by state law, complete the following:

a. NAME AS SHOWN ON BIRTH CERTIFICATE

I hereby state that I have not changed my name through any court procedure; and that I prefer to use the name by which I am known in the community as a matter of convenience and with no criminal or fraudulent intent. I further state that I am the same person as the one whose name is shown in block 1.

b. WITNESS (Name, grade, and signature)

c. SIGNATURE OF APPLICANT

24. EDUCATION

<table>
<thead>
<tr>
<th>YEAR &amp; MONTH</th>
<th>NAME AND LOCATION OF SCHOOL</th>
<th>GRADUATE</th>
<th>DEGREE RECEIVED</th>
</tr>
</thead>
<tbody>
<tr>
<td>FROM</td>
<td>TO</td>
<td>YES</td>
<td>NO</td>
</tr>
</tbody>
</table>

25. CITIZENSHIP VERIFICATION (To be completed in presence of your recruiter).

a. PLACE OF BIRTH (City, State and if not in USA, Country)

b. BIRTH CERTIFICATE ISSUED BY (County and State)

c. IF NATURALIZED, CERTIFICATE NO.

d. IF DERIVED, PARENTS' CERTIFICATE NO., DATE, PLACE AND COURT

e. IF ALIEN, ALIEN REGISTRATION NUMBER

f. NATIVE COUNTRY

g. DATE AND PORT OF ENTRY
### MILITARY SERVICE

<table>
<thead>
<tr>
<th>b. PAY GRADE AND SERVICE NUMBER</th>
<th>c. SERVICE AND COMPONENT</th>
<th>d. DATE OF ENTRY</th>
<th>e. DATE OF DISCH</th>
<th>f. TYPE DISCH/REL</th>
<th>g. TIME LOST (NO. OF DAYS)</th>
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### PREVIOUS MILITARY SERVICE

<table>
<thead>
<tr>
<th>Total Active Military Service</th>
<th>Total Inactive Military Service</th>
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<tbody>
<tr>
<td>b. FEBD</td>
<td>c. AOSD</td>
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### OTHER BACKGROUND DATA

#### RELATIVES

<table>
<thead>
<tr>
<th>b. DATE AND PLACE OF BIRTH</th>
<th>c. PRESENT ADDRESS</th>
<th>d. CITIZENSHIP</th>
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</thead>
<tbody>
<tr>
<td></td>
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**DD FORM 1966/2** REPLACES DD FORM 1966, 1 JUL 75, WHICH WILL BE USED
<table>
<thead>
<tr>
<th>LAST NAME:</th>
<th>SSN:</th>
</tr>
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</table>

| 25. COMMERCIAL LIFE INSURANCE POLICIES YOU OWN ON YOUR LIFE — Optional entry to assist your survivors in filing claims should you die while on active duty. |
|-----------|------|
| a. NAME OF COMPANY ISSUING POLICY | b. POLICY NUMBER |

| 30. RELATIVES AND ALIEN FRIENDS LIVING IN FOREIGN COUNTRIES — List anyone with whom you had or have a close relationship, who lives in a foreign country. |
|-----------|------|
| a. NAME AND RELATIONSHIP | b. AGE | c. OCCUPATION | d. ADDRESS | e. CITIZENSHIP |

| 31. RESIDENCES — List all from 16th birthday. |
|-----------|------|
| YEAR & MONTH | NUMBER AND STREET | CITY | STATE | ZIP CODE |
| FROM | TO |

| 32. EMPLOYMENT — Show every employment you have had and all periods of unemployment. |
|-----------|------|
| a. YEAR & MONTH | b. Company, firm, and address | c. JOB TITLE | d. SUPERVISOR NAME |
| FROM | TO |

| e. HAVE YOU EVER WORKED FOR A FOREIGN GOVERNMENT? | | |
|-----------|------|
| Yes | No |

(If "yes" give dates of employment, Government you worked for, location and nature of your duties.)
## 33. MEMBERSHIP IN YOUTH PROGRAMS

<table>
<thead>
<tr>
<th>ORGANIZATION</th>
<th>MEMBERSHIP HELD</th>
<th>CONDUCTED BY</th>
<th>LOCATION</th>
<th>YEARS COMPLETED OR LEVEL REACHED</th>
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</thead>
<tbody>
<tr>
<td>ROTC</td>
<td>FROM TO</td>
<td>SPONSOR</td>
<td>SCHOOL AND ADDRESS</td>
<td>YEARS</td>
</tr>
<tr>
<td>NJROTC</td>
<td>AIR FORCE</td>
<td></td>
<td></td>
<td>LEVEL</td>
</tr>
<tr>
<td>CAP</td>
<td>NAVY</td>
<td></td>
<td></td>
<td>LEVEL</td>
</tr>
<tr>
<td>SEA CADET</td>
<td></td>
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<tr>
<td>OTHER (Specify)</td>
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</tbody>
</table>

## 34. FOREIGN TRAVEL

<table>
<thead>
<tr>
<th>YEAR &amp; MONTH</th>
<th>COUNTRY VISITED</th>
<th>PURPOSE OF TRAVEL</th>
</tr>
</thead>
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</table>

## 35. DECLARATIONS

- **a.** HAVE YOU EVER BEEN REJECTED FOR ENLISTMENT, REENLISTMENT, OR ENTRANCE INTO ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES? [ ] NO [ ] YES
- **b.** ARE YOU A CONSCIENTIOUS OBJECTOR? [ ] NO [ ] YES
- **c.** ARE YOU NOW OR HAVE YOU EVER BEEN A DESERTER FROM ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES? [ ] NO [ ] YES
- **d.** ARE YOU NON-DRAWING, OR DO YOU HAVE AN APPLICATION PENDING OR APPROVAL FOR, RETIRED PAY, DISABILITY ALLOWANCE, OR SEVERANCE PAY OR A PENSION FROM THE GOVERNMENT OF THE UNITED STATES? [ ] NO [ ] YES
- **e.** ARE YOU THE ONLY LIVING CHILD OF YOUR PARENTS? [ ] NO [ ] YES

## 36. UNDERSTANDINGS

- **a.** I understand that if I am rejected for enlistment because of a disqualification I have concealed, I may not be provided return transportation from the place of examination to my home. [INITIALS]
- **b.** (For male applicants only). I understand that if I have not reached my 26th birthday, that an original enlistment obligation me to serve in the Armed Forces for a period of six (6) years active and reserve unless sooner discharged. [INITIALS]
### Character and Social Adjustment

Read and consider the following instructions carefully before answering questions A through F.

1. If your answer to every question is truthfully "NO", please indicate in the appropriate space.
2. If your answer to any questions in this item is "YES", or you have reservations about answering questions of this nature, you are not required to answer, or explain any of these questions in writing. Instead, you may request a personal interview in which you may provide the required information for each question orally.
3. If you choose the personal interview, the information you give may be investigated; however, any written record of the interview itself will not be retained more than six months after entry upon active duty, and it will not become a part of your permanent military personnel service record.
4. If you enlist, this information may be requested from you again at some future date and may become a part of your security investigative file at that time. This could occur as a result of your being considered for duties involving access to classified information or other types of duty requiring a personal security investigation.
5. A "YES" answer will not necessarily disqualify you for enlistment. It will depend on the circumstances surrounding the situation involved.

Initial here if you prefer a personal interview: 

Applicant has been interviewed and is ☐ Eligible for enlistment, ☐ Ineligible for enlistment.

<table>
<thead>
<tr>
<th>Date of Interview</th>
<th>Name, Organization &amp; Title</th>
<th>Signature of Interviewer</th>
</tr>
</thead>
</table>

**Explain "YES" answers in item 41:**

- **a.** Have you ever taken any narcotic substance, sedative, stimulant, or tranquilizer drugs except as prescribed by a licensed physician?
- **b.** Have you ever intentionally sniffed glue, paint, hairspray, or other chemical fumes?
- **c.** Have you ever been involved in the use, purchase, possession or sale of marijuana, LSD, or any harmful or habit-forming drugs and/or chemicals except as prescribed by a licensed physician?
- **d.** Has your use of alcoholic beverages (such as liquor, beer, wine) ever resulted in the loss of a job, arrest by police, or treatment for alcoholism?
- **e.** Have you ever been a patient (whether or not formally committed) in any institution primarily devoted to the treatment of mental, nervous, emotional, psychological, or personality disorders?

Have you ever engaged in homosexual activity (sexual relations with another person of the same sex)?
### 38. Marital Status and Dependency

<table>
<thead>
<tr>
<th></th>
<th>No</th>
<th>Yes</th>
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<tbody>
<tr>
<td>a. Are you now, or have you ever been married?</td>
<td></td>
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<tr>
<td>b. If you have been married, are you now living with your spouse?</td>
<td></td>
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<tr>
<td>c. Have you ever been divorced? (If yes, enter date, place and court which granted divorce or legal separation)</td>
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<tr>
<td>d. Is any court order or judgment directing support for children of alimony in effect? (Enter date, place, and court which granted support, or support as the result of a paternity suit)</td>
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<tr>
<td>e. Is anyone other than your spouse and/or children solely or partially dependent upon you? (list name &amp; address)</td>
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### 39. Do you now have, or within the past ten years, have you had knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organizations, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitutions of any State, or which seeks to overthrow the Government of any State or any State or subdivision thereof by unlawful means? (If you answered “yes”, give the names of the organizations and inclusive dates (month and year) of your membership; describe the nature of your activities as a member of the organization(s) in the "Remarks" section, item 41.) | No | Yes |

### 40. Involvement with Police or Judicial Authorities

Your answers to the following questions will be verified with the Federal Bureau of Investigation (FBI), and other agencies to determine any previous records of arrest or convictions or juvenile court adjudications. If you conceal such records at this time, you may, upon enlistment, be subject to disciplinary action under the Uniform Code of Military Justice and/or discharge from the military service with other than an honorable discharge.

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<th></th>
<th>No</th>
<th>Yes</th>
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<tbody>
<tr>
<td>a. Have you ever been arrested, charged, cited, or held by Federal, State, or other law enforcement or juvenile authorities regardless of whether the citation or charge was dropped or dismissed or you were found not guilty?</td>
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<td>b. As a result of being arrested, charged, cited, or held by law enforcement or juvenile authorities, have you ever been convicted, fined by or forfeiture bond to a Federal, State, or other judicial authority or adjudicated a youthful offender or juvenile delinquent (regardless of whether the record in your case has been &quot;sealed&quot; or otherwise stricken from the court record)?</td>
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<tr>
<td>c. Have you ever been detained, held in, or served time in, any jail or prison, for reform or industrial school, or any juvenile facility or institution under the jurisdiction of any State, or Federal or foreign country?</td>
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<tr>
<td>d. Have you ever been awarded, or are you now under suspension, parole, or probation or awaiting any action on charges against you?</td>
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DD FORM 1966/4 REPLACES DD FORM 1966, 1 JUN 75, WHICH WILL BE USED AND DD FORM 373, 1 MAR 74; DD FORM 1916, 1 JUL 73, WHICH ARE OBSOLETE.
<table>
<thead>
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<th>OFFENSE</th>
<th>DATE/PLACE</th>
<th>AGE</th>
<th>DISPOSITION</th>
<th>COURT</th>
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41. REMARKS
I am interested in the following options or programs:

V. CERTIFICATION

42. BY APPLICANT: I UNDERSTAND THAT THE ARMED FORCES REPRESENTATIVE WHO WILL ACCEPT MY ENLISTMENT DOES SO IN RELIANCE ON THE INFORMATION PROVIDED BY ME IN THIS DOCUMENT; THAT IF ANY OF THE INFORMATION IS KNOWINGLY FALSE OR INCOMPLETE, I MAY BE PROSECUTED UNDER FEDERAL CIVILIAN OR MILITARY LAW OR SUBJECT TO ADMINISTRATIVE SEPARATION PROCEEDINGS AND, IN EITHER INSTANCE, I MAY RECEIVE A LESS THAN HONORABLE DISCHARGE WHICH COULD AFFECT MY FUTURE EMPLOYMENT OPPORTUNITIES. I CERTIFY THAT THE INFORMATION GIVEN BY ME IN THIS DOCUMENT IS TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

a. DATE
b. NAME

43. DATA VERIFICATION: To be completed by the recruiter who enters a description of the actual documents reviewed by him/her to verify:

<table>
<thead>
<tr>
<th>NAME</th>
<th>AGE</th>
<th>CITIZENSHIP</th>
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</table>

EDUCATION

OTHER (Specify)

DD FORM 1966/5 REPLACES DD FORM 1966, 1 JUN 75, WHICH WILL BE USED
**VI. PARENTAL/GUARDIAN CONSENT FOR ENLISTMENT**

45. I/herewith certify that the applicant named herein has no other legal guardian than me/us and I/we consent to his/her enlistment in the United States Army, subject to all the requirements and lawful commands of the officers who may, from time to time, be placed over him/her, and I/we certify that no promise of any kind has been made to me/us concerning assignment to duty, or promotion during his/her enlistment as an inducement to me/us to sign this consent. I/we hereby authorize the Armed Forces representatives concerned to administer medical examinations, mental and/or aptitude testing, and conduct records checks to determine applicant's enlistment eligibility. I/we relinquish all claim to his/her service and to any wage or compensation for such service.

46. For enlistment in a Reserve Component: I/we understand that as a member of a Reserve Component, he/she must serve minimum periods of active duty unless excused by competent authority. In the event he/she fails to fulfill the obligations of his/her Reserve commitment, he/she may be recalled to active duty as prescribed by law. I/we further understand that while the applicant is in the Ready Reserve, he/she may be ordered to extended active duty in time of war or national emergency declared by the Congress or the President or when otherwise authorized by law.

47. I/we certify that the applicant's birth date is:

<table>
<thead>
<tr>
<th>NAME AND SIGNATURE OF WITNESSING OFFICIAL</th>
<th>SIGNATURE OF PARENT OR LEGAL GUARDIAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME AND SIGNATURE OF WITNESSING OFFICIAL</td>
<td>SIGNATURE OF PARENT OR LEGAL GUARDIAN</td>
</tr>
</tbody>
</table>

**VII. ENLISTMENT OPTIONS** - Completed by guidance counsellor, career counsellor, recruiter, AFEES Liaison NCO, etc., as specified by sponsoring service.

<table>
<thead>
<tr>
<th>ENL, COMP, GRADE, RATE</th>
<th>DATE OF RANK</th>
<th>TERM ENL.</th>
<th>T-ESAFS</th>
<th>T-MOSAFS</th>
<th>WAIHER INFO</th>
<th>OPT ANAL</th>
<th>PROG ENL FOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>NAME, GRADE, AND SSN, ORGANIZATION OR RECRUITER ID (Type or Print)</td>
<td>SIGNATURE</td>
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</tbody>
</table>

**VIII. Recertification by Applicant, and Correction of Data at Time of Enlistment**

I have reviewed all information contained in this document; that information is still correct and true to the best of my knowledge and belief. If changes were required, the original entry has been marked. "See VIII" and the corrected information is provided below, keyed to the appropriate question.

<table>
<thead>
<tr>
<th>QUESTION</th>
<th>CHANGE REQUIRED</th>
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</table>

<table>
<thead>
<tr>
<th>DATE</th>
<th>NAME, GRADE, SSN AND SIGNATURE OF WITNESS (Type or Print)</th>
<th>SIGNATURE OF APPLICANT</th>
</tr>
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DD FORM 1966/6 REPLACES DD FORM 1965, JUN 75, WHICH WILL BE USED 1 AUG 75
Appendix D to opinion of ALITO, J.
Appendix D to opinion of ALITO, J.
**Privacy Act Statement**

<table>
<thead>
<tr>
<th>AUTHORITY:</th>
<th>Title 10, United States Code, Sections 504, 505, 508, 518, and 528a, and Title 30 USC Appendix 481 and following section.</th>
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<tr>
<td>PRINCIPAL PURPOSE:</td>
<td>To determine your eligibility for military service.</td>
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<tr>
<td>ROUTINE USES:</td>
<td>This form becomes the principal source document for and part of your military personnel records which are used to make decisions related to your training, promotion, assignments, and other personnel management actions.</td>
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<td>DISCLOSURE:</td>
<td>Voluntary; however, failure to answer all questions on this form, except &quot;optional&quot; items, may result in denial of your enlistment.</td>
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**WARNING**

Information provided by you on this form is FOR OFFICIAL USE ONLY and will be maintained and used in strict compliance with Federal laws and regulations. The information provided by you becomes the property of the United States Government, and it may be consulted throughout your military service career, particularly whenever either favorable or adverse administrative or disciplinary actions related to you are involved.
YOU CAN BE PUNISHED BY FINE, IMPRISONMENT OR BOTH IF YOU ARE FOUND GUILTY OF MAKING A KNOWING AND WILLFUL FALSE STATEMENT ON THIS DOCUMENT.

INSTRUCTIONS
(Read carefully BEFORE filling out this form.)

1. Read Privacy Act Statement above before completing form.

2. Type or print LEGIBLY all answers. If the answer is "None" or "Not Applicable," so state. "OPTIONAL" questions may be left blank.

3. List all responses requiring dates (schools, employers/residences) in chronological order beginning with present or the most recent and work backwards. Show all employers/residences for the last five years or since 13th birthday. Give inclusive dates for each period of residence/employment/school. If additional space is needed for any answer, continue it in Item 39, "Remarks."

4. Unless otherwise specified, write all dates as 6 digits (with no spaces or marks) in YYMMDD fashion. February 12, 1985 is written 850212.
Appendix D to opinion of ALITO, J.
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28. Are you now or have you ever been in any regular or reserve branch of the Armed Forces or in the Army National Guard or the Air National Guard? (Give your recruiter the appropriate DD Form 214 and/or DD Form 215 or NGB Form 22 for review.)

29. Are you now or have you ever been divorced or legally separated? If "YES," enter in item 39. "REMARKS," the date, place and court which granted divorce or legal separation.

30. Is any court order or judgment in effect that directs you to provide support for children or alimony? If "YES," enter in item 39. "REMARKS," the date, place, and court which granted alimony or support including order resulting from paternity suit.

31. Have you ever been arrested, apprehended, charged, cited or held by Federal, State, military or other law enforcement or juvenile authorities, regardless of whether the citation was dropped or dismissed or you were found not guilty? Include all courts-martial or non-judicial punishment while in military service. If "YES," enter details in item 35.

32. As a result of being arrested, apprehended, charged, cited or held by Federal, State, military or other law enforcement or juvenile authorities, have you ever been convicted, fined or forfeited bond to a Federal, State or other judicial authority or adjudicated a youthful offender or juvenile delinquent (regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record); or have you been released from parole, probation, juvenile supervision or given a suspended sentence or released on charges pending on condition that you apply for or return to the United States Armed Forces? If "YES," enter details in item 35.

33. Have you ever been detained, held in, or served time in any jail or prison, reform or industrial school, or a juvenile facility or institution under the jurisdiction of any city, State, Federal or foreign country? If "YES," enter details in item 35.

34. Have you ever been a ward, or are you now under suspended sentence, parole, or probation or awaiting any action on criminal/civil charges against you? If "YES," enter details in item 35.

35. LAW VIOLATIONS. Explain below "YES" answers given in items 31 through 34 above. (Include all incidents with law enforcement authorities even if the citation or charge was dropped or dismissed or you were found not guilty or you have been told by recruiting personnel or anyone else that the incident was not important enough to list.)

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ALITO, J., dissenting

Do you intend to engage in homosexual acts (sexual relations with another person of the same sex)?

A Are you a homosexual or a bisexual? ("Homosexual" is defined as: sexual desire or behavior directed at a person(s) of one's own sex. "Bisexual" is defined as: a person sexually responsive to both sexes.)

Do you intend to engage in homosexual acts (sexual relations with another person of the same sex)?

Are you a homosexual or a bisexual? ("Homosexual" is defined as: sexual desire or behavior directed at a person(s) of one's own sex. "Bisexual" is defined as: a person sexually responsive to both sexes.)

Are you a homosexual or a bisexual? ("Homosexual" is defined as: sexual desire or behavior directed at a person(s) of one's own sex. "Bisexual" is defined as: a person sexually responsive to both sexes.)

Have you ever been arrested for involvement in illicit drug use or possession?

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ALITO, J., dissenting

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**NOTE**

USE THIS DD FORM 1666 PAGE ONLY IF EITHER SECTION APPLIES TO THE APPLICANT'S RECORD OF MILITARY SERVICE.

**SECTION VII - PARENT/GUARDIAN CONSENT FOR ENLISTMENT**

**a. Parent/Guardian statement (if applicable)**

I/we certify that [enter name of applicant] has no other legal guardian other than myself and I/we consent to his/her enlistment in the United States [enter branch of service].

**b. For enlistment in a reserve component**

I/we understand that, as a member of a reserve component, he/she must serve minimum periods of active duty for training unless excused by competent authority. In the event he/she fails to fulfill the obligations of hirer reserve enlistment, he/she may be recalled to active duty as prescribed by law. I/we further understand that while he/she is in the ready reserve, he/she may be ordered to extended active duty in time of war or national emergency declared by the Congress or the President or when otherwise authorized by law.

**PARENT**

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**WITNESS**

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Appendix D to opinion of ALITO, J.
Like many cases in this Court, this case boils down to one fundamental question: Who decides? Title VII of the Civil Rights Act of 1964 prohibits employment discrimination “because of” an individual’s “race, color, religion, sex, or national origin.” The question here is whether Title VII
should be expanded to prohibit employment discrimination because of sexual orientation. Under the Constitution’s separation of powers, the responsibility to amend Title VII belongs to Congress and the President in the legislative process, not to this Court.

The political branches are well aware of this issue. In 2007, the U. S. House of Representatives voted 235 to 184 to prohibit employment discrimination on the basis of sexual orientation. In 2013, the U. S. Senate voted 64 to 32 in favor of a similar ban. In 2019, the House again voted 236 to 173 to outlaw employment discrimination on the basis of sexual orientation. Although both the House and Senate have voted at different times to prohibit sexual orientation discrimination, the two Houses have not yet come together with the President to enact a bill into law.

The policy arguments for amending Title VII are very weighty. The Court has previously stated, and I fully agree, that gay and lesbian Americans “cannot be treated as social outcasts or as inferior in dignity and worth.” Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n, 584 U. S. ___ (2018) (slip op., at 9).

But we are judges, not Members of Congress. And in Alexander Hamilton’s words, federal judges exercise “neither Force nor Will, but merely judgment.” The Federalist No. 78, p. 523 (J. Cooke ed. 1961). Under the Constitution’s separation of powers, our role as judges is to interpret and follow the law as written, regardless of whether we like the result. Cf. Texas v. Johnson, 491 U. S. 397, 420–421 (1989) (Kennedy, J., concurring). Our role is not to make or amend the law. As written, Title VII does not prohibit employment discrimination because of sexual orientation.1

1Although this opinion does not separately analyze discrimination on the basis of gender identity, this opinion’s legal analysis of discrimination on the basis of sexual orientation would apply in much the same way to discrimination on the basis of gender identity.
KAVANAUGH, J., dissenting

Title VII makes it unlawful for employers to discriminate because of “race, color, religion, sex, or national origin.” 42 U. S. C. §2000e–2(a)(1). As enacted in 1964, Title VII did not prohibit other forms of employment discrimination, such as age discrimination, disability discrimination, or sexual orientation discrimination.


To prohibit age discrimination and disability discrimination, this Court did not unilaterally rewrite or update the

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2In full, the statute provides:

“it shall be an unlawful employment practice for an employer—

“(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

“(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” 42 U. S. C. §2000e–2(a) (emphasis added).

As the Court today recognizes, Title VII contains an important exemption for religious organizations. §2000e–1(a); see also §2000e–2(e). The First Amendment also safeguards the employment decisions of religious employers. See Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 565 U. S. 171, 188–195 (2012). So too, the Religious Freedom Restoration Act of 1993 exempts employers from federal laws that substantially burden the exercise of religion, subject to limited exceptions. §2000bb–1.
law. Rather, Congress and the President enacted new legislation, as prescribed by the Constitution’s separation of powers.

For several decades, Congress has considered numerous bills to prohibit employment discrimination based on sexual orientation. But as noted above, although Congress has come close, it has not yet shouldered a bill over the legislative finish line.

In the face of the unsuccessful legislative efforts (so far) to prohibit sexual orientation discrimination, judges may not rewrite the law simply because of their own policy views. Judges may not update the law merely because they think that Congress does not have the votes or the fortitude. Judges may not predictively amend the law just because they believe that Congress is likely to do it soon anyway.

If judges could rewrite laws based on their own policy views, or based on their own assessments of likely future legislative action, the critical distinction between legislative authority and judicial authority that undergirds the Constitution’s separation of powers would collapse, thereby threatening the impartial rule of law and individual liberty. As James Madison stated: “Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul, for the judge would then be the legislator.” The Federalist No. 47, at 326 (citing Montesquieu). If judges could, for example, rewrite or update securities laws or healthcare laws or gun laws or environmental laws simply based on their own policy views, the Judiciary would become a democratically illegitimate super-legislature—unelected, and hijacking the important policy decisions reserved by the Constitution to the people’s elected representatives.

Because judges interpret the law as written, not as they might wish it were written, the first 10 U. S. Courts of Appeals to consider whether Title VII prohibits sexual orientation discrimination all said no. Some 30 federal judges
considered the question. All 30 judges said no, based on the text of the statute. 30 out of 30.

But in the last few years, a new theory has emerged. To end-run the bedrock separation-of-powers principle that courts may not unilaterally rewrite statutes, the plaintiffs here (and, recently, two Courts of Appeals) have advanced a novel and creative argument. They contend that discrimination “because of sexual orientation” and discrimination “because of sex” are actually not separate categories of discrimination after all. Instead, the theory goes, discrimination because of sexual orientation always qualifies as discrimination because of sex: When a gay man is fired because he is gay, he is fired because he is attracted to men, even though a similarly situated woman would not be fired just because she is attracted to men. According to this theory, it follows that the man has been fired, at least as a literal matter, because of his sex.

Under this literalist approach, sexual orientation discrimination automatically qualifies as sex discrimination, and Title VII’s prohibition against sex discrimination therefore also prohibits sexual orientation discrimination—and actually has done so since 1964, unbeknownst to everyone. Surprisingly, the Court today buys into this approach. Ante, at 9–12.

For the sake of argument, I will assume that firing someone because of their sexual orientation may, as a very literal matter, entail making a distinction based on sex. But to prevail in this case with their literalist approach, the plaintiffs must also establish one of two other points. The plaintiffs must establish that courts, when interpreting a statute, adhere to literal meaning rather than ordinary meaning. Or alternatively, the plaintiffs must establish that the ordinary meaning of “discriminate because of sex”—not just the literal meaning—encompasses sexual orientation discrimination. The plaintiffs fall short on both counts.
First, courts must follow ordinary meaning, not literal meaning. And courts must adhere to the ordinary meaning of phrases, not just the meaning of the words in a phrase.

There is no serious debate about the foundational interpretive principle that courts adhere to ordinary meaning, not literal meaning, when interpreting statutes. As Justice Scalia explained, “the good textualist is not a literalist.” A. Scalia, A Matter of Interpretation 24 (1997). Or as Professor Eskridge stated: The “prime directive in statutory interpretation is to apply the meaning that a reasonable reader would derive from the text of the law,” so that “for hard cases as well as easy ones, the ordinary meaning (or the ‘everyday meaning’ or the ‘commonsense’ reading) of the relevant statutory text is the anchor for statutory interpretation.” W. Eskridge, Interpreting Law 33, 34–35 (2016) (footnote omitted). Or as Professor Manning put it, proper statutory interpretation asks “how a reasonable person, conversant with the relevant social and linguistic conventions, would read the text in context. This approach recognizes that the literal or dictionary definitions of words will often fail to account for settled nuances or background conventions that qualify the literal meaning of language and, in particular, of legal language.” Manning, The Absurdity Doctrine, 116 Harv. L. Rev. 2387, 2392–2393 (2003). Or as Professor Nelson wrote: No “mainstream judge is interested solely in the literal definitions of a statute’s words.” Nelson, What Is Textualism?, 91 Va. L. Rev. 347, 376 (2005). The ordinary meaning that counts is the ordinary public meaning at the time of enactment—although in this case, that temporal principle matters little because the ordinary meaning of “discriminate because of sex” was the same in 1964 as it is now.

Judges adhere to ordinary meaning for two main reasons: rule of law and democratic accountability. A society governed by the rule of law must have laws that are known and understandable to the citizenry. And judicial adherence to
ordinary meaning facilitates the democratic accountability of America’s elected representatives for the laws they enact. Citizens and legislators must be able to ascertain the law by reading the words of the statute. Both the rule of law and democratic accountability badly suffer when a court adopts a hidden or obscure interpretation of the law, and not its ordinary meaning.

Consider a simple example of how ordinary meaning differs from literal meaning. A statutory ban on “vehicles in the park” would literally encompass a baby stroller. But no good judge would interpret the statute that way because the word “vehicle,” in its ordinary meaning, does not encompass baby strollers.

The ordinary meaning principle is longstanding and well settled. Time and again, this Court has rejected literalism in favor of ordinary meaning. Take a few examples:

- The Court recognized that beans may be seeds “in the language of botany or natural history,” but concluded that beans are not seeds “in commerce” or “in common parlance.” *Robertson v. Salomon*, 130 U. S. 412, 414 (1889).

- The Court explained that tomatoes are literally “the fruit of a vine,” but “in the common language of the people,” tomatoes are vegetables. *Nix v. Hedden*, 149 U. S. 304, 307 (1893).

- The Court stated that the statutory term “vehicle” does not cover an aircraft: “No doubt etymologically it is possible to use the word to signify a conveyance working on land, water or air . . . . But in everyday speech ‘vehicle’ calls up the picture of a thing moving on land.” *McBoyle v. United States*, 283 U. S. 25, 26 (1931).

- The Court pointed out that “this Court’s interpretation of the three-judge-court statutes has frequently deviated from the path of literalism.” *Gonzalez v. Automatic Employees Credit Union*, 419 U. S. 90, 96 (1974).
The Court refused a reading of “mineral deposits” that would include water, even if “water is a ‘mineral,’ in the broadest sense of that word,” because it would bring about a “major . . . alteration in established legal relationships based on nothing more than an overly literal reading of a statute, without any regard for its context or history.” *Andrus v. Charleston Stone Products Co.*, 436 U. S. 604, 610, 616 (1978).

The Court declined to interpret “facilitating” a drug distribution crime in a way that would cover purchasing drugs, because the “literal sweep of ‘facilitate’ sits uncomfortably with common usage.” *Abuelhawa v. United States*, 556 U. S. 816, 820 (2009).

The Court rebuffed a literal reading of “personnel rules” that would encompass any rules that personnel must follow (as opposed to human resources rules about personnel), and stated that no one “using ordinary language would describe” personnel rules “in this manner.” *Milner v. Department of Navy*, 562 U. S. 562, 578 (2011).

The Court explained that, when construing statutory phrases such as “arising from,” it avoids “uncritical literalism leading to results that no sensible person could have intended.” *Jennings v. Rodriguez*, 583 U. S. ___, ___–___ (2018) (plurality opinion) (slip op., at 9–10) (internal quotation marks omitted).

Those cases exemplify a deeply rooted principle: When there is a divide between the literal meaning and the ordinary meaning, courts must follow the ordinary meaning.

Next is a critical point of emphasis in this case. The difference between literal and ordinary meaning becomes especially important when—as in this case—judges consider phrases in statutes. (Recall that the shorthand version of the phrase at issue here is “discriminate because of sex.”)

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3The full phrasing of the statute is provided above in footnote 2. This
Courts must heed the ordinary meaning of the phrase as a whole, not just the meaning of the words in the phrase. That is because a phrase may have a more precise or confined meaning than the literal meaning of the individual words in the phrase. Examples abound. An “American flag” could literally encompass a flag made in America, but in common parlance it denotes the Stars and Stripes. A “three-pointer” could literally include a field goal in football, but in common parlance, it is a shot from behind the arc in basketball. A “cold war” could literally mean any winter-time war, but in common parlance it signifies a conflict short of open warfare. A “washing machine” could literally refer to any machine used for washing any item, but in everyday speech it means a machine for washing clothes.

This Court has often emphasized the importance of sticking to the ordinary meaning of a phrase, rather than the meaning of words in the phrase. In FCC v. AT&T Inc., 562 U. S. 397 (2011), for example, the Court explained:

“AT&T's argument treats the term ‘personal privacy’ as simply the sum of its two words: the privacy of a person. . . . But two words together may assume a more particular meaning than those words in isolation. We understand a golden cup to be a cup made of or resembling gold. A golden boy, on the other hand, is one who is charming, lucky, and talented. A golden opportunity is one not to be missed. ‘Personal’ in the phrase ‘personal privacy’ conveys more than just ‘of a person.’ It suggests a type of privacy evocative of human concerns—not the sort usually associated with an entity like, say, AT&T.” Id., at 406.
Exactly right and exactly on point in this case.

Justice Scalia explained the extraordinary importance of hewing to the ordinary meaning of a phrase: “Adhering to the fair meaning of the text (the textualist’s touchstone) does not limit one to the hyperliteral meaning of each word in the text. In the words of Learned Hand: ‘a sterile literalism . . . loses sight of the forest for the trees.’ The full body of a text contains implications that can alter the literal meaning of individual words.” A. Scalia & B. Garner, Reading Law 356 (2012) (footnote omitted). Put another way, “the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes.” Helvering v. Gregory, 69 F. 2d 809, 810–811 (CA2 1934) (L. Hand, J.). Judges must take care to follow ordinary meaning “when two words combine to produce a meaning that is not the mechanical composition of the two words separately.” Eskridge, Interpreting Law, at 62. Dictionaries are not “always useful for determining the ordinary meaning of word clusters (like ‘driving a vehicle’) or phrases and clauses or entire sentences.” Id., at 44. And we must recognize that a phrase can cover a “dramatically smaller category than either component term.” Id., at 62.

If the usual evidence indicates that a statutory phrase bears an ordinary meaning different from the literal strung-together definitions of the individual words in the phrase, we may not ignore or gloss over that discrepancy. “Legislation cannot sensibly be interpreted by stringing together dictionary synonyms of each word and proclaiming that, if the right example of the meaning of each is selected, the ‘plain meaning’ of the statute leads to a particular result. No theory of interpretation, including textualism itself, is premised on such an approach.” 883 F. 3d 100, 144, n. 7 (CA2 2018) (Lynch, J., dissenting).4

4Another longstanding canon of statutory interpretation—the absurdity canon—similarly reflects the law’s focus on ordinary meaning rather
KAVANAUGH, J., dissenting

In other words, this Court’s precedents and longstanding principles of statutory interpretation teach a clear lesson: Do not simply split statutory phrases into their component words, look up each in a dictionary, and then mechanically put them together again, as the majority opinion today mistakenly does. See ante, at 5–9. To reiterate Justice Scalia’s caution, that approach misses the forest for the trees.

A literalist approach to interpreting phrases disrespects ordinary meaning and deprives the citizenry of fair notice of what the law is. It destabilizes the rule of law and thwarts democratic accountability. For phrases as well as terms, the “linchpin of statutory interpretation is ordinary meaning, for that is going to be most accessible to the citizenry desirous of following the law and to the legislators and their staffs drafting the legal terms of the plans launched by statutes and to the administrators and judges implementing the statutory plan.” Eskridge, Interpreting Law, at 81; see Scalia, A Matter of Interpretation, at 17.

Bottom line: Statutory Interpretation 101 instructs courts to follow ordinary meaning, not literal meaning, and to adhere to the ordinary meaning of phrases, not just the meaning of the words in a phrase.

Second, in light of the bedrock principle that we must adhere to the ordinary meaning of a phrase, the question in this case boils down to the ordinary meaning of the phrase “discriminate because of sex.” Does the ordinary meaning of that phrase encompass discrimination because of sexual orientation? The answer is plainly no.

than literal meaning. That canon tells courts to avoid construing a statute in a way that would lead to absurd consequences. The absurdity canon, properly understood, is “an implementation of (rather than . . . an exception to) the ordinary meaning rule.” W. Eskridge, Interpreting Law 72 (2016). “What the rule of absurdity seeks to do is what all rules of interpretation seek to do: make sense of the text.” A. Scalia & B. Garner, Reading Law 235 (2012).
KAVANAUGH, J., dissenting

On occasion, it can be difficult for judges to assess ordinary meaning. Not here. Both common parlance and common legal usage treat sex discrimination and sexual orientation discrimination as two distinct categories of discrimination—back in 1964 and still today.

As to common parlance, few in 1964 (or today) would describe a firing because of sexual orientation as a firing because of sex. As commonly understood, sexual orientation discrimination is distinct from, and not a form of, sex discrimination. The majority opinion acknowledges the common understanding, noting that the plaintiffs here probably did not tell their friends that they were fired because of their sex. Ante, at 16. That observation is clearly correct. In common parlance, Bostock and Zarda were fired because they were gay, not because they were men.

Contrary to the majority opinion’s approach today, this Court has repeatedly emphasized that common parlance matters in assessing the ordinary meaning of a statute, because courts heed how “most people” “would have understood” the text of a statute when enacted. New Prime Inc. v. Oliveira, 586 U. S. ___–___ (2019) (slip op., at 6–7); see Henson v. Santander Consumer USA Inc., 582 U. S. ___–___ (2017) (slip op., at 4) (using a conversation between friends to demonstrate ordinary meaning); see also Wisconsin Central Ltd. v. United States, 585 U. S. ___–___ (2018) (slip op., at 2–3) (similar); AT&T, 562 U. S., at 403–404 (similar).

Consider the employer who has four employees but must fire two of them for financial reasons. Suppose the four employees are a straight man, a straight woman, a gay man, and a lesbian. The employer with animosity against women (animosity based on sex) will fire the two women. The employer with animosity against gays (animosity based on sexual orientation) will fire the gay man and the lesbian. Those are two distinct harms caused by two distinct biases that have two different outcomes. To treat one as a form of
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the other—as the majority opinion does—misapprehends common language, human psychology, and real life. See Hively v. Ivy Tech Community College of Ind., 853 F. 3d 339, 363 (CA7 2017) (Sykes, J., dissenting).

It also rewrites history. Seneca Falls was not Stonewall. The women’s rights movement was not (and is not) the gay rights movement, although many people obviously support or participate in both. So to think that sexual orientation discrimination is just a form of sex discrimination is not just a mistake of language and psychology, but also a mistake of history and sociology.

Importantly, an overwhelming body of federal law reflects and reinforces the ordinary meaning and demonstrates that sexual orientation discrimination is distinct from, and not a form of, sex discrimination. Since enacting Title VII in 1964, Congress has never treated sexual orientation discrimination the same as, or as a form of, sex discrimination. Instead, Congress has consistently treated sex discrimination and sexual orientation discrimination as legally distinct categories of discrimination.

Many federal statutes prohibit sex discrimination, and many federal statutes also prohibit sexual orientation discrimination. But those sexual orientation statutes expressly prohibit sexual orientation discrimination in addition to expressly prohibiting sex discrimination. Every single one. To this day, Congress has never defined sex discrimination to encompass sexual orientation discrimination. Instead, when Congress wants to prohibit sexual orientation discrimination in addition to sex discrimination, Congress explicitly refers to sexual orientation discrimination.5

That longstanding and widespread congressional practice matters. When interpreting statutes, as the Court has often said, we “usually presume differences in language” convey “differences in meaning.” Wisconsin Central, 585 U. S., at ___ (slip op., at 4) (internal quotation marks omitted). When Congress chooses distinct phrases to accomplish distinct purposes, and does so over and over again for decades, we may not lightly toss aside all of Congress’s careful handiwork. As Justice Scalia explained for the Court, “it is not our function” to “treat alike subjects that different Congresses have chosen to treat differently.” West Virginia Univ. Hospitals, Inc. v. Casey, 499 U. S. 83, 101 (1991); see id., at 92.

And the Court has likewise stressed that we may not read “a specific concept into general words when precise language in other statutes reveals that Congress knew how to identify that concept.” Eskridge, Interpreting Law, at 415; see University of Tex. Southwestern Medical Center v. Nassar, 570 U. S. 338, 357 (2013); Arlington Central School Dist. Bd. of Ed. v. Murphy, 548 U. S. 291, 297–298 (2006); Jama v. Immigration and Customs Enforcement, 543 U. S. 335, 341–342 (2005); Custis v. United States, 511 U. S. 485, 491–493 (1994); West Virginia Univ. Hospitals, 499 U. S., at 99.

(identifying violence motivated by “gender, sexual orientation” as national problem); §30503(a)(1)(C) (authorizing Attorney General to assist state, local, and tribal investigations of crimes motivated by the victim’s “gender, sexual orientation”); §§41305(b)(1), (3) (requiring Attorney General to acquire data on crimes motivated by “gender . . . , sexual orientation,” but disclaiming any cause of action including one “based on discrimination due to sexual orientation”); 42 U. S. C. §294e–1(b)(2) (conditioning funding on institution’s inclusion of persons of “different genders and sexual orientations”); see also United States Sentencing Commission, Guidelines Manual §3A1.1(a) (Nov. 2018) (authorizing increased offense level if the crime was motivated by the victim’s “gender . . . , or sexual orientation”); 2E Guide to Judiciary Policy §320 (2019) (prohibiting judicial discrimination because of “sex . . . sexual orientation”).
So it is here. As demonstrated by all of the statutes covering sexual orientation discrimination, Congress knows how to prohibit sexual orientation discrimination. So courts should not read that specific concept into the general words “discriminate because of sex.” We cannot close our eyes to the indisputable fact that Congress—for several decades in a large number of statutes—has identified sex discrimination and sexual orientation discrimination as two distinct categories.

Where possible, we also strive to interpret statutes so as not to create undue surplusage. It is not uncommon to find some scattered redundancies in statutes. But reading sex discrimination to encompass sexual orientation discrimination would cast aside as surplusage the numerous references to sexual orientation discrimination sprinkled throughout the U. S. Code in laws enacted over the last 25 years.

In short, an extensive body of federal law both reflects and reinforces the widespread understanding that sexual orientation discrimination is distinct from, and not a form of, sex discrimination.

The story is the same with bills proposed in Congress. Since the 1970s, Members of Congress have introduced many bills to prohibit sexual orientation discrimination in the workplace. Until very recently, all of those bills would have expressly established sexual orientation as a separately proscribed category of discrimination. The bills did not define sex discrimination to encompass sexual orientation discrimination.6

6See, e.g., H. R. 14752, 93d Cong., 2d Sess., §§6, 11 (1974) (amending Title VII “by adding after the word ‘sex’” the words “‘sexual orientation,’” defined as “choice of sexual partner according to gender”); H. R. 451, 95th Cong., 1st Sess., §§6, 11 (1977) (”adding after the word ‘sex,’ . . . ‘affectional or sexual preference,’” defined as “having or manifesting an emotional or physical attachment to another consenting person or persons of either gender, or having or manifesting a preference for such
The proposed bills are telling not because they are relevant to congressional intent regarding Title VII. See *Central Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 186–188 (1994). Rather, the proposed bills are telling because they, like the enacted laws, further demonstrate the widespread usage of the English language in the United States: Sexual orientation discrimination is distinct from, and not a form of, sex discrimination.

Like the relevant federal statutes, the 1998 Clinton Executive Order expressly added sexual orientation as a new, separately prohibited form of discrimination. As Judge Lynch cogently spelled out, “the Clinton Administration did not argue that the prohibition of sex discrimination in” the prior 1969 Executive Order “already banned, or henceforth would be deemed to ban, sexual orientation discrimination.” 883 F. 3d, at 152, n. 22 (dissenting opinion). In short, President Clinton’s 1998 Executive Order indicates that the Executive Branch, like Congress, has long understood sexual orientation discrimination to be distinct from, and not a form of, sex discrimination.

Federal regulations likewise reflect that same understanding. The Office of Personnel Management is the federal agency that administers and enforces personnel rules across the Federal Government. OPM has issued regulations that “govern . . . the employment practices of the Federal Government generally, and of individual agencies.” 5 CFR §§300.101, 300.102 (2019). Like the federal statutes and the Presidential Executive Orders, those OPM regulations separately prohibit sex discrimination and sexual orientation discrimination.

The States have proceeded in the same fashion. A majority of States prohibit sexual orientation discrimination in
employment, either by legislation applying to most workers,\(^7\) an executive order applying to public employees,\(^8\) or


both. Almost every state statute or executive order proscribing sexual orientation discrimination expressly prohibits sexual orientation discrimination separately from the State’s ban on sex discrimination.

That common usage in the States underscores that sexual orientation discrimination is commonly understood as a legal concept distinct from sex discrimination.


Over the last several decades, the Court has also decided many cases involving sexual orientation. But in those cases, the Court never suggested that sexual orientation discrimination is just a form of sex discrimination. All of the Court’s cases from Bowers to Romer to Lawrence to Windsor to Obergefell would have been far easier to analyze and decide if sexual orientation discrimination were just a form of sex discrimination and therefore received the same heightened scrutiny as sex discrimination under the Equal Protection Clause. See Bowers v. Hardwick, 478 U. S. 186 (1986); Romer v. Evans, 517 U. S. 620 (1996); Lawrence v. Texas, 539 U. S. 558 (2003); United States v. Windsor, 570 U. S. 744 (2013); Obergefell v. Hodges, 576 U. S. 644 (2015).

Did the Court in all of those sexual orientation cases just miss that obvious answer—and overlook the fact that sexual orientation discrimination is actually a form of sex discrimination? That seems implausible. Nineteen Justices have participated in those cases. Not a single Justice stated or even hinted that sexual orientation discrimination was just a form of sex discrimination and therefore entitled to the same heightened scrutiny under the Equal Protection Clause. The opinions in those five cases contain no trace of such reasoning. That is presumably because everyone on this Court, too, has long understood that sexual orientation
discrimination is distinct from, and not a form of, sex discrimination.

In sum, all of the usual indicators of ordinary meaning—common parlance, common usage by Congress, the practice in the Executive Branch, the laws in the States, and the decisions of this Court—overwhelmingly establish that sexual orientation discrimination is distinct from, and not a form of, sex discrimination. The usage has been consistent across decades, in both the federal and state contexts.

Judge Sykes summarized the law and language this way: “To a fluent speaker of the English language—then and now—. . . discrimination ‘because of sex’ is not reasonably understood to include discrimination based on sexual orientation, a different immutable characteristic. Classifying people by sexual orientation is different than classifying them by sex. The two traits are categorically distinct and widely recognized as such. There is no ambiguity or vagueness here.” Hively, 853 F. 3d, at 363 (dissenting opinion).

To tie it all together, the plaintiffs have only two routes to succeed here. Either they can say that literal meaning overrides ordinary meaning when the two conflict. Or they can say that the ordinary meaning of the phrase “discriminate because of sex” encompasses sexual orientation discrimination. But the first flouts long-settled principles of statutory interpretation. And the second contradicts the widespread ordinary use of the English language in America.

II

Until the last few years, every U. S. Court of Appeals to address this question concluded that Title VII does not prohibit discrimination because of sexual orientation. As noted above, in the first 10 Courts of Appeals to consider the issue, all 30 federal judges agreed that Title VII does not prohibit sexual orientation discrimination. 30 out of 30
judges.9

The unanimity of those 30 federal judges shows that the question as a matter of law, as compared to as a matter of policy, was not deemed close. Those 30 judges realized a seemingly obvious point: Title VII is not a general grant of authority for judges to fashion an evolving common law of equal treatment in the workplace. Rather, Title VII identifies certain specific categories of prohibited discrimination. And under the separation of powers, Congress—not the courts—possesses the authority to amend or update the law, as Congress has done with age discrimination and disability discrimination, for example.

So what changed from the situation only a few years ago when 30 out of 30 federal judges had agreed on this question? Not the text of Title VII. The law has not changed. Rather, the judges’ decisions have evolved.

To be sure, the majority opinion today does not openly profess that it is judicially updating or amending Title VII. Cf. *Hively*, 853 F. 3d, at 357 (Posner, J., concurring). But the majority opinion achieves the same outcome by seizing on literal meaning and overlooking the ordinary meaning of the phrase “discriminate because of sex.” Although the majority opinion acknowledges that the meaning of a phrase and the meaning of a phrase’s individual words could differ, it dismisses phrasal meaning for purposes of this case. The majority opinion repeatedly seizes on the meaning of the

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statute’s individual terms, mechanically puts them back together, and generates an interpretation of the phrase “discriminate because of sex” that is literal. See ante, at 5–9, 17, 24–26. But to reiterate, that approach to statutory interpretation is fundamentally flawed. Bedrock principles of statutory interpretation dictate that we look to ordinary meaning, not literal meaning, and that we likewise adhere to the ordinary meaning of phrases, not just the meaning of words in a phrase. And the ordinary meaning of the phrase “discriminate because of sex” does not encompass sexual orientation discrimination.

The majority opinion deflects that critique by saying that courts should base their interpretation of statutes on the text as written, not on the legislators’ subjective intentions. Ante, at 20, 23–30. Of course that is true. No one disagrees. It is “the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” Oncale v. Sundowner Offshore Services, Inc., 523 U. S. 75, 79 (1998).

But in my respectful view, the majority opinion makes a fundamental mistake by confusing ordinary meaning with subjective intentions. To briefly explain: In the early years after Title VII was enacted, some may have wondered whether Title VII’s prohibition on sex discrimination protected male employees. After all, covering male employees may not have been the intent of some who voted for the statute. Nonetheless, discrimination on the basis of sex against women and discrimination on the basis of sex against men are both understood as discrimination because of sex (back in 1964 and now) and are therefore encompassed within Title VII. Cf. id., at 78–79; see Newport News Shipbuilding & Dry Dock Co. v. EEOC, 462 U. S. 669, 682–685 (1983). So too, regardless of what the intentions of the drafters might have been, the ordinary meaning of the law demonstrates that harassing an employee because of her sex is discriminating against the employee because of her sex with respect
to the “terms, conditions, or privileges of employment,” as this Court rightly concluded. *Meritor Savings Bank, FSB v. Vinson*, 477 U. S. 57, 64 (1986) (internal quotation marks omitted).  

By contrast, this case involves sexual orientation discrimination, which has long and widely been understood as distinct from, and not a form of, sex discrimination. Until now, federal law has always reflected that common usage and recognized that distinction between sex discrimination and sexual orientation discrimination. To fire one employee because she is a woman and another employee because he is gay implicates two distinct societal concerns, reveals two distinct biases, imposes two distinct harms, and falls within two distinct statutory prohibitions.

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10 An amicus brief supporting the plaintiffs suggests that the plaintiffs' interpretive approach is supported by the interpretive approach employed by the Court in its landmark decision in *Brown v. Board of Education*, 347 U. S. 483 (1954). See Brief for Anti-Discrimination Scholars as Amici Curiae 4. That suggestion is incorrect. *Brown* is a correct decision as a matter of original public meaning. There were two analytical components of *Brown*. One issue was the meaning of “equal protection.” The Court determined that black Americans—like all Americans—have an individual equal protection right against state discrimination on the basis of race. (That point is also directly made in *Bolling v. Sharpe*, 347 U. S. 497, 499–500 (1954).) Separate but equal is not equal. The other issue was whether that racial nondiscrimination principle applied to public schools, even though public schools did not exist in any comparable form in 1868. The answer was yes. The Court applied the equal protection principle to public schools in the same way that the Court applies, for example, the First Amendment to the Internet and the Fourth Amendment to cars.

This case raises the same kind of inquiry as the first question in *Brown*. There, the question was what equal protection meant. Here, the question is what “discriminate because of sex” means. If this case raised the question whether the sex discrimination principle in Title VII applied to some category of employers unknown in 1964, such as to social media companies, it might be a case in *Brown’s* second category, akin to the question whether the racial nondiscrimination principle applied to public schools. But that is not this case.
To be sure, as Judge Lynch appropriately recognized, it is “understandable” that those seeking legal protection for gay people “search for innovative arguments to classify workplace bias against gays as a form of discrimination that is already prohibited by federal law. But the arguments advanced by the majority ignore the evident meaning of the language of Title VII, the social realities that distinguish between the kinds of biases that the statute sought to exclude from the workplace from those it did not, and the distinctive nature of anti-gay prejudice.” 883 F. 3d, at 162 (dissenting opinion).

The majority opinion insists that it is not rewriting or updating Title VII, but instead is just humbly reading the text of the statute as written. But that assertion is tough to accept. Most everyone familiar with the use of the English language in America understands that the ordinary meaning of sexual orientation discrimination is distinct from the ordinary meaning of sex discrimination. Federal law distinguishes the two. State law distinguishes the two. This Court’s cases distinguish the two. Statistics on discrimination distinguish the two. History distinguishes the two. Psychology distinguishes the two. Sociology distinguishes the two. Human resources departments all over America distinguish the two. Sports leagues distinguish the two. Political groups distinguish the two. Advocacy groups distinguish the two. Common parlance distinguishes the two. Common sense distinguishes the two.

As a result, many Americans will not buy the novel interpretation unearthed and advanced by the Court today. Many will no doubt believe that the Court has unilaterally rewritten American vocabulary and American law—a “statutory amendment courtesy of unelected judges.” Hively, 853 F. 3d, at 360 (Sykes, J., dissenting). Some will surmise that the Court succumbed to “the natural desire that beguiles judges along with other human beings into imposing their own views of goodness, truth, and justice upon others.”
I have the greatest, and unyielding, respect for my colleagues and for their good faith. But when this Court usurps the role of Congress, as it does today, the public understandably becomes confused about who the policymakers really are in our system of separated powers, and inevitably becomes cynical about the oft-repeated aspiration that judges base their decisions on law rather than on personal preference. The best way for judges to demonstrate that we are deciding cases based on the ordinary meaning of the law is to walk the walk, even in the hard cases when we might prefer a different policy outcome.

* * *

In judicially rewriting Title VII, the Court today cashiers an ongoing legislative process, at a time when a new law to prohibit sexual orientation discrimination was probably close at hand. After all, even back in 2007—a veritable lifetime ago in American attitudes about sexual orientation—the House voted 235 to 184 to prohibit sexual orientation discrimination in employment. H. R. 3685, 110th Cong., 1st Sess. In 2013, the Senate overwhelmingly approved a similar bill, 64 to 32. S. 815, 113th Cong., 1st Sess. In 2019, the House voted 236 to 173 to amend Title VII to prohibit employment discrimination on the basis of sexual orientation. H. R. 5, 116th Cong., 1st Sess. It was therefore easy to envision a day, likely just in the next few years, when the House and Senate took historic votes on a bill that would prohibit employment discrimination on the basis of sexual orientation. It was easy to picture a massive and celebratory Presidential signing ceremony in the East Room or on the South Lawn.

It is true that meaningful legislative action takes time—often too much time, especially in the unwieldy morass on
Capitol Hill. But the Constitution does not put the Legislative Branch in the “position of a television quiz show contestant so that when a given period of time has elapsed and a problem remains unsolved by them, the federal judiciary may press a buzzer and take its turn at fashioning a solution.” Rehnquist, The Notion of a Living Constitution, 54 Texas L. Rev. 693, 700 (1976). The proper role of the Judiciary in statutory interpretation cases is “to apply, not amend, the work of the People’s representatives,” even when the judges might think that “Congress should reenter the field and alter the judgments it made in the past.” Henson, 582 U. S., at ___–___ (slip op., at 10–11).

Instead of a hard-earned victory won through the democratic process, today’s victory is brought about by judicial dictate—judges latching on to a novel form of living literalism to rewrite ordinary meaning and remake American law. Under the Constitution and laws of the United States, this Court is the wrong body to change American law in that way. The Court’s ruling “comes at a great cost to representative self-government.” Hively, 853 F. 3d, at 360 (Sykes, J., dissenting). And the implications of this Court’s usurpation of the legislative process will likely reverberate in unpredictable ways for years to come.

Notwithstanding my concern about the Court’s transgression of the Constitution’s separation of powers, it is appropriate to acknowledge the important victory achieved today by gay and lesbian Americans. Millions of gay and lesbian Americans have worked hard for many decades to achieve equal treatment in fact and in law. They have exhibited extraordinary vision, tenacity, and grit—battling often steep odds in the legislative and judicial arenas, not to mention in their daily lives. They have advanced powerful policy arguments and can take pride in today’s result. Under the Constitution’s separation of powers, however, I believe that it was Congress’s role, not this Court’s, to amend Title VII. I therefore must respectfully dissent from the
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Court’s judgment.
NEW ANALYSIS SHOWS STARTLING LEVELS OF DISCRIMINATION AGAINST ASIAN AMERICAN, SOUTH ASIAN, SOUTHEAST ASIAN AND PACIFIC ISLANDER TRANSGENDER PEOPLE

Asian American, South Asian, Southeast Asian and Pacific Islander (API) transgender and gender non-conforming people face high levels of discrimination according to an analysis released today, Injustice at Every Turn: A Look at Asian American, South Asian, Southeast Asian and Pacific Islander (API) Respondents in the National Transgender Discrimination Survey.

This analysis by the National Gay and Lesbian Task Force, the National Center for Transgender Equality and the National Queer Asian Pacific Islander Alliance (NQAPIA) is a supplement to the comprehensive national study released last year, Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, which revealed widespread discrimination experienced by transgender and gender non-conforming people across the board.

A key finding of the full report was that, even given the high levels of discrimination against all transgender people in the U.S., people of color experienced heightened levels of discrimination and had worse outcomes than the sample overall. API transgender people faced the combination of anti-transgender bias with structural and interpersonal racism.

Anjali Chaudhry, who serves on the board of the National Queer Asian Pacific Islander Alliance, says:

From employment discrimination to education to health care disparities, Asian American, South Asian, Southeast Asian and Pacific Islander transgender people are suffering at high rates due to bigotry, racism and transphobia. This is unacceptable. NQAPIA is committed to bringing visibility to these inequities and to creating a world where transgender and gender non-conforming people can go about their daily lives without fear of discrimination, harassment or violence.

The new supplemental analysis was released at the 2012 NQAPIA Conference, which kicked off today in Washington, D.C. Among the findings:

- API transgender people had a high unemployment rate at 12 percent, nearly twice the rate of the general population at the time the survey was fielded (7 percent).
- API transgender people often live in extreme poverty, with 18 percent reporting a household income of less than $10,000/year. This is higher than the rate for transgender people of all races (15
percent), six times the general API population rate (3 percent) and over four times the general U.S. population rate (4 percent).

- API respondents who attended school as transgender people reported alarming rates of harassment (65 percent), physical assault (39 percent) and sexual assault (19 percent) in K-12; harassment was so severe that it led 11 percent to leave school. Six percent were also expelled due to bias.

- Nearly 5 percent of API transgender people reported being HIV-positive and an additional 10 percent reported that they did not know their status.

- Forty-four percent (44%) of API transgender and gender non-conforming people have experienced significant family acceptance. Those respondents who were accepted by their families were much less likely to face discrimination.

Darlene Nipper, deputy executive director of the National Gay and Lesbian Task Force, says:

> The numbers make clear the way that racism, anti-immigrant and anti-transgender bias all work together, often with devastating results in the lives of API transgender people. This report is a critical call to action. We must ensure that we continue to work toward an LGBT movement that prioritizes immigration, racial and economic justice.

Mara Keisling, executive director of the National Center for Transgender Equality, says:

> These findings underscore the importance of recognizing that API transgender people are a significant and too-often marginalized part of both API and LGBT communities, and one that faces substantial and sometimes unique challenges. And the broader racial justice analysis has too often excluded API’s. This research contributes to our long-held belief that policy makers must understand and act on the deep disparities that exist within people of color communities.

*Injustice at Every Turn: A Look at Asian American, South Asian, Southeast Asian and Pacific Islander (API) Respondents in the National Transgender Discrimination Survey* is available in English, Chinese (traditional), Hindi, Korean, Tagalog, Tamil and Vietnamese. [Download the reports here.](#)

For the full *Injustice at Every Turn* report, [go here.](#)

**Share:**

Injustice at Every Turn

A Report of the National Transgender Discrimination Survey

Lead authors in alphabetical order:
Jaime M. Grant, Ph.D.
Lisa A. Mottet, J.D.
Justin Tanis, D.Min.

with Jack Harrison
Jody L. Herman, Ph.D.
and Mara Keisling
INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY

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About the National Center for Transgender Equality

The National Center for Transgender Equality is a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on national issues of importance to transgender people. By empowering transgender people and our allies to educate and influence policymakers and others, NCTE facilitates a strong and clear voice for transgender equality in our nation’s capital and around the country.

About the National Gay and Lesbian Task Force

The mission of the National Gay and Lesbian Task Force is to build the grassroots power of the lesbian, gay, bisexual and transgender (LGBT) community. We do this by training activists, equipping state and local organizations with the skills needed to organize broad-based campaigns to defeat anti-LGBT referenda and advance pro-LGBT legislation, and building the organizational capacity of our movement. Our Policy Institute, the movement’s premier think tank, provides research and policy analysis to support the struggle for complete equality and to counter right-wing lies. As part of a broader social justice movement, we work to create a nation that respects the diversity of human expression and identity and creates opportunity for all.

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This study was undertaken with the dogged commitment of the National Center for Transgender Equality and the National Gay and Lesbian Task Force to bring the full extent of discrimination against transgender and gender non-conforming people to light. Executive directors Mara Keisling and Rea Carey committed considerable staff and general operating resources to this project over the past three years to create the original survey instrument, collect the data, analyze thousands of responses and, finally, present our findings here.

Key Task Force and NCTE staff, as well as our data analyst, are credited on the masthead of this report but many former staff, pivotal volunteers and visiting fellows put their unflagging effort and best thinking to this enormous task.

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A number of Vaid Fellows at the Task Force made crucial contributions to this work in the data cleaning, field work and early analytical stages of this report including Morgan Goode, Amanda Morgan, Robert Valadéz, Stephen Wiseman, Tey Meadow and Chloe Mirzayi. Morgan’s work interfacing with staff at homeless shelters, health clinics and other direct service programs serving transgender and gender non-conforming people greatly increased participation in the study by transgender people often shut out of research projects.

Transgender community leaders made a major contribution to our thinking in developing the survey and field work, including Marsha Botzer, Moonhawk River Stone, M.S., LMHC and Scout, Ph.D. All of these leaders made important suggestions in the development of the questionnaire and our data collection process. We are grateful to Marsha, as the Task Force board chair, and Hawk, a member of the Task Force board, for championing this work institutionally.

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This study has obviously been a labor of love by a community of dedicated advocates, and we are honored to be able to offer the collective fruits of our labor to the community.
EXECUTIVE SUMMARY

This study brings to light what is both patently obvious and far too often dismissed from the human rights agenda. Transgender and gender non-conforming people face injustice at every turn: in childhood homes, in school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the grocery store, the hotel front desk, in doctors’ offices and emergency rooms, before judges and at the hands of landlords, police officers, health care workers and other service providers.

The National Gay and Lesbian Task Force and the National Center for Transgender Equality are grateful to each of the 6,450 transgender and gender non-conforming study participants who took the time and energy to answer questions about the depth and breadth of injustice in their lives. A diverse set of people, from all 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands, completed online or paper surveys. This tremendous gift has created the first 360-degree picture of discrimination against transgender and gender non-conforming people in the U.S. and provides critical data points for policymakers, community activists and legal advocates to confront the appalling realities documented here and press the case for equity and justice.

KEY FINDINGS

Hundreds of dramatic findings on the impact of anti-transgender bias are presented in this report. In many cases, a series of bias-related events lead to insurmountable challenges and devastating outcomes for study participants. Several meta-findings are worth noting from the outset:

- Discrimination was pervasive throughout the entire sample, yet the combination of anti-transgender bias and persistent, structural racism was especially devastating. People of color in general fare worse than white participants across the board, with African American transgender respondents faring worse than all others in many areas examined.

- Respondents lived in extreme poverty. Our sample was nearly four times more likely to have a household income of less than $10,000/year compared to the general population.¹

- A staggering 41% of respondents reported attempting suicide compared to 1.6% of the general population,² with rates rising for those who lost a job due to bias (55%), were harassed/bullied in school (51%), had low household income, or were the victim of physical assault (61%) or sexual assault (64%).

![Household Incomes of Respondents](image-url)
HARASSMENT AND DISCRIMINATION IN EDUCATION

- Those who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (78%), physical assault (35%) and sexual violence (12%); harassment was so severe that it led almost one-sixth (15%) to leave a school in K-12 settings or in higher education.

- Respondents who have been harassed and abused by teachers in K-12 settings showed dramatically worse health and other outcomes than those who did not experience such abuse. Peer harassment and abuse also had highly damaging effects.

EMPLOYMENT DISCRIMINATION AND ECONOMIC INSECURITY

- Double the rate of unemployment: Survey respondents experienced unemployment at twice the rate of the general population at the time of the survey, with rates for people of color up to four times the national unemployment rate.

- Widespread mistreatment at work: Ninety percent (90%) of those surveyed reported experiencing harassment, mistreatment or discrimination on the job or took actions like hiding who they are to avoid it.

- Forty-seven percent (47%) said they had experienced an adverse job outcome, such as being fired, not hired or denied a promotion because of being transgender or gender non-conforming.

- Over one-quarter (26%) reported that they had lost a job due to being transgender or gender non-conforming and 50% were harassed.

- Large majorities attempted to avoid discrimination by hiding their gender or gender transition (71%) or delaying their gender transition (57%).

- The vast majority (78%) of those who transitioned from one gender to the other reported that they felt more comfortable at work and their job performance improved, despite high levels of mistreatment.

- Overall, 16% said they had been compelled to work in the underground economy for income (such as doing sex work or selling drugs).

- Respondents who were currently unemployed experienced debilitating negative outcomes, including nearly double the rate of working in the underground economy (such as doing sex work or selling drugs), twice the homelessness, 85% more incarceration, and more negative health outcomes, such as more than double the HIV infection rate and nearly double the rate of current drinking or drug misuse to cope with mistreatment, compared to those who were employed.

- Respondents who had lost a job due to bias also experienced ruinous consequences such as four times the rate of homelessness, 70% more current drinking or misuse of drugs to cope with mistreatment, 85% more incarceration, more than double the rate working in the underground economy, and more than double the HIV infection rate, compared to those who did not lose a job due to bias.
HOUSING DISCRIMINATION AND HOMELESSNESS

- Respondents reported various forms of direct housing discrimination — 19% reported having been refused a home or apartment and 11% reported being evicted because of their gender identity/expression.

- One-fifth (19%) reported experiencing homelessness at some point in their lives because they were transgender or gender non-conforming; the majority of those trying to access a homeless shelter were harassed by shelter staff or residents (55%), 29% were turned away altogether, and 22% were sexually assaulted by residents or staff.

- Almost 2% of respondents were currently homeless, which is almost twice the rate of the general population (1%).

- Respondents reported less than half the national rate of home ownership: 32% reported owning their home compared to 67% of the general population.

- Respondents who have experienced homelessness were highly vulnerable to mistreatment in public settings, police abuse and negative health outcomes.
DISCRIMINATION IN PUBLIC ACCOMMODATIONS

- Fifty-three percent (53%) of respondents reported being verbally harassed or disrespected in a place of public accommodation, including hotels, restaurants, buses, airports and government agencies.
- Respondents experienced widespread abuse in the public sector, and were often abused at the hands of “helping” professionals and government officials. One fifth (22%) were denied equal treatment by a government agency or official; 29% reported police harassment or disrespect; and 12% had been denied equal treatment or harassed by judges or court officials.

Experiences of Discrimination and Violence in Public Accommodations

<table>
<thead>
<tr>
<th>Location</th>
<th>Denied Equal Treatment</th>
<th>Harassed or Disrespected</th>
<th>Physically Assaulted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Store</td>
<td>32%</td>
<td>37%</td>
<td>3%</td>
</tr>
<tr>
<td>Police Officer</td>
<td>20%</td>
<td>29%</td>
<td>6%</td>
</tr>
<tr>
<td>Doctor’s Office or Hospital</td>
<td>24%</td>
<td>25%</td>
<td>2%</td>
</tr>
<tr>
<td>Hotel or Restaurant</td>
<td>19%</td>
<td>25%</td>
<td>2%</td>
</tr>
<tr>
<td>Government Agency/Official</td>
<td>22%</td>
<td>22%</td>
<td>1%</td>
</tr>
<tr>
<td>Bus, Train, or Taxi</td>
<td>9%</td>
<td>22%</td>
<td>4%</td>
</tr>
<tr>
<td>Emergency Room</td>
<td>13%</td>
<td>16%</td>
<td>1%</td>
</tr>
<tr>
<td>Airplane or Airport Staff/TSA</td>
<td>11%</td>
<td>17%</td>
<td>1%</td>
</tr>
<tr>
<td>Judge or Court Official</td>
<td>12%</td>
<td>12%</td>
<td>1%</td>
</tr>
<tr>
<td>Mental Health Clinic</td>
<td>11%</td>
<td>12%</td>
<td>1%</td>
</tr>
<tr>
<td>Legal Services Clinic</td>
<td>8%</td>
<td>6%</td>
<td>1%</td>
</tr>
<tr>
<td>Ambulance or EMT</td>
<td>5%</td>
<td>7%</td>
<td>1%</td>
</tr>
<tr>
<td>Domestic Violence Shelter/Program</td>
<td>6%</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>Rape Crisis Center</td>
<td>5%</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>Drug Treatment Program</td>
<td>3%</td>
<td>4%</td>
<td>1%</td>
</tr>
</tbody>
</table>

BARRIERS TO RECEIVING UPDATED ID DOCUMENTS

- Of those who have transitioned gender, only one-fifth (21%) have been able to update all of their IDs and records with their new gender. One-third (33%) of those who had transitioned had updated none of their IDs/records.
- Only 59% reported updating the gender on their driver’s license/state ID, meaning 41% live without ID that matches their gender identity.
- Forty percent (40%) of those who presented ID (when it was required in the ordinary course of life) that did not match their gender identity/expression reported being harassed, 3% reported being attacked or assaulted, and 15% reported being asked to leave.
ABUSE BY POLICE AND IN PRISON

• One-fifth (22%) of respondents who have interacted with police reported harassment by police, with much higher rates reported by people of color.

• Almost half of the respondents (46%) reported being uncomfortable seeking police assistance.

• Physical and sexual assault in jail/prison is a serious problem: 16% of respondents who had been to jail or prison reported being physically assaulted and 15% reported being sexually assaulted.

DISCRIMINATION IN HEALTH CARE AND POOR HEALTH OUTCOMES

• Health outcomes for all categories of respondents show the appalling effects of social and economic marginalization, including much higher rates of HIV infection, smoking, drug and alcohol use and suicide attempts than the general population.

• Refusal of care: 19% of our sample reported being refused medical care due to their transgender or gender non-conforming status, with even higher numbers among people of color in the survey.

• Uninformed doctors: 50% of the sample reported having to teach their medical providers about transgender care.

• High HIV rates: Respondents reported over four times the national average of HIV infection, with rates higher among transgender people of color.

• Postponed care: Survey participants reported that when they were sick or injured, many postponed medical care due to discrimination (28%) or inability to afford it (48%).
FAMILY ACCEPTANCE OF GREAT IMPORTANCE

- Forty-three percent (43%) maintained most of their family bonds, while 57% experienced significant family rejection.
- In the face of extensive institutional discrimination, family acceptance had a protective effect against many threats to well-being including health risks such as HIV infection and suicide. Families were more likely to remain together and provide support for transgender and gender non-conforming family members than stereotypes suggest.

RESILIENCE

Despite all of the harassment, mistreatment, discrimination and violence faced by respondents, study participants also demonstrated determination, resourcefulness and perseverance:

- Although the survey identified major structural barriers to obtaining health care, 76% of transgender respondents have been able to receive hormone therapy, indicating a determination to endure the abuse or search out sensitive medical providers.
- Despite high levels of harassment, bullying and violence in school, many respondents were able to obtain an education by returning to school. Although fewer 18 to 24-year-olds were currently in school compared to the general population, respondents returned to school in large numbers at later ages, with 22% of those aged 25-44 currently in school (compared to 7% of the general population).
- Over three-fourths (78%) reported feeling more comfortable at work and their performance improving after transitioning, despite reporting nearly the same rates of harassment at work as the overall sample.
- Of the 26% who reported losing a job due to bias, 58% reported being currently employed and of the 19% who reported facing housing discrimination in the form of a denial of a home/apartment, 94% reported being currently housed.
**CUMULATIVE DISCRIMINATION**

Sixty-three percent (63%) of our participants had experienced a serious act of discrimination — events that would have a major impact on a person’s quality of life and ability to sustain themselves financially or emotionally. These events included the following:

- Lost job due to bias
- Eviction due to bias
- School bullying/harassment so severe the respondent had to drop out
- Teacher bullying
- Physical assault due to bias
- Sexual assault due to bias
- Homelessness because of gender identity/expression
- Lost relationship with partner or children due to gender identity/expression
- Denial of medical service due to bias
- Incarceration due to gender identity/expression

Almost a quarter (23%) of our respondents experienced a catastrophic level of discrimination — having been impacted by at least three of the above major life-disrupting events due to bias. These compounding acts of discrimination — due to the prejudice of others or lack of protective laws — exponentially increase the difficulty of bouncing back and establishing a stable economic and home life.

**CONCLUSION**

It is part of social and legal convention in the United States to discriminate against, ridicule, and abuse transgender and gender non-conforming people within foundational institutions such as the family, schools, the workplace and health care settings, every day. Instead of recognizing that the moral failure lies in society’s unwillingness to embrace different gender identities and expressions, society blames transgender and gender non-conforming people for bringing the discrimination and violence on themselves.

Nearly every system and institution in the United States, both large and small, from local to national, is implicated by this data. Medical providers and health systems, government agencies, families, businesses and employers, schools and colleges, police departments, jail and prison systems — each of these systems and institutions is failing daily in its obligation to serve transgender and gender non-conforming people, instead subjecting them to mistreatment ranging from commonplace disrespect to outright violence, abuse and the denial of human dignity. The consequences of these widespread injustices are human and real, ranging from unemployment and homelessness to illness and death.

This report is a call to action for all of us, especially for those who pass laws and set policies and practices, whose action or continued inaction will make a significant difference between the current climate of discrimination and violence and a world of freedom and equality. And everyone else, from those who drive buses or teach our children to those who sit on the judicial bench or write prescriptions, must also take up the call for human rights for transgender and gender non-conforming people, and confront this pattern of abuse and injustice.

We must accept nothing less than a complete elimination of this pervasive inhumanity; we must work continuously and strenuously together for justice.
Endnotes


4 See note 3. “Mistreatment” includes harassment and bullying, physical or sexual assault, discrimination, or expulsion from school at any level based on gender identity/expression.

5 Seven percent (7%) was the rounded weighted average unemployment rate for the general population during the six months the survey was in the field, based on which month questionnaires were completed. See seasonally unadjusted monthly unemployment rates for September 2008 through February 2009. U.S. Department of Labor, Bureau of Labor Statistics, “The Employment Situation: September 2008,” (2008): http://www.bls.gov/news.release/archives/empsit_10032008.htm.

6 1.7% were currently homeless in our sample compared to 1% in the general population. National Coalition for the Homeless, “How Many People Experience Homelessness?” (July 2009): http://www.nationalhomeless.org/factsheets/How_Many.html.


8 The overall sample reported an HIV infection rate of 2.6% compared to .6% in the general population. United Nations Programme on HIV/AIDS (UNAIDS) and World Health Organization (WHO), “2007 AIDS Epidemic Update” (2007): http://data.unaids.org/pub/EPISlides/2007/2007epiupdate_en.pdf. People of color in the sample reported substantially higher rates: 24.9% of African-Americans, 10.9% of Latino/as, 7.0% of American Indians, and 3.7% of Asian-Americans in the study reported being HIV positive.


10 See note 9.
Introduction

Every day, transgender and gender non-conforming people bear the brunt of social and economic marginalization due to discrimination based on their gender identity or expression. Advocates confront this reality regularly working with transgender people who have lost housing, been fired from jobs, experienced mistreatment and violence, or been unable to access the health care they need. Too often, policymakers, service providers, the media and society at large have dismissed or discounted the needs of transgender and gender non-conforming people, and a lack of hard data on the scope of anti-transgender discrimination has hampered the work to make substantive policy changes to address these needs.

In 2008, The National Center for Transgender Equality and the National Gay and Lesbian Task Force formed a ground-breaking research partnership to address this problem, launching the first comprehensive national transgender discrimination study. The data collected brings into clear focus the pervasiveness and overwhelming collective weight of discrimination that transgender and gender non-conforming people endure.

This report provides information on discrimination in every major area of life — including housing, employment, health and health care, education, public accommodation, family life, criminal justice and government identity documents. In virtually every setting, the data underscores the urgent need for policymakers and community leaders to change their business-as-usual approach and confront the devastating consequences of anti-transgender bias.

Sixty-three percent (63%) of our participants experienced a serious act of discrimination—events that would have a major impact on a person’s quality of life and ability to sustain themselves financially or emotionally. Participants reported that they had faced:

- Loss of job due to bias
- Eviction due to bias
- School bullying/harassment so bad the respondent had to drop out
- Teacher bullying
- Physical assault due to bias
- Sexual assault due to bias
- Homelessness because of gender identity/expression
- Loss of relationship with partner or children due to gender identity/expression
- Denial of medical service due to bias
- Incarceration due to gender identity/expression

Each of these can be devastating and have long-term consequences, as we will see in this report.

Almost a quarter (23%) of our respondents experienced a catastrophic level of discrimination, having been impacted by at least three of the above major life-disrupting events due to bias. Imagine losing your home, your job and your children, or being bullied by a teacher, incarcerated because of your gender identity and sexually assaulted. These compounding acts of discrimination—due to the prejudice of others or unjust laws—exponentially increase the difficulty of bouncing back and re-establishing a stable economic and home life.
While these statistics are often devastating, it is our hope that they motivate people to take action, rather than simply despair. The gravity of these findings compels each of us to confront anti-transgender bias in our communities and rebuild a foundation of health, social and economic security for transgender and gender non-conforming people in our communities. We do believe that the situation is improving and look forward to future studies that will enable us to look at discrimination over time.

All of us — whether we are human resources professionals, nurses or doctors, police officers or judges, insurance company managers, landlords or restaurant managers, clerks or EMTs, teachers or principals, friends or community advocates — must take responsibility for the pervasive civil rights violations and callous disregard for basic humanity recorded and analyzed here. It is through the choices that each of us make, and the institutional policies we reject or uphold that either recreate or confront the outrageous discrimination study participants endure.

We present our findings, having just scratched the surface of this extensive data source. We encourage advocates and researchers to consider our findings with an eye toward much-needed future research. We expect these data to answer many questions about the lives of transgender people and the needs of this community and to provoke additional inquiry in years to come. To this end, we plan to provide the data set to additional researchers to perform deeper or different analysis.

“I was kicked out of my house and out of college when I was 18. I became a street hooker, thief, drug abuser, and drug dealer. When I reflect back, it’s a miracle that I survived. I had so many close calls. I could have been murdered, committed suicide, contracted AIDS, or fatally overdosed.”

Roadmap for this Report

Immediately after this chapter is Methodology, then we provide chapters based on major areas of life:

- Education
- Employment
- Health
- Family Life
- Housing and Homelessness
- Public Accommodations
- Identity Documents
- Police and Incarceration

Following these, we have shorter sections on two subjects: the particular experiences of cross-dressers and the policy priorities as defined by our respondents. We end with a Conclusion chapter.

There are three Appendices: Appendix A is a glossary of terms used in this report, Appendix B contains recommendations for future researchers who seek to do similar studies or ask similar questions of respondents, and Appendix C is the original survey instrument (paper version). We plan to provide the dataset to additional researchers to perform deeper or different analysis.
METHODOLOGY

The National Transgender Discrimination Survey is the most extensive survey of transgender discrimination ever undertaken. Over eight months, a team of community-based advocates, transgender leaders, researchers, lawyers and LGBT policy experts came together to create an original survey instrument. In the end, over 7,500 people responded to the 70-question survey. Over four months, our research team fielded its 70-question online survey through direct contacts with more than 800 transgender-led or transgender-serving community-based organizations in the U.S. We also contacted possible participants through 150 active online community listserves. The vast majority of respondents took the survey online, through a URL established at Pennsylvania State University.

Additionally, we distributed 2,000 paper surveys to organizations serving hard-to-reach populations — including rural, homeless, and low-income transgender and gender non-conforming people, conducting phone follow-up for three months. With only $3,000 in funding for outreach provided by the Network for LGBT Health Equity, formerly the Network for LGBT Tobacco Control, we decided to pay stipends to workers in homeless shelters, legal aid clinics, mobile health clinics and other service settings to host “survey parties” to encourage respondents whose economic vulnerability, housing insecurity, or literacy level might pose particular barriers to participation. This effort resulted in the inclusion of approximately 500 paper surveys in the final sample.

Both the paper and online surveys were available in both English and Spanish. For additional information about the questionnaire itself, please see the Survey Instrument chapter.

The final study sample includes 6,456 valid respondents from all 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands. Our geographic distribution generally mirrors that of the general U.S. population. For more information, see the tables at the end of this chapter or the Portrait chapter.

Our Respondents

At the outset, we had to determine if the population we sought for the survey was transgender people only, or transgender and gender non-conforming people. We ultimately chose to include both.

Both of our organizations define “transgender” broadly to include those who transition from one gender to another (transsexuals), and those who may not, including genderqueer people, cross-dressers, the androgynous, and those whose gender non-conformity is a part of their identity. Because the term “transgender” is understood in various ways that may or may not include these groups of people, we chose to use broader gender non-conforming language to ensure broad participation in the survey.

Furthermore, gender non-conforming people, especially those who are also lesbian, gay or bisexual, found themselves at the heart of the debate over the inclusion of transgender people and “gender identity” in the Employment Non-Discrimination Act in 2007. Information about their experiences of discrimination could better shape debates like these and shed light on the relationship between gender identity/expression and discrimination.

Consequently, we decided to invite the broader range of people to respond to the survey, and then, during cleaning, eliminate those who were neither transgender nor gender non-conforming; this process is described further in the “Cleaning the Data” section.

In the Portrait chapter, and in our discussion of Questions 3 and 4 in Appendix B, we describe more about the results of the choice to survey both transgender and gender non-conforming people (75% of our sample fell into the transgender category), as well as how we developed the categories of “transgender” and “gender non-conforming.” Throughout this report, we attempted to give both transgender and gender non-conforming results separately so that those who are interested in one of the groups could use more specific data.
Developing the Survey Instrument

Over eight months, a team of highly trained social science and health researchers, grassroots and national transgender rights advocates, expert lawyers, statisticians, and LGBT movement leaders worked together to craft this questionnaire. The mix of trained researchers, movement advocates and end-users at the forefront of policy change was powerful.

We based survey questions — their inclusion, their framing, relevant terms, and literacy level — on the experiences of transgender and gender non-conforming people in the room, and others in our lives, our families and our communities. By mining the stories of discrimination we had already encountered as advocates, researchers, family members and grassroots organizers, we helped design an instrument that was relevant and user-friendly, and ultimately yielded the largest sample of transgender experience ever gathered.

There were a few places where wording of questions could have been improved, which we realized during the data analysis phase of this project. Please see Appendix B, Survey Instrument—Issues and Analysis, for guidance for future researchers who seek to inquire about similar topics.

Length

The survey contained 70 questions, although often a single “question” was in reality a combination of many questions (for example, Question 4 asks for responses to 15 different terms). Reports from the field varied widely about the time it took to complete the survey. Some reported taking the survey in 20 minutes on a personal computer; while others who accessed the survey through health or homeless services settings and took it with the assistance of outreach workers often took an hour or longer. Before the survey data collection was started, some experts expressed concern that respondents who had a high school diploma or less would be unable to complete such a lengthy questionnaire, but our final sample included 806 respondents at that educational level.

The team believes that the period in which we fielded the survey — about a year after the 2007 removal of gender identity from proposed federal legislation that would have prohibited discrimination based on sexual orientation in the workplace — was a factor in the depth and breadth of our sample. This was a historic moment when gender non-conforming and transgender people felt a particular urgency to tell their stories, and to have their experiences accounted for in the national conversation on workplace discrimination and employment.

Many questions we wanted to ask were deleted in the end so that we could keep the survey at 70 questions. We understood length to be a risk.1 We were hopeful that our two national organizations maintained a level of credibility in the community that would generate a strong response and that our affiliation with an academic institution, Pennsylvania State University, would also boost completion rates.

Distribution of Online and Paper Surveys

Before starting survey field work, we developed a list of about 800 active, transgender-specific or trans-related organizations and about 150 listserves in the United States. We attempted to reach every one by phone or e-mail, asking the organizations to e-mail their constituents or members directly with the URL for the questionnaire upon release and to run articles and free ads about the survey in their newsletters.

During our first two weeks of field work, study team members called hundreds of colleagues in LGBT organizations to ask for their help in spreading the word about the survey, and encouraging appropriate contacts to take the survey. We made a sustained effort to focus on LGBT people of color, rural and homeless/health service organizations so that our study would not neglect the respondents most often left out of critical research on our communities.

During our six-month data gathering effort, we dedicated a half-time staff person to do direct outreach to rural-focused organizations and listserves and those serving transgender people who access community resources via housing, health and legal programs. In some cases, volunteers, some of whom were given a modest stipend, acted as survey assistants at clinics or small “survey parties” through local programs, delivering and collecting paper surveys. We did not use incentives for respondents to complete the survey, although food was served at some group gatherings.

Our final sample consisted of approximately 6,000 online surveys and 500 paper surveys. More research or analysis would need to be done on the sample to determine whether we may have avoided the typical online bias by collecting paper questionnaires in addition to online data collection.2

While we did our best to make the sample as representative as possible of transgender and gender non-conforming people in the U.S., it is not appropriate to generalize the findings in this study to all transgender and gender non-conforming people because it is a non-random sample. A truly random sample of transgender...
and gender non-conforming people is not currently possible, as
government actors that have the resources for random sampling
have failed to include questions on transgender identity in their
population-based research.

**Language and Translation**

We attempted to make the language of the survey questionnaire
accessible to as many participants as possible by maintaining an
appropriately accessible literacy level without compromising the
meaning of our questions. For example, we often omitted medical
terminology that is not commonly understood while putting
technical terms in parentheses for those who were familiar with
them.

Often, we also had to choose between words that were
clearer versus those that matched the sensitivities of the
various communities the survey was intended to speak to. For
example, we avoided using the terms “illegal,” “criminal,” and
“prostitution” in Question 29 because of implicit value judgments
in those terms. Instead we opted for “street economy” and “sex
work,” which may have reassured some respondents but puzzled
others. We found striking the right balance on language use to be
a challenge.

Trained volunteers, including a company providing pro bono
services, translated the survey into Spanish; we did not have
funding to translate into additional languages. Gendered terms
posed a major challenge since they are often linguistically and
culturally specific and don't always translate easily or precisely.

**Hosting and Institutional Review**

The questionnaire was hosted online by Pennsylvania State
University through our partnership with Professor Susan (Sue)
Rankin. The technological aspects of administering the online
survey were handled by Pennsylvania State University IT
professionals and her graduate students, who did an excellent
job programming and safeguarding our data. Paper surveys were
hand-entered into the system after the online survey closed.

It was important to us that our data go through a university-
based Institutional Review Board (IRB) process, which ensures
confidentiality and humane treatment of survey participants, so
that our data could be published in and cited in peer-reviewed
journals. Although this did add extra steps and time to our
process, we believe it was well worth it.

Going through institutional review also required that we start
the questionnaire with an instruction sheet that told participants
their rights and recourses as participants, as well as a variety of
other information. The language in the instruction sheet met
Pennsylvania State’s standards for IRB instructions and was at a
higher literacy level than the remainder of the survey. Accordingly,
we worried that this would prove to be an intimidating first hurdle
for some respondents. That instruction sheet is available in full in
Appendix C: Survey Instrument.

**Cleaning the Data**

The next step was to clean the data, which is the process of
eliminating those questionnaires that did not belong in the
sample, as well as recoding written responses into categories
when appropriate.

First, we eliminated respondents whose answers indicated that
they were not taking the survey in earnest or were answering
questions illogically, such as by strongly agreeing with each term
in Question 4.

Second, we eliminated from our data set those respondents who
indicated through their answers to Questions 1-4 that they were
not actually transgender or gender non-conforming. There were
a small group of people who were eliminated according to the
following rubric: If they were born as one gender (Question 2),
and still identified as that gender today (Question 3), we looked
to see if they identified with the terms in Question 4. If they did
not identify with these terms and reported that people did not
know they were gender non-conforming (Question 5) and they
did not tell people (Question 6), we removed them from the
sample.

Third, throughout the survey there were open-ended questions,
often “other, please specify ________,” to which respondents were
given the opportunity to write their own answer. Part of our
cleaning process involved examining these written responses. In
some instances we were able to place more specific responses into
the listed answer choices.

Fourth, we dealt with incompletes, duplicates, and those that did
not consent. There were 31 duplicates that we removed from the
sample. We removed records if the respondent stopped before
answering Question 5, and we removed those who did not
consent.

Taken together, our cleaning process reduced our sample size
from an initial set of 7,521 respondents to 6,456 respondents.
Data Analysis and Presentation of Findings

After being cleaned, these data were analyzed to tabulate the sample’s responses to each question presented in the survey instrument. Answers to individual survey questions were then broken down by various demographic characteristics to explore differences that may exist in the experiences of survey respondents based on such factors as race, income, gender and educational attainment. Further analysis was completed to see how some subgroups differed based on their answers to non-demographic questions, such as questions about drug use, suicide attempts and HIV status.

Not all respondents answered each question presented in the survey, either because they skipped the question or because the question did not apply to them. Tabulations of data were completed for those who completed the question being analyzed, with the further limitation that generally only those respondents for whom the question was applicable were included in the tabulation. For instance, when analyzing respondents’ experiences while in jail or prison, the analysis was limited to those who answered the questions and also reported they had been sent to jail or prison.

Our findings are generally presented in the form of percentages, with frequencies presented where relevant. Throughout this report, we have rounded these percentages to whole numbers. We did not round HIV rates, which are provided in two decimals for more exact comparisons with existing research on the general population, and did not round in a few other places where greater precision was necessary due to small size.

When the respondents were segmented, occasionally the sample size became either too small to report on or too small for reliable analysis. When the n is under 15, we do not report the data and when the n is over 15 but under 30, we report the data enclosed in parentheses and make a note of it.

General population data are provided in the report as a way to roughly gauge how our sample differs from the U.S. population in terms of demographics and a variety of outcomes our survey sought to measure.

We did not employ the use of statistical testing to establish the statistical significance of the differences we found between various respondent subsets or between our sample and the general population. Though our sample was not randomly selected, future researchers may wish to conduct tests with this sample as a way to crudely measure the statistical significance of differences and relationships among subsets in the sample.

Throughout this report, we occasionally use terms such as “correlate,” “significant,” and “compare” that trained researchers might interpret to mean that we ran statistical tests; we did not, as explained above, and are using these terms in the way that a lay person uses such terminology.

Throughout the report, we include quotes from respondents who wrote about their experiences of acceptance and discrimination in response to an open-ended question. We have edited these responses for grammar, spelling, brevity, and clarity, as well as to preserve their confidentiality.
Demographic Composition of the Sample

(Some readers may be more interested in these data as it is presented in the next chapter:
A Portrait of Transgender and Gender Non-Conforming People.)

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
<th>#</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1. Identify as Transgender</td>
<td>Yes</td>
<td>6436</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>6436</td>
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</tr>
<tr>
<td>Q2. Sex Assigned at Birth</td>
<td>Male</td>
<td>3870</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>2566</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>6436</td>
<td>100</td>
</tr>
<tr>
<td>Q3. Primary Gender Identity Today</td>
<td>Male/Man</td>
<td>1687</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>Female/Woman</td>
<td>2608</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>Part time as one gender, part time as another</td>
<td>1275</td>
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<tr>
<td></td>
<td>A gender not listed here, please specify</td>
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<td>13</td>
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<td></td>
<td>Total</td>
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</tr>
<tr>
<td>Q4. Identify with the Word Transgender</td>
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<tr>
<td></td>
<td>Somewhat</td>
<td>1601</td>
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</tr>
<tr>
<td></td>
<td>Strongly</td>
<td>4039</td>
<td>65</td>
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<tr>
<td>Q10. Region</td>
<td>New England</td>
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<tr>
<td>(see Portrait chapter for the composition of the regions)</td>
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<tr>
<td></td>
<td>South</td>
<td>1120</td>
<td>18</td>
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<tr>
<td></td>
<td>Mid-West</td>
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</tr>
<tr>
<td></td>
<td>West (Not California)</td>
<td>1035</td>
<td>17</td>
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<tr>
<td></td>
<td>California</td>
<td>906</td>
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</tr>
<tr>
<td></td>
<td>Total</td>
<td>6207</td>
<td>100</td>
</tr>
<tr>
<td>Q47. Disability</td>
<td>Yes</td>
<td>1972</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>4401</td>
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<td></td>
<td>Total</td>
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<td>Q49. HIV Status</td>
<td>HIV negative</td>
<td>5667</td>
<td>89</td>
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<tr>
<td></td>
<td>HIV positive</td>
<td>168</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Don't know</td>
<td>536</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>6371</td>
<td>100</td>
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<td>Question</td>
<td>Response</td>
<td>#</td>
<td>%</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>---------------------------------</td>
<td>-----</td>
<td>----</td>
</tr>
<tr>
<td>Q11. Race (Multiple Answers Permitted)</td>
<td>White</td>
<td>5372</td>
<td>83</td>
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<tr>
<td></td>
<td>Latino/a</td>
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<tr>
<td></td>
<td>Black</td>
<td>389</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>American Indian</td>
<td>368</td>
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</tr>
<tr>
<td></td>
<td>Asian</td>
<td>213</td>
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</tr>
<tr>
<td></td>
<td>Arab or Middle Eastern</td>
<td>45</td>
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</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Multiple responses were permitted</td>
<td></td>
<td>&gt;100%</td>
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<tr>
<td>Q11. Race recoded</td>
<td>American Indian only</td>
<td>75</td>
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<tr>
<td></td>
<td>Asian only</td>
<td>137</td>
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<tr>
<td></td>
<td>Black only</td>
<td>290</td>
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<tr>
<td></td>
<td>Hispanic only</td>
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<td>5</td>
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<tr>
<td></td>
<td>White only</td>
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<td></td>
<td>Multiracial and other</td>
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<td></td>
<td>Total</td>
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<td>Multiple responses were permitted</td>
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<td>&gt;100%</td>
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<td>Q12. Education</td>
<td>Less than high school</td>
<td>53</td>
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<tr>
<td></td>
<td>Some high school</td>
<td>213</td>
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<tr>
<td></td>
<td>High school graduate</td>
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<td>8</td>
</tr>
<tr>
<td></td>
<td>Some college &lt;1 year</td>
<td>506</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Technical school</td>
<td>310</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>&gt;1 years of college, no degree</td>
<td>1263</td>
<td>20</td>
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<tr>
<td></td>
<td>Associate degree</td>
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<tr>
<td></td>
<td>Bachelor's degree</td>
<td>1745</td>
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<tr>
<td></td>
<td>Master's degree</td>
<td>859</td>
<td>13</td>
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<tr>
<td></td>
<td>Professional degree (e.g. MD, JD)</td>
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<td></td>
<td>Doctorate degree</td>
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<td>Q38. Did You Ever Attend School as a Trans or GNC Person</td>
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<td></td>
<td>No</td>
<td>3262</td>
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<td>Q25. Work Status</td>
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<tr>
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<td>Part-time</td>
<td>1012</td>
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<td>Multiple Jobs</td>
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<td>Self-employed/Owner</td>
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<td>Self-employed/ Contractor</td>
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<tr>
<td></td>
<td>Unemployed/Looking</td>
<td>700</td>
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<tr>
<td></td>
<td>Unemployed/Not looking</td>
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<td></td>
<td>Disability</td>
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<td></td>
<td>Student</td>
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<td>Retired</td>
<td>450</td>
<td>7</td>
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<td></td>
<td>Homemaker</td>
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<tr>
<td></td>
<td>Other, specify</td>
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<td></td>
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<td>Multiple responses were permitted</td>
<td></td>
<td>&gt;100%</td>
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<td>Question</td>
<td>Response</td>
<td>#</td>
<td>%</td>
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<td>Q13. Household Income</td>
<td>Less than $10,000</td>
<td>944</td>
<td>15</td>
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<tr>
<td></td>
<td>$10,000 to $19,999</td>
<td>754</td>
<td>12</td>
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<tr>
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<td>$20,000 to $29,999</td>
<td>731</td>
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<td></td>
<td>$30,000 to $39,999</td>
<td>712</td>
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<td>$40,000 to $49,999</td>
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<td>9</td>
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<tr>
<td></td>
<td>$50,000 to $59,999</td>
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<td></td>
<td>$60,000 to $69,999</td>
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<td>$70,000 to $79,999</td>
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<td></td>
<td>$80,000 to $89,999</td>
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<td>$90,000 to $99,999</td>
<td>234</td>
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</tr>
<tr>
<td></td>
<td>$100K to $149,999</td>
<td>539</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>$150K to $199,999</td>
<td>163</td>
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</tr>
<tr>
<td></td>
<td>$200K to $250,000</td>
<td>74</td>
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<td></td>
<td>More than $250,000</td>
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<tr>
<td>Q16. Relationship Status</td>
<td>Single</td>
<td>2286</td>
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<tr>
<td></td>
<td>Partnered</td>
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<td>27</td>
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<td></td>
<td>Civil union</td>
<td>72</td>
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<tr>
<td></td>
<td>Married</td>
<td>1394</td>
<td>22</td>
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<tr>
<td></td>
<td>Separated</td>
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<tr>
<td></td>
<td>Divorced</td>
<td>690</td>
<td>11</td>
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<tr>
<td></td>
<td>Widowed</td>
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<td>1</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>6427</td>
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</tr>
<tr>
<td>Q63. Citizenship</td>
<td>U.S. citizen</td>
<td>6106</td>
<td>96</td>
</tr>
<tr>
<td></td>
<td>Documented non-citizen</td>
<td>156</td>
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<tr>
<td></td>
<td>Undocumented non-citizen</td>
<td>117</td>
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<td></td>
<td>Total</td>
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<td>Q64. Voter Registration</td>
<td>Registered</td>
<td>5695</td>
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<tr>
<td></td>
<td>Not Registered</td>
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<td></td>
<td>Total</td>
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<td>Q65. Armed Service</td>
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<td>1261</td>
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<td></td>
<td>No</td>
<td>4983</td>
<td>78</td>
</tr>
<tr>
<td></td>
<td>Denied Enlistment</td>
<td>133</td>
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</tr>
<tr>
<td></td>
<td>Total</td>
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<tr>
<td>Q66. Sexual Orientation</td>
<td>Gay/Lesbian/Same-gender</td>
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<td>21</td>
</tr>
<tr>
<td></td>
<td>Bisexual</td>
<td>1473</td>
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<tr>
<td></td>
<td>Queer</td>
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<tr>
<td></td>
<td>Heterosexual</td>
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<td>21</td>
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<tr>
<td></td>
<td>Asexual</td>
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<tr>
<td></td>
<td>Other, specify</td>
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<td></td>
<td>Total</td>
<td>6368</td>
<td>100</td>
</tr>
</tbody>
</table>
In general, we suggest that future researchers not replicate the length of this survey, unless they have the resources to process the results and are sure that respondents will complete the questionnaire.

According to Don Dillman, “The lack of Internet service for 29% of the population and high-speed service for 53% of the population is complicated by differences between those who have and do not have these services. Non-Whites, people 65+ years old, people with lower incomes, and those with less education have lower internet access rates than their counterparts, and, therefore, are more likely to be left out of Internet surveys.” Don Dillman, Jolene Smyth, and Leah Melani Christian, Internet, Mail, and Mixed-Mode Surveys: The Tailored Design Method (New York: Wiley, 2008). Therefore, online samples often have higher educational attainment and higher household income. Our sample had considerably lower household income, which would lead one to speculate that we have avoided this bias. However, our educational attainment is much higher than the general population, which could lead to the opposite conclusion. Even more interestingly, one would expect the sample to demonstrate higher levels than the general population of being in school between 18-24, if it were privileged, yet, as discussed in the Education chapter later, our sample is in school less than the general population in that age range. For more information about online bias, see David Solomon, “Conducting web-based surveys,” Practical Assessment, Research & Evaluation, 7 no.19, (2001): http://PAREonline.net/getvn.asp?v=7&n=19. See also Lee Rainie et al., “The Ever-Shifting Internet Population: A new look at Internet access and the digital divide,” Pew Internet & American Life Project (2003): http://www.pewinternet.org/Reports/2003/The-EverShifting-Internet-Population-A-new-look-at-Internet-access-and-the-digital-divide/02-Who-is-not-online/03-Several-demographic-factors-are-strong-predictors-of-Internet-use.aspx.

We would recommend that future studies budget funding for translation. We also recommend working with members of the transgender community who speak the language you are translating to to be sure that the terms used are current and appropriate.

We urge other researchers to follow the IRB process to continue building peer-reviewed research and articles that document the overwhelming problems of discrimination against transgender and gender non-conforming people. However, the additional time and expense involved may make institutional review impractical for some community-based surveys that are not intended for publication in peer-reviewed academic or research journals.

In every case where writing in answers was an option, coding and tabulating the data was extremely time-consuming. For organizations conducting a survey such as this with fewer resources to process results, it may be advantageous to avoid or limit this type of question.
A PORTRAIT OF TRANSGENDER AND GENDER NON-CONFORMING PEOPLE

Our sample provides a new and complex look at transgender and gender non-conforming people and the ways they define themselves. In this chapter, we will explore information about who responded to our survey and present some of the more detailed findings about gender identity and expression. It is our hope that these additional data about our respondents will provide a fuller picture of their lives.

Transgender and gender non-conforming people form a diverse group and, while they shared many common experiences that are outlined in this report, our participants also came from many demographic and sociographic groups. We will begin by exploring some broader demographic characteristics and then focus more specifically on the concepts of gender, gender identity and sexual orientation.

Race

Respondents were given the following options:

- White
- Black or African American
- American Indian or Alaska Native (enrolled or principal tribe)
- Hispanic or Latino/a
- Asian or Pacific Islander
- Arab or Middle Eastern
- Multiracial or mixed race

Throughout the report, when we report data on race, those who checked more than one racial identity are included within the multiracial category. This includes all respondents who identified as Arab/Middle Eastern because all Arab/Middle Eastern respondents in this study also selected a second racial identity option. Accordingly, reports about race, other than about the multiracial category, provide information on those who chose that racial/ethnic identity alone.

Our sample size of American Indian/Alaska Native respondents was the smallest of the final categories. While this group was small, we did include American Indian/Alaska Native separately in all data analyses that involved race.
Age

The sample included participants from 18 to 89 years of age. Our sample has a larger percentage of young people than the U.S. population as a whole. Further research is needed to know whether the difference in age between our respondents and the population as a whole is a result of our research methods or reflects differing understandings and social acceptance of gender identity/expression among different generations. We suspect that a combination of the two factors may have been involved. When more studies are undertaken of transgender and gender non-conforming experience, we will be better able to answer this question.

Location

The sample included respondents from all 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands. Our geographic distribution approximately mirrors that of the general U.S. population. The regional breakdown we used is: New England (ME, NH, VT, MA, RI, CT), Mid-Atlantic (NY, NJ, DE, PA, MD, DC, VA, WV), South (NC, SC, GA, FL, AL, MS, LA, TX, OK, AR, TN, KY) Midwest (OH, MI, IN, IL, WI, MN, IA, MO, KS, NE, SD, ND), West (NM, AZ, CO, WY, UT, NV, MT, ID, WA, OR, AK, HI), California (CA).
Household Income

Our respondents reported much lower household incomes than the population as a whole, with many living in dire poverty. Fifteen percent (15%) of our respondents reported making under $10,000/year, nearly four times the rate of this household income category for the general population. Twelve percent (12%) said they made between $10,000 and $20,000/year. Fourteen percent (14%) said they made $20,000/year or more, compared to 25% making 100,000/year or more for the general population.

Given that household income does vary between men and women in the United States, it is notable that the current gender of our participants did not impact their income much.

Employment Status

When asked about employment (with the option of selecting as many responses as were applicable), respondents noted the following:

Based on these responses, we determined that of all our respondents, 70% were currently employed, 11% were currently unemployed, and 19% were out of the workforce (generally as students, retirees, or homemakers).

When calculating the unemployment rate, the U.S. Department of Labor excludes those who are out of the workforce; applying the same standard to our sample provides a generally comparable unemployment rate of 14%. The weighted unemployment rate for the general population during the time the questionnaires were collected was 7%.

SEX WORK AND WORK IN THE UNDERGROUND ECONOMY

It has been well documented that economic circumstances have caused many transgender people to enter the underground economy for survival, as sex workers or by selling drugs. Yet, despite the stereotypes that a majority do so, the vast majority (84%) of participants have never done so. Sixteen percent (16%) of respondents said they had engaged in sex work, drug sales, or other underground activities for income.

Sex workers made up the largest portion of those who had worked in the underground economy with 11% of all respondents reporting having done sex work for income. Eight percent (8%) engaged in drug sales.

In comparison, the Prostitutes’ Education Network estimates that 1% of women in the U.S. have engaged in sex work.
Educational Attainment

In terms of educational attainment: 4% reported having no high school diploma, 8% have a high school diploma, 40% have attended college without receiving a four-year degree, 27% have attained a college degree, and 20% have gone to graduate school or received a professional degree. In contrast to the other measures of economic security, health, and other indicators we examined in the study, where our respondents often fare much worse than the general population, our sample has a higher level of educational attainment than the general population. Study findings of higher levels of poverty, incarceration, homelessness, and poor health outcomes among respondents speak to the power of anti-transgender bias to “trump” educational attainment. The Education chapter provides additional breakdown and analysis of these figures.

Disability

Thirty percent (30%) of respondents reported having a physical disability or mental health condition that substantially affects a major life activity. By contrast, the overall U.S. population reports a disability at a rate of 20%. However, the way we asked the question about disability may differ from the definition used by the Centers for Disease Control.

Citizenship

Ninety-six percent (96%) of our sample respondents were U.S. citizens. Two percent (2%) were undocumented non-citizens. Two percent (2%) were documented non-citizens.

In the U.S., generally 7.1% of the population are non-citizens and among those, generally 45% are undocumented.
Gender Identity/Expression

IDENTITY

As with any community, language around identity in transgender communities is constantly changing. Class, race, culture, region, education and age all shape the language respondents use to describe their gender identity and expression, as well as individual preferences. We offered participants a variety of choices that we understood to be commonly used, and they chose “Strongly,” “Somewhat,” and “Not at all” for each.

Percentages of respondents who selected that they “strongly” identified with term

<table>
<thead>
<tr>
<th>Term</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transgender</td>
<td>65%</td>
</tr>
<tr>
<td>MTF (male to female)</td>
<td>46%</td>
</tr>
<tr>
<td>Transsexual</td>
<td>46%</td>
</tr>
<tr>
<td>Gender non-conforming or FTM</td>
<td>32%</td>
</tr>
<tr>
<td>FTM (female to male)</td>
<td>29%</td>
</tr>
<tr>
<td>Genderqueer</td>
<td>22%</td>
</tr>
<tr>
<td>Two-spirit</td>
<td>15%</td>
</tr>
<tr>
<td>Cross-dresser</td>
<td>15%</td>
</tr>
<tr>
<td>Androgy nous</td>
<td>14%</td>
</tr>
<tr>
<td>Third gender</td>
<td>10%</td>
</tr>
<tr>
<td>Feminine male</td>
<td>10%</td>
</tr>
<tr>
<td>Masculine female or butch</td>
<td>8%</td>
</tr>
<tr>
<td>Intersex</td>
<td>6%</td>
</tr>
<tr>
<td>Drag performer (King/Queen)</td>
<td>3%</td>
</tr>
<tr>
<td>AG or Aggressive</td>
<td>2%</td>
</tr>
<tr>
<td>Other</td>
<td>17%</td>
</tr>
</tbody>
</table>

Note: respondents could select all terms that applied so percentages do not add to 100%. Definitions of these terms are provided in Appendix A.

Over 500 respondents wrote in a range of additional gender identities including: “transdyke,” “mahuwhine,” “FTX,” “boi,” “questioning,” “stud,” “both-neither,” “princess” and “bender,” among others. This remarkable descriptive variety speaks to the dynamic, evolving diversity of gender expression within transgender and gender non-conforming communities.

ANALYTIC GENDER IDENTITY/EXPRESSION CATEGORIES

Gender identity and expression are complex and layered characteristics, with almost as many variations as there are individuals. However, for the purposes of this study, the researchers created aggregate categories presented here so that we might have useful “containers” in which to organize and analyze respondents’ experiences of anti-transgender bias and its impacts.

Based on the terms that people identified with, as well as their sex assigned at birth and current gender identity, we created several gender identity/expression categories that, though limited, provide a framework from which to analyze strengths, resiliencies and exposure to prejudice and abuse.

We identified two groups of transgender respondents: those who are male-to-female (MTF) and those who are female-to-male (FTM), also referred to as transgender women and transgender men respectively. These respondents generally identified strongly with the terms transgender, transsexual, MTF, or FTM. Fully 75% of all respondents fell into one of the transgender categories, with 47% of the sample identifying as MTF and 28% as FTM. For more information on how we formed these categories, consult Appendix B: Survey Instrument — Issues and Analysis.

We also created a “gender non-conforming” category. Fourteen percent (14%) of the sample identified as gender non-conforming, which generally included those who strongly identified as genderqueer, two-spirit, and third gender, among others. Three percent (3%) of the sample self-reported identifying as gender non-conforming along a male-to-female spectrum of gender identity/expression and 9% of the sample described themselves as gender non-conforming along a female-to-male spectrum of gender identity/expression. Of the gender non-conforming people in the sample, therefore, 78% identify on the female-to-male spectrum, with 22% on the male-to-female spectrum.

Additionally, we created two cross-dresser categories, generally including those that identified strongly with the term cross-dresser. Eleven percent (11%) of our sample identified as male-to-female cross-dressers, while another 3% identified as female-to-male cross-dressers. The existence of those who are best described as female-to-male cross-dressers is notable. The experiences of cross-dressers, when remarkably different than that of the rest of the sample, are noted throughout this report. However, we also provided a separate chapter that provides results about male-born cross-dressers because of their unique experience.
Although both of our organizations firmly define “transgender” to include gender non-conforming people and cross-dressers, to better understand and report on the experiences of different types of transgender people, we needed these analytic categories. Therefore, in this report, when we refer to transgender respondents, we do not include cross-dressers and gender non-conforming respondents.

**Analytic Gender Identity/Expression Categories**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>MTF Transgender</td>
<td>47%</td>
</tr>
<tr>
<td>FTM Transgender</td>
<td>28%</td>
</tr>
<tr>
<td>Cross-dresser, male-to-female</td>
<td>11%</td>
</tr>
<tr>
<td>Cross-dresser, female-to-male</td>
<td>11%</td>
</tr>
<tr>
<td>Male-assigned-at-birth Gender Non-Conforming</td>
<td>3%</td>
</tr>
<tr>
<td>Female-assigned-at-birth Gender Non-Conforming</td>
<td>9%</td>
</tr>
</tbody>
</table>

**ASSIGNMENT AT BIRTH AND CURRENT IDENTITY**

Sixty percent (60%) of respondents were assigned male at birth, while 40% were assigned female. We gave respondents a choice of indicating whether their current gender identity was male, female or if they lived a part-time or gender non-conforming identity. Twenty-nine percent (29%) of respondents said their current gender identity was male. Forty-two percent (42%) said they were currently female. Twenty-nine percent (29%) said they identified/lived part time as one gender and part-time as another.

Out of those who are transgender, 63% were assigned male at birth and 37% were assigned female. Out of those who are gender non-conforming, 22% were assigned male and 78% were assigned female.

**Gender Identity/Expression and Current Age**

The most dramatic demographic differences in gender identity/expression were among age groups. Our older respondents are much more likely to have been assigned male at birth and to be living as women, while younger respondents are more likely to have been assigned female at birth and living as male. In addition, gender non-conforming respondents were also in the younger age categories.
Transition

Transition is a process that some — but certainly not all — transgender and gender non-conforming people undertake to live in a gender different from the one they were assigned at birth. For some, the journey traveled from birth sex to current gender may involve primarily a social change but no medical component; for others, medical procedures are an essential step toward embodying their gender.

For many gender non-conforming people, transition as a framework has no meaning in expressing their gender — there may be no transition process at all, but rather a recognition of a gender identity that defies convention or conventional categories. For yet other gender non-conforming people, transition is a meaningful concept that applies to their journey from birth sex to their current identity, which may not be male or female.

Respondents in our sample were asked questions that helped us identify whether they had embarked on a transition process or if they desired to do so in the future. This was important to us and, hopefully, to future researchers in considering the role of transition in (among other things) transgender health, economic security, experience of bias and family life.

FULL-TIME STATUS AND TRANSITION

Fifty-five percent (55%) of our sample reported that they lived full-time in a gender different from their birth sex. We considered a respondent to have transitioned if that person reported living full time in a gender different than that assigned at birth.

Twenty-seven percent (27%) said they were not living full-time in their desired gender yet but wanted to someday. Eighteen percent (18%) said they did not want to live full time in a gender other than that assigned at birth.

MEDICAL TRANSITION

Two terms that we used to define the medical aspects of transition are “medical transition” and “surgical transition.” Medical transition includes respondents who have had any type of surgery or hormonal treatment. Surgical transition identifies only those respondents who have had some type of transition-related surgical procedure.

Sixty-one percent (61%) of our respondents reported having medically transitioned, while 33% said that they had surgically transitioned. The percentage of respondents who we label “medically transitioned” is higher than the percent of those who we consider “transitioned” because a sizable percent of those who have had hormone therapy are not yet living full-time. Detailed information about specific treatments and procedures is contained in the Health chapter.

It is important to keep in mind that almost all transition-related care is paid for out of pocket, without any insurance reimbursement. Thus, appropriate medical treatment is highly dependent on an individual’s ability to pay for it. The desire to medically transition and the ability to afford to do so are entirely different and should not be conflated or confused.

AGE OF TRANSITION

For those who had transitioned, we calculated the age that they transitioned (when they began to live full time in a gender different than their sex at birth). Most transitioned between the ages of 18 and 44.

Generally, transgender men in our sample transitioned at earlier ages than transgender women.
Gender Identity and the Public Sphere

**VISUAL NON-CONFORMITY**

At the outset of our study, the research team hypothesized (based on anecdotal experience) that those respondents whom others visually identify as not conforming to society’s expectations of gender might be at higher risk for discrimination and violence. Thus, we determined whether respondents believed their gender presentation matched their gender identity by asking whether: “People can tell I’m transgender even if I don’t tell them.” The term we developed for the study participants who are perceived by strangers or in casual circumstances to be transgender or gender non-conforming is *visual non-conformers*. This is a similar to the concept of “passing,” a more colloquial term used by some to describe the same perception.

Throughout the report, we will note the significance of visual non-conformity as a risk factor in eliciting anti-transgender bias and its attendant social and economic burdens.

*People can tell I’m transgender even if I don’t tell them:*

- **Always**: 6%
- **Most of the time**: 16%
- **Sometimes**: 27%
- **Occasionally**: 29%
- **Never**: 21%

We also collapsed these categories further for our analysis.

*Visual Conformity Analytic Categories*
Outness

Along with visual conformity, the research team wondered about “outness” in the lives of the respondents. Our question was: does being open that one is transgender or expressing gender non-conformity have any positive or protective effect (i.e. in the workplace, at the doctor’s office, or in social situations) or does it simply increase risk for discrimination? In LGBT communities, the process of coming out is widely seen as a path to self-empowerment and public understanding. A number of studies among lesbian, gay and bisexual people have shown positive effects of being out on social and economic outcomes. However, the specific impact of outness on transgender people has not been examined.

Multiple questions on levels of outness helped us establish two basic categories, “generally out” and “generally not out,” in order to ascertain whether outness has a positive or negative effect in the lives of transgender and gender non-conforming respondents.

Outness in specific contexts, such as the workplace, with family members, and in seeking medical care is reported on in the relevant chapters.

Sexuality and Relationships

SEXUAL ORIENTATION

The sexual orientation of the sample demonstrates a diverse spectrum of sexual orientations among transgender and gender non-conforming people. Among respondents, 23% reported a lesbian or gay sexual orientation (or attraction to the same gender); 24% identified as bisexual; 23% reported a queer orientation; 23% reported a heterosexual or opposite-gender sexual orientation, 4% describe themselves as asexual and 2% wrote in other answers.

The wide distribution of responses speaks to the complexity of sexual orientation for those whose gender identity/expression may have changed over the course of their lives.

Those who assume all transgender people are straight after transition are as incorrect as those who assume them all to be gay, lesbian or bisexual.

The common assumption that gender identity and sexual orientation form the basis for two distinct communities obscures the reality, documented here, that the majority of transgender people — at least in our sample — are lesbian, gay, bisexual or queer-identified. While debate in the LGBT community often draws clear lines of demarcation between the LGB and the T, our findings suggest that there is considerable overlap.
Relationship Status

Our sample was split evenly among those who reported being currently in a relationship and those who reported being single, separated, divorced or widowed.

Thirty-six percent (36%) of survey respondents said they were single. Twenty-seven percent (27%) said they were partnered. Twenty-three percent (23%) indicated they were in a civil union or were married. Three percent (3%) said they were separated. Eleven percent (11%) said they were divorced. One percent (1%) said they were widowed. In the general population, 51% are married. Note that many respondents may not have the ability to legally marry depending on the gender of their partner.
Civic Participation

VOTER REGISTRATION

Our sample had high rates of voter registration. Eight-nine percent (89%) of respondents said they were registered to vote while 11% said they were not. The U.S. Census reports that in the 2008 election cycle, the closest Presidential election year to our survey, 71% of the voting-eligible population was registered to vote.10

MILITARY SERVICE

Our sample was very highly engaged in military service to the nation. Twenty percent (20%) of respondents said they are or had been a member of the armed forces. Seventy-eight percent (78%) said they had not, while 2% said they were denied entry. According to the American Community Survey for the same year as this survey, 10% of the adult United States population had served in the military.20

Endnotes

1 U.S. Census Bureau, “American Community Survey (ACS): 1-year Public Use Microdata Sample: 2009 (2010): http://factfinder.census.gov/home/en/acs_pums_2009_1yr.html. The ACS has more age categories than our survey instrument; for the purposes of analysis, the ACS categories have been combined here to match our survey categories to enable comparisons and limited to the adult U.S. population (age 18 and over).


6 Note that in the report we use two definitions of “unemployed.” Here, we have approximated the definition the U.S. Department of Labor uses, in which “unemployed and stopped looking” are considered to be outside of the workforce, and thus not part of the equation when calculating the unemployment rate. However, when measuring discrimination and harassment against people who are “unemployed,” those who chose “unemployed and stopped looking” are included.


A relatively new Hawaiian term for transgender women of Hawaiian and Polynesian ancestry. *Mahu* denotes someone who is homosexual, intersex, or has a cross-gendered identity, while *wahine* means both woman and feminine.

FTX generally refers to females assigned at birth who no longer identify as female, but also not male.

The percentage of respondents whom we categorize as “medically transitioned” is higher than the percent of those who we consider “transitioned” because a sizable proportion of those who have had hormone therapy are not living full-time yet.

This perception is often based on a person’s physical features, the sound of their voice, mannerisms and other stereotypes of how men/women are supposed to appear and present.

“Always” and “most of the time” were categorized as visual conforming, “sometimes” and “occasionally” became somewhat visually conforming, and “never” became visual non-conforming.


EDUCATION

Education is a fundamental human right. It can expand our horizons, help us learn about ourselves and our world and build foundational skills for our working lives. In the United States, there is a strong connection between one’s level of educational attainment and income. In addition, individuals who have higher education levels are less likely to be dependent on public safety-net programs, to be incarcerated, or to experience extreme poverty. They are also more likely to have positive health outcomes, such as lower rates of smoking, and high rates of civic participation.¹

Unfortunately, not all students have the opportunity to pursue education in a safe environment. Our data shows that transgender and gender non-conforming people are currently unable to access equal educational opportunities because of harassment, discrimination and even violence. Our data also shows the way this discrimination impacts educational attainment, which in turn affects other outcomes such as income, incarceration, health and suicidality, over respondents’ life spans.

“People are suffering in my school, there are so many trans kids that just can’t come out because they are afraid.”

“I find these constant whispers, this constant staring, it terrifies me in the same way all the high school bullies did. When they followed me and screamed at me and threw my things around the room.”
KEY FINDINGS IN EDUCATION

What emerges clearly from the following data is that in education, as in other areas of life, survey participants faced high levels of harassment and violence. For participants in the study, this mistreatment is highly correlated with lower levels of educational attainment, lower income and a variety of other negative outcomes from homelessness to suicide.

- Those who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (78%), physical assault (35%) and sexual violence (12%).

- The harassment was so severe that it led nearly one-sixth (15%) to leave school in grades K-12 or in higher education settings.

- Six percent (6%) of respondents were expelled in grades K-12 for their gender identity/expression.

- Teachers and staff members, whose job in part includes ensuring student safety, were too often the perpetrators of harassment and violence in K-12. Thirty-one percent (31%) of the sample reported harassment by teachers or staff, 5% reported physical assault by teachers or staff and 3% reported sexual assault by teachers or staff.

- Negative experiences at school varied by gender and race. Students of color experienced higher rates of harassment and violence across the board. In terms of gender, MTF students reported higher rates of violence, while FTM and gender non-conforming students reported higher rates of harassment and bullying.

- Nineteen percent (19%) of respondents expressing a transgender identity or gender non-conformity in higher education reported being denied access to gender-appropriate housing. Five percent (5%) were denied campus housing altogether. Eleven percent (11%) lost or could not get financial aid or scholarships because of gender identity/expression.

- Despite mistreatment in school, respondents reported considerably higher rates of educational attainment than the general population, with 47% receiving a college or graduate degree, compared with only 27% of the general population. These high levels of achievement appear to be largely due to respondents returning to school later in life.

- Educational attainment did not provide respondents the protection against poverty that is common in the United States. At each level of educational attainment, our respondents had considerably lower incomes than the general population. Our sample was 4-5 times more likely to have a household income of less than $10,000/year at each educational category, including college graduates.

- Experiences of mistreatment in school correlated with lower income levels. Those who reported mistreatment in school were 50% less likely to earn $50,000/year than the general population.

- Those respondents who said they were physically assaulted at school due to gender identity/expression were twice as likely to have done sex work and other work in the underground economy and were 50% more likely to be incarcerated.

- For those who had to leave school due to harassment, nearly half (48%) reported having experienced homelessness.

- Those who were mistreated in school had higher rates of drug and alcohol abuse and smoking to cope with the mistreatment. For those who were physically assaulted or had to leave school due to harassment, rates of misuse of alcohol and drugs doubled.

- Respondents who reported having to leave school due to harassment were HIV-positive at a rate of 5.14%, more than eight times the HIV rate of the general population, 0.6%.²

- More than half (51%) of respondents who were harassed, physically or sexually assaulted, or expelled because of their gender identity/expression reported having attempted suicide. Of those who were physically assaulted by teachers/staff or students, 64% reported having attempted suicide. And three-quarters (76%) of those who were assaulted by teachers or staff reported having attempted suicide.
Expressing a Transgender Identity or Gender Non-Conformity at School

We asked respondents a series of questions to explore their experience of the educational system when they “attended school as a transgender/gender non-conforming person.” Participants who answered these questions may have done so because they openly identified as transgender or gender non-conforming at school or in some other way expressed gender non-conformity. We did not ask whether they expressed a transgender identity or gender non-conforming presentation at school; so when we report results based on gender identity/expression, those who identify as transgender today may have expressed gender non-conformity at school but not a transgender identity.

Forty-nine percent (49%) of study participants reported engaging in educational pursuits as a transgender/gender non-conforming person at any level, with 29% reporting such attendance in K-12 educational settings, and 40% reporting a transgender or gender non-conforming presentation or identity in college, technical school or graduate school.

Notably, lower current household income was strongly associated with expressing a transgender identity or gender non-conformity in school. Those who most frequently expressed a transgender identity or gender non-conformity at school were those in the lowest income categories.

Among study participants, people of color were more likely to report expressing a transgender identity or gender non-conformity at school (Black 52%, Latino/a 57%, Asian 59%, American Indian 56%, Multiracial 63%), than whites (46%). Transgender and gender non-conforming people from New England (56%), California (57%), and other West Coast respondents (excluding CA) (53%), answered affirmatively more often than those from other regions of the country.

Respondents who identify as transgender today reported expressing transgender identities or gender non-conformity at school at a frequency of 50% while those who are gender non-conforming today reported 68%. Female-to-male respondents who identify as transgender today expressed transgender identities or gender non-conformity at school at particularly high rates (72%), compared to only 37% of male-to-female transgender respondents.

“I am afraid in school and I am slowly coming out. I came out to one of my teachers and I have never felt so good in my life.”

“Not being out at school has sheltered me from many of the challenges other transgender/gender non-conforming people face.”
Experiences of Harassment and Discrimination at School

Fully 61% of respondents who expressed a transgender identity or gender non-conformity at school reported considerable abuse because of their identity/expression. From elementary through graduate school, the survey showed high levels of harassment and bullying, physical assault, sexual assault, and expulsion from school.

The following data reports on the experiences of those respondents who expressed a transgender identity or gender non-conformity in school. Throughout, we report on negative experiences that respondents attributed to bias based on their transgender identity or gender non-conformity.

Fifty-nine percent (59%) of respondents said they were harassed or bullied in school at any level. Twenty-three percent (23%) said they were physically assaulted in school at any level. Eight percent (8%) were sexually assaulted at school at any level. Five percent (5%) were expelled at any level.

Race and geography compounded these effects. Multiracial respondents reported these abuses at 71%. Those living in the South reported 65%.

Respondents who identify as female-to-male transgender people today reported a higher rate of these abuses (65%) than male-to-female respondents (53%) and those who identify as gender non-conforming experienced abuse at a higher frequency (70%) than transgender-identified respondents (59%).

Respondents in all educational settings also reported denial of access to essential gender-appropriate facilities, such as bathrooms (26%) and housing (19%).

“I am not allowed to use the facilities I would like and have been denied requests for unisex bathrooms.”
K-12 Settings

Kindergarten through twelfth grade is a formative period, both educationally and socially. Alarmingly, our study showed both physical and emotional damage done to students in these grades. In this section, we first examine experiences of harassment and assault in general. Later we look more closely at harassment and assault committed by other students versus that committed by teachers. Within each of these sets, we will further subdivide our findings by 1) harassment and bullying, 2) physical assault, and 3) sexual assault. Throughout we will report on these experiences through the lenses of race, gender identity, and region.

MISTREATMENT IN K-12 SCHOOLS

Seventy-eight percent (78%) of the 1,876 respondents who expressed a transgender identity or gender non-conformity in grades K-12 reported harassment by students, teachers or staff. Many of the students experienced violence in the form of physical assault by either a peer or teacher/staff member (35%) or sexual assault (12%). Six percent (6%) reported expulsion due to their gender identity/expression.

Harassment

There were regional variations; students in the South noted higher levels of harassment and violence. Gender identity/expression was also clearly a factor; those who are transgender men today reported a considerably higher frequency of harassment and bullying than those who are transgender women today. Gender non-conforming students citing harassment at higher rates than their transgender counterparts.

Physical Assault

Multiracial students (45%) reported a higher incidence of physical assault than students of other races, and those in the South (40%) and West (40%) reported higher incidences than those in other regions. Male-to-female transgender participants experienced higher rates of assault (43%) than female-to-male respondents (34%).

Sexual Assault

American Indian (24%), multiracial (18%), Asian (17%) and Black (15%) respondents experienced sexual assault at higher rates than students of other races. MTF respondents experienced sexual assault more often (15%) than their FTM peers (10%).

“Shortly after I came out in high school, I began receiving threats in my locker. The usual sort of idiocy: ‘Damn dyke, no one wants you here’ or ‘Fucking fag.’”
HARASSMENT AND ASSAULT BY OTHER STUDENTS IN K-12

Examining harassment perpetrated by other students in the K-12 setting, respondents reported high levels of harassment and bullying (76%) and physical assault (35%).

Multiracial students reported the highest levels of harassment and bullying (83%) and physical assault (45%); American Indian students showed particularly high levels of sexual assault (21%). Respondents who are female-to-male transgender today reported higher rates of harassment and bullying (82%) while MTFs reported higher rates of physical (42%) and sexual assault (14%).

Harassment and Assault by Students in K-12 Settings by Race

Harassment and Assault by Students in K-12 Settings by Region

Harassment and Assault by Students in K-12 Settings by Gender Identity/Expression
HARASSMENT AND ASSAULT BY TEACHERS AND STAFF IN K-12

Mistreatment by teachers and staff in K-12 was also severe and had an even greater negative impact than mistreatment by peers. Respondents experienced considerable abuse, including harassment and bullying (31%), physical assault (5%) and sexual assault (3%) at the hands of teachers and staff. Students and their parents have every right to expect that teachers and staff will keep children safe, and not endanger the students through violence or harassment. This trust was violated for far too many.

Latino/a and multiracial respondents reported the highest levels of harassment and bullying by their teachers, at 35% and 42% respectively. Multiracial and American Indian students experienced the highest levels of physical assault by teachers and staff at 6%. African American students experienced much higher rates of sexual assault by teachers (7%) relative to their peers of any race.

Respondents who today identify as female-to-male transgender people experienced teacher harassment and bullying by teachers and staff at higher rates (35%) than male-to-female transgender study participants (30%), but MTFs were at nearly double the risk for physical (7%) and sexual (3%) assault than their FTM peers (4% physical, 2% sexual).

“My sister has faced more outright discrimination for her support of me than I have. I transitioned in her last year in high school, the students verbally harassed her regularly to the point that she considered dropping out and just getting her GED. Teachers would also verbally harass her, saying things like “You will go to hell for your support of that abomination” and generally treating her unequally compared to other students.”
College, Graduate School, Professional School and Technical School

In examining higher education specifically, those attending college, graduate school, professional school or technical school reported high rates of abuse by students, teachers and staff, including harassment and bullying (35%) as well as physical (5%) and sexual assault (3%). Two percent (2%) reported expulsion due to their gender identity/expression. At this level, the variation in frequency of harassment and assault did not vary considerably among racial groups, between regions, or by gender identity/expression.

Those students identifying as transgender or expressing gender non-conformity while attending college, graduate school or technical school also reported other barriers to full participation including denial of campus housing (5%) denial of gender-appropriate housing (20%), and denial of appropriate bathroom facilities.

Educational Attainment

Despite the mistreatment that respondents have faced, they reported high levels of educational attainment. Almost half of our sample had a college degree (27%) or a graduate degree (20%); this compares to a combined total of 27% of the general population with these degrees. This above average educational attainment appears to be related to many older students returning to school after facing job loss or other difficulties; we explore this further in the section, “School Attendance by Age.”

“I have chosen to attend college online to avoid harassment.”

“…I have been denied classes and otherwise harassed by some teachers. One male psychologist verbally attacked me in class and used transphobic and misogynist language.”

“I am not able to pass as male to the students who live in the same residence hall that I do because I have a female roommate, which automatically shows to them that I [was born] female as well.”
Female-to-male respondents reported higher levels of educational attainment than their male-to-female peers. Fifty-two percent (52%) of transgender men had college or graduate degrees compared to 41% of transgender women. Gender non-conforming people reported college and graduate degree attainment at 60%. In the general population, men and women have the same rate of holding a college or graduate degree.7

Black and Latino/a respondents were the least likely to obtain a high school diploma.

FORCED TO LEAVE SCHOOL

In addition to the previously discussed problem of expulsion due to bias, we found many study participants experienced other barriers to attendance so severe that they were also forced to leave school (in grades K-12 or in higher education). Fifteen percent (15%) reported leaving school "because the harassment was so bad." Fifteen percent (15%) reported leaving school due to financial reasons related to transition. Eleven percent (11%) said they lost or could not get financial aid or scholarships because they were transgender or gender non-conforming.

American Indian, Black, Latino/a and multiracial respondents reported these difficulties at higher rates than students of other races, and transgender women respondents experienced these barriers at higher rates than transgender men.
“Prior to being out at school, I received about $18,000 in financial aid, several awards, and scholarships. The year that I decided to be “out” on my applications, I received one scholarship out of 18 that I applied for despite having a 4.0 and an excellent application package.”

“I was kicked out of school by my principal because he hated who I was; I was also harassed by students and even called a slut by a one of my Special Ed teachers because she didn’t like the way I dressed. I was sent to a correctional facility for boys because I used to act out when I was very young, not having the guidance I wish I had. There at the correctional facility, I was harassed, attacked, spit on, verbally abused by other youth and staff, and sexually abused.”

“I am an older re-entry student at a university in California. I was surprised and pleased to find that among my younger friends (who are typically college-aged), gender and sexuality seems almost to be a non-issue. This gives me great hope for the future.”

“Regarding employment status, I lost my job of 10 years as a result of transition. I was unemployed for several months, then underemployed in a temp job. Eventually, I returned to school to get an Associate’s degree in nursing which I paid for with home equity loans, and became a registered nurse.”

“Because of these findings related to the percentage of people in school at different ages, we do not believe online bias is the only reason our sample has such high educational attainment figures. Had these attainment figures been due solely to online bias, we would have expected a higher rate of students in the 18-24 age category exceeding that (or at least matching that) of the general population. Thus, we believe that transgender people reported higher rates of formal education than the general population largely due to returning to school at later ages (ages 25 and above).”
FINANCIAL BARRIERS TO EDUCATIONAL ATTAINMENT

As previously mentioned, 15% of the sample reported leaving school for financial reasons related to transition. Respondents who left school for financial reasons experienced lower levels of educational attainment overall. This is most notable in the percentage of respondents who reported their highest education level was some college. Sixty-one percent (61%) of those who had to leave school due to financial reasons related to transition started college but did not finish it. This contrasts with the rest of our sample (who did not leave school for financial reasons) for which 39% started but did not finish college. This is also reflected in the percentages of people who achieved college and graduate degrees. A combined 30% of people who left school for financial reasons ultimately received a college (19%) or graduate degree (11%) as opposed to a combined total of 49% of those who did not have to leave school for financial reasons.

We also found that mistreatment in school correlated with lower levels of educational attainment. Those who had to leave school due to harassment were less likely to graduate from high school, college or graduate school. Forty-nine percent (49%) of those who did not have to leave school due to harassment went on to receive a college or graduate degree, whereas 30% of those who did have to leave school achieved the same (either returning to school later or switching to a new school in order to graduate). Those who had to leave school due to harassment were twice as likely (9%) to not graduate from high school as opposed to those who did not (4%).

MISTREATMENT, EDUCATIONAL ATTAINMENT, AND INCOME

In our sample, mistreatment in school, educational attainment and present household income of our respondents were connected. We found that negative experiences in school were tied to income disparities later in life. Sixty-seven percent (67%) of those making under $10,000 per year at the time of the survey had been harassed, physically assaulted, sexually assaulted or expelled from school. Comparatively, a smaller number (55%) of those with high incomes, making $100,000 per year or more, experienced this mistreatment.

We also compared current income for those who reported no problems in school (either because they did not experience bias or because they did not express a transgender identity or gender non-conformity at school) with those who did experience mistreatment at school. Forty-six percent (46%) of those who reported no mistreatment at school reported making over $50,000/year at the time of the survey, whereas 30% of those who experienced mistreatment in school were in the same income range. Fifty-eight percent (58%) of the general population makes $50,000/year or more, meaning our respondents who were mistreated in school are about half as likely to be in that range than the general population.\textsuperscript{12}
EDUCATIONAL ATTAINMENT AND INCOME COMPARED TO THE GENERAL POPULATION

Below we compare the income of our respondents to that of the general U.S. population\(^4\) at four levels of educational attainment: no high school diploma, only high school diploma, some college and college degree or higher.

Shockingly, our sample is 4-5 times more likely than the general population to have a household income of less than $10,000/year at each level.\(^5\) For example, 8% of those who achieved a bachelor’s degree or higher in our sample still made less than $10,000/year as compared to only 2% of the general population, and 42% of our respondents who did not have a high school diploma made less than $10,000/year as compared with 9% of the general population without a high school diploma.

Our respondents were 2-3 times less likely than the general population to be making $100,000/year or more at the same levels of educational attainment. For example, 5% of our respondents who had a high school diploma make $100,000/year or more as compared to 15% of the general population, and 20% of our respondents who had a college degree make $100,000 or more as compared to 46% of the general population.
Making the Connections: Experiences in School, Economic Security, and Health

In this section, we examine the connections between negative experiences in school and employment access, incarceration, homelessness and health outcomes.

MISTREATMENT IN SCHOOL AND ACCESS TO EMPLOYMENT

We found that being mistreated in school aligned with various negative outcomes later in life.

We found that those who were mistreated in school were more likely than others to report doing sex work or other work in the underground economy such as drug sales. For example, 32% of those who were physically assaulted at school also reported doing sex work or other work in the underground economy as compared to 14% of those who were not assaulted. Thirty-nine percent (39%) of those who had to leave school “because the harassment was so bad” reported doing sex work or other work in the underground economy.

Having to leave school because harassment was intolerable was also associated with unemployment. Nineteen percent (19%) of those who had to leave school because of harassment reported being unemployed as compared with 11% of those who did not.

We also found that being physically attacked in school was linked to later actions in the workplace that were presumably taken to avoid further discrimination. Those who were physically attacked in school were considerably more likely to stay in a job they would prefer to leave (64%) compared to those who were not (42%). Similarly, 47% of those who were physically assaulted in school “did not seek a promotion or raise” in order to avoid discrimination as opposed to 27% of those who were not. Thus, it appears that appropriate treatment in school impacts later job success.

MISTREATMENT IN SCHOOL AND INCARCERATION

We found an association between being assaulted at school and being incarcerated. Fifteen percent (15%) of our sample reported having been incarcerated at some point in their lives, but 22% of those who were physically assaulted in school were incarcerated at some point in their lives. Further, 24% of those who were sexually assaulted in school were incarcerated at some point in their lives.

MISTREATMENT IN SCHOOL AND HOMELESSNESS

There was an alarming relationship between mistreatment in school and whether respondents reported having ever experienced homelessness. For those who were verbally harassed, physically or sexually assaulted, or expelled because they were transgender or gender non-conforming, 25% reported having experienced homelessness as compared to 14% of those who did not experience this mistreatment at school. For the subset who were physically assaulted at school, 38% reported having experienced homelessness, and for those who had to leave school due to harassment, nearly half (48%) were currently or formerly homeless.

MISTREATMENT IN SCHOOL AND HEALTH

We examined four health indicators — smoking, drug and alcohol abuse, HIV rates, and suicide attempts — as they related to mistreatment in school. In all cases, those who experienced mistreatment in school had worse outcomes.

Smoking

Thirty-seven percent (37%) of those who were physically assaulted at school reported being current daily or occasional smokers compared to 29% of those who were not. Forty-five percent (45%) of those who had to leave school due to harassment reported being current daily or occasional smokers.

Drugs and Alcohol

Thirty-five percent (35%) of those who were verbally harassed, physically or sexually assaulted, or expelled because they were transgender or gender non-conforming, reported using drugs or alcohol to cope with mistreatment they faced for being transgender or gender non-conforming. This compared to 21% of those who did not face these forms of mistreatment in school. This number rose to 44% for those who were physically assaulted and 48% of those who had to leave school due to harassment.
HIV

Respondents who reported having to leave school due to harassment were HIV-positive at a rate of 5.14%, compared to 1.87% of respondents who did not. This rate, 5.14%, is more than eight times the HIV rate of the general population, 0.6%.17

Suicide

Fifty-one percent (51%) of those who were verbally harassed, physically or sexually assaulted, or expelled because they were transgender or gender non-conforming reported having attempted suicide.

Of those who were physically assaulted, 64% attempted suicide, and of those who were sexually assaulted 68% attempted suicide. Of those who had to leave school because of harassment, 68% reported having attempted suicide.

Notably, suicide attempt rates rose dramatically when teachers were the reported perpetrators: 59% for those harassed or bullied by teachers in K-12 or higher education, 76% among those who were physically assaulted by teachers and 69% among those who were sexually assaulted by teachers.
CONCLUSIONS FOR EDUCATION

Harassment and discrimination against transgender and gender non-conforming students is severe and pervasive in school. In grades K-12, over three-quarters of students reported experiencing harassment or assault. Almost one-third were harassed by their teachers. In higher education, students are too often denied gender-appropriate housing or housing altogether and experienced bias in financial aid and scholarship opportunities.

Given these devastating circumstances, the number of those who stayed in school, or returned despite mistreatment, demonstrates a remarkable resiliency and commitment to obtaining an education. The level of educational attainment in this sample is notable given the extreme levels of discrimination and abuse in educational settings reported.

The fact that so many are going back to school later in life likely speaks both to persistence as well as the desperate economic state people find themselves in because of severe employment discrimination. Respondents appear to be experiencing a revolving door of between the classroom and the job market driven by educational and workplace abuses.

Clearly, despite these high levels of educational attainment, our respondents are not fully benefitting from their efforts as reflected by current household income. Whereas most who obtain high school diplomas, college degrees, or professional degrees see a corresponding increase in income, our sample too often does not.

People of color were especially vulnerable to lower educational attainment and lower income, which may be in part due to the fact that people of color were more likely to report having expressed their gender identity or gender non-conformity at school and because of the compounding effects of racism.

In terms of gender, MTF students reported higher rates of violence, while FTM and gender non-conforming students reported higher rates of harassment and bullying. We speculate that the difference here is that MTF students were under-reporting verbal harassment that occurred when they were also experiencing violence.

We found that mistreatment in school had a lasting effect on our respondents’ lives and correlated with a number of negative outcomes including higher rates of sex work, incarceration, homelessness, smoking, drug and alcohol abuse, HIV and attempted suicide.

All of the experiences documented here as well as the related negative outcomes later in life speak to an urgent need for reform of the nation’s education system and an end to the abuse of transgender and gender non-conforming students. Like all other students, transgender and gender non-conforming people have a right to equal opportunity in school, free from harassment and violence.

“Overall, my experience at school was night and day different when they didn’t know I am trans.”

“In school I was harassed and bullied for being different. I was forced to wear dresses to school until 8th grade when the dress code was changed.”
RECOMMENDATIONS FOR EDUCATION

• Provide a safe learning environment for transgender and gender non-conforming students
  • Enact and enforce anti-harassment policies that cover gender identity/expression as well as race and other personal characteristics within educational settings at all levels and provide training so that faculty, staff and students are aware of and comply with the policies.
  • Actively and promptly investigate all complaints of harassment or violence perpetrated by students, faculty or staff and ensure that appropriate disciplinary actions are taken. have a zero-tolerance policy for violence and harassment initiated by faculty and staff members.
  • Pass and ensure compliance with all local, state and federal laws relating to harassment, discrimination and assault.

• Create a supportive environment for transgender and gender non-conforming students
  • Develop curricular and extra-curricular programming to create a school environment that affirms transgender and gender non-conforming people and students, including but not limited to inclusive Gay-Straight Alliances.
  • Ensure that transgender and gender non-conforming students of color are fully included and supported in these efforts.

• Help transgender and gender non-conforming students remain in school
  • Develop policies to ensure that transgender and gender non-conforming students are not expelled because of their gender identity or expression or because of something triggered by their gender identity or expression (such as a physical alteration when the student was simply acting in self-defense).
  • Intervene with transgender and gender non-conforming students who are at high risk of dropping out, especially students of color who face additional risk factors.

• Ensure that higher education is accessible to transgender and gender non-conforming students
  • Ensure that financial aid and scholarship opportunities are open to and non-discriminatory toward transgender and gender non-conforming applicants.
  • Enact policies to ensure transgender and gender non-conforming students have access to gender-appropriate housing and facilities.
  • Develop trans-inclusive support systems for older students returning to school.

• Bridge the gap between education and employment
  • Ensure that campus resources such as career counseling and job placement services are accessible to transgender students and are able to provide culturally competent resources that help students become employed in their fields.
  • Provide meaningful internship opportunities for those students to make career contacts and to show the contribution that they can make to the workplace.
  • Ensure GED programs, vocational training programs, and other workforce development programs are accessible to transgender and gender non-conforming people.

2 HIV rates have not been rounded for better comparison to national rates.

3 In a similar survey reaching LGBT students in 2007, the Gay, Lesbian, and Straight Education Network found that 86.2% of respondents reported being verbally harassed in the last year — 44.1% said they were physically harassed, and 22.1% reported physical assault. The transgender-specific break out from that sample reported much higher rates, including verbal harassment because of sexual orientation at 89%, verbal harassment because of gender expression at 87%, physical harassment because of sexual orientation at 55%, physical harassment because of gender expression at 53%, physical assault due to sexual orientation at 28%, and physical assault due to gender expression at 26%. Gay, Lesbian, and Straight Education Network, “2007 National School Climate Survey” (2008): http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1290-1.pdf; Gay, Lesbian, and Straight Education Network, “Harsh Realities” (2009): http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1290-1.pdf.

4 Physical and sexual assault figures have not been rounded due to their small size.


8 Ibid.

9 Ibid.

10 Some numbers have not been rounded due to their size.

11 According to Don Dillman, “The lack of Internet service for 29% of the population and high-speed service for 53% of the population is complicated by differences between those who have and do not have these services. Non-Whites, people 65 + years old, people with lower incomes, and those with less education have lower internet access rates than their counterparts, and, therefore, are more likely to be left out of Internet surveys.” Don Dillman, Jolene Smyth, and Leah Melani Christian, Internet, Mail, and Mixed-Mode Surveys: The Tailored Design Method (New York: Wiley, 2008). Therefore, online samples often have higher educational attainment and higher household income. Our sample had considerably lower household income, which would lead one to speculate that we have avoided this bias. However, our educational attainment is much higher than the general population, which could lead to the opposite conclusion. Even more interestingly, one would expect the sample to demonstrate higher levels than the general population of being in school between 18-24, if it were privileged, yet, as discussed in the Education chapter later, our sample is in school less than the general population in that age range. For more information about online bias, see David Solomon, “Conducting web-based surveys,” Practical Assessment, Research & Evaluation, 7 no.19, (2001): http://PAREonline.net/getvn.asp?v=7&n=19. See also Lee Rainie et al., “The Ever-Shifting Internet Population: A new look at Internet access and the digital divide,” Pew Internet & American Life Project (2003): http://www.pewinternet.org/Reports/2003/The-Ever-Shifting-Internet-Population-A-new-look-at-Internet-access-and-the-digital-divide/02-Who-is-not-online/03-Several-demographic-factors-are-strong-predictors-of-Internet-use.aspx.


13 Ibid.

14 Ibid.

15 Given that overall, our respondents have only nearly four times the rate of having a household income lower than $10,000 per year reported elsewhere, a reader might be confused that these data (that states for each educational attainment level, respondents have 4-5 times the rate of being in the lowest income category) is incorrect. It is correct. The reason our overall rate of those with $10,000 per year or less is only nearly four times larger than the general population is that our sample has a large number of who are in the lowest income category and yet have the highest educational attainment (24% of those making $10,000 or lower in our sample had a bachelor’s degree or higher). The highest educational category has the lowest percentage of people in our sample receiving $10,000 annually or less, so the large presence of highly educated people in the sample’s lowest income category drags the overall percentage down closer to the general population percentage in that income category.


17 HIV rates have not been rounded for better comparison to national rates.
EMPLOYMENT

Employment is fundamental to people’s ability to support themselves and their families. Paid work is not only essential to livelihood; it also contributes greatly to a sense of dignity and accomplishment over a lifetime. The Universal Declaration of Human Rights asserts the rights of individuals to work at the job of their choice, receiving equal pay for equal work, without discrimination. Yet far too often, transgender people are denied these basic human rights.

There are also serious social consequences associated with unemployment and underemployment. The loss of a job and unemployment are linked to depression and other mental health challenges. Given the high rates of unemployment seen in our sample and the high rates of suicide attempts noted in the Health chapter of this document, employment issues are of particular concern to transgender and gender non-conforming people.

Field work for this study was done from September 2008 through February 2009, with a large majority completing questionnaires during September. Accordingly, the employment statistics here largely precede the widespread layoffs and double digit unemployment that the nation as a whole experienced as the economy moved into a major recession. The data that follow show that due to discrimination, study participants were experiencing very high rates of unemployment and extremely poor employment conditions. Given that respondents were faring worse than the nation as a whole before the recession led to large-scale layoffs, the data suggests that in the current crisis, transgender and gender non-conforming people are likely facing even higher unemployment than their gender-conforming peers.

The data show not only the rampant discrimination against transgender and gender non-conforming people, but also show that large numbers have turned to the underground economy for income, such as sex work or drug sales, in order to survive. Throughout this chapter, we refer to this as “underground employment.”
KEY FINDINGS IN EMPLOYMENT

• **Double the rate of unemployment:** Survey respondents experienced unemployment at twice the rate of the general population, with rates for people of color up to four times the national unemployment rate.

• **Near universal harassment on the job:** Ninety percent (90%) of those surveyed reported experiencing harassment or mistreatment on the job or took actions to avoid it.

• **Considerable loss of jobs and careers:** Forty-seven percent (47%) said they had experienced an adverse job outcome, such as being fired, not hired or denied a promotion because of being transgender/gender non-conforming; 26% of respondents said that they had lost a job due to being transgender or gender non-conforming.

• **Race multiplies the effect of discrimination:** For Black, Latino/a, American Indian and multiracial respondents, discrimination in the workplace was even more pervasive, sometimes resulting in up to twice or three times the rates of various negative outcomes.

• **Living in dire poverty:** Fifteen percent (15%) of our respondents reported a household income under $10,000/year, nearly four times the rate of this category for the general population. **Those who lost a job due to bias lived at this level of poverty at six times the rate of the general population.** More information about income can be found in the Portrait and Education chapters.

• **Rampant under-employment:** Forty-four percent (44%) reported experiencing under-employment.

• **Large majorities attempted to avoid discrimination** by hiding their gender or gender transition (71%) or delaying their gender transition (57%).

• **The vast majority (78%) of those who transitioned from one gender to the other reported** that they felt more comfortable at work and **their job performance improved.**

• **Eighty-six percent (86%) of those who have not lost a job due to bias reported** that they were able to access restrooms at work appropriate for their gender identity, meaning that 14% of those who kept their jobs were denied access.

• **People who had lost a job due to bias or were currently unemployed reported much higher involvement in underground employment such as sex work or drug sales,** had much higher levels of incarceration and homelessness, and negative health outcomes.

• Sixteen percent (16%) said they had been compelled to engage in underground employment for income. **Eleven percent (11%) turned to sex work.**

• **Many respondents demonstrated resilience:** Of the 26% who reported losing a job due to bias, 58% reported being currently employed.
Outness at Work

We asked about outness at work in two different ways, only examining those who were currently employed. First, we asked respondents whether they tell work colleagues they are transgender or gender non-conforming. Second, we asked whether or not people at work knew that the respondent was transgender or gender non-conforming.

In the first measure, 38% reported that they tell work colleagues that they are transgender or gender non-conforming.\(^2\)

In the second measure, whether or not people at work knew that the respondent was transgender or gender non-conforming, we found that over one third (35%) reported that “most” or “all” coworkers knew they were transgender or gender non-conforming. Another third (37%) said “some” or “a few” coworkers knew, and 28% said no one knew.

Among those who had transitioned, we see slightly elevated rates of coworkers being aware of their transgender or gender non-conforming status. Half (50%) reported “most” or “all” coworkers knew, 34% said “some” or “a few” knew, and 16% said no one knew.

“*The only positive benefit of being on Disability is that I do not have to worry about employment discrimination.”*

“For years, I lived ‘in the closet’ in order to support myself in my career.”
**Employment Discrimination**

Forty-seven percent (47%) of survey respondents said they had experienced an adverse job action—they did not get a job, were denied a promotion or were fired—because they are transgender or gender non-conforming.

Male-to-female transgender respondents reported job loss due to bias at a frequency of 36% while female-to-male transgender respondents reported 19%. Twenty-nine percent (29%) of transgender respondents experienced job loss due to bias while gender non-conforming participants reported 15%.

Respondents who reported having lost a job due to bias reported being currently unemployed (26%), many times the general population rate at the time of the survey (7%), which suggests that they have been unable to find new employment after a discriminatory termination. Twenty-eight percent (28%) of those who have lost a job due to bias have also reported work in the underground economy. Those who were living in the South were more likely to have lost a job due to bias (30%) than those living in other regions of the country. Undocumented non-citizens (39%) reported lost jobs due to bias more often than U.S. citizens (26%). Those with no high school diploma (37%) and those with only a high school diploma (33%) also experienced particularly high rates of job loss due to bias.

“I was highly regarded at my new workplace until one of my old co-workers came in for an interview there and saw me. During his interview he told them all about me. He didn’t get the job, but I soon lost mine.”

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**Loss of Job by Gender**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>MTF</td>
<td>36%</td>
</tr>
<tr>
<td>FTM</td>
<td>19%</td>
</tr>
<tr>
<td>All Trans</td>
<td>29%</td>
</tr>
<tr>
<td>GNC</td>
<td>15%</td>
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</tbody>
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**Loss of Job by Race**

<table>
<thead>
<tr>
<th>Race</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Sample</td>
<td>26%</td>
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<tr>
<td>American Indian</td>
<td>14%</td>
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<td>Asian</td>
<td>32%</td>
</tr>
<tr>
<td>Black</td>
<td>30%</td>
</tr>
<tr>
<td>Latino/a</td>
<td>24%</td>
</tr>
<tr>
<td>White</td>
<td>36%</td>
</tr>
<tr>
<td>Multiracial</td>
<td>36%</td>
</tr>
</tbody>
</table>
DISCRIMINATION IN HIRING

Forty-four percent (44%) of survey respondents reported they did not get a job they applied for because of being transgender or gender non-conforming. Eighty-one percent (81%) of those who had lost their job due to bias also reported discrimination in hiring as did 71% of those currently unemployed. Also particularly hard hit were multiracial respondents (56%), American Indians (55%) and those making under $10,000/year (60%).

Sixty-one percent (61%) of those who reported doing sex work, drug sales or other underground work also say that they had experienced discrimination in hiring in the traditional workforce.

Male-to-female respondents experienced discrimination in hiring at 55%, compared to 40% of female-to-male respondents. Gender non-conforming respondents experienced this form of discrimination at 32%.

“"It was absolutely impossible to find any work at all during transition. I was unemployed for four years. I went from comfortably upper middle class to the brink of destitution; I have spent all my retirement savings.”

DENIED PROMOTION

Twenty-three percent (23%) of respondents reported that they were denied a promotion because of being transgender or gender non-conforming. Thirty-three percent (33%) of those with no high school diploma reported denial of a promotion due to bias along with 31% of those who made under $10,000/year. Also hard hit were Latino/a (29%), multiracial (31%) and American Indian (31%) respondents.

Twenty-nine percent (29%) of male-to-female respondents reported denial of promotion due to bias, while female-to-male respondents reported an 18% rate. Twenty percent (20%) of gender non-conforming respondents reported denial of promotions due to bias.
DENIED PROMOTION

Denied Promotion by Gender Identity/Expression

MTF 29%  FTM 18%  All Trans 25%  GNC 20%

UNEMPLOYMENT

Transgender and gender non-conforming people are unemployed at alarming rates. Overall, the unemployment rate for respondents was 14%; double the weighted national average at the time of the survey. Nineteen percent (19%) of respondents were out of the workforce and “not looking.” Black, American Indian, Latino/a and multiracial respondents experienced unemployment at considerably higher rates than their white counterparts. Black respondents were unemployed at 28%, four times the rate among the general population; American Indian/Alaska Native respondents were unemployed at over three times the general population rate at 24%; Latino/a and multiracial respondents were unemployed over twice the general population rate at 18%.

UNDER-EMPLOYMENT

We asked respondents whether they were currently or previously under-employed due to their gender identity/expression; that is “working in the field I should not be in or a position for which I am over-qualified.”

Forty-four percent (44%) of our respondents reported that they considered themselves under-employed. Seventy-seven percent (77%) of those who lost a job due to bias also reported experiencing under-employment at some point as well. Sixty-four percent (64%) of those currently unemployed also reported under-employment. Those who made less than $10,000/year reported current or previous under-employment at a rate of 56%. Also highly impacted were multiracial respondents (56%).

“I was a very respected lawyer before all of this, but lost my practice and clients, and have not been able to attract any new clients or get referrals or even get a job in my field for the past 8 years. Very frustrating because I don’t feel any less intelligent or less qualified, but others, both the public and lawyers, perceive me that way.”
Workplace Abuse —
A Near-Universal Experience

Harassment and mistreatment at work is a near universal experience for transgender and gender non-conforming people and its manifestations and consequences are many. Not only do many face mistreatment and discrimination directly from coworkers and supervisors; others feel distressed and intimidated when they see others discriminated against, and decide they must hide who they are or give up certain career aspirations in order to stay protected.

Ninety percent (90%) of respondents said they had directly experienced harassment or mistreatment at work or felt forced to take protective actions that negatively impacted their careers or their well-being, such as hiding who they were, in order to avoid workplace repercussions.

Mistreatment ranged from verbal harassment and breaches of confidentiality to physical and sexual assault, while bias-avoidant behaviors included hiding one’s gender, delaying transition, or staying in a job one would have preferred to leave. Given the broad spectrum of workplace abuse experienced by our study participants, their persistent engagement in the workforce speaks to a determination and resilience that goes largely unheralded in statistics and discourse about transgender and gender non-conforming people in the workplace.

“The obstacles currently facing trans people in regards to employment are the most insidious. Without an income, one has absolutely NO voice, politically, economically or socially. Elimination of employment discrimination, above all else, is the keystone to fundamental transgender equality in America.”

DIRECT MISTREATMENT AND DISCRIMINATION

Respondents reported on a wide range of workplace abuses, including direct discrimination and mistreatment by coworkers and supervisors. Seventy-eight (78%) of respondents said they experienced some type of direct mistreatment or discrimination.

In answering each negative work experience question, transgender respondents reported higher levels of abuse than their gender non-conforming counterparts, often with a gap of 10 percentage points or more. Male-to-female respondents experienced harassment and mistreatment slightly more often than female-to-male respondents, though MTF experience of job loss, denial of promotion and discrimination in hiring was much higher than for FTM respondents.

People of color in the sample generally reported higher levels of abuse than the sample as a whole. Other respondents reporting higher vulnerability to mistreatment at work were those who had lost jobs due to discrimination; the unemployed; respondents who had done sex work, drug sales, or other underground work for income; and those earning under $10,000 annually.
Direct Mistreatment at Work for MTF and FTM Respondents

- I was harassed by someone at work: 54% MTF, 50% FTM
- Supervisors/coworkers shared information about me inappropriately: 53% MTF, 51% FTM
- I was referred to be the wrong pronoun, repeatedly and on purpose: 51% MTF, 51% FTM
- I was removed from direct contact with clients: 43% MTF, 50% FTM
- I did not get a job I applied for: 40% MTF, 55% FTM
- I was not able to work out a suitable bathroom situation: 43% MTF, 50% FTM
- I was denied access to appropriate bathrooms: 27% MTF, 37% FTM
- I was forced to present in the wrong gender to keep my job: 27% MTF, 37% FTM
- I lost my job: 19% MTF, 36% FTM
- I was denied a promotion: 18% MTF, 29% FTM
- I was not able to work out a suitable bathroom situation: 23% MTF, 23% FTM
- I was removed from direct contact with clients: 15% MTF, 27% FTM
- I was the victim of physical violence at work: 4% MTF, 9% FTM
- I was the victim of sexual assault at work: 3% MTF, 8% FTM
- At least one of these: 62% MTF, 80% FTM

Direct Mistreatment at Work for Transgender and Gender Non-Conforming Respondents

- I was harassed by someone at work: 52% All Trans, 47% GNC
- Supervisors/coworkers shared information about me inappropriately: 52% All Trans, 51% GNC
- I was referred to be the wrong pronoun, repeatedly and on purpose: 51% All Trans, 51% GNC
- I did not get a job I applied for: 49% All Trans, 49% GNC
- I was not able to work out a suitable bathroom situation: 23% All Trans, 23% GNC
- I was denied access to appropriate bathrooms: 25% All Trans, 25% GNC
- I was forced to present in the wrong gender to keep my job: 33% All Trans, 33% GNC
- I lost my job: 29% All Trans, 29% GNC
- I was denied a promotion: 20% All Trans, 20% GNC
- I was not able to work out a suitable bathroom situation: 10% All Trans, 10% GNC
- I was removed from direct contact with clients: 14% All Trans, 14% GNC
- I was the victim of physical violence at work: 6% All Trans, 6% GNC
- I was the victim of sexual assault at work: 5% All Trans, 5% GNC
- At least one of these: 71% All Trans, 81% GNC

“I was fired from my job after 18 years of loyal employment after a fellow employee saw me dressed while attending counseling and reported me to the boss. I was forced on to public assistance to survive.”
HARASSMENT

Fifty percent (50%) of respondents reported experiencing harassment in the workplace. This was the most common negative experience at work. Risk of harassment was higher for those earning lower incomes. High numbers of those who were currently unemployed also reported that they had been harassed when they were working. Similarly, a large number of those who reported having lost jobs due to bias also reported having been harassed at work. Last, those that had done underground work such as sex work, drug sales, or other underground activities for income also frequently reported that they had been harassed at work.

PHYSICAL ASSAULT AT WORK

Seven percent (7%) of our sample reported being physically assaulted at work because of being transgender or gender non-conforming. Undocumented noncitizens in our sample reported the highest rates of physical assault at 25%, over three times the rate of the overall sample.
SEXUAL ASSAULT AT WORK

Six percent (6%) of respondents reported being sexually assaulted by someone at work because of being transgender or gender non-conforming. Undocumented noncitizens reported the particularly high rates of sexual assault at 19%, over three times the rate of the overall sample.
Forced to Present in the Wrong Gender by Race

Thirty-two percent (32%) of respondents reported being forced to present in the wrong gender to keep their jobs. Our question did not specify whether they were required to do so by their employer, or they felt forced to because of fear of discrimination. Undocumented noncitizens reported this experience at a particularly high rate (45%).

Forced to Present in the Wrong Gender by Household Income

“When one of my colleagues found out I was born female, I was forced to use the bathroom in another part of the building where I worked, because he said that I made the ‘real’ men uncomfortable with my presence. Now, I look like a bio-male, and the only reason they knew about my status is because a supervisor found out, and spread my business to the other supervisors and friends. I had to walk 5 minutes to another building, which impeded my break times.”
**RESTROOMS AT WORK**

Eighty-six percent (86%) of those who have not lost a job due to bias reported that they were able to access restrooms at work appropriate for their gender identity, meaning that 14% of those who kept their jobs were denied access. Looking at the full sample, regardless of whether they were able to keep or they had lost a job, 78% were given access to restrooms appropriate for their gender identity and 22% were denied access.

**INAPPROPRIATE QUESTIONS**

Forty-one percent (41%) of respondents reported having been asked inappropriate questions about their transgender or surgical status.

Forty-five (45%) of our sample reported having been referred to by the wrong pronouns “repeatedly and on purpose” at work.

“At the job I came out at, most were ok and accepting; but the HR manager blocked any attempts for me to arrange a bathroom, even after I pointed to a local law allowing me to use the correct bathroom.”
DELIBERATE MISUSE OF PRONOUNS

Forty-five (45%) of our sample reported having been referred to by the wrong pronouns “repeatedly and on purpose” at work.

BREACHES OF CONFIDENTIALITY

Forty-eight percent (48%) reported that supervisors or coworkers shared information about the respondent that they should not have had.

“My former employer out me anytime a prospective employer calls.”
Attempts to Avoid Discrimination

In order to avoid discriminatory actions and workplace abuse, many study respondents reported having “delayed my gender transition” (57%) or “hid my gender or gender transition” (71%). Given the importance of transition for many people, it is striking that well over half of our respondents delayed this life-affirming, and often live-saving step. Even more alarming is that nearly three-quarters of respondents reported they felt they had to hide who they are on a daily basis for job security.

Many respondents stayed in jobs they would have preferred to leave (45%) or didn’t seek promotions or raises (30%) in order to avoid discrimination. Others (42%) said they had changed jobs to escape discrimination.

Discrimination-Avoidant Behaviors, Overall Sample

The discrimination avoidant behaviors described in this section all have implications for career achievement and secure livelihood. Those who have lost a job due to discrimination display the highest levels of discrimination avoidant behavior.

Employment Bias by Association

We asked respondents whether their spouses/partners or children experienced job discrimination due to the respondent being transgender or gender non-conforming. Fourteen percent (14%) of respondents reported that due to their gender identity, their spouse or partner experienced job discrimination. Respondents who reported having lost a job due to bias reported discrimination against their partners at twice that rate (28%).

Respondents also reported that their children were subject to job discrimination due to associational bias at 11%. For those who lost jobs due to bias, discrimination against their children was reported at 25%.

Undocumented non-citizens reported high levels of associational discrimination for both spouses/partners (20%) and children (20%).

Employment Bias by Association by Race
Improved Job Situation For Those Who Transition

Of respondents who are living full-time in accordance with their gender identity, 78% said they felt more comfortable and their performance improved at work. Respondents in the higher income categories more often reported an increase in feeling comfortable and performing better after transitioning. Transgender men (78%) and transgender women (79%) who have transitioned reported nearly identical rates of improved job situation.

These respondents who felt their performance improved experienced similar rates of harassment and other forms of mistreatment in the workplace as other transgender and gender non-conforming people. For example, of those who transitioned who said their job performance improved, 51% also reported being harassed at work, compared 50% of the overall sample.

“When I started my transition, the place that I was working was very supportive. My boss had a family member who is transgender. I was treated with respect by everyone. I had worked there for many years and everyone assumed that I was gay until then and they knew my partner. I guess they just figured I would still be me. Except for growing facial hair and going bald, I am the same, only better and more free.”

Sex Work, Drug Sales, and Other Underground Work for Income

Given that transgender and gender non-conforming people are often denied access to, forced out of or grossly mistreated in traditional employment markets, it follows that underground work can be an essential survival strategy.

Sixteen percent (16%) of our sample has had some experience in sex work, drug sales, and other underground work. Those at high risk for underground work were those who had lost jobs due to bias (28%), compared to those who had not lost a job (13%), and the unemployed (29%), compared to 14% of those who were employed.

Black (53%) and Latino/a (34%) respondents had extremely high rates of underground work, likely related in part to barriers and abuse within educational systems and dramatically higher rates of employment discrimination.

Male-to-female (19%) respondents had slightly higher rates of underground work than female-to-male (15%) respondents, and transgender (18%) and gender non-conforming (16%) respondents were involved at almost equal frequency.
**SEX WORK**

Eleven percent (11%) of respondents did sex work for income. Here we take a closer look at the demographics of sex workers in our sample and then examine their rates of incarceration, homelessness, and health outcomes.

MTF respondents were more likely to report sex work (15%) than FTM respondents (7%); these data unearths the reality that some transgender men have also done sex work at some point in their lives. Transgender respondents, overall, reported sex work at 12%, only slightly higher than gender non-conforming respondents (10%). Respondents of color were more likely to have reported having done sex work; African-American respondents reporting the highest rate at 44%. Latino/a respondents had the next highest rate at 28%. These data aligns with extremely high rates of unemployment and workplace abuse experienced by respondents of color in the study.

Those with higher educational attainment were less likely to report sex work. Those with no high school diploma reported a 33% rate of sex work, compared to those with college degrees at 7%. However, sex work among those with high levels of attainment remained elevated, including 6% of those with graduate degrees.

**Homelessness**

Respondents reporting sex work were far more likely to also report experiencing homelessness due to bias than the full sample; anecdotal evidence indicates that many who face homelessness do sex work to pay rent or to stay in a hotel. Forty-eight percent (48%) of those who had done sex work also reported experiencing homelessness due to bias. This compares to 19% of the sample overall and 7.4% for the general population overall.5

**Incarceration**

Participants who did sex work were almost four times as likely to have been incarcerated for any reason (48%) than the overall sample (16%).

**HIV**

Those who had done sex work were over 25 times more likely to be HIV-positive (15.32%) than the general population (0.6%).6

**Smoking**

The rate of smoking among those who had done sex work was much higher (49%) than the overall sample (30%).

**Drinking and Drugs**

Respondents who had done sex work were twice as likely to misuse drugs or alcohol to cope with the mistreatment (18%) as the overall sample (8%).

**Suicide Attempts**

The rate of attempted suicide among those who had done sex work was much higher (60%) than the overall sample (41%) and more than 37 times higher than the general population (1.6%).
Making the Connections: Employment Discrimination, Economic Security, and Health

In this section, we examine the connections between employment discrimination and present income, incarceration, homelessness and health outcomes.

RESPONDENTS WHO HAVE LOST JOBS DUE TO DISCRIMINATION

We looked at present household income of the more than one quarter (26%) of our sample who said they had lost jobs because they were transgender or gender non-conforming and found the apparent effects to be severe. Respondents who had lost a job due to bias were six times as likely to be living on a household income under $10,000/year (24%) as the general U.S. population (4%). They were nearly twice as likely to be living on between $10,000 and $20,000/year (17%) as the general population (9%).

Homelessness

Respondents who had lost a job due to bias were four times more likely to have experienced homelessness due to bias (40%) than those who did not lose a job due to bias (10%).

Incarceration

Respondents who had lost a job due to bias were 85% more likely to have been incarcerated for any reason (24%) than those who did not lose a job (13%).

HIV

Respondents who had lost a job due to bias reported an HIV rate (4.59%) over seven times higher than the general population (.6%), and more than double the rate of those who did not lose a job (2.06%).

Smoking

Respondents who had lost a job due to bias were more likely to be smokers (38%) than the overall sample (30%).

Drinking & Drugs

Respondents who had lost a job due to bias were 70% more likely to misuse drugs or alcohol to cope with the mistreatment they face (12%) than those who had not lost a job (7%).

Suicide Attempts

Respondents who had lost a job due to bias were much more likely to have attempted suicide (55%) than those respondents who had not lost a job due to bias (38%), and both figures are striking in contrast to the general population figure of 1.6%.

“I was fired for being transgender. I was on the brink of homelessness and starvation until a friend (who is also transgender) invited me to stay with her in a different state, over 15 hours away.”
UNEMPLOYED RESPONDENTS

Here we take a closer look at those respondents who reported being currently unemployed and describe the higher incidence of negative outcomes they experienced. These respondents may be unemployed because they lost a job due to bias, because they experienced discrimination in hiring, or for other reasons.

Homelessness

Respondents who were unemployed were more than twice as likely to have experienced homelessness due to bias (38%) than those who were employed (14%).

Incarceration

Respondents who were unemployed were 85% more likely to have been incarcerated for any reason (24%) than those who were employed (13%).

HIV

Respondents who were unemployed reported an HIV rate (4.67%) over seven times higher than the general population (.6%), and more than double the rate of those who were employed (1.81%).

Smoking

Respondents who were unemployed were more likely to be smokers (38%) than the overall sample (30%), and almost twice as likely to be smokers than those who were working (20%).

Drinking & Drugs

Respondents who were unemployed were almost two times as likely to misuse drugs or alcohol to cope with the mistreatment they face (13%) than those who were working (7%).

Suicide Attempts

Respondents who were unemployed were much more likely to have attempted suicide (51%) than those respondents who were working (37%), and both figures are striking in contrast to the general population figure of 1.6%.

“I was fired from a good job because I tried to transition on the job. I then lived on menial employment for over 3 years before finally landing another good one that was full-time job and had benefits. At one point, I had an offer of employment withdrawn after the would-be employer found out I was transgender.”
CONCLUSIONS FOR EMPLOYMENT

Transgender and gender non-conforming people face staggering rates of harassment mistreatment, and discrimination at work. In this chapter we have shown that many of those who faced this discrimination also experienced multiple, devastating outcomes across many areas of life.

The most obvious sign of this discrimination was the extremely high unemployment figure: double the rate of the general population at the time of study. Underemployment and low household income were also widely reported.

Encouragingly, most of those who have transitioned reported feeling more comfortable at work and that their job performance had improved. However, many of our respondents are unable to reap that benefit because they delayed their gender transition in order to avoid discrimination. The data appears to indicate that transition is not only pivotal to the individual’s well-being, but also that employers would be wise to support and facilitate gender transition of their employees to increase productivity.

Many report changing jobs to avoid discrimination or the risk of discrimination. Again, employers should be aware how environments hostile to transgender workers negatively affect their bottom line, as they lose experienced employees and face the added expense of hiring and training replacements.

High rates of workplace abuse and unemployment among respondents, and resulting poverty, indicate that anti-transgender discrimination has left many in a position where sex work and drug sales are necessary for survival. Respondents of color were particularly vulnerable to being pushed into underground work, with a combination of discrimination based on gender, race and citizenship forcing them farthest to the margins.

The data show that there is a high price to pay for those who must do sex work and other underground work, including homelessness, incarceration and catastrophic health outcomes.

This survey is a call to action; employment discrimination has devastating effects on transgender and gender non-conforming people and must be confronted and eradicated. Not only must individual employers be held accountable, but society as a whole must be held accountable for widespread violations of a basic human right.

RECOMMENDATIONS FOR EMPLOYMENT

Respondents in this study faced overwhelming bias and mistreatment in the workplace due to gender identity and expression. In the absence of workplace protections, employers and coworkers are free to engage in a broad range of abuses from arbitrary firings to demeaning and even violent treatment. The solution to this problem requires the attention of the legislative and executive branches of government, corporations and other employers, labor organizations and non-profit organizations.

- Federal, state, and local laws should be enacted to prohibit discrimination on the basis of gender identity or expression.
  - Federal employment non-discrimination legislation should be enacted with transgender/gender non-conforming protections intact.
  - States and local governments should prioritize enactment of non-discrimination laws.
- Government agencies should implement laws through regulations, compliance guidelines, training, and publicized decisions by enforcement agencies.
  - Only a handful of the states/localities that currently have legal protections have written regulations or guidelines showing employers how to properly treat transgender and gender non-conforming employees. Without these specifics, employers are not sure what the law requires of them and employees cannot engage in effective self-advocacy when being mistreated or discriminated against.
• Enforcement agency staff should undergo training to better understand the specific issues that transgender and gender non-conforming employees experience in the workplace and should learn how to respectfully deal with transgender and gender non-conforming complainants.

• Decisions, investigations, and settlements related to discrimination on the basis of gender identity/expression should be publicized as much as possible to increase awareness of what constitutes illegal discriminatory actions.

• Enforcement agencies should develop and offer trainings for employers on how to comply with the law. If this is not done, non-profit organizations should develop and provide these trainings.

• Enforcement agencies and non-profit groups should develop “Know Your Rights” materials and trainings for transgender and gender non-conforming people.

• Corporations should enact and enforce their own gender identity/expression non-discrimination policies.

  • All employees should be trained on how to comply with the policy. Hiring officers must be instructed to ensure they are not consciously or unconsciously discriminating in hiring and should also be educated about how to recognize when an applicant has a poor work record due to discrimination.

  • Written policies should be developed concerning gender transition in the workplace so that all employees understand proper, respectful protocol. This policy should address confidentiality, access to gender-segregated facilities, dress standards (if relevant), medical leave policies, pronouns and forms of address, harassment, change of employee records and badges, and any other topic necessary for a smooth gender transition in the workplace.

  • Companies should actively recruit transgender and gender non-conforming applicants.

• Government agencies at all levels should develop transgender-specific workforce development programs, or modify existing programs, to train and match transgender and gender non-conforming people to the best jobs available.

  • Staff running these programs should be properly trained to address and work with transgender and gender non-conforming participants respectfully.

  • Special attention in such programs should be paid to devising ways to expunge criminal records of persons who have been incarcerated for survival behaviors, and/or find employers who are willing to hire applicants with criminal records.

  • These programs should train cooperating employers on how to avoid discrimination in hiring transgender and gender non-conforming employees and require that staff of cooperating employers have received training on how to respectfully treat these coworkers.

  • Government agencies should work with transgender organizations to develop such programs, ideally providing grants to these organizations for their assistance.

• Labor organizations should ensure that contracts include gender identity/expression nondiscrimination clauses, train union officers and rank-and-file on the importance of nondiscrimination in the workplace, and how to process grievances related to discriminatory treatment.

• Governments should focus their resources on providing meaningful pathways out of poverty, such as by increasing employment opportunities for transgender and gender non-conforming people, rather than expending significant resources on arresting, prosecuting, and incarcerating those doing sex work.
Endnotes


2 This includes people who said they tell “everyone.”

3 Seven percent (7%) was the rounded weighted average unemployment rate for the general population during the six months the survey was in the field, based on which month questionnaires were completed. See seasonally unadjusted monthly unemployment rates for September 2008 through February 2009. For information on how we calculated the unemployment rate for respondents, see the Portrait chapter. U.S. Department of Labor, Bureau of Labor Statistics, “The Employment Situation: September 2008,” (2008): http://www.bls.gov/news.release/archives/empsit_10032008.htm

4 See Appendix B: Survey Instrument – Issues and Analysis for more discussion of this question.


6 HIV rates are reported without rounding in order to make a more precise comparison with general population data.


8 HIV rates reported without rounding in order to make a more precise comparison with general population data.

9 HIV rates reported without rounding in order to make a more precise comparison with general population data.
Access to health care is a fundamental human right that is regularly denied to transgender and gender non-conforming people.

Transgender and gender non-conforming people frequently experience discrimination when accessing health care, from disrespect and harassment to violence and outright denial of service. Participants in our study reported barriers to care whether seeking preventive medicine, routine and emergency care, or transgender-related services. These realities, combined with widespread provider ignorance about the health needs of transgender and gender non-conforming people, deter them from seeking and receiving quality health care.

Our data consistently show that racial bias presents a sizable additional risk of discrimination for transgender and gender non-conforming people of color in virtually every major area of the study, making their health care access and outcomes dramatically worse.

**KEY FINDINGS IN HEALTH**

- Survey participants reported that when they were sick or injured, they postponed medical care due to discrimination (28%) or inability to afford it (48%).

- Respondents faced serious hurdles to accessing health care, including:
  - **Refusal of care**: 19% of our sample reported being refused care due to their transgender or gender non-conforming status, with even higher numbers among people of color in the survey.
  - **Harassment and violence in medical settings**: 28% of respondents were subjected to harassment in medical settings and 2% were victims of violence in doctor’s office.
  - **Lack of provider knowledge**: 50% of the sample reported having to teach their medical providers about transgender care.

- The majority of survey participants have accessed some form of transition-related medical care despite the barriers; the majority reported wanting to have some type of surgery but have not had any surgeries yet.

- If medical providers were aware of the patient's transgender status, the likelihood of that person experiencing discrimination increased.

- Respondents reported over four times the national average of HIV infection, 2.64% in our sample compared to .6% in the general population, with rates for transgender women at 4.28%, and with those who are unemployed (4.67%) or who have done sex work (15.32%) even higher.¹

- Over a quarter of the respondents misused drugs or alcohol specifically to cope with the mistreatment they faced due to their gender identity or expression.

- A staggering 41% of respondents reported attempting suicide compared to 1.6% of the general population, with unemployment, bullying in school, low household income and sexual and physical associated with even higher rates.
Access to Healthcare

HEALTH CARE SETTINGS

A majority of study participants sought care (“when you are sick or need advice about your health”) through a doctor’s office (60%); however a sizable minority used health centers and clinics (28%). Four percent (4%) of respondents primarily used emergency rooms for care. Several studies have shown that individuals who use emergency rooms for primary care experience more adverse health outcomes than those who regularly see a primary physician. Factors that correlated with increased use of emergency rooms (ERs) among our respondents were:

- Race—17% of African-Americans used ERs for primary care, as did 8% of Latino/a respondents;
- Household income—8% of respondents earning under $10,000 per year used ERs for primary care;
- Employment status—10% of unemployed respondents and 7% of those who said they had lost their jobs due to bias used ERs for primary care;
- Education—13% of those with less than a high school diploma used ERs for primary care.

Visual conformers and those who had identity documents that matched their presentation had high rates of using doctor’s offices for their care.

Health Care Experiences

DISCRIMINATION BY MEDICAL PROVIDERS

Denial of health care and multiple barriers to care are commonplace in the lives of transgender and gender non-conforming people. Respondents in our study seeking health care were denied equal treatment in doctor’s offices and hospitals (24%), emergency rooms (13%), mental health clinics (11%), by EMTs (5%) and in drug treatment programs (3%). Female-to-male respondents reported higher rates of unequal treatment than male-to-female respondents. Latino/a respondents reported the highest rate of unequal treatment of any racial category (32% by a doctor or hospital and 19% in both emergency rooms and mental health clinics).

We also asked whether respondents had been denied service altogether by doctors and other providers. Nineteen percent (19%) had been refused treatment by a doctor or other provider because of their transgender or gender non-conforming status.

Twenty-four percent (24%) of transgender women reported having been refused treatment altogether and 20% of transgender men did. Respondents who reported they had lost jobs due to bias (36%); American Indians (36%); those who worked in the underground economy (30%); those on public insurance (28%); and those who transitioned (25%) experienced high occurrence of refusal to treat.

“After an accident on ice, I was left untreated in the ER for two hours when they found my breasts under my bra while I was dressed outwardly as male.”

“I have been refused emergency room treatment even when delivered to the hospital by ambulance with numerous broken bones and wounds.”
VIOLANCE AND HARASSMENT WHEN SEEKING MEDICAL TREATMENT

Doctors’ offices, hospitals, and other sources of care were often unsafe spaces for study participants. Over one-quarter of respondents (28%) reported verbal harassment in a doctor’s office, emergency room or other medical setting and 2% of the respondents reported being physically attacked in a doctor’s office.

Those particularly vulnerable to physical attack in doctors’ offices and hospitals include those who have lost their jobs (6%); African-Americans (6%); those who have engaged in sex work, drug sales or other work in the underground economy (6%); those who transitioned before they were 18 (5%); and those who are undocumented non-citizens (4%).

In emergency rooms, 1% reported attack. Those more vulnerable to attack include those who are undocumented (6%); those who have worked in the underground economy (5%); those who lost their jobs (4%); and Asian respondents (4%). Obviously, harassment and physical attacks have a deterrent effect on patients seeking additional care and impact the wider community as information about such abuses circulates.

“I have had general practitioners refuse to accept me as a patient on the basis of having a history of gender identity disorder.”

“My experiences in dealing with hospital personnel after my rape was not pleasant and lacked a lot of sensitivity to trans issues.”

“When I tried to kill myself and was taken to a suicide center, I was made fun of by staff and treated roughly.”

“I was forced to have a pelvic exam by a doctor when I went in for a sore throat. The doctor invited others to look at me while he examined me and talked to them about my genitals.”
OUTNESS AND DISCRIMINATION

Twenty-eight percent (28%) of respondents said they were out to all their medical providers. Eighteen percent (18%) said they were out to most, 33% said some or a few, and 21% were out to none.

Doctors can provide more effective care when they have all medically relevant information about their patients. Unfortunately, our data shows that doctors’ knowledge of a patient’s transgender status increases the likelihood of discrimination and abuse. Medical professionals’ awareness of their patient’s transgender status increased experiences of discrimination among study participants up to eight percentage points depending on the setting:

- **Denied service altogether**: 23% of those who were out or mostly out to medical providers compared to 15% of those who were not out or partly out
- **Harassment in ambulance or by EMT**: 8% of those who were out or mostly out to medical providers compared with 5% of those who were not out or partly out
- **Physically attacked or assaulted in a hospital**: 2% of those who were out or mostly out to medical providers compared with 1% of those who were not out or partly out

“I have been harassed and physically assaulted on the street. One time, I didn’t go the hospital until I went home, changed [out of feminine] clothes, and then went to the emergency room in male mode. I had a broken collar bone as a result of that attack.”

“I rarely tell doctors of my gender identity. It just seems so hard to explain what “genderqueer” means in a short doctor’s appointment. I also am reluctant to take the risk of discrimination; I need to be healthy more than I need to be out to my doctors. I hate making this compromise. But I’m not quite that brave yet.”

“Denial of health care by doctors is the most pressing problem for me. Finding doctors that will treat, will prescribe, and will even look at you like a human being rather than a thing has been problematic. Have been denied care by doctors and major hospitals so much that I now use only urgent care physician assistants, and I never reveal my gender history.”
MEDICAL PROVIDERS’ LACK OF KNOWLEDGE

When respondents saw medical providers, including doctors, they often encountered ignorance about basic aspects of transgender health and found themselves required to “teach my provider” to obtain appropriate care. Fully 50% of study respondents reported having to teach providers about some aspect of their health needs; those who reported “teaching” most often include transgender men (62%), those who have transitioned (61%) and those on public insurance (56%).

“I have several health issues and have been refused care by one doctor who ‘suggested’ that I go somewhere else because she could not treat me since she ‘did not know anything about transgender people.’ “

POSTPONEMENT OF NECESSARY AND PREVENTIVE MEDICAL CARE

We asked respondents whether they postponed or did not try to get two types of health care: preventive care “like checkups” and necessary care “when sick or injured.” We found that many postponed care because they could not afford it and many postponed care because of discrimination and disrespect from providers. A large number of study participants postponed necessary medical care due to inability to afford it, whether seeking care when sick or injured (48%), or pursuing preventive care (50%). Transgender men reported postponing any care due to inability to afford it at higher rates (55%) than transgender women (49%).

Insurance was a real factor in delayed care: those who have private insurance were much less likely to postpone care because of inability to afford it when sick or injured (37%) than those with public (46%) or no insurance who postponed care (86%).

In terms of preventive care, those without insurance reported delaying care due to inability to afford it much more frequently (88%) than those with private insurance (39%) or public insurance (44%). Failing to obtain preventive care is known to lead to poor long-term health outcomes.

Due to discrimination and disrespect, 28% postponed or avoided medical treatment when they were sick or injured and 33% delayed or did not try to get preventive health care. Female-to-male transgender respondents reported postponing care due to discrimination and disrespect at a much higher frequency (42%, sick/injured; 48% preventive) than male-to-female transgender respondents (24%, sick/injured; 27% preventive). Those with the highest rates of postponing care when sick/injured included those who have lost a job due to bias (45%) and those who have done sex work, sold drugs, or done other work in the underground economy for income (45%). Twenty-nine percent (29%) of respondents who were “out” or “mostly out” to medical providers reported they had delayed care when ill and 33% postponed or avoided preventive care because of discrimination by providers.

“The transition and health care has been expensive, all at a time where my main source of income (my law practice) deteriorated. I have exhausted my savings and the equity from selling my home just to pay medical and living expenses.”

ACCESS TO INSURANCE

Study participants were less likely than the general population to have health insurance, more likely to be covered by public programs such as Medicare or Medicaid, and less likely to be insured by an employer.

Nineteen percent (19%) of the sample lacked any health insurance compared to 17% of the general population. Fifty-one percent (51%) had employer-based coverage compared to 58% of the general population.

African-American respondents had the worst health insurance coverage of any racial category: 39% reported private coverage and 30% public. Thirty-one percent (31%) of Black respondents reported being uninsured; by contrast 66% of white respondents reported private insurance, 17% public insurance and 17%
uninsured. In the general population, 68% have private insurance and 28% have public insurance.\(^7\)

Undocumented non-citizens had very low rates of coverage: 26% reported private insurance, 37% public insurance, and 36% no insurance. The South was the worst region for coverage where 59% of respondents reported private insurance, 17% public insurance and 25% no insurance.

Transgender women reported private insurance at 54%, public insurance at 24% and 22% were uninsured. Transgender men reported private insurance at 68%, public insurance at 13% and 19% with no insurance. Transgender respondents, overall, reported private insurance at 60%, public insurance at 20% and 20% had no insurance. Gender non-conforming respondents were insured at higher rates than their transgender counterparts, with 73% reporting private insurance, 11% public insurance, and 17% uninsured.

“I have been living with excruciating pain in my ovaries because I can’t find a doctor who will examine my reproductive organs.” (from a transgender man)

Transition-related Care

Most survey respondents had sought or accessed some form of transition-related care. Counseling and hormone treatment were notably more utilized than any surgical procedures, although the majority reported wanting to “someday” be able to have surgery. The high costs of gender-related surgeries and their exclusion from most health insurance plans render these life-changing (in some cases, life-saving) and medically necessary procedures inaccessible to most transgender people.

Throughout this section, we focus primarily on transgender people rather than on gender non-conforming people, though they too may also desire and sometimes use various forms of gender-related medical care.

The World Professional Association for Transgender Health (WPATH) publishes Standards of Care\(^8\) which are guidelines for mental health, medical and surgical professionals on the current consensus for providing assistance to patients who seek transition-related care. They are intended to be flexible to assist professionals and their patients in determining what is appropriate for each individual. The Standards of Care are a useful resource in understanding the commonly experienced pathways through transition-related care.

“My choices for health coverage at my employer all exclude any treatment for transgender issues, even though they cover things like hormones for other people.”
COUNSELING

Counseling often plays an important role in transition. Because of the WPATH Standards of Care, medical providers often require a letter from a qualified counselor stating that the patient is ready for transition-related medical care; transgender people may seek out counseling for that purpose. Counseling may also play a role in assisting with the social aspects of transition, especially in dealing with discrimination and family rejection.

Seventy-five percent (75%) of respondents received counseling related to their gender identity and an additional 14% hoped to receive it someday. Only 11% of the overall sample did not want it. Those who identified as transgender were much more likely to have had counseling (84%) than those who are gender non-conforming (48%). Eighty-nine percent (89%) of those who medically transitioned have received counseling, as have 91% of those who had some type of surgery.

Part of counseling can involve receiving a gender-related mental health diagnosis such as “Gender Identity Disorder.” Many doctors require this diagnosis before providing hormones or surgical treatment, but the diagnosis itself is widely criticized for categorizing naturally occurring gender variance as pathological.9 Fifty-percent (50%) of study participants have received a gender-related mental health diagnosis. Transgender women reported a higher rate of diagnosis (68%) than transgender men (56%); and transgender-identified participants had a substantially higher rate of diagnosis (63%) than gender non-conforming respondents (11%).

“I can no longer afford health care of any kind. I am fully transitioned and thus reliant upon estradiol as my body produces neither estrogens nor androgens in sufficient quantity. I am unable to go to the doctor for my prescriptions, and thus have been unable to buy my hormones for over one year. Thus I watch my hair falling out, my nails dissolve and am weak and tired like a far older lady than I am.”

HORMONE THERAPY

Sixty-two percent (62%) of respondents have had hormone therapy, with the likelihood increasing with age; an additional 23% hope to have it in the future. Transgender-identified respondents accessed hormonal therapy (76%) at much higher rates than their gender non-conforming peers, with transgender women more likely to have accessed hormone therapy (80%) than transgender men (69%). Almost all respondents who reported undertaking transition-related surgeries also reported receiving hormone therapy (93%).

Hormone Therapy by Age of Respondent

<table>
<thead>
<tr>
<th>Age of Respondent</th>
<th>Have had it</th>
<th>Want it someday</th>
<th>Do not want it</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-24</td>
<td>47%</td>
<td>33%</td>
<td>21%</td>
</tr>
<tr>
<td>25-44</td>
<td>64%</td>
<td>23%</td>
<td>13%</td>
</tr>
<tr>
<td>45-54</td>
<td>78%</td>
<td>15%</td>
<td>6%</td>
</tr>
<tr>
<td>55-64</td>
<td>76%</td>
<td>18%</td>
<td>7%</td>
</tr>
<tr>
<td>65+</td>
<td>82%</td>
<td>11%</td>
<td>8%</td>
</tr>
</tbody>
</table>
**SURGERY—MALE-TO-FEMALE**

Transgender women may elect to undertake a variety of surgeries, including breast augmentation, orchiectomy (removal of testes), vaginoplasty (creation of a vagina and/or removal of the penis), and facial feminization surgeries. We asked respondents to report on whether they had, or wanted, breast augmentation surgery, orchiectomies and vaginoplasties. As the charts below show, most transgender women reported wanting or having these surgeries. In addition, 17% reported having had facial surgery. However, it is impossible to know how many others would desire or utilize surgery if it was more financially accessible.

**MTF Breast Augmentation Surgery**

- **Have Had**: 21%
- **Want Someday**: 53%
- **Don’t Want**: 26%

**MTF Orchiectomy**

- **Have Had**: 25%
- **Want Someday**: 61%
- **Don’t Want**: 14%

**MTF Vaginoplasty**

- **Have Had**: 23%
- **Want Someday**: 64%
- **Don’t Want**: 14%

“**I cannot afford gender reassignment surgery which is crucial to my mental well being and thoughts of suicide are always present.**”

**SURGERY—FEMALE-TO-MALE**

Transgender men may elect to undertake a variety of surgeries, including chest reconstruction, hysterectomy, metoidioplasty and other genital surgeries. We asked respondents to report on chest surgery; hysterectomy; metoidioplasty, which releases the clitoris; surgeries that create testes; and phalloplasty, which surgically creates a penis and testes. The majority of FTM transgender-identified respondents wanted to have, or have already had, chest surgery and a hysterectomy. However, when it came to genital surgeries, very few reported having such surgeries; a slim majority (53%) reported desiring other genital surgery such as metoidioplasty in addition to the 3% that have had it; and one-quarter (27%) wanted to have a phalloplasty in addition to the 1% who have had it. It is impossible to know how these rates would change if these surgeries were more financially accessible.

**FTM Chest Surgery**

- **Have Had**: 43%
- **Want Someday**: 50%
- **Don’t Want**: 7%

**FTM Hysterectomy**

- **Have Had**: 21%
- **Want Someday**: 58%
- **Don’t Want**: 21%

**FTM Metoidioplasty/Creation of Testes**

- **Have Had**: 4%
- **Want Someday**: 53%
- **Don’t Want**: 44%

**FTM Phalloplasty**

- **Have Had**: 2%
- **Want Someday**: 53%
- **Don’t Want**: 72%

“I have also have had several bouts with depression and anxiety disorders and once ended up in the emergency room for depression. I still bounce in and out of depression due to not being able to get the appropriate surgical procedures.”
Health Vulnerabilities

Survey participants reported poorer health outcomes than the general population in a variety of critical health areas.

PHYSICAL VIOLENCE AND SEXUAL ASSAULT

In questions related to experiences in educational settings, at work, in interactions with police and with family members, at homeless shelters, accessing public accommodations, and in jails and prisons, respondents were asked about physical violence or sexual violence, or both, committed against them because of their gender identity/expression. There was no general question asked about whether respondents had ever experienced any bias-motivated violence, and further, there was no question that asked to report on violence that was not specifically motivated by anti-transgender bias.

Twenty-six percent (26%) of respondents had been physically assaulted in at least one of these contexts because they were transgender or gender non-conforming. Ten percent (10%) of respondents were sexually assaulted due to this bias.

As a child because I acted “girly,” I was a victim of severe child abuse, and was sexually assaulted. I avoided transitioning until I came to the point of suicide.”

Having been physically or sexually assaulted aligned with a range of other negative outcomes, as described below in each relevant section.

HIV

Respondents reported an HIV infection rate of 2.64%,\textsuperscript{11} over four times the rate of HIV infection in the general United States adult population (0.6%) as reported by the United Nations Programme on HIV/AIDS and the World Health Organization.\textsuperscript{12} People of color reported HIV infection at substantially higher rates: 24.90% of African-Americans, 10.92% of Latino/as, 7.04% of American Indians, and 3.70% of Asian-Americans in the study reported being HIV positive. This compares with national rates of 2.4% for African Americans, 0.8% Latino/as, and 0.1% Asian Americans.\textsuperscript{13} Non-U.S. citizens in our sample reported more than twice the rate of HIV infection of U.S. citizens (2.41%), with documented non-citizens at 7.84% and undocumented at 6.96%.

Respondents reported over four times the national average of HIV infection.

Doing sex work for income clearly was a major risk factor, with 61% of respondents who were HIV positive reporting they had done sex work for income. To consider this from a different angle, of all the people in our sample who had done sex work, 15.32% reported being HIV positive.

Among survey participants, 88% of those who reported being HIV positive identified as either MTF or gender non-conforming on the male-to-female spectrum. The reported rate of HIV infection for the MTF transgender respondents was 4.28%. The reported rate of HIV infection for FTM respondents was .51%, lower than the national average.

Other categories that reported substantially higher HIV rates than the sample as a whole were:

- Those without a high-school diploma (13.49%)
- Those who had been sexually assaulted due to bias (10.13%)
- Those with household income below $10,000 a year (6.40%)
- Those who had lost a job due to bias (4.59%) or reported being unemployed (4.67%)

Eight percent (8%) of our sample reported that they did not know their HIV status. Transgender women and transgender men had equal rates of not knowing, both 8%, with transgender respondents also at 8% and gender non-conforming respondents at 9%. Those most likely not to know their HIV status include undocumented non-citizens (17%), those with household incomes under $10,000/year (14%), and those with lower educational attainment (those with no high school diploma and high school diploma only, both at 13%). With regard to race, Asian respondents were least likely to know their status (13%).
DRUG AND ALCOHOL USE

The National Institutes of Health (NIH) estimate that 7.3% of the general public abuses or is dependent on alcohol, while 1.7% abuses or is dependent on non-prescription drugs. Eight percent (8%) of study participants reported currently using alcohol or drugs specifically to cope with the mistreatment that they received as a result of being transgender or gender non-conforming, while 18% said they had done so in the past but not currently. We did not ask about general use of alcohol and drugs, only usage which the respondents described as a coping strategy for dealing with the mistreatment they face as transgender or gender non-conforming persons.

Doing sex work, drug sales, and other work in the underground economy for income more than doubles the risk of alcohol or drug use because of mistreatment, with 19% of these respondents currently using alcohol and/or drugs while 36% reported that they had done so in the past. Those who have been the physically attacked due to bias also had a higher rate of current alcohol and drug misuse (15%) as did those who have been sexually assaulted due to bias (16%). Also at elevated risk were those who had lost a job due to discrimination; 12% reported currently using drugs and alcohol, while 28% have done so in the past.

Alcohol and drug use decreased by age among our participants, as they did in studies of the general population, with those 65 years and above reporting less than half the rate of use (4%) of those who are the 18-44 age range (9%). This contrasts with studies of LGBT populations that show a less dramatic decrease in use over the life cycle; however, because our study only asked about use connected to mistreatment, the comparisons with both the general population and LGBT studies are not precise.

SMOKING

Thirty percent (30%) of our sample reported smoking daily or occasionally, compared to 20.6% of U.S. adults. Studies of LGBT adults show similar rates to those in our study, with elevated rates of 1.1-2.4 times that of the general population, and a 2004 California study found a 30.7% smoking rate for transgender people. In the general population, men smoke at higher rates than women, but in LGBT studies, women smoke at higher rates than men. Our sample resembled the LGBT data regarding elevated smoking levels but differed in that more men than women in our sample smoke, a pattern that is closer to that of the general population. When asked if they would “like to quit,” 70% of smokers in the study selected yes.

Comparative Smoking Rates from Other Studies, Compared to Our Study

<table>
<thead>
<tr>
<th></th>
<th>General Population</th>
<th>Lesbian and Gay</th>
<th>Bisexual</th>
<th>Our Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>23.1%</td>
<td>26.5-30.9%</td>
<td>29.5-38.1%</td>
<td>33%</td>
</tr>
<tr>
<td>Women</td>
<td>18.3%</td>
<td>22.3-26%</td>
<td>30.9-39.1%</td>
<td>29%</td>
</tr>
</tbody>
</table>

Visual conformers were less likely to be current smokers (27%) than visual non-conformers (37%), suggesting that the stress caused by the additional mistreatment that visual non-conformers face may be involved in the development of an addiction to nicotine. Similarly, those who have been physically assaulted due to bias (40%) and sexually assaulted due to bias (45%) have higher smoking rates than their peers who were not assaulted.
SUICIDE ATTEMPTS

When asked “have you ever attempted suicide?” 41% of respondents answered yes. According to government health estimates, five million, or 1.6% of currently living Americans have attempted suicide in the course of their lives. Our study asked if respondents had ever attempted suicide while most federal studies refer to suicide attempts within the last year; accordingly it is difficult to compare our numbers with other studies. Regardless, our findings show a shockingly high rate of suicidality.

The National Institute for Mental Health (NIMH) reports that most suicide attempts are signs of extreme distress, with risk factors including precipitating events such as job loss, economic crises, and loss of functioning. Given that respondents in this study reported loss in nearly every major life area, from employment to housing to family life, the suicide statistics reported here cry out for further research on the connection between the consequences of bias in the lives of transgender and gender non-conforming people and suicide attempts.

NIMH also reports that generally African-Americans, Latino/as and Asians have much lower suicide rates than whites and American Indians; our sample showed a different pattern of risk for suicide by race, with Black and Latino/a respondents showing dramatically elevated rates in comparison to their rates in the general population.

In terms of age group risk, the highest rates of suicide attempts in this study were reported among those in the 18-24 age group (45%) and 25-44 age group (45%), with only 16% of those over 65 reporting a suicide attempt. These rates are inverse to the general population, which shows a higher incidence of attempts among older Americans than youth.

Our questionnaire did not ask at what age the respondents made suicide attempts and therefore it is difficult to draw conclusions about the risk of suicide over their life spans. However, there are a number of attributes that align with an increased rate of attempted suicide. High risk groups include visual non-conformers (44%) and those who are generally out about their transgender status (44%). Those who have medically transitioned (45%) and surgically transitioned (43%) have higher rates of attempted suicide than those who have not (34% and 39% respectively).

Respondents’ work status and experiences of discrimination in employment also had a sizable impact on their likelihood of having attempted suicide.
Those who were bullied, harassed, assaulted, or expelled because they were transgender or gender non-conforming in school (at any school level) reported elevated levels of suicide attempts (51% compared with 41% of our sample as a whole). Most notably, suicide attempt rates rise dramatically when teachers were the reported perpetrators: 59% for those harassed or bullied by teachers, 76% among those who were physically assaulted by teachers and 69% among those who were sexually assaulted by teachers. These numbers speak to the urgency of ending violence and harassment of transgender students by both their peers and their teachers.

Education and household income both align with suicide rates, with those earning $10,000 annually or less at extremely high risk (54%), while those making more than $100,000 are at comparatively lower risk (26%), while still tremendously higher than the general population. Those who have not completed college attempted suicide at higher rates (48% among those with no high school diploma, 49% for those with a high school diploma only, and 48% for those with some college education) while those have completed college (33%) or graduate school (31%) have lower rates.

Those who had survived violence perpetrated against them because they were transgender or gender non-conforming were at very high risk; 61% of physical assault survivors reported a suicide attempt, while sexual assault survivors reported an attempt rate of 64%.

“My suicide attempt had a lot to do with the fact that I felt hopeless and alone in regards to my gender identity.”
CONCLUSIONS FOR HEALTH

Respondents reported serious barriers to health care and outrageous frequencies of anti-transgender bias in care, from disrespect to refusal of care, from verbal harassment to physical and sexual abuse. Transgender people of color and low-income respondents faced substantially elevated risk of abuse, refusal of care, and poor health outcomes than the sample as a whole.

The data gathered here speak to a compelling need to examine the connection between multiple incidences of discrimination, harassment and abuse faced by our respondents in the health care system and the high risk for poor health outcomes. Additionally, our data suggest that discriminatory events are commonplace in the daily lives of transgender people and that this has a cumulative impact—from losing a job because of bias to losing health insurance; from experiencing health provider abuse to avoiding health care; from long-term unemployment to turning to work on the streets. The collective impact of these events exposed our respondents to increased risk for HIV infection, smoking, drug/alcohol use, and suicide attempts.

It is important to note that the traumatic impact of discrimination also has health care implications. Transgender people face violence in daily life; when this risk is compounded by the high rates of physical and sexual assault they face while accessing medical care, health care costs increase, both to treat the immediate trauma as well as ongoing physical and psychological issues that may be created.

As we have seen across a number of categories in the survey, the ability to work substantially impacts transgender health. In particular, those who have been fired due to anti-transgender bias and those who have done sex work, drug sales, or other work in the underground economy are much more likely to experience health risks that are shown to lead to poorer health outcomes.

Discrimination in the health care system presents major barriers to care for transgender people and yet a majority of our survey participants were able to access some transition-related care, with 75% receiving counseling and 62% obtaining hormones. Genital surgery, on the other hand, remains out of reach for a large majority, despite being desired by most respondents. This is one important reason why legal rights for transgender people must never be determined by surgical status.

“I saw a doctor in New York and told her how I wanted [chest surgery]. She looked at me sternly and said, ‘I can’t believe you are wasting my time. Do you know what your problem is? You just want to be a boy. You want to be a boy and that’s never gonna happen so just do yourself a favor and get over it.’ Then she left the room abruptly. I grabbed my things and bolted down the street, feeling like the biggest freak in the world.”
RECOMMENDATIONS FOR HEALTH

• Anti-transgender bias in the medical profession and U.S. health care system has catastrophic consequences for transgender and gender non-conforming people. This study is a call to action for the medical profession:
  • The medical establishment should fully integrate transgender-sensitive care into its professional standards, and this must be part of a broader commitment to cultural competency around race, class, and age;
  • Doctors and other health care providers who harass, assault, or discriminate against transgender and gender non-conforming patients should be disciplined and held accountable according to the standards of their professions.
• Public and private insurance systems should cover transgender-related care; it is urgently needed and is essential to basic health care for transgender people.
• Ending violence against transgender people should be a public health priority, because of the direct and indirect negative effect it has on both victims and on the health care system that must treat them.
• Medical providers and policy makers should never base equal and respectful treatment and the attainment of appropriate government-issued identity documents on:
  • Whether an individual has obtained surgery, given that surgeries are financially inaccessible for large majorities of transgender people because they are rarely covered by either public or private insurance;
  • Whether an individual is able to afford or attain proof of citizenship or legal residency.
• Rates of HIV infection, attempted suicide, drug and alcohol abuse, and smoking among transgender and gender non-conforming people speak to the overwhelming need for:
  • Transgender-sensitive health education, health care, and recovery programs;
  • Transgender-specific prevention programs.
• Additional data about the health outcomes of transgender and gender non-conforming people is urgently needed:
  • Health studies and other surveys need to include gender identity as a demographic category;
  • Information about health risks, outcomes and needs must be sought specifically about transgender populations;
  • Transgender people should not be put in categories such as “men who have sex with men” (MSM) as transgender women consistently are and transgender men sometimes are. Separate categories should be created for transgender women and transgender men so HIV rates and other sexual health issues can be accurately tracked and researched.
Endnotes

1 HIV rates are presented with two decimal places for more accurate comparison with general population figures.


3 These results were based on question 30, which was prefaced by: “Based on being transgender/gender non-conforming, please check whether you have experienced any of the following in these public spaces,” and asked respondents to indicate whether they had been “denied equal treatment or service” for each of the various locations.

4 These results were based on question 43, which was prefaced by: “Because you are transgender/gender non-conforming, have you had any of the following experiences?” and asked respondents to indicate whether “a doctor or other provider refused to treat me because I am transgender/gender non-conforming.”


10 The facial feminization surgery rate was determined differently than the other surgery data. We determined the rate by looking at how many respondents reported spending a valid dollar amount in Question 45.

11 HIV rates are presented with two decimal places for closer comparison with general population figures.


14 U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, “Results from the 2008 National Survey on Drug Use and Health: National Findings” (2009): http://www.oas.samhsa.gov/ndsuh/2k8ndsuh/2k8Results.pdf


20 The general population, lesbian and gay, and bisexual data in this table is from California Department of Health Services, “California Lesbians, Gays, Bisexuals, and Transgender (LGBT) Tobacco Use Survey — 2004.” The data on transgender persons is ours.


23 American Foundation for Suicide Prevention, “Risk Factors for Suicide” (2010): http://www.afsp.org/index.cfm?fuseaction=home.viewPage&page_id=05147440-E24E-E376-BDF48F88A6444E76 According to the Substance Abuse and Mental Health Services Administration, adults who have had a major depressive episode—the leading risk factor for suicide—in the previous twelve months had an attempt rate of 10.4%.

FAMILY LIFE

Respondents answered several questions about family life, specifically about relationships with their families, partners/spouses, and children. We wanted to know how living, parenting and partnering as a transgender or gender non-conforming person had impacted relationships; we also wanted to know if participants were the primary providers for the economic security of children or others.

Our results showed a combination of improved relationships and successful development of families alongside major challenges in retaining friendships, partnerships, and relationships with children. Among some groups of respondents, coming out to family members and friends had a positive impact, while for others, relationships faced considerable challenges.

KEY FINDINGS IN FAMILY LIFE

- Forty-five percent (45%) of respondents reported that their family is as strong today as it was before coming out.
- Forty-three percent (43%) maintained the majority of family bonds.
- Thirty-eight percent (38%) of the sample were parents with 18% reporting that they currently have at least one dependent child.
- Seventy percent (70%) of respondents reported that their children continued to speak to them and spend time with them after coming out.
- Fifty-seven percent (57%) of respondents experienced family rejection.
- Relationships ended for 45% of those who came out to partners.
- Twenty-nine percent (29%) of those with children experienced an ex-partner limiting their contact with their children.
- Courts limited or stopped relationships with children for 13% of respondents, with Black, Asian, and multiracial respondents experiencing higher rates of court interference.
- Nineteen percent (19%) of respondents reported experiencing domestic violence by a family member because they were transgender or gender non-conforming.

“When I asked my father to sign a ‘consent to treat’ form so I could start hormone therapy in 1970, he tore it up and threatened to kill me if I went ahead with transition.”

- Family acceptance was strongly connected with a range of positive outcomes while family rejection was connected with negative outcomes. Those who were rejected by family members had considerably elevated negative outcomes, including homelessness (three times the frequency), sex work (double the rate), and suicidality (almost double), compared to those that were accepted by their family members.
- Domestic violence at the hands of a family member was also strongly connected to negative outcomes, with domestic violence survivors reporting four times the rate of homelessness, four times the rate of sex work, double the HIV rate, and double the rate of suicide attempts compared to their peers who did not experience family violence.
Outness to Family

We asked about outness to family members or “at home” in two different ways. First, we asked respondents whether they tell family members they are transgender or gender non-conforming. Overall, 57% reported telling family members they are transgender or gender non-conforming. Transgender respondents reported this more often (64%) compared to gender non-conforming respondents (35%).

Outness to Family by Gender Identity/Expression

<table>
<thead>
<tr>
<th></th>
<th>Overall Sample</th>
<th>MTF</th>
<th>FTM</th>
<th>All Trans</th>
<th>GNC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>57%</td>
<td>62%</td>
<td>68%</td>
<td>64%</td>
<td>35%</td>
</tr>
</tbody>
</table>

Whether or not respondents reported telling family members varied somewhat by race; multiracial (59%) and white (57%) respondents more often reported doing so.

Outness to Family by Race

<table>
<thead>
<tr>
<th></th>
<th>Overall Sample</th>
<th>American Indian</th>
<th>Asian</th>
<th>Black</th>
<th>Latino/a</th>
<th>White</th>
<th>Multiracial</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>57%</td>
<td>51%</td>
<td>47%</td>
<td>46%</td>
<td>51%</td>
<td>57%</td>
<td>59%</td>
</tr>
</tbody>
</table>

“My partner knows about my cross-dressing but is not and does not want to be involved. My partner is afraid my being found out will affect our relationship and our lives dramatically. If there was not such a stigma with appearing or acting like another gender to any degree, she would be fine with my dressing. I know in my lifetime this probably will not change.”

We also asked how many people they were out to “at home.” Because home does not necessarily include family members, and may instead include friends, roommates, and other non-family members, this is not an exact measure of outness to family.

Overall, 73% reported they were out at home to “most” or “all,” 17% were out to “some” or “a few,” and 10% were out to no one.

Of those who had transitioned, 88% were out to “most” or “all” at home, 8% were out to “some” or “a few,” and 4% were out to no one.
Parenting

Only 38% of respondents identified themselves as parents, compared to 64% of the general population. Part of this difference may be due to the relative age of our sample compared to the general population. Yet, looking at status as a parent by age, reveals different patterns of parenting by age compared to the general population.

<table>
<thead>
<tr>
<th>Age of Transition</th>
<th>Our Sample</th>
<th>General Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-24</td>
<td>28%</td>
<td>20%</td>
</tr>
<tr>
<td>25-44</td>
<td>70%</td>
<td>14%</td>
</tr>
<tr>
<td>45-54</td>
<td>76%</td>
<td>38%</td>
</tr>
<tr>
<td>55-64</td>
<td>78%</td>
<td>69%</td>
</tr>
<tr>
<td>65+</td>
<td>74%</td>
<td>82%</td>
</tr>
</tbody>
</table>

Latino/a and white respondents reported the highest rates of parenting of any racial/ethnic groups at 40% each. Asian respondents had the lowest rate at 18%.

“*My partner and I are in the process of adopting a child whom we’ve been fostering for the past two years. We’ve been engaged in a legal battle since November of 2007, when a social worker decided (primarily, we’ve been told by a number of sources, because of my transgender status) to try to remove her from our home.”*
Transgender women were parents (52%) considerably more often than transgender men (17%). However, our transgender female sample was considerably older (44% were 45 or older) than the transgender male respondents (11% were 45 or older) and age is associated with increased rates of parenting.

Transgender respondents, overall, reported being parents at 41%, compared to 20% of gender non-conforming respondents (again, this may be partly explained by differences in the age of these groups). Sixty-one percent (61%) of male-born cross-dressers said they were parents.

Dependants

We asked respondents how many children currently rely on their income. Note that the question did not ask whether the children were under 18 years of age, or specify a biological or legal relationship.

Federal surveys generally ask respondents about the number of children in a household, rather than the number of dependents, so it is difficult to compare federal statistics to these data.

Eighteen percent (18%) of the sample reported at least one dependent.

Generally, those with higher levels of household income and education were more likely to be responsible for children, with 18% of respondents making more than $100,000 annually reporting two or more dependents. People in the workforce reported more dependents than those who were unemployed or out of the workforce.
Black and Latino/a respondents were slightly more likely to be providing for two or more children.

MTF respondents were supporting dependents much more often (22%) than their FTM peers (12%).
Family Strength and Acceptance

“AS STRONG TODAY”

We asked three general questions about our respondents’ family relationships. Depending on the individual respondent, answers to these questions may relate to parents and siblings (family of origin), spouse/partner and children, or both.

Almost half of the sample (45%) reported that their family is as strong today as before coming out. Conversely, 55% indicated their family was not as strong today. Those who reported a higher level of family resilience include Black (55%) and Asian (49%) respondents as well as 52% of respondents without a high school diploma. These data counters prevailing mythologies about race, culture and class and family acceptance of transgender and gender non-conforming people.

“IMPROVING AFTER COMING OUT”

A majority of respondents (61%) reported that their family relationships have slowly improved after coming out, with Latino/a (65%) and white (61%) respondents reporting the highest percentages of improvement. Those who had made medical (63%) and surgical (66%) transitions, and visual conformers (67%) also reported high rates of improving family relationships.

“I have been very fortunate to live in the state where I do, where people for the most part, are open-minded and accepting. I have also been fortunate to have the support of my parents and my, now, 11 year-old son who I came out to when he was age 6.”

“After coming out to my family last year, I was told they ‘support me 100%’ and then they proceeded to change their phone number and discontinued any contact.”
FAMILY ACCEPTANCE/REJECTION

Two-fifths (40%) of respondents reported that their parents or other family members “chose not to speak or spend time with me” due to their gender identity/expression. Sixty percent (60%) did not experience this type of family rejection.

Family rejection was worse for multiracial (49%), American Indian (46%), and Latino/a (44%) participants. Also at higher risk than the full sample for family rejection were those earning $10,000 or less annually (47%), those earning between $10,000 and $20,000 annually (48%), the unemployed (47%), those working in the underground economy (52%) and those who reported they lost a job due to bias (57%). MTFs and transgender participants fared worse with their families than their FTM and gender non-conforming counterparts.

“I just wish my daughter would come back to me. I fear I have lost her.”
Partner and Spousal Relationships

Nearly half (45%) of those who responded to the statement “my relationship with my spouse or partner ended” reported that their relationship with that spouse or partner ended due to their transgender identity or gender non-conformity; over half (55%) stayed in their relationship (or the relationship ended for other reasons). These data indicate that relationships are maintained at a much higher rate than some might expect.

Those respondents who had transitioned did see their relationships end at a higher rate, with 55% of relationships ending. Additionally, the age the respondent began living full time was closely connected to whether a relationship ended. Those who transitioned at a younger age were more likely to have maintained their relationship through a transition, with 59% of people maintaining their relationship if they transitioned between the ages of 18-24 compared to only 36% of relationships lasting for those between the ages of 45-54.

We also saw that whether or not relationships ended was connected to gender identity. Transgender women were more likely to experience the end of a relationship, compared to transgender men, except for those transitioned under the age of 18. This gender difference increased as the age of transition for respondents increased.¹

Unemployed respondents (50%) and those who had lost jobs due to bias (62%) reported higher rates of relationship disruption. Male-to-female transgender respondents also reported higher rates of disruption (57%) than their FTM peers (39%) and transgender respondents lost their partnerships more often (50%) than gender non-conforming respondents (22%).

For information on current relationship status of the survey respondents, see the Portrait chapter.

“I am married, and my wife knew about my status by the time of our second date. She said she could accept me as I was. After we were married, and she was pregnant with our son, she told me I could not be who I wanted/was. Out of a sense of commitment, I have stayed with her, and have not been able to fully express who I really am. I have considered suicide. After all, smoking and drinking are a civilized way of committing suicide.”
Relationships with Children

For the majority of our respondents, relationships with children remained the same, although for a sizable minority, contact with their children was limited or denied.

When asked if being transgender or gender non-conforming had impacted their situation as parents, 22% of respondents reported an improved situation and 29% reported that their situation was worse. Almost half (49%) reported that their situation as parents either “remained the same” or was “in some ways better, in some ways worse.”

Those without a high school diploma were more likely to report a much improved parenting situation (26%) versus the overall sample (10%) and, in general, those without a high school diploma and those with only a high school diploma were least likely to report any of the “worse” options.

Asian (21%), Latino/a (20%) and Black (14%) respondents all had higher rates of improvement in their parenting situations after coming out than their white counterparts (9%).

Lower household income respondents (under $10,000/year) experienced a much improved situation somewhat more often (15%) than their peers earning over $100,000 annually (11%). However, they were also more likely to report a “much worse” situation (24%) versus those with high household income (7%).

Respondents who had worked in the underground economy reported a higher level of improvement (17%) than the sample as a whole, as well as a higher rate of reporting “much worse.”

Others reported that their parenting situation was “much worse.” This includes 23% of respondents who have lost a job due to bias and 16% of the unemployed.
EX-PARTNER/SPOUSE LIMITING OR STOPPING RELATIONSHIPS WITH CHILDREN

Of respondents who had children and were in a relationship that ended, 29% reported that their ex-spouse or partner limited or stopped their relationships with their children because of their transgender identity or gender non-conformity. However, 71% have maintained their relationships with their children, or if they were limited or stopped it was not due to bias.

Multiracial (33%) and Black (33%) respondents were more vulnerable to having their relationships with their children limited or stopped more often than their FTM peers (20%). Male-to-female transgender respondents had their relationships with their children limited or stopped more often than FTM respondents (34%) and transgender participants were more vulnerable than gender non-conforming respondents (19%).

Of respondents who had children and were in a relationship that ended, 13% reported that a court or judge stopped or limited their relationships with children because of their transgender identity or gender non-conformity. However, this does not necessarily mean that 87% of transgender parents who appeared before a court in a custody dispute did not experience discrimination. The way we posed this question suggests that 87% of respondents either came to an agreement with their ex-spouse or partner over the issue of custody outside of court or, if they went to court, had a positive outcome.

Compared to the 13% of the overall sample that experienced court interference, Black (29%) and multiracial (20%) respondents were much more vulnerable to court interference, as were respondents earning a household income of $10,000/year or less (29%), those working in the underground economy (27%) and those who had lost jobs due to bias (26%).

Male-to-female transgender respondents suffered court interference more often (16%) than their FTM peers (8%).

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![Ex-Spouse/Partner Limited or Stopped Relationships with Children by Race](image)

![Court Stopped/Limited Relationships with Children by Race](image)

![Court Stopped/Limited Relationships with Children by Household Income](image)
Thirty percent (30%) of respondents reported that their children have chosen not to speak with them or spend time with them due to their gender identity/expression. Still, a large majority (70%) reported that their children chose to continue their relationship.

White respondents experienced child rejection at the highest rate of any racial group (31%). Respondents whose household income was $10,000/year or less (33%), those without a high school diploma (37%), and those who had lost jobs due to bias (43%) all reported high level of rejection by their children. Male-to-female transgender respondents experienced child rejection more often (37%) than female-to-male transgender participants (10%). Transgender respondents endured child rejection more often (33%) than gender non-conforming participants (10%). Those who reported living full time in their preferred gender (37%), and those who had undertaken a medical (35%) or surgical (37%) transition all reported higher rates of child rejection.
Family Violence

Nineteen percent (19%) of respondents have experienced domestic violence at the hands of a family member because of their transgender identity or gender non-conformity.

American Indian (45%), Asian (36%), Black (35%) and Latino/a (35%) respondents reported higher rates of domestic violence than the full sample, as well as undocumented non-citizens (39%), those earning under $10,000 annually (38%), those without a high school diploma (39%), the unemployed (30%), respondents who have lost jobs due to bias (35%) and those who worked in the underground economy (42%). MTF respondents endured family violence more often (22%) than FTM respondents (15%), while gender non-conforming respondents were victimized more often (21%) than their transgender peers (19%).

Friendships

Over half the sample (58%) experienced the loss of close friendships as a result of their gender identity/expression.

Black and Asian respondents were least likely to have lost a close friend than other racial cohorts. Those most at risk for losing close friends included undocumented non-citizens (66%), those who had lost jobs due to bias (79%) and those engaged in the underground economy (70%). MTFs lost friends more often (67%) than FTM (51%) and transgender respondents lost friends at a higher rate (61%) than their gender non-conforming peers (49%).

“I cannot come out of the closet until I have graduated college and/or have a steady job, because I would be disowned by my parents and they would stop paying for my education.”
Making the Connections: Family Rejection and Domestic Violence, Homelessness, Incarceration, and Health

In this section, we examine the connections between negative experiences at home and how they relate to income, incarceration, homelessness, work in the underground economy and health outcomes.

FAMILY REJECTION OR ACCEPTANCE

To compare the experiences of respondents who had been accepted by their families with those who were rejected, we created a new variable using the answers to several statements about family acceptance. Fifty-seven percent (57%) faced some rejection by their family and 43% were accepted.

Family Acceptance/Rejection by Household Income

Household Income

Those whose families accepted them tended to have higher current household incomes than those who experienced family rejection. For example, 47% of those whose families accepted them made more than $50,000/year compared to 38% of those whose families rejected them.

Homelessness

Twenty-six percent (26%) of those who experienced family rejection also reported having experienced homelessness, nearly three times higher than those whose families were accepting (9%).

Incarceration

Nineteen percent (19%) of those who experienced family rejection had been incarcerated compared to only 11% of those whose families were accepting.

Underground Economy

Nineteen percent (19%) of those who experienced family rejection had worked in the underground economy for income, compared to only 11% of those whose families were accepting.

Specifically, 13% of those who experienced family rejection had done sex work for income, compared to 7% of those whose families were accepting.

HIV

The contrast between HIV rates of the two groups was less stark, with 2.46% of those who experienced family rejection also reporting an HIV-positive status, compared to 2.04% of those whose families were accepting.

Suicide

Family rejection dramatically increased the likelihood of suicide attempts. Fifty-one percent (51%) of those who experienced family rejection reported having attempted suicide, compared to 32% of those whose families were accepting.

Smoking

Thirty-two percent (32%) of those who experienced family rejection reported being current smokers. For those whose families were accepting, the rate was slightly lower at 27%.

Drugs and Alcohol

Thirty-two percent (32%) of those who experienced family rejection also reported having used drugs or alcohol to deal with the mistreatment they faced as a transgender or gender non-conforming person. This compared with 19% of those whose families were accepting.

“My parents threatened to disown me. ‘It was a sin,’ ‘I was sick,’ ‘I wanted to mutilate my body,’ etc. I drank fairly heavily from when I was 14 on. And I just kept drinking.”
DOMESTIC VIOLENCE

Of those who experienced family rejection, we found that those who experienced domestic violence by family members experienced other negative outcomes at particularly alarming rates, explained below.

Homelessness

Family violence had a strong apparent link to homelessness. Forty-eight percent (48%) of those who experienced domestic violence also reported having experienced homelessness, nearly four times the rate of those whose families were accepting (9%).

Incarceration

Twenty-nine percent (29%) of those who experienced domestic violence reported having been incarcerated, compared to only 11% of those whose families were accepting.

Underground Economy

Thirty-eight percent (38%) of those who experienced domestic violence also reported having worked in the underground economy for income, compared to only 11% of those whose families were accepting.

Specifically, 29% of those who experienced domestic violence also reported having done sex work for income, a rate more than four times as high than those whose families were accepting (7%).

HIV

Five and a half percent (5.5%) of those who experienced domestic violence also reported being HIV-positive. This compared to 2.04% of those whose families were accepting and our overall sample rate of 2.64%.

Suicide

Sixty-five percent (65%) of those who experienced domestic violence also reported having attempted suicide, compared to 32% of those whose families were accepting.

Alcohol and Drugs

Forty-seven (47%) of those who experienced domestic violence also reported drinking or misusing drugs to cope with the mistreatment they faced as transgender or gender non-conforming people. This compared with 19% of those whose families were accepting.
CONCLUSIONS FOR FAMILY LIFE

Our analysis shows that many transgender and gender non-conforming people experienced improvement in their family relationships after coming out. Others endured considerable challenges including rejection by partners, friends, and family members. A majority experienced both good and bad, and this didn’t differ much by race.

Occasionally, family rejection took severe forms including domestic violence, which was associated with some of the most alarming rates of negative outcomes later in life.

Nonetheless, these data contradict the assumption that coming out as transgender or gender non-conforming always causes relationships with spouses or partners to end; we found about half of respondents staying in the same relationship (or having broken up for other reasons).

Children of transgender and gender non-conforming parents were generally accepting although their relationships were sometimes limited by ex-partners/spouses or family court judges. It appears that partner and judicial biases towards transgender and gender non-conforming parents often obstruct ties with children.

While family rejection was shown to be related to a number of negative outcomes including homelessness, HIV and suicide attempts, those respondents whose families accepted them had better health outcomes and enjoyed higher levels of social and economic security that the full sample. It appears that family support and safety nets can have a major positive impact on the lives of transgender and gender non-conforming people even in the face of pervasive mistreatment and discrimination outside of the home.

All of these statistics appear to confirm the groundbreaking findings of the Family Acceptance Project (FAP), a multi-year study that examines the impact of family rejection on LGBT youth health outcomes. Aligned with FAP findings, data in this study show a strong correlation between family acceptance and health as well as social and economic security for adult transgender and gender non-conforming adults, making a strong case for more research in this emerging arena of study.
RECOMMENDATIONS FOR FAMILY LIFE

• Family members of transgender and gender non-conforming people who are coming out should educate themselves so that they can accept and continue to support their loved one and provide a place to turn to in the face of mistreatment or discrimination in wider society.

• Those involved with the family court system should be educated about transgender and gender non-conforming people, their continuing ability to be good parents, and the destructive consequences of separating parents and children.
  
  • Family court judges should be educated about research showing that remaining in a strong relationship with a transgender or gender non-conforming parent is in “the best interest of the child,” and that transgender or gender non-conforming children need to be in custody of parents or guardians who accept them. Furthermore, transgender and gender non-conforming parents should not be restricted from expressing their identity or gender non-conformity during visitation.

  • Guardians Ad Litem and Court Appointed Special Advocates should be trained to understand that transgender and gender non-conforming children need to be in custody of parents or guardians who are accepting of their gender identity/expression. They also need to understand that it is in “the best interest of the child” to have contact with their transgender or gender non-conforming parent.

  • Lawyers involved in family court issues should not make arguments to limit custody or contact with children a parent is transgender or gender non-conforming.

  • Experts or professionals that the court relies on for analysis and advice who express bias against transgender or gender non-conforming children or adults should be removed from their cases.

• Adoption and foster care agencies should similarly be educated and establish policies of nondiscrimination for potential parents based on gender identity/expression and race.

• Social service providers should be aware of the likelihood of family rejection and domestic violence for transgender and gender non-conforming people and be prepared to be a resource or intervene as appropriate.
  
  • School counselors should be aware of the potential challenges transgender and gender non-conforming youth may be facing at home as well as in school, so that they can provide needed assistance.

  • Social workers should provide services friendly to transgender and gender non-conforming people as well as develop referral lists of other social service providers accessible to transgender and gender non-conforming people including homeless shelters and domestic violence shelters.

• Counselors and therapists in private practice should be prepared to counsel individuals and families who have a transgender or gender non-conforming family member and assist these families in accepting and supporting their identity.

• Family and marriage counselors should be able to assist spouses and partners dealing with gender identity/expression issues and what they may mean for their relationship. They should encourage understanding on the part of all parties and, if separation is warranted, they should also assist with an amicable breakup and ensure that any children continue to have relationships with their parents.
Endnotes

1 We included those that tell “everyone” in this calculation.


3 Ibid.

4 No data is available in this study to explain the differences between MTF and FTM respondents in relationship preservation. However, based on anecdotal evidence, this may be due to a difference in the sexual orientation of the partner of the transitioning individual and the norms that go with that sexual orientation.

5 Those who responded “Yes” to any of the following statements were in the family rejection group: “my relationship with my spouse or partner ended,” “my ex limited or stopped my relationship with my children,” “a court/judged limited or stopped my relationship with my children,” “my children chose not to speak with me or spend time with me,” “my parents or family chose not to speak with me or spend time with me,” or “I was a victim of domestic violence by a family member.”

6 HIV rates have not been rounded for better comparison to national rates.

7 HIV rates have not been rounded for better comparison to national rates.

8 For more, see The Family Acceptance Project at http://familyproject.sfsu.edu/home.

HOUSING AND HOMELESSNESS

Housing is a necessity and a basic human right but one that is often denied to transgender and gender non-conforming people. Direct discrimination as well as the aggregate effects of mistreatment and denied opportunities across multiple aspects of life create a tenuous and often threatening housing landscape for participants in this study.

We asked a series of questions to evaluate the impact of anti-transgender bias in housing. Respondents reported substantial housing insecurity while employing a variety of strategies to secure shelter and make a home.

We also asked several questions specifically about shelters, including homeless and domestic violence shelters. These responses confirmed the study team’s anecdotal experience that emergency shelter systems as a whole are utterly failing to provide safety or relief for transgender and gender non-conforming people facing a housing crisis.

KEY FINDINGS IN HOUSING AND HOMELESSNESS

- The various forms of direct housing discrimination faced by respondents included 19% being denied a home or apartment and 11% being evicted because they were transgender or gender non-conforming.

- Nineteen percent (19%) of respondents became homeless at some point because they were transgender or gender non-conforming, and 1.7% of respondents were currently homeless.¹

- Those who had experienced homelessness were 2.5 times more likely to have been incarcerated (34%) than those who had not (13%), and were more than four times more likely to have done sex work for income (33%) than those who had not (8%). They were more likely to be HIV-positive (7.12%) than those who had not (1.97%), and were much more likely to have attempted suicide (69%) than those who had not (38%).²

- For those respondents who had attempted to access homeless shelters, 29% were turned away altogether, 42% were forced to stay in facilities designated for the wrong gender, and others encountered a hostile environment. Fifty-five percent (55%) reported being harassed, 25% were physically assaulted and 22% were sexually assaulted.

- Respondents were forced to use various strategies to secure shelter including moving into a less expensive home/apartment (40%), moving in with family or friends (25%), and having sex with people to sleep in a bed (12%).

- Thirty-two percent (32%) of respondents reported owning their home, compared to 67% of the general population.

- Respondents demonstrated resilience: Of the 19% who reported facing housing discrimination in the form of a denial of a home/apartment, 94% reported being currently housed.

“I’m homeless, sleeping in makeshift housing under a bridge.”
Current Housing Situation

We asked respondents to indicate their current housing situation, in order to establish a national snapshot of their living situation at the time the survey was fielded.

CURRENT HOMELESSNESS OR LIVING IN A SHELTER

We first asked about homelessness; 1.7% of the sample responded that they were currently homeless or living in a shelter, which is nearly double the percentage that the National Coalition for the Homeless estimates for the U.S. population. Those particularly vulnerable to being currently homeless included African Americans (13%), American Indians (8%) and undocumented non-citizens (4%). The unemployed (7%), those working in the underground economy (7%) and those without a high school diploma (8%) also reported high rates of homelessness. Three percent (3%) of those who had lost a job due to bias were currently homeless.

As will be demonstrated later in this chapter, transgender people faced real barriers accessing shelter resources; therefore, it is possible that an even higher percentage of our sample needed shelter services but were unable or afraid to access them.

“I am now being evicted from the garage I have been living in the last several months, and in parting fashion, this afternoon I was informed that I have been denied access to renting a two-decade-old mobile home, the only place I could find with my limited income.”
LIVING WITH FAMILY OR FRIENDS TEMPORARILY

Four percent (4%) of the sample reported living with family members or friends temporarily. Those who were younger were more likely to report this experience, as were Black (8%), and Latino/a (7%) respondents, as well as those who worked in the underground economy (8%). Although these respondents are not currently homeless, their “temporary” status suggests a substantial level of housing insecurity.

GROUP HOMES AND FOSTER CARE

Less than 1% of respondents were currently living in a group home or foster care. However, Black (5%), Latino/a (1%) and multiracial respondents (1%) were in group or foster care situations at slightly higher rates, as were those making less than $10,000/year (2%) and those without a high school diploma (4%).

SKILLED NURSING AND ADULT CARE FACILITIES

Only .1% of the overall sample reported living in a skilled nursing or adult care facility. Due to small sample size, we are unable to provide more details about this group.

“I fear growing old as I feel I would be treated poorly if I ever ended up in an elder care home.”
CAMPUS AND UNIVERSITY HOUSING

Four percent (4%) of respondents reported living in university or campus housing. As expected, the age category with the highest rate was 18-24 year olds (8%); the percentage for 25-44 year olds was 3%.

LIVING WITH PARENTS OR FAMILY MEMBERS

Seven percent (7%) of the sample reported currently living with their parents or family “they grew up with.” Though younger respondents were more likely to have marked this response, 3% of 45-54 year olds did as well. We did not ask whether respondents were living with family members because they needed to for financial reasons, wanted to, or had invited aging relatives into their homes to care for them.

LIVING WITH PARTNER OR SPOUSE WHO PAYS

Eight percent (8%) of respondents said they lived with a partner or spouse who paid for their housing. Those who were unemployed (18%) and out of the workforce (10%) were particularly likely to be relying on a spouse or partner to cover housing expenses. In terms of race, Latino/as were the most likely to have marked this response at 14%.

Asian respondents had the highest rate of living with parents or family members of any race.
Living with Partner or Spouse who Pays by Race

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<th>Percentage</th>
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<td>Overall Sample</td>
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RENTING A HOUSE, APARTMENT, OR CONDO

Forty-two percent of respondents said they lived in a house, apartment, or condo that they rent. Renting did not vary widely across race. However, transgender men were much more likely to rent their homes (52%) than transgender women (40%).

Those making between $10,000 and $50,000/year were the most likely to be renting their homes.

Owning a House, Apartment, or Condo

Thirty-two percent (32%) of respondents reported owning their place of residence. This is less than half of the national average of 67.4% reported by the U.S. Department of Housing and Urban Development (HUD) in the second quarter of 2009, at approximately the same time as the survey was launched.

Transgender women were more likely to own their homes (36%) than transgender men (20%), and transgender respondents were more likely to own their homes (30%) than their gender non-conforming peers (24%). As might be expected, home ownership rose with age, from 15% of those aged between 18 and 24 to 71% of those over 65 years old.

People of color were much less likely to own their homes than white respondents. African American respondents were the least likely to own their homes at 14%. By comparison, the U.S. Department of Housing and Urban Development reports that “minority home ownership” nationwide was 49.7% during the comparable period.
Home ownership also rose with income, but even in the highest income categories, our respondents have a lower rate of home ownership that the general population (67%).

Negative Housing Outcomes

We asked respondents to report on experiences related to housing conditions and situations they've encountered due to anti-transgender bias over their lifetime. We found high levels of homelessness and eviction, as well as spending down of assets and moving into less desirable housing due to bias.

"I MOVED INTO A LESS EXPENSIVE HOME/APARTMENT"

Forty percent (40%) of respondents said they had moved into a less expensive home or apartment due to bias. Those hit hardest were Black (52%) and Latino/a (51%) respondents, as well as those making under $10,000/year (55%), and those who: were unemployed (54%), had lost a job due to bias (65%), had worked in the underground economy for income (63%) and had no high school diploma (54%).
Transgender women were much more likely to have moved into a less expensive home or apartment due to bias (50%) than their transgender male counterparts (34%). Transgender respondents were more likely to have done so (44%) than gender non-conforming respondents (28%).

“I BECAME HOMELESS”

Nineteen percent (19%) of respondents said they became homeless as a result of discrimination or family rejection based on gender identity. This figure is more than 2.5 times higher than the general population lifetime rate of homelessness (7.4%).

Fewer older people reported having been homeless with 10% of 55-64 year olds reporting homelessness at some point in their lives and 8% of those 65 and above experiencing homelessness at some point. Transitioning later in life was inversely related to homelessness, with the percentage of those who had been homeless decreasing as the age of transition increased. A possible explanation is that prior to a late-life transition process, these respondents may have hidden their transgender identity or gender non-conformity and thus been better able to preserve jobs and secure housing over time.

The U.S. Conference of Mayors cites a number of causal factors for homelessness. For families: a lack of affordable housing, poverty and unemployment, while for single people: substance abuse, lack of affordable housing and mental illness were the leading factors. As we've seen in this report, transgender and gender non-conforming people experience many of these situations and conditions at much higher rates than the general population due to discrimination.

As expected, respondents who faced economic challenges were at increased risk for homelessness: 39% of those who reported incomes of less than $10,000 per year had experienced homelessness, while those with incomes between $10,000 and $20,000 were at 26%, compared with 19% of the sample as a whole. Losing a job due to bias also led to highly elevated levels of homelessness. Forty percent (40%) of those who had been fired because of their gender identity reported having been homeless.

“I HAVE BEEN EVICTED”

Eleven percent (11%) of respondents said they had been evicted from housing at some point in their lives because they are transgender or gender non-conforming. African American respondents reported an exceptionally high eviction rate of 37%. Others reporting high rates included those with no high school diploma at 33%, those making under $10,000/year at 26%, and undocumented immigrants at 21%.
MTF respondents reported nearly twice the rate of eviction (16%) as their FTM counterparts (8%), and transgender respondents had twice the rate (13%) as gender non-conforming respondents (6%).
“I HAD TO MOVE BACK IN WITH FAMILY OR FRIENDS”
Twenty-five percent (25%) of respondents said they had to move in with family or friends because they were transgender or gender non-conforming. Black respondents reported the highest rate of this outcome at 47%, followed by multiracial respondents at 36%. Those without a high school diploma reported living with family or friends at 47%. Those working in the underground economy had a rate of 49%.

“I had to move back in with family or friends” by Race

25% 51% 47% 30% 22% 36%
Overall Sample American Indian Asian Black Latino/a White Multiracial

“I had to move back in with family or friends” by Household Income

43% 34% 26% 16% 11%
Under $10K $10K-under $20K $20K-under $50K-under $100K $100K+

“I HAD TO FIND DIFFERENT PLACES TO SLEEP FOR SHORT PERIODS OF TIME, LIKE A FRIEND’S COUCH”
Twenty-six percent (26%) of respondents reported having to find different places to sleep for short periods. Those working in the underground economy reported a rate of 56%, and Black respondents reported a rate of 48%. Those who had lost a job reported having to find different places to sleep for short periods at a rate of 49%. Also reporting high rates were those with no high school diploma (53%) and those making under $10,000/year (45%).

“I had to find different places to sleep for short periods of time, like a friend’s couch” by Race

26% 45% 48% 36% 22% 38%
Overall Sample American Indian Asian Black Latino/a White Multiracial

“I had to find different places to sleep for short periods of time, like a friend’s couch” by Household Income

45% 32% 26% 16% 14%
Under $10K $10K-under $20K $20K-under $50K-under $100K $100K+
**“I HAVE HAD SEX WITH PEOPLE TO SLEEP IN THEIR BED/AT THEIR HOMES OR TO PAY RENT”**

Twelve percent (12%) of the sample reported having had sex with people to secure a place to stay. Those exchanging sex for housing in high numbers were those working in the underground economy (43%), those with no high school diploma (43%), Black respondents (38%), Latino/a respondents (27%), and those making under $10,000/year (25%).

**“I had to use equity in my home to pay for living expenses” by Race**

Fourteen percent (14%) of respondents reported having to use equity in their home to pay for living expenses. Those reporting the highest rates included those with no high school diploma (34%), those who had lost jobs due to bias (28%), those 55-64 years old (27%), and African American respondents (26%).

Male-to-female respondents were nearly twice as likely to have traded sex for housing (15%) as their female-to-male counterparts (8%), but transgender respondents, overall, were equally likely to have traded sex for housing as gender non-conforming respondents (12%).

**“I have had sex with people to sleep in their bed/at their homes or to pay rent” by Household Income**
Male-to-female respondents were more than twice as likely to have had to use equity in their home to pay for living expenses (21%) as their female-to-male counterparts (8%), and transgender respondents were more than three times as likely (16%) as gender non-conforming respondents (5%).

Access to Shelters

Of the 19% of respondents who had experienced homelessness, about a quarter (25%) reported trying to access a homeless shelter during that time. Their reports of attempting to access shelter describe a system in which abuses against transgender and gender non-conforming people are commonplace. These include denial of access, ejection when transgender status was disclosed, harassment by staff and residents, assault and forced presentation in the wrong gender. Nearly half of all respondents who accessed a shelter (47%) left due to poor treatment.

OUTRIGHT DENIAL

Housing insecurity for transgender and gender non-conforming people in the U.S. goes beyond eviction and homelessness; they are also frequently barred from access to safety nets meant to help people in crisis. Twenty-nine percent (29%) of respondents who attempted to access shelter reported being denied access to shelters altogether because they were transgender or gender non-conforming.

Groups reporting particularly high rates of denial of access to shelters included documented non-citizens (45%), Latino/a respondents (45%), those with no high school diploma (44%), those who had lost a job due to bias (40%), and Black respondents (40%).

Transgender women were much more likely to have been denied access to shelters (34%) than their transgender male counterparts (20%), and transgender respondents, overall, were far more likely (30%) to have been refused shelter than gender non-conforming respondents (12%).

In addition to those who were denied access outright, 25% of respondents reported being evicted after their transgender identity or gender non-conformity became known and 47% reported leaving a shelter due to poor treatment. Sixteen percent (16%) reported experiencing all three of these outcomes.
HARASSMENT AND ASSAULT

When provided access to shelter, respondents often reported living in hostile and dangerous environments. Many experience harassment, physical and sexual assault perpetrated by either shelter residents or staff.

Harassment

Over half of respondents (55%) reported being harassed by residents or staff members of shelters. Looking at race, Latino/as reported the highest rate of harassment at 63%, followed by Black respondents at 61%.

Physical Assault

One quarter (25%) of respondents who accessed shelter reported having been physically assaulted by either another resident or a staff person. Looking at race, Black respondents reported the highest rate at 31%.

Others reporting high rates of harassment included documented non-citizens (62%), those who had lost a job due to bias (70%), and those working in the underground economy (65%).

Others reporting high rates of physical assault included undocumented non-citizens at 50% and those who had lost a job due to bias at 35%.

Transgender women were almost twice as likely to have been physically assaulted in a shelter (29%) than transgender men (15%), and transgender respondents were more likely to have been assaulted (25%) than gender non-conforming respondents (20%).
Sexual Assault

Twenty-two percent (22%) of respondents who accessed shelter reported being sexually assaulted by either another resident or a staff person. Looking at race, Black respondents reported the highest rate of sexual assault at 33%, followed by Latino/as at 31%.

Others reporting high rates of sexual assault included undocumented non-citizens (40%) and those who had lost a job due to bias (32%).

MTF respondents were more likely (26%) than FTM respondents (15%) to report sexual assault. Transgender respondents were nearly six times more likely to report sexual assault (23%) than gender non-conforming respondents (4%).

Forced to Live as the Wrong Gender

Among respondents who accessed a shelter, 42% reported that they were forced to live as the wrong gender to be allowed to stay. Being forced to live as the wrong gender can range from being required to alter a hairstyle or make-up to radically altering gender presentation from head to toe. More than half of those who had lost a job due to bias (51%) said they had had to live as the wrong gender to access a shelter, along with 47% of the unemployed and 47% of those who worked in the underground economy. African-American respondents experienced high levels of coerced presentation, with 48% being forced to live in the wrong gender.

Also hard hit were those who reported that they were not visually conforming (51%).

Those who had had surgery were less likely to be subjected to coerced gender presentation; nonetheless, 35% of those who had surgically transitioned were still required to live as the wrong gender.

In addition to those who were forced to present in the wrong gender to stay in a shelter, 41% of respondents also reported presenting in the wrong gender in order to be or feel safe in a shelter.
Making the Connections

In this section, we examine the connections between homelessness and how it relates to incarceration, work in the underground economy and health outcomes. We offer analysis concerning both those who reported having experienced homelessness at some point in their lives because of bias due to gender identity and those who reported being currently homeless for any reason.

THOSE WHO EXPERIENCED HOMELESSNESS

We found that having experienced homelessness seemed to align with several other negative conditions and outcomes.

**Household Income**

Respondents who had experienced homelessness reported earning lower incomes at the time of survey. Fifty-four (54%) of those who experienced homelessness said they were currently making less than $20,000/year, while only 24% of those who had not experienced homelessness were earning under $20,000.

**Incarceration**

Thirty-four percent (34%) of those who had experienced homelessness had been incarcerated for any reason. This is nearly 2.5 times the rate of those who had not experienced homelessness (13%).

**Underground Economy**

Forty-seven percent (47%) of respondents who had experienced homelessness said they had worked in the underground economy for income, more than 3.5 times the rate of those who had not experienced homelessness (13%).

Thirty-three percent (33%) of respondents who had experienced homelessness said they had done sex work for income. This is more than four times the rate of those who had not experienced homelessness (8%).

**Physical and Sexual Assault**

Sixty-six percent (66%) of those who experienced homelessness also reported experiencing physical assault and 33% also reported sexual assault.

**Smoking**

Forty-seven percent (47%) of those who had experienced homelessness reported being smokers. Those who have not been homeless smoked at a rate of 28%.

**Drinking and Drugs**

Forty-nine percent (49%) of those who had experienced homelessness said they had used alcohol or drugs to deal with the discrimination they faced as transgender or gender non-conforming people. This is almost double the rate of those who had not experienced homelessness.

**HIV**

The HIV rate for those who had experienced homelessness (7.12%) was dramatically higher than those who had not (1.97%).

**Suicide**

Sixty-nine percent (69%) of those who had experienced homelessness said they had attempted suicide. This compared to 38% of those who had not experienced homelessness.

CURRENTLY HOMELESS

Being currently homeless (including those living in a shelter) seemed to correlate with several other negative outcomes.

**Incarceration**

Fully 49% of currently homeless respondents said they had been incarcerated at some point in their lives. This is more than 3 times higher than the rate of incarceration for those who were not currently homeless (15%).

**Underground Employment**

Sixty-nine percent (69%) of respondents who were currently homeless had worked in the underground economy for income. This is nearly five times the rate of those who were not currently homeless (15%).

Fifty-five percent (55%) of those who were currently homeless reported having done sex work for income. This is compared to only 10% of those who were not currently homeless.
Smoking
Sixty-one percent (61%) of those who were currently homeless reported being smokers. This compares with 30% of those who were not currently homeless.

Drinking and Drugs
Fifty-four percent (54%) of currently homeless respondents said they had used drugs or alcohol to cope with the discrimination they face as transgender or gender non-conforming people. This was nearly twice as high as the rate for those who were not currently homeless (25%).

HIV
The HIV infection rate for currently homeless respondents was 22.11%, over eight times the rate of those who were not currently homeless (2.27%).

Suicide
Sixty-eight percent (68%) of those who said they were currently homeless also reported having attempted suicide, compared to 40% of those who said they were not currently homeless.

“I experienced a lot of discrimination during my time of being homeless, in group homes, shelters, and transitional living houses. Additionally, I was been kicked out of several colleges, but I never gave up. For the last 6 years, I have used my past experiences, as a transgender person of color, to improve best practices for youth in systems, get more services for them, and help youth become assertive. I am on the local government-run HIV prevention planning council. I continue to struggle to find a job that pays enough, but I always have a positive attitude and that has gotten me far.”
CONCLUSIONS FOR HOUSING AND HOMELESSNESS

Housing insecurity for transgender and gender non-conforming people is a crisis. Respondents reported direct discrimination by housing providers and negative housing impacts of discrimination in other critical areas of life such as employment, health care and criminal justice. Accordingly, respondents were forced to employ various strategies to secure places to live.

For transgender and gender non-conforming people who became homeless, safety nets meant to help people in a housing crisis often failed. Respondents experienced being refused shelter due to bias and when admitted, often faced a hostile environment. Study participants reported enduring harassment, physical attack, and sexual assault perpetrated by both shelter staff and other residents.

Finally, for respondents who experienced homelessness, we found a correlation to life-threatening, devastating outcomes including incarceration, work in the underground economy, smoking, drinking and drug use, HIV infection and suicide attempts.
RECOMMENDATIONS FOR HOUSING AND HOMELESSNESS

• Stronger laws are needed to address housing discrimination and insecurity.
  • Congress should amend the Fair Housing Act to include transgender and gender non-conforming people in its protections and pass employment protections so that they can better afford to provide shelter for themselves.
  • State legislatures and local governments should pass laws prohibiting both housing discrimination and employment discrimination based on gender identity/expression, so that transgender and gender non-conforming people are better able to provide shelter for themselves and have recourse when they experience discrimination.
  • Government agencies should fully enforce housing discrimination laws, including already existing protections based on race and gender as well as gender identity/expression.
    • Free trainings on how to comply with the law should be developed and made widely available for housing providers and real estate professionals.
    • Pair testing and other ways to detect discrimination should be regularly used to ensure that housing non-discrimination laws are being followed and corrective actions should be taken when non-compliance is found.
    • Individual complaints should be investigated thoroughly and housing providers who discriminate should face harsh penalties.

• Shelters should be made accessible and safe for all transgender and gender non-conforming people.
  • Shelters should have clear policies on housing transgender residents, ensuring that they are housed according to their gender identity.
  • Gender non-conforming expression and presentation should not be prohibited in order to gain access to shelters.
  • Policies should be developed to minimize the risk of violence directed at transgender and gender non-conforming residents by other residents.
  • Shelter staff should be fully trained on these policies as well as how to respectfully serve transgender and gender non-conforming residents. Staff members who violate policy or serve residents disrespectfully should be disciplined or dismissed.
  • Shelter staff who physically or sexually assault residents should be terminated and reported to law enforcement authorities for investigation.
  • Group homes should have policies that ensure transgender and gender non-conforming residents are respected and safe from harm.
  • Assisted care facilities should have policies of respect for residents’ gender identity/expression and house them accordingly.
  • Foster care systems should ensure that before placing a transgender or gender non-conforming child in a home that the foster family is accepting and supportive of the child’s gender identity/expression.
  • Colleges and universities should develop policies to ensure that transgender and gender non-conforming students are housed according to their gender identity and that there are gender-neutral options available.

• State and local support programs should be developed that holistically approach and resolve the various challenges and barriers that transgender and gender non-conforming people need addressed in order to house and support themselves. This includes assistance in such things as: earning a G.E.D., work training, finding a job, transitional housing, health care, updating ID documents, legal services, counseling, and/or assistance with applying for benefits.
Endnotes

1 Some numbers have not been rounded due to their small size.

2 HIV rates are provided to two decimal points for easier comparison with national rates.

3 Some numbers have not been rounded due to their small size.


5 Some numbers have not been rounded due to their small size.


10 HIV rates are provided out to two decimal points for easier comparison with national rates.

11 HIV rates are provided out to two decimal points for easier comparison with national rates.
PUBLIC ACCOMMODATIONS

We asked respondents to report on experiences they have had in various places of public accommodation, such as restaurants, hotels and emergency services. Participants were asked if they had experienced being denied equal treatment or service, verbal harassment or disrespect, and physical assault or attack “based on being transgender/gender non-conforming” in 15 kinds of public accommodation. Ninety-three percent (93%) of survey respondents had attempted to access one or more of these types of public accommodation as a transgender or gender non-conforming person.

KEY FINDINGS IN PUBLIC ACCOMMODATIONS

- **Over half (53%) of respondents** reported being **verbally harassed or disrespected** in a place of public accommodation.
- Forty-four percent (44%) of respondents reported being **denied equal treatment or service at least once at one or more of the 15 types of public accommodation** covered in the study.
- Eight percent (8%) of respondents reported being **physically attacked or assaulted in places of public accommodation**.
- **Respondents of color** generally experienced **higher rates of abuse in public accommodations** than their white peers. **African American respondents endured much higher rates of physical assault** than their non-Black peers, at 22% (relative to the 8% mentioned above).
- **Police services were the most highly problematic aspect of government services overall**, with respondents reporting the **highest rate of assault** when attempting to access police services (6%), along with very high rates of harassment/disrespect (29%) and denial of equal service (20%). More information about police treatment can be found in the Police and Incarceration chapter.
- **Gender non-conforming** respondents experienced **higher rates** than transgender respondents of refusal of service, harassment/disrespect and violence when accessing retail stores, hotels, and transportation; transgender respondents experienced higher rates of unequal treatment, harassment/disrespect and violence in accessing government services and interacting with judges.
- Those who had **lost jobs due to anti-transgender bias** experienced among the **highest rates of harassment/disrespect, denial of service and physical assault** in nearly every setting.

“I was intentionally discriminated against by a motel owner. He told me he would not give me a room because I was a cross dresser, and to leave the property or he was going to call the police and tell them that a hooker was in the parking lot selling drugs.”
Denied Equal Treatment in Public Accommodations

Forty-four percent (44%) of respondents reported being denied equal treatment or service at least once at one or more of the types of public accommodation covered in this survey. Experiences differ depending on race, income, employment status, gender, transition status, visual non-conformity and whether the respondent had ID documents consistent with his or her gender identity/expression. Those who had lost their jobs due to discrimination and those who have worked in the underground economy reported the highest rate of discrimination in public accommodations, at 67% and 63%, respectively.

American Indian (49%), Latino/a (50%) and multiracial (57%) respondents reported higher rates of gender identity/expression discrimination in public accommodation than the full sample.

Respondents with household incomes of $50,000 a year or less reported higher rates of discrimination in public accommodation than those in households with incomes over $50,000 a year. Respondents who were currently unemployed reported discrimination in public accommodations at a rate 6 percentage points higher than the full sample. Transgender men reported a higher rate of discrimination in public accommodation (50%) than transgender women (44%).

Noticeable differences in experiences of discrimination in public accommodations appear based on the age a respondent began living full-time in a gender other than that assigned at birth, current transition status, and whether a person has undergone any medical or surgical transition procedures. Those who began living full-time at a younger age seem to have experienced more discrimination in public accommodations than those who began living full-time at an older age, possibly because they are able to report about discrimination over a longer period of time.

"A lot of people tell me I’m lucky because I ‘pass’ and am considered beautiful as a transgender woman, but... I sure don’t feel lucky. I’m always fearful every time I step out the door into the real world, that someone will harass or physically harm me."
Those who are currently living full-time in a gender other than that assigned at birth reported discrimination in public accommodations at a rate 6 percentage points higher than respondents as a whole. Those who had any medical or surgical transition treatments or procedures also reported higher rates than all respondents, at 48% and 51%, respectively. Visual non-conformers (53%) and those open about their transgender or gender non-conforming identity in general (48%) or at work (51%) also reported higher rates of discrimination in public accommodations.

Finally, people who have transitioned and tried to update the gender marker on their driver’s license, but were denied the change, reported discriminatory treatment in public accommodations at a high rate (57%).

Verbal Harassment in Places of Public Accommodation

Fifty-three percent (53%) of respondents reported being verbally harassed or disrespected in a place of public accommodation. Subgroups that reported higher rates of being denied equal treatment or service also reported higher rates of verbal harassment or disrespect in places of public accommodation.

Those groups reporting higher rates of verbal harassment included those with lower household incomes (ranging from 56% to 63%), those who lost their jobs (72%), or were currently unemployed (63%), those who began living full-time at younger ages (ranging from 59% to 68%), those who were currently living full-time (59%), those who were visual non-conformers (64%), and those who were generally out (59%). In addition, 67% those who have transitioned and tried to update the gender on their driver’s license and were denied were harassed/disrespected.

Respondents who have worked in the underground economy reported the highest rate of verbal harassment/disrespect, at 77%.

Respondents’ reports of verbal harassment/disrespect differed more sharply by race than was the case with other types of mistreatment. Those who identify as Black, Latino/a, or multiracial (at 56%, 57%, and 65%, respectively) all reported higher rates of verbal harassment/disrespect than the full sample.

“The fear of being the victim of a hate crime has also meant that I haven’t lived completely freely; I know that if people on the street knew that I was born female, I’d be at risk of violence or harassment.”
FTM respondents and gender non-conforming respondents reported higher rates of verbal harassment/disrespect (at 62% and 59%, respectively) than MTF and transgender respondents (52% and 56%, respectively).

Physical Attack or Assault in Places of Public Accommodation

Eight percent (8%) of respondents reported being physically attacked or assaulted in places of public accommodation.

Some groups reported much higher rates of physical attack or assault than the full sample. African American respondents endured the highest rate of assault (22%) of any demographic group — much higher than any other. Multiracial (13%), Asian (11%), and Latino/a (11%) respondents also reported high rates of physical assault.

Those who have lost their jobs due to bias (17%) or are currently unemployed (12%) reported higher rates of physical attack or assault. Twenty-two percent (22%) of those who had worked in the underground economy reported physical assault.

Respondents who are younger (9-10%) also reported higher rates of physical assault than older respondents.¹

Non-citizens (documented at 13% and undocumented at 12%) reported higher rates of physical attack or assault than those who identified as U.S. citizens (7%). Although there are some differences in reported rates of physical assault based on the educational attainment and household income of the respondents, the difference is not as great as some might expect.
Physical Assault in Places of Public Accommodation by Educational Attainment

- Overall Sample: 8%
- No HS Diploma: 11%
- High School Diploma: 10%
- Some College: 8%
- College Degree: 6%
- Graduate Degree: 7%

Physical Assault in Places of Public Accommodation by Age Respondents Began Living Full-time

- Overall Sample: 8%
- <18: 17%
- 18-24: 13%
- 25-44: 8%
- 45-54: 4%
- 55+: 4%

Physical Assault in Places of Public Accommodation by Household Income

- Overall Sample: 8%
- Under $10K: 13%
- $10K-$20K: 10%
- $20K-$30K: 8%
- $30K-$40K: 5%
- $40K-$50K: 5%
- $50K-$60K: 5%
- $60K-$70K: 5%
- $70K-$80K: 5%
- $80K-$90K: 5%
- $90K-$100K: 5%
- $100K+: 5%

Respondents who are visual non-conformers reported higher rates of physical attack or assault (10%) than those who are visual conformers (6%).

Those who transitioned at younger ages reported higher rates of physical attack or assault than those who began living full-time at an older age.
Places of Public Accommodation

Discrimination, verbal harassment/disrespect, and physical attack or assault were reported more often in some types of public accommodation or when accessing certain services. This study offered 15 types of public accommodation for which respondents could report their experiences. The following table lists those types and the corresponding rates of denial of equal treatment, verbal harassment/disrespect, and physical attack or assault that respondents reported in those areas.

Respondents reported denial of equal treatment or service at all 15 listed types of accommodation, ranging from 3% to 32%. The highest rate of such mistreatment occurred at retail stores (32%), followed by doctor’s offices or hospitals (24%) and when interacting with a government agency or official (22%). Police officers were reported to have denied equal service or treatment to 20% of respondents. Other accommodations where respondents reported relatively high rates of discrimination included emergency rooms (13%), by a judge or official of the court (12%), on an airplane or airport (11%), and at a mental health clinic (11%).

Respondents also reported verbal harassment or disrespect at all listed types of accommodations, at rates ranging from 4% to 37%. Retail stores were the location where respondents reported the highest rate of verbal harassment or disrespect (37%). The second highest rate was related to police services; 29% of respondents reported that police officers verbally harassed or disrespected them. Other settings that proved to be highly problematic for respondents in terms of verbal harassment or disrespect include hotels and restaurants (25%), doctor’s offices or hospitals (25%), buses, trains or taxis (22%), by a government agency or official (22%), airplanes or airports (17%), emergency rooms (16%), by a judge or court official (12%) and mental health clinics (12%).

Physical attack or assault was also reported in all 15 listed settings. Rates of reported assaults range from 1% to 6%. The highest reported rate of physical attack or assault related to police services, with 6% of respondents reporting physical attack/assault. The second-highest rate of reported assaults occurred on buses, trains or taxis (4%). Three percent (3%) of respondents reported physical attack or assault at retail stores. Two percent (2%) of respondents reported physical assault at doctor’s offices or hospitals, and the same rate was reported at hotels or restaurants.

Retail stores, hotels, transportation services, government and legal services, including police, and social services are all areas where respondents reported experiencing unequal treatment, verbal harassment/disrespect and physical assault. In the following sections, we will look at those groups that experienced disproportionally high rates of mistreatment in these settings. More detailed reporting of respondents’ experiences with medical services and law enforcement is provided in the chapters on Health and Police and Incarceration.
Experiences of Discrimination and Violence in Public Accommodations by Location

- Any location: 65% (53% Any Problem, 44% Denied Equal Treatment or Service, 32% Harassed or Disrespected, 20% Physically Assaulted, 9% Any Problem)
- Retail Store: 46% (37% Any Problem, 32% Denied Equal Treatment or Service, 24% Harassed or Disrespected, 19% Physically Assaulted, 13% Any Problem)
- Police Officer: 35% (29% Any Problem, 20% Denied Equal Treatment or Service, 19% Harassed or Disrespected, 6% Physically Assaulted, 2% Any Problem)
- Doctor's Office or Hospital: 35% (25% Any Problem, 24% Denied Equal Treatment or Service, 22% Harassed or Disrespected, 2% Physically Assaulted, 1% Any Problem)
- Hotel or Restaurant: 33% (25% Any Problem, 22% Denied Equal Treatment or Service, 19% Harassed or Disrespected, 2% Physically Assaulted, 2% Any Problem)
- Government Agency/Official: 32% (22% Any Problem, 22% Denied Equal Treatment or Service, 13% Harassed or Disrespected, 1% Physically Assaulted, 1% Any Problem)
- Bus, Train, or Taxi: 26% (22% Any Problem, 13% Denied Equal Treatment or Service, 9% Harassed or Disrespected, 4% Physically Assaulted, 2% Any Problem)
- Emergency Room: 22% (16% Any Problem, 13% Denied Equal Treatment or Service, 11% Harassed or Disrespected, 4% Physically Assaulted, 1% Any Problem)
- Airplane or Airport Staff/TSA: 17% (17% Any Problem, 11% Denied Equal Treatment or Service, 11% Harassed or Disrespected, 6% Physically Assaulted, 1% Any Problem)
- Judge or Court Official: 19% (19% Any Problem, 12% Denied Equal Treatment or Service, 12% Harassed or Disrespected, 1% Physically Assaulted, 1% Any Problem)
- Mental Health Clinic: 18% (12% Any Problem, 11% Denied Equal Treatment or Service, 11% Harassed or Disrespected, 6% Physically Assaulted, 1% Any Problem)
- Legal Services Clinic: 12% (12% Any Problem, 9% Denied Equal Treatment or Service, 11% Harassed or Disrespected, 6% Physically Assaulted, 1% Any Problem)
- Ambulance or EMT: 10% (12% Any Problem, 5% Denied Equal Treatment or Service, 7% Harassed or Disrespected, 5% Physically Assaulted, 1% Any Problem)
- Domestic Violence Shelter/Program: 9% (9% Any Problem, 4% Denied Equal Treatment or Service, 6% Harassed or Disrespected, 6% Physically Assaulted, 1% Any Problem)
- Rape Crisis Center: 7% (7% Any Problem, 5% Denied Equal Treatment or Service, 4% Harassed or Disrespected, 5% Physically Assaulted, 1% Any Problem)
- Drug Treatment Program: 6% (6% Any Problem, 4% Denied Equal Treatment or Service, 4% Harassed or Disrespected, 3% Physically Assaulted, 1% Any Problem)
RETAIL STORES

Retail stores were the setting for which respondents reported the highest rates of unequal treatment and verbal harassment/disrespect. Those groups most affected by discrimination, verbal harassment/disrespect and physical assault in retail stores were largely those who experienced the highest overall rates of these problems in all public accommodations. These include those of younger current age, people of color, non-citizens, people living on lower household incomes, those who are unemployed or have lost jobs, those who have worked in the underground economy and those who identify as FTM or gender non-conforming.

Asian, Latino/a, and multiracial respondents reported higher rates of unequal treatment and verbal harassment/disrespect (38-44% unequal treatment and 39-46% verbal harassment/disrespect). Black, Latino/a, and multiracial respondents reported higher rates of physical assault than the full sample and those of other races (4-6% physical assault).4

People living on lower household incomes (less than $50,000 per year) reported higher rates of all reported problems in retail stores than those with higher household incomes.5 Those respondents with the highest educational attainment (graduate degree) reported higher rates of unequal treatment (35%) and verbal harassment/disrespect (40%) than those with lower educational attainment.6 However, those with lower educational attainment (high school diploma or less) reported higher rates of physical assault, at 4%.7 The higher rates of reported unequal treatment and harassment/disrespect by those with high household income and educational attainment may be accurate or may be due to a different sense of what is equal treatment/harassment/disrespect, whereas the question of physical violence is less subjective.

Those who worked in the underground economy reported among the highest rates of unequal treatment in retail stores (51%), verbal harassment/disrespect (56%), and had the highest rate of physical assault of all groups in the survey (10%).
Those who began living full-time in a gender other than that assigned at birth at younger ages (age 24 or younger) reported higher rates of unequal treatment in retail stores (37% for under 18, 36% for 18-24), verbal harassment/disrespect (38% for under 18, 44% for 18-24), and physical assault (6% for under 18, 4% for 18-24). Visual non-conformers reported among the highest rates of unequal treatment (50%), verbal harassment/disrespect (54%) and physical assault (5%).

In addition, of those whose driver’s licenses did not reflect the gender they have transitioned to, 41% reported denial of equal treatment or service and 48% reported harassment/disrespect in retail stores.

**HOTELS OR RESTAURANTS**

Respondents reported relatively high rates of unequal treatment (19%) and verbal harassment/disrespect (25%) at hotels or restaurants. The demographic patterns detailed in the Retail Stores section above also apply to hotels or restaurants. Those reporting the highest rates of unequal treatment at hotels or restaurants included those who: are visual non-conformers (32%), identify as gender non-conforming (31%), are Latino/a or multiracial (28%) or earn under $10,000 annually (26%).

The highest rates of verbal harassment/disrespect in hotels or restaurants were reported by those who are visual non-conformers (38%), identify as gender non-conforming (34%), or are American Indian, Latino/a, or multiracial (30-32%).

Two percent (2%) of respondents reported being physically attacked or assaulted at a hotel or restaurant. Those reporting the highest rates of physical assault included those who are African American (6%) or Asian (5%).

**TRANSPORTATION**

The survey asked respondents to report experiences in two areas of transportation: ground transportation (buses, trains or taxis) and air travel (airplanes, airports, during TSA screening). When using buses, trains or taxis, respondents reported experiencing unequal treatment (9%), verbal harassment or disrespect (22%), and physical attack or assault (4%). During air travel, whether on a plane or at the airport, respondents reported experiencing unequal treatment (11%), verbal harassment or disrespect (17%) and physical attack or assault (1%).

Experiences based on demographic patterns, again, largely reflect the patterns described in the section on retail stores above.

“Travel is a nightmare. Searches, IDs, pat-downs, the new low-power X-ray, power-drunk guards, etc….and if your ID doesn’t match, you are immediately guilty until proven innocent.”
GOVERNMENT AND LEGAL SERVICES

The survey asked respondents to report their experiences when interacting with government agencies or officials, judges or courts, and legal services clinics. Rates of mistreatment at government agencies or by government officials were among the highest rates for unequal treatment (22%) or verbal harassment/disrespect (22%). When dealing with judges and courts, respondents reported lower overall rates of mistreatment, including unequal treatment (12%) and verbal harassment/disrespect (12%). When utilizing legal services clinics, respondents reported unequal treatment (8%) and verbal harassment/respect (6%). One percent (1%) of respondents reported being physically attacked or assaulted at a government agency or by a government official, by a judge or court official, or when utilizing a legal services clinic.

In the areas previously discussed, retail stores, hotels or restaurants, and transportation, gender non-conforming respondents have consistently reported higher rates of mistreatment than transgender respondents and all respondents. The reverse is true in the area of government agencies and officials. In these responses, transgender respondents consistently reported higher rates of unequal treatment (24%) and verbal harassment/disrespect (24%) than gender non-conforming respondents. Gender non-conforming respondents reported rates lower than all respondents (17% for unequal treatment and 19% for verbal harassment/respect).

In dealing with judges, courts and legal services clinics specifically, transgender respondents reported higher rates of mistreatment than gender non-conforming respondents. Yet, an additional exception to the overall demographic trends appears in the area of judges, courts, and legal services clinics. In all prior areas discussed thus far, respondents who identify as FTM have consistently reported higher rates of mistreatment than MTF respondents. In the area of judges, courts, and legal services clinics, however, the reverse is true; MTF respondents reported consistently higher rates of mistreatment than FTM respondents.

Latino/a and multi-racial respondents reported the most denial of equal treatment/service by government agencies or officials. Black and Asian respondents reported the lowest rates of denial of equal service and verbal harassment/disrespect. Physical assault was most was most often reported by Black, Latino/a and multiracial respondents.
SOCIAL SERVICES

The survey asked respondents to report on their experiences with a variety of social services: rape crisis centers, domestic violence shelters or programs, mental health clinics and drug treatment programs. Respondents reported mistreatment with all of these services, including unequal treatment, verbal harassment/disrespect and physical assault. For purposes of demographic breakdowns and analysis, the lower number of those who utilized these services creates the problem of sample sizes too small within various demographic groups to conduct a complete analysis.

Respondents reported unequal treatment (5%), verbal harassment/disrespect (4%), and physical assault (1%) when utilizing rape crisis centers. When being housed in or utilizing domestic violence shelters or programs, respondents reported unequal treatment (6%), verbal harassment/disrespect (4%), and physical assault (1%). In drug treatment programs, respondents reported unequal treatment (3%), verbal harassment/disrespect (4%), and physical assault (1%).

Higher rates of unequal treatment and verbal harassment/disrespect were reported with mental health clinics. Eleven percent (11%) of respondents reported unequal treatment and 12% reported verbal harassment/disrespect. One percent (1%) reported physical attack or assault.

“It is a lonely place filled with seemingly endless scorn, ridicule and humiliation and the constant threat of violence.”
CONCLUSIONS FOR PUBLIC ACCOMMODATIONS

Transgender and gender non-conforming people experience grave abuses when accessing everyday goods and essential services, from retail stores and buses to police and court systems. From disrespect and refusal of service to harassment and violence, this mistreatment in so many settings contributes to severe social marginalization and safety risk. Study participants’ experiences demonstrate the overwhelming need for legal and policy protections to ensure access to essential services and prospects for living fully and moving freely in public and social settings. Throughout this chapter, we discussed physical assault in numerous places of public accommodation. In the Health chapter we examine the impact of surviving assault on other social, economic and health outcomes.

The data on public accommodation show that gender non-conforming respondents and transgender men generally reported higher rates of unequal service and verbal harassment/disrespect than transgender women (though not true in regard to interactions with judges/court officials and legal services). More research is needed into why there is a different reported experience based on gender: we speculate that the difference may be that transgender women were under-reporting discrimination and verbal harassment/disrespect that occurred.

“I was at first verbally assaulted and then physically assaulted in broad daylight on a crowded street. As a result of the assault I didn’t leave my house for several weeks unless it was absolutely necessary (due to mental anguish). I didn’t report the incident but I have since helped start a self-defense class for trans-men and masculine-identified genderqueers.”

“Being androgynous has given me such a different perspective on how rigid people’s ideas of gender are. When I was younger I was picked on for being a tomboy, and now I get picked on for the fact that, at first glance, they can’t tell if I’m a boy or girl.”

Respondents of color generally experienced higher rates of abuse in public accommodations than their white peers.
RECOMMENDATIONS FOR PUBLIC ACCOMMODATIONS

- Enact strong federal, state and local laws prohibiting discrimination on the basis of gender identity/expression in places of public accommodation.

- Government enforcement agencies should develop compliance regulations and guidelines, provide trainings for entities covered by the laws, and should effectively and thoroughly investigate complaints of discrimination, and when discrimination is found, use strong penalties to deter other entities from violating the law.

- Places of public accommodation should develop their own non-discrimination policies related to gender identity/expression and train staff on how to follow these policies. Service organizations should develop cultural competency. Institutions include:
  - Retail stores
  - Hotels
  - Restaurants
  - Transportation agencies, including mass transit and taxi systems
  - Airline and airport staff, including Transportation Security Officers
  - Rape crisis centers and domestic violence shelters
  - Government agencies
  - Judges and court systems
  - Legal services agencies
  - Police departments (see the Police and Incarceration chapter for more specific recommendations)
  - Doctor’s offices, hospitals, and other health related services (see the Health chapter for more specific recommendations).
Respondents aged 18-24 reported physical assault in any place of public accommodation at 9%, those aged 25-44 at 10%, those aged 45-54 at 4%, those aged 55-64 at 3%, and those 65 and older at 6%.

We asked questions about mistreatment by police both in our public accommodations question, Question 30, as well as in a police-specific question, Question 32, and we did so in slightly different ways. Respondents answered the questions consistently. When asked about harassment and/or disrespect in Question 30, 29% selected yes. When asked about disrespect in Question 32, 30% selected yes (and 22% selected harassment). The minor numeric difference between 29% and 30% are not meaningful and likely reflect the slightly different wording of the question. For more information, see the Police and Incarceration chapter.

We asked about assault by police in two different ways. In Question 30, which asked about public accommodations, “physical attack or assault” was an option that 6% of respondents chose. In Question 32, “officers physically assaulted me” and “officers sexually assaulted me” were options in a list with a “mark all that apply” instruction. Six percent (6%) of respondents chose physical assault and 2% of respondents chose sexual assault; these respondents generally overlapped. Thus, the data correspond as one would expect. For more information, see the Police and Incarceration chapter.

The breakdown of mistreatment in retail stores by race is as follows. Unequal treatment was reported by American Indians at 33%, Asians at 38%, Black respondents at 28%, Latino/as at 40%, white respondents at 30%, and multiracial respondents at 44%. Verbal harassment was reported by American Indians at 31%, Asians at 39%, Black respondents at 30%, Latino/as at 41%, white respondents at 36%, and multiracial respondents at 46%. Physical assault was reported by American Indians at 3%, Asians at 3%, Black respondents at 6%, Latino/as at 4%, white respondents at 3%, and multiracial respondents at 5%.

For physical assault, those making between $20,000 and $50,000 annually broke from the trend of higher reported incidence and reported a lower rate than the overall sample, at 2%. Those whose household incomes were less than $10,000/year reported being denied equal treatment at a retail store at 38%, those whose household incomes were between $10,000/year and $20,000/year at 38%, those whose household incomes were between $20,000/year and $50,000/year at 34%, those whose household incomes were between $50,000/year and $100,000/year at 27%, and those whose household incomes were $100,000/year or more at 27%. Those whose household incomes were less than $10,000/year reported being verbally assaulted in a retail store at 43%, those whose household incomes were between $10,000/year and $20,000/year at 43%, those whose household incomes were between $20,000/year and $50,000/year at 34%, those whose household incomes were between $50,000/year and $100,000/year at 34%, and those whose household incomes were $100,000/year or more at 29%. Those whose household incomes were less than $10,000/year reported being verbally assaulted in a retail store at 43%, those whose household incomes were between $10,000/year and $20,000/year at 43%, those whose household incomes were between $20,000/year and $50,000/year at 34%, those whose household incomes were between $50,000/year and $100,000/year at 34%, and those whose household incomes were $100,000/year or more at 29%. Those whose household incomes were less than $10,000/year reported being verbally assaulted in a retail store at 43%, those whose household incomes were between $10,000/year and $20,000/year at 43%, those whose household incomes were between $20,000/year and $50,000/year at 34%, those whose household incomes were between $50,000/year and $100,000/year at 34%, and those whose household incomes were $100,000/year or more at 29%.

The only exception is people who began living full-time in a gender other than assigned at birth between the ages of 25 and 44, who reported verbal harassment at a rate of 38%, the same as the youngest age group.

See the Housing chapter for more detailed reporting and analysis.
IDENTITY DOCUMENTS

Possessing accurate and consistent identification documents is essential to basic social and economic functioning in our country. Access to employment, housing, health care and travel all can hinge on having appropriate documentation. Yet, for many of the respondents, obtaining identity documents that match their gender is a major hurdle.

We provided survey respondents with a list of nine commonly used identity documents and asked them to tell us whether they had a) succeeded in changing the gender on each document, b) tried and failed, c) did not try at all, or d) if the question didn’t apply (i.e. If they didn't have that particular form of ID or they didn’t want that document updated).

Throughout this chapter, except as noted otherwise, we are reporting only on those who have transitioned gender from male to female or from female to male—since these are primarily the people who need updated identity documents in order to function in society.

Some of the laws and policies relating to changing gender on identification documents require that evidence of surgical sex reassignment must be produced. Because laws and written policies often emphasize transgender people's surgical status, we examined how having or not having the most common gender-related surgical procedures affected people’s ability to get accurate and updated identity documents.

The costs of transition-related surgeries, which are rarely covered by health insurance, are beyond the reach of most transgender people, particularly because the community experiences such high rates of employment discrimination and poverty. In addition, some people who want such surgery cannot have it for medical reasons. Furthermore, some do not want surgery because they do not feel it is necessary for them personally.

Study participants confirmed anecdotal evidence that gender incongruent identification exposes people to a range of hostile outcomes, from denial of benefits and employment to violence. Legal and bureaucratic barriers to amending transgender people’s identity documents marginalize and stigmatize transgender people.

It is unjust to require people to obtain financially-unobtainable or undesired medical care in order to change identification. The extent of this injustice and related abuses is detailed in this chapter.
KEY FINDINGS IN IDENTITY DOCUMENTS

- Of people who had already transitioned from male to female or female to male:
  - Only one-fifth (21%) have been able to update all of their IDs and records with their new gender and one-third (33%) had updated none of their IDs/records.
  - Fifty-nine percent (59%) reported updating the gender on their driver's license/state ID.
  - About half (49%) reported updating the gender in their Social Security record.
  - About one quarter (26%) reported updating the gender on their passport.
  - About one quarter (24%) reported updating the gender on their birth certificate.
  - More than half (59%) of those who have work ID reported updating it.
  - Less than half (46%) of current students have updated their student records, although 81% of those who have tried to do so have been successful.

- Whether or not an individual has had some type of transition-related surgery dramatically affects his or her likelihood of having changed each of the ID documents and records we studied. For example, 81% of those who have had some type of surgery have updated their driver's license compared to 37% of those who have not had any surgery.

- People of color, and those with lower household incomes and educational attainment, were generally less likely to have updated their IDs/records across the board, even when controlling for surgical status, with few exceptions.

- Forty percent (40%) of those who presented ID (when it was required in the ordinary course of life) that did not match their gender identity/expression reported being harassed and 3% reported being attacked or assaulted. Fifteen percent (15%) reported being asked to leave the setting in which they had presented incongruent identification.

- Rates of reported hiring discrimination, and discrimination in housing, including campus housing, are much higher for those who do not have an updated driver's license.
Ability to Change Gender on Identification and in Records

DRIVER’S LICENSES / STATE IDENTIFICATION CARDS

For driver’s licenses, 59% of those who had transitioned were able to change the gender marker on their driver’s license. Eleven percent (11%) were denied an updated license, 30% did not try or indicated not applicable (meaning that they do not have this form of identification or they did not desire to change it).

Transgender women were more likely to have an updated driver’s license (65%) than transgender men (57%).

White respondents (62%) were most likely to have updated their driver’s license, and American Indian (37%) and Black respondents (42%) were least likely.

Unfortunately, it appears that the ability to update driver’s licenses is affected by the type of surgery undergone. Sixty-three percent (63%) of transgender women who have only had breast augmentation were able to update their license, with 18% denied and 19% not trying; of those that tried, 78% were successful. Ninety-four percent (94%) of transgender women who had an orchiectomy or vaginoplasty were able to update their driver’s license; of those who tried, 96% were successful.

Driver’s License Updates for Transgender Women by Surgical Status

Even though many states have abandoned outdated surgery requirements for a change of driver’s license gender marker, the data shows that surgery has made a difference for respondents’ ability to update their license, with 81% of those who have had some type of surgery able to update their driver’s license compared to 37% of those who have had no surgery. Seven percent (7%) of those who had some type of transition-related surgery were denied an updated license, and 12% did not seek to update their ID.

Eighty-five percent (85%) of transgender women who have had some type of transition-related surgery were able to update their licenses, with 7% denied, while 8% did not try; of those who had some type of surgery and tried to change their license, 92% were successful. Only 43% of those who did not have surgery were able to update their driver’s license.
Similarly, 76% of transgender men who had some type of surgery were allowed to update their driver’s license with 6% denied, and 18% not trying; of those who tried, 92% were successful. ⁶

Which surgeries were performed also affected transgender men’s ability to update their licenses. Seventy-six percent (76%) of those who have had chest surgery were able to update their licenses, with 7% denied and 17% having not tried; of those who tried, 92% were successful. Ninety-four percent (94%) of those with a metoidioplasty or surgery to create testes have been able to update their licenses; of those who tried, 97% were successful. Ninety percent (90%) of those who have had phalloplasty were able to update their driver’s licenses; of those who tried, 93% were successful. Because of the small numbers of those who have had metoidioplasty and/or phalloplasty in the sample, the difference in rates between these two (97% and 93%) was likely not meaningful.
Of the variables we asked about in the survey, surgical status seems most strongly associated with the ability to update driver’s licenses. We also found that visual conformity was associated. Of those who have not had surgery but have tried to update their license, 76% of visual conformers were successful in obtaining the change, while only 60% of visual non-conformers succeeded. Common wisdom among transgender people is that the more a person looks like the gender he or she identifies in, the easier it is to change a driver’s license; survey responses seem to bear this out.

We also wanted to see if we looked only at those who have not had any transition-related surgery, what the effect of race, household income and educational attainment was on the likelihood of having updated one’s driver license. Among people who have not had any surgery, Latino/as (45%) were the most likely to have updated their licenses, with multiracial respondents (37%) next most successful. Asian and American Indian respondents were the least likely.

Those with higher household incomes were generally more likely to have updated their licenses, and, of those who tried, generally more likely to have been successful. We also found that those with higher educational attainment were more likely to have successfully updated their ID, and, of all of those who tried, they were the most likely to have obtained the changes they sought.
BIRTH CERTIFICATES

With some exceptions, birth certificate laws and policies (which are established at the state level) generally require that surgery must take place before an updated document is issued. These laws and policies have been slow to catch up to the current medical understanding that medical treatments should not be required to update gender on identity documents. Some states also require a court order for a change of birth certificate, presenting added financial and logistical barriers.

Overall, 24% were able to change the gender marker on their birth certificates.

However, 18% of respondents were denied and 53% had not even attempted to change their birth certificate, with another 5% choosing “not applicable,” meaning that they either did not have a birth certificate or they did not desire to change it. Many of those who did not attempt to change their birth certificates may have chosen not to do so because they knew they would not meet the requirements of the written policies; for example, because they had not had any surgery. Alternatively, they may not have had the resources to pay an attorney for assistance in obtaining a court order.

Gender identity was not a factor, with 26% of MTF respondents and 24% of FTM respondents able to change gender markers.

Looking at race, White (25%) and Latino/a (23%) respondents were the most likely to have changed their gender markers and American Indians were the least likely, with only 7% having done so.

Many state laws and policies require surgery for changing a birth-certificate gender marker; not surprisingly, having had surgery dramatically changes the likelihood of updating a birth certificate. Those who have had some type of surgery were able to change their gender marker over six times as frequently (39%) than those without (6%). Twenty percent (20%) have been denied the change even with some type of surgery. Thirty-eight percent (38%) with some type of surgery have not tried to change their birth certificate.

Unfortunately, the type of surgery an applicant has undergone appears to matter to state agencies charged with amending birth certificates. Of MTF respondents who have had some type of surgery, 43% had changed their birth certificates. Of MTFs who have only had breast augmentation surgery, only 15% had changed their birth certificates; of those with breast surgery who tried, 32% were able to. Of transgender women who have had an orchiectomy or vaginoplasty, 55% have been able to change their birth certificate; of those who tried, 74% were able to do so.
For FTM respondents who have had some type of transition-related surgery, 37% have updated their gender markers on their birth certificates. Twenty-nine percent (29%) of FTMs with chest surgery only were able to change their birth certificate, while 23% were denied an updated document, and about half had not tried (48%); of those with chest surgery who tried to change their birth certificate, 56% were able to do so. Seventy percent (70%) of those with a metoidioplasty or surgery to create testes were able to change their birth certificates (15% were denied) and 15% did not try; of those who tried, 82% with this surgery or surgeries were allowed the change. Of those with a phalloplasty, 72% have been granted changes (21% were denied) and 7% have not tried; of those who tried, 78% were successful. Because of the low numbers of FTMs with phalloplasty, the different rates of ability to change their birth certificates between metoidioplasty (82%) and phalloplasty (78%) is probably not meaningful.

“I cannot get my birth certificate changed in Illinois unless I have a penis! This is wrong! I look like, act like and am seen as a man by everyone around me until I have to show my Driver’s License, which still says Female. The picture on my license is me with a beard!”
Of all of those who have transitioned, those who are visual conformers are more likely to have a change to their birth certificate approved, regardless of their level of surgical transition. Of those who have had some type of surgery as part of transition and who have tried to update their birth certificate, those who are visual conformers are more likely to be granted a change on their birth certificate (70%) than visual non-conformers (57%).

We also wanted to see how race, household income and educational attainment affected rates of updating birth certificates. Since most birth certificate policies generally require some type of transition-related surgery, we looked at respondents who only had some type of surgery.

Among those who have had some type of surgery, white respondents were the most likely to have updated their birth certificates (41%), with black respondents next most likely (37%). Higher-income respondents who have had some type of surgery were able to change their birth certificates more often than those with lower household incomes; and, among those who tried to update such documents, higher-income respondents had much higher rates of being allowed to do so. It is possible that those with higher household incomes were able to afford legal representation for the gender change process, as many states require a court order to change a birth certificate; however, we did not ask if people used the services of an attorney.

Similarly, those in the higher educational attainment categories were more likely to have changed their birth certificate and more likely to report success if they tried. Because the process for changing birth certificates in most states is complex, those with formal education may have fared better in navigating the government bureaucracy.
SOCIAL SECURITY

The Social Security Administration keeps a record of gender, although Social Security cards are issued without gender markers. It is the Social Security Administration’s current policy to change the gender in a transgender person’s records only upon proof of “completed” sex reassignment surgery (although the policy does not specify what types of surgery must be done). Before this current policy was adopted, it is our understanding that surgery was not always required and there are reports that even after the written policy went into effect, some people have been to update their records without showing proof of surgery.

Only about half (49%) of those who transitioned have updated their Social Security gender record. Twelve percent (12%) were denied the change, 37% have not tried, and 3% chose not applicable (meaning they do not have a Social Security account or they did not want to update it). Transgender women were more likely to have updated their accounts, with 51% having done so, compared to 44% of transgender men.

Given the written policy requiring completed surgery, it is not surprising that the ability to change the Social Security record was strongly connected to whether an individual had had surgery. For transgender women, 75% who have had some surgery updated their Social Security records, compared to 30% of those who have not had any surgery; 15% of those have had surgery and tried to update their records, 89% succeeded. Interestingly, more than half (56%) of those who tried to update their record but had not had any surgery were also successful. About half (48%) of those who have only had breast augmentation updated their record, with 23% denied, and 29% who have not tried; of those who tried, 67% were successful. Of those who had orchiectomy or vaginoplasty, 88% have changed their record, with 4% denied and 8% not tried; of those who tried, 95% were successful.

Of those who tried to update their gender in Social Security records, transgender men fared better than women. Transgender men who tried to update their records were able to do so in 89% of cases, compared to 77% for transgender women.

Whether or not respondents had changed their Social Security gender record differed by race. American Indian (35%), Asian (38%), and Black (38%) respondents were least likely to have changed their records.

Given the written policy requiring completed surgery, it is not surprising that the ability to change the Social Security record was strongly connected to whether an individual had had surgery. For transgender women, 75% who have had some surgery updated their Social Security records, compared to 30% of those who have not had any surgery; 15% of those have had surgery and tried to update their records, 89% succeeded. Interestingly, more than half (56%) of those who tried to update their record but had not had any surgery were also successful. About half (48%) of those who have only had breast augmentation updated their record, with 23% denied, and 29% who have not tried; of those who tried, 67% were successful. Of those who had orchiectomy or vaginoplasty, 88% have changed their record, with 4% denied and 8% not tried; of those who tried, 95% were successful.
Ability to Change Gender in Social Security Record for Transgender Women by Surgical Status

All MTF Respondents Who Transitioned
- 31% Not Tried
- 16% Denied
- 53% Allowed

MTFs with No Surgery
- 47% Not Tried
- 22% Denied
- 30% Allowed

MTFs with Any Surgery
- 15% Not Tried
- 10% Denied
- 75% Allowed

MTFs with Breast Augmentation
- 29% Not Tried
- 23% Denied
- 48% Allowed

MTFs with Orchiectomy/Vaginoplasty
- 4% Denied
- 8% Not Tried
- 88% Allowed

For transgender men, 64% of those who had some type of surgery updated their Social Security records, compared to 16% of those who have had no surgery. Of those who have had some type of surgery and tried to update their records, 92% were successful. Interestingly, more than two-thirds (71%) of those without any surgery who tried to update their record were successful. Sixty-two percent (62%) who had only chest surgery were able to change their Social Security records; of those who tried, 91% were successful. Of those who had a metoidioplasty or surgery to create testes, 91% have updated their record; of those who tried, 97% were successful. For those who have phalloplasty, 93% have updated their Social Security record; and, of those who tried, 96% were successful. Because the numbers of transgender men in our sample who have had metoidioplasty and/or phalloplasty are low, the differences in the rates between them may not be meaningful.

Ability to Change Gender in Social Security Record for Transgender Men by Surgical Status

All FTM Respondents Who Transitioned
- 48% Not Tried
- 6% Denied
- 77% Allowed

MTFs with No Surgery
- 31% Not Tried
- 4% Denied
- 64% Allowed

MTFs with Any Surgery
- 33% Not Tried
- 6% Denied
- 62% Allowed

MTFs with Chest Surgery
- 31% Not Tried
- 6% Denied
- 91% Allowed

MTFs with Metoidioplasty/Creation of Testes
- 3% Not Tried
- 3% Denied
- 93% Allowed

MTFs with Phalloplasty
- 3% Not Tried
- 3% Denied
- 93% Allowed
We also wanted to see how race, household income and educational attainment affected rates of updating Social Security records when we held surgery constant. Since current Social Security policy requires surgery, we looked at respondents who only had some type of surgery.

With regard to race, among those who have had some type of surgery, white respondents were the most likely to have updated their Social Security records (72%), with multiracial respondents next most likely (63%).

Among those who have had some type of surgery, those in the higher household income brackets reported more often having Social Security records updated, and, among those who tried to change their records, much higher rates of being allowed to change their records. Those in the higher educational attainment categories were more likely to have changed their Social Security records and more likely to report success if they tried.
Looking at whether visual conformity appears to affect the outcome of attempts to update Social Security records, among those who have had surgery, we found that visual conformers were much more likely to be granted the updated records.

![Graph showing Ability to Change Gender on Social Security Record by Visual Conformity Among Those With Surgery.](chart.png)
PASSPORTS

From 1992 until June 2010, the U.S. Department of State had a policy of requiring proof of “sex reassignment surgery” before changing gender markers on passports. In 2010, the department, eliminated the surgery requirement, but field work for our study was done before that action.

Twenty-six percent (26%) of respondents who had transitioned reported having updated the gender markers on their passport. Seven percent were denied, and 68% either did not try or chose “not applicable” likely meaning they did not have a passport.

Of those who had some type of surgery, 43% reported having an updated passport, compared to only 5% of those who did not have surgery.19 Six percent (6%) of those who have had surgery reported being denied an updated passport and 51% either did not try to update it or did not have a passport.20

Of those who have tried to change their passport, and have had some type of surgery, 87% reported success and 13% reported denials. Of those who had not had surgery and tried to change the gender on their passport anyway, 40% reported success and 60% reported denials.

We wanted to know whether race, household income and educational attainment appeared to have an effect on whether people were able to update their passports. Among those who have had some type of surgery, Asian respondents were the most likely to have updated a passport and had the highest success rate among those who tried to update their passport.

Among those with some type of surgery, those with higher household incomes and higher educational attainment were more likely to have changed their passports.
WORK ID

Overall, 59% of those who have work ID were able to update gender markers. Six percent (6%) were denied the change and 35% have not tried. Transgender women were more likely to have made this change, with 64% having received an updated ID, compared to 51% of transgender men. Thirty percent (30%) of transgender women and 43% of transgender men have not tried. Six percent of both groups were denied the change.

The likelihood of trying to change one’s work ID, and the likelihood of being successful in doing so, also increased by household income.

MILITARY DISCHARGE PAPERS

Thirty-five percent (35%) of those who tried to update discharge records (by receiving a DD-215 form) were allowed to do so. Those who had some type of surgery, and who tried to update their discharge papers, were only slightly more likely to have been allowed the change, with 40% successful.

HEALTH INSURANCE RECORDS

Generally, 39% percent of people who have transitioned updated their health insurance records, and a small number (7%) reported being denied. A large group has not attempted to do so (41%). Anecdotally, we know that many people fear updating their health insurance records because doing so may prevent them from getting preventive and necessary care for their sexual and reproductive systems (for example, someone listed as male is likely to be denied coverage for a mammogram). Furthermore, transgender people are aware that updating gender markers could out the person as transgender to the insurance company. This could trigger a denial of coverage for care that the insurance company considers related to gender transition (much of which is excluded by most insurance plans).

Transgender women (44%) were more likely to have updated their records; however, transgender men were less likely to try to do so. Of those who tried, transgender men have a lower denial rate (14%) than transgender women (17%).

STUDENT RECORDS

Overall, less than one half (46%) of current students who have transitioned have updated the gender on their student records. Eleven percent (11%) attempted to update their records and were denied, and 38% have not tried. Of those who tried, 81% were successful.

PROFESSIONAL LICENSES AND/OR CREDENTIALS

Eighty-eight percent (88%) of those who tried to change the gender on their professional license or credential were successful, while 12% were denied such changes.
Living With Incongruent Identity Documents

We asked respondents whether “All,” “Some,” or “None” of their IDs and records match the “gender you prefer.” Of those who had transitioned, only 21% reported that they had been able to update all of their IDs and records. About half (46%) indicated that they have been able to update some of their IDs and/or records, and one-third (33%) indicated that none of their IDs and records matched their current gender identity.

Respondents’ success in updating all, some or none of their IDs and records varied by race and household income. Although the percentages of respondents reporting that they had been able to change all of their IDs/records was relatively even across the board, respondents of color (except Latino/as) were more likely to be living with no matching IDs and/or records. Similarly, respondents with higher household incomes were also more likely to have been able to change all or at least some IDs and records.

“When I tell people my birth name or show IDs with my birth name, people at first don’t believe me. Often when I am trying to buying something, people squint at my ID and usually let me buy it, but I can tell they are not sure that is really who I am.”

Only one-fifth (21%) of those who have transitioned have been able to update the gender on all their IDs and records.
Harassment and Violence When Presenting Incongruent Identity Documents

All respondents, not only those who have transitioned, may need to present ID during at times in the ordinary course of their lives when their visible gender expression doesn’t match the gender or name on their IDs. We asked respondents to tell us what happened to them when they presented incongruent ID documents.

Forty percent (40%) of respondents who presented gender incongruent identification reported harassment and 3% reported being assaulted or attacked. Fifteen percent (15%) reported that they were asked to leave an establishment. Overall, 44% had one of these problems (harassment, assault, or being asked to leave) and 56% had no problems.

African American (50%) and multiracial (53%) respondents reported higher rates of harassment than the overall sample. While only 3% of the full sample reported being assaulted when presenting incongruent identification, 9% of African American and Latino/a respondents and 6% of multiracial respondents reported assault.

Harassment and Violence When Presenting Incongruent Identity Documents by Race

Working in the underground economy and losing a job due to bias were highly associated with harassment (61% and 56% respectively) due to incongruent ID. These groups also experienced high exposure to violence (8% and 7% respectively). Transgender men reported much higher rates of harassment (50%) than transgender women (33%); gender non-conforming respondents reported more harassment due to gender incongruent identification (47%) than their transgender peers (40%).

“My documents match now, but they didn’t for most of my life. I lived in terror of losing my life, my freedom, my employment, and my friends.”

Harassment and Violence When Presenting Incongruent Identity Documents by Gender Identity/Expression
Making the Connections: The Impact of Incongruent Identification

For transgender and gender non-conforming people, not having identification consistent with their gender identity or expression can have far-reaching negative consequences. Whenever people with incongruent identification documents must produce them, they are potentially revealed as transgender, whether to an employer, clerk, police officer, or airport personnel. Each of these “outings” presents the possibility for disrespect, harassment, discrimination or violence as outlined above.

In the hiring process, ID is required by employers who need to fill out government forms relating to taxes and Social Security when adding an employee to payroll. Anecdotal evidence indicates that some transgender people are offered jobs by employers who don’t realize these job candidates are transgender, and when ID is provided that doesn’t match gender identity/expression, the result can be withdrawal of the offer of employment.

Among those who have transitioned, we looked at the relationship between reported rates of hiring discrimination and updating of driver’s licenses. Of those who had an updated driver’s license, 52% reported experiencing discrimination in hiring. Among those who did not have an updated driver’s license, the reported rate was 64%. More research is needed to determine whether the lack of gender-congruent ID is a direct cause of hiring discrimination.

We also examined denials of home/apartments and housing on campus in terms of ID gender congruence. Showing ID is a typical step toward renting or buying a home or apartment and checking ID or student records is typically a determinant in deciding eligibility for housing on campus. Among those who have transitioned, about one-third (32%) of those with a non-matching driver’s license reported being denied a home or apartment, compared to 20% of those who did have an updated driver’s license.

Among those who transitioned and reported seeking campus housing, those with updated driver’s licenses were less likely to be denied housing, with 7% being denied housing, compared to 20% being denied among those without updated licenses. We also asked about whether respondents were denied gender-appropriate student housing. Gender congruent licenses also appeared to matter here — 36% of those without an updated driver’s license reported being denied gender-appropriate housing, compared to 18% of those with an updated driver’s license.

“These are hard times, I know, but there is still no reason for me to not be able to find adequate employment. I am very passable until the employer runs my driver’s license. I have to work as a Drag King for now and hope to at least make my mortgage payment.”

“My worst experience involved how the police saw me and what my Pennsylvania driver’s license listed as my sex was when I was in New Jersey. I was held and verbally abused by two officers for a burned-out headlamp for about 45 minutes.”
CONCLUSIONS FOR IDENTITY DOCUMENTS

Having gender-congruent identification is clearly important to the well-being of transgender people. However, substantial barriers to obtaining gender-congruent identification remain in place in states, localities and federal agencies.

Gender-incongruent identification presents barriers to travel, employment, health care, housing, education and other essential arenas of life. Further, data here indicate that presenting gender-incongruent identification exposed respondents to harassment and violence.

Having transition-related surgery is, by far, the single biggest factor in obtaining gender-congruent identification and, it appears that government agencies and other institutions that maintain IDs and records discriminate based on what type of surgery the respondent has had.

Health data on gender related surgeries analyzed earlier in this report indicate that a high percentage of our study respondents do not have access to the gender-related surgeries they need. Accordingly, requiring surgery to change gender markers on essential identity documents effectively condemns a major portion of transgender and gender non-conforming people to social and economic marginalization and harassment and violence.

RECOMMENDATIONS FOR IDENTITY DOCUMENTS

• Gender markers on all identity documents and in all records, at every level of government and by every institution that records gender, should be determined by the gender the person identifies as. This includes:
  • Federal agencies, such as the Social Security Administration, Department of Transportation, Department of Defense, Department of Veteran's Affairs, Office of Personnel Management
  • State Bureaus of Vital Statistics
  • State Departments of Motor Vehicles
  • Employers and professional licensing organizations and associations
  • Educational institutions of all levels
  • Health systems and health insurance companies

• All entities should evaluate whether there is a legitimate programmatic purpose for collecting gender information and putting this information on identity documents; if not, gender markers should be removed.

• Sensitivity training is urgently needed for staff who administer the changing of IDs and records, to ensure that transgender people are treated respectfully and IDs and records are updated appropriately.

• Research should be funded to further assess the impacts of gender-incongruent identity documents on transgender people's social and economic security; studies should be constructed to explore potential race and income discrimination at agencies that issue identity documents.
Endnotes

1 Data here is calculated with Not Applicables removed, as we typically do in this report. However, in some instances in this section, data are reported with Not Applicable responses included in order to better describe the percent of respondents who have updated that particular ID/record. If Not Applicable responses are not mentioned in the text or in the relevant chart, as done here, the reader should assume that they were not included in the calculations.

2 Many states have policies that require proof of surgery, while many others allow applicants to obtain updated licenses in order to match their current gender identity with or without surgery. More research could be done to divide respondents based on the type of policy in each state, and then further inquire into the how having had surgery, or not, affects the percent of those able to change their driver’s licenses.

3 See note 1.

4 Please see the Glossary for definitions of various medical terms.

5 See note 1.

6 See note 1.

7 Please see the Glossary for definitions of various medical terms.

8 See note 1.

9 The World Professional Association for Transgender Health, a professional association of those who provide medical and other health care for transgender people, develops the current worldwide Standards of Care, referred to in the Health chapter. In June of 2010, they issued the following statement (excerpt): “The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.” In 2010, the U.S. Department of State abandoned its surgery-based policy in favor of a new policy requiring a letter from a physician (without reference to the patient’s surgical status) to update the birth certificates of U.S. citizens born in other countries, referred to as Consular Reports of Birth Abroad, making them one of the first government agencies to catch up with medical understandings of transgender people.

10 See note 1.

11 Some people do not have a birth certificate because they were born in a different country without a formal certificate system; others do not have a birth certificate because of record storage problems, among other reasons.

12 See note 1.

13 See note 1.

14 See note 1.

15 See note 1.

16 See note 1.

17 See note 1.

18 See note 1.

19 See note 1.

20 A reader might note that it appears from these numbers and charts that our sample has a higher rate of holding a passport than the general population (28%). Note that we have segmented our sample for most of the this section to examine only those who have had surgery, which means that they are more likely to have higher income, which in turn means it is more likely they hold a passport. Furthermore, because many surgeons who do transgender-related procedures practice in other countries, a larger number of these respondents may have acquired a passport to travel abroad for their surgery. For general population figures, see http://www.gao.gov/new.items/d08891.pdf.

21 We presume that those who have work ID without a gender marker chose “not applicable” or answered this question with regard to being able to update a gender-specific name.

22 The DD-214, which are discharge papers, are generally considered historical documents and are generally not updated. However, according to the policy, veterans should be able to receive a DD-215 with updated information.

23 We presume that these students are primarily college, graduate or technical school students because our sample includes only those 18 and older.
POLICE AND INCARCERATION

Most people interact with police officers during the ordinary course of their lives. Transgender and gender non-conforming people may have higher levels of interaction with police. They are more likely to interact with police because they are more likely to be victims of violent crime, because they are more likely to be on the street due to homelessness and/or being unwelcome at home, because their circumstances often force them to work in the underground economy, and even because many face harassment and arrest simply because they are out in public while being transgender. Some transgender women report that police profile them as sex workers and arrest them for solicitation without cause; this is referred to as “Walking While Transgender.” The survey brought to light a wide range of alarming experiences of transgender and gender non-conforming people with police and the criminal justice system. It also provides the first look at abuse in jails and prisons nationwide; other studies have documented abuse in specific geographic areas or within certain systems.

KEY FINDINGS IN POLICE AND INCARCERATION

- One-fifth (22%) of respondents who have interacted with police reported harassment by police due to bias, with substantially higher rates (29-38%) reported by respondents of color.
- Six percent (6%) reported physical assault and 2% reported sexual assault by police officers because they were transgender or gender non-conforming.
- Twenty percent (20%) reported denial of equal service by police. More information about denial of equal service can be found in the Public Accommodation chapter.
- Almost half of the respondents (46%) reported being uncomfortable seeking police assistance.
- While 7% of the sample reported being held in a cell due to their gender identity/expression alone, these rates skyrocketed for Black (41%) and Latino/a (21%) respondents.
- Respondents who served time in jail reported harassment by correctional officers (37%) more often than harassment by peers (35%).
- Physical and sexual assault in jail/prison is a real problem: 16% of respondents who had been to jail or prison reported being physically assaulted and 15% reported being sexually assaulted.
- African-American respondents reported much higher rates of physical and sexual assault in prison, by other inmates and corrections officers, than their counterparts.
- Health care denial was another form of abuse in prison, with 12% of people who had been in jails or prisons reporting denial of routine health care and 17% reporting denial of hormones.
Police Interaction

Fifty-four percent (54%) of all respondents reported that they had interacted with the police as a transgender or gender non-conforming person. When asked about their experience, 68% of those interacting with police reported that “officers generally have treated me with respect.” Almost a third (30%), indicated that “officers generally treated me with disrespect.”

Respect increased with household income (51% of those earning $10,000/year or less compared to 79% of those earning $100,000/year or more reported respectful treatment) and educational attainment (43% among those with no high school diploma compared to 74% of those with a graduate degree).

We were curious if respondents who had never worked in the underground economy and who had never been incarcerated would report differing degrees of respectful treatment by police. We found that incidence of respectful treatment and harassment increased for these respondents, but not dramatically. Seventy-seven (77%) of those who have never worked in the underground economy and have never been to jail or prison reported that officers treated them with disrespect (compared to our overall rate of 68%) and 22% reported disrespectful treatment (compared to 30% of the overall sample).

Race had a larger impact on interactions with the police, with white respondents experiencing respectful treatment at much higher levels than their peers who are people of color. Gender non-conforming respondents and transgender men reported higher rates of disrespect than transgender women.
HARASSMENT AND ASSAULT

We asked respondents whether they were harassed, physically assaulted, or sexually assaulted by police officers because they were transgender or gender non-conforming. There were notable differences between reported frequency of harassment compared to reported frequency of physical and sexual assault.

Twenty-two percent (22%) of respondents interacting with police reported harassment by officers. Higher rates of harassment were reported by Black (38%), multiracial (36%) and Asian (29%) respondents. Higher household income and educational attainment made it less likely that a person experienced harassment. Female-to-male and gender non-conforming respondents reported higher rates of police harassment than their MTF and transgender counterparts. Looking at whether harassment was also directed at those who had never worked in the underground economy and had never been incarcerated, we found still high rates of harassment, with 15% reporting that officers harassed them, compared to the 22% overall rate for all respondents who interacted with police.

Six percent (6%) of study participants who had interacted with police reported physical assault, and 2% reported sexual assault because of being transgender or gender non-conforming. Fifteen percent (15%) of Black respondents interacting with police reported physical assault and 7% reported sexual assault. Those who have worked in the underground economy experienced high rates of physical (15%) and sexual assault (8%). Two percent (2%) of those who have never worked in the underground economy and have never been incarcerated reported physical assault.

“After I was raped, the officer told me that I got what I deserved.”
“I did not pass as male, but I was obviously presenting as a masculine person at a nightclub. I kissed the cheek of my girlfriend at the time. … The security guard picked me up and carried me towards the door, kicked the door open with his foot and launched me out the door of the nightclub. I tumbled to the ground to find three police officers standing over me. One said, ‘Do we have trouble here?’ The security guard said, ‘The trouble is that this fucking lesbian needs to know what it’s like to be with a man.’ They all started to laugh. ‘I could show her,’ one police officer said. Just then my friends bolted through the door and instructed me to run. I stumbled to my feet and narrowly escaped the officer’s hands. ‘Fucking dykes! Don’t come back here unless you wanna get fucked!’ one of the officers screamed as we ran off.”
Comfort in Seeking Police Assistance

Police harassment and assault had an apparent deterrent effect on respondents’ willingness to seek out help from law enforcement; 46% of the sample reported that they were uncomfortable seeking help from police while only 35% reported that they were comfortable doing so.

Those who have never worked in the underground economy nor were ever incarcerated reported only a slight decrease in discomfort in seeking police assistance, with 42% uncomfortable and 37% comfortable.

“My boyfriend and I were jumped last year because he was wearing a dress. I didn’t call the police because we are both gender non-conforming and he is a person of color.”

“Street harassment is the most constant gender-related experience of discrimination in my day-to-day life: from cops, other government workers, as well as fellow city residents. My experience ranges from catcalls, to being followed (on foot and in cars) by threatening groups of people, to having things thrown at me. Enough of this harassment comes from cops that I can’t imagine a situation in which I’d either report it to the police or want them to intervene.”

Levels of Comfort and Discomfort in Seeking Help from Police by Race
Incarceration

Seven percent (7%) of study participants reported being arrested or held in a cell strictly due to bias of police officers on the basis of gender identity/expression. Four percent (4%) of those who have not worked in the underground economy reported being arrested or held in a cell due to this same bias.

This experience was heightened for respondents of color. Black and Latino/a incidences of being incarcerated due only to gender identity/expression were much higher than the overall sample’s experience, at 41% and 21% respectively.

Sixteen percent (16%) of respondents reported being sent to jail or prison “for any reason,” with Black (47%) and American Indian (30%) respondents at highest risk for going to jail/prison. Twenty-one percent (21%) of male-to-female transgender respondents reported having been sent to jail for any reason, in contrast with 10% of female-to-male respondents.

These statistics exceed those of the general population for prisons, in some cases by many times. A 2003 report of the Department of Justice shows that 2.7% of the general American population is imprisoned at some point in life. However, the Department of Justice report does not include jails, so the general population rate for being held in jail or prison should be higher than the simple prison rate.

Despite this difference, the Department of Justice data provides a useful benchmark. Their data reported an overall rate for males of 4.9%, and for females, 0.5%. They provide only limited racial/ethnic data.

Because the Department of Justice data is limited to prisons and does not include jails, the comparison with our data is not exact. However, the difference in reported rates is stark, with respondents in our sample reporting many times the rate of incarceration than the general population, based on the best available data for comparison.

<table>
<thead>
<tr>
<th></th>
<th>All</th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Population</strong></td>
<td>2.7%</td>
<td>4.9%</td>
<td>0.5%</td>
</tr>
<tr>
<td><strong>White</strong></td>
<td>1.4%</td>
<td>2.6%</td>
<td>0.3%</td>
</tr>
<tr>
<td><strong>Black</strong></td>
<td>8.9%</td>
<td>16.6%</td>
<td>1.7%</td>
</tr>
<tr>
<td><strong>Latino/a</strong></td>
<td>4.3%</td>
<td>7.7%</td>
<td>0.7%</td>
</tr>
</tbody>
</table>
LENGTH OF INCARCERATION

Respondents were asked to provide the total amount of time they have been in jail/prison throughout their lives.

In terms of race, Black respondents had by far the worst outcomes in terms of length of stay in jails/prisons. Five percent (5%) of African Americans sent to jail for any reason were incarcerated for 10 or more years and 10% were incarcerated for 5-10 years. By contrast, the only 4% of the full sample served 5 or more years in jail.

As is true in other populations, participants’ jail time decreased as household income increased; educational attainment was also inversely correlated with jail time.

Male-to-female transgender respondents reported serving more time than FTMs. In general, transgender respondents served longer sentences (or more sentences) than gender non-conforming participants, faring worse in every category except the lowest (serving under 6 months).

“I was arrested recently and the officer thought it necessary to announce in a loud tone to the entire jail that I was a transgender man.”
POLICE AND INCARCERATION

**Total Length of Incarceration by Race**
(of Those Incarcerated)

<table>
<thead>
<tr>
<th>Race</th>
<th>Under six months</th>
<th>Six months to a year</th>
<th>One to three years</th>
<th>Three to five years</th>
<th>Five to ten years</th>
<th>Ten or more years</th>
</tr>
</thead>
<tbody>
<tr>
<td>All who went to Jail/Prison</td>
<td>81%</td>
<td>19%</td>
<td>6%</td>
<td>2%</td>
<td>5%</td>
<td>3%</td>
</tr>
<tr>
<td>American Indian</td>
<td>81%</td>
<td>19%</td>
<td>13%</td>
<td>8%</td>
<td>9%</td>
<td>2%</td>
</tr>
<tr>
<td>Asian</td>
<td>83%</td>
<td>6%</td>
<td>14%</td>
<td>10%</td>
<td>10%</td>
<td>3%</td>
</tr>
<tr>
<td>Black</td>
<td>47%</td>
<td>18%</td>
<td>6%</td>
<td>10%</td>
<td>5%</td>
<td>6%</td>
</tr>
<tr>
<td>Latino/a</td>
<td>72%</td>
<td>13%</td>
<td>9%</td>
<td>1%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>White</td>
<td>89%</td>
<td>5%</td>
<td>2%</td>
<td>1%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Multiracial</td>
<td>82%</td>
<td>8%</td>
<td>10%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
</tr>
</tbody>
</table>

( ) Sample size too low for reliable analysis

**Total Length of Incarceration by Household Income**
(of Those Incarcerated)

<table>
<thead>
<tr>
<th>Household Income</th>
<th>Under six months</th>
<th>Six months to a year</th>
<th>One to three years</th>
<th>Three to five years</th>
<th>Five to ten years</th>
<th>Ten or more years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $10K</td>
<td>74%</td>
<td>10%</td>
<td>6%</td>
<td>3%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>$10K- under $20K</td>
<td>78%</td>
<td>9%</td>
<td>1%</td>
<td>5%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>$20K-under $50K</td>
<td>84%</td>
<td>6%</td>
<td>1%</td>
<td>1%</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>$50K-under $100K</td>
<td>88%</td>
<td>5%</td>
<td>3%</td>
<td>1%</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>$100K+</td>
<td>84%</td>
<td>3%</td>
<td>1%</td>
<td>1%</td>
<td>3%</td>
<td>1%</td>
</tr>
</tbody>
</table>

**Total Length of Incarceration by Educational Attainment**
(of Those Incarcerated)

<table>
<thead>
<tr>
<th>Educational Attainment</th>
<th>Under six months</th>
<th>Six months to a year</th>
<th>One to three years</th>
<th>Three to five years</th>
<th>Five to ten years</th>
<th>Ten or more years</th>
</tr>
</thead>
<tbody>
<tr>
<td>No HS Diploma</td>
<td>66%</td>
<td>20%</td>
<td>10%</td>
<td>2%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>HS Diploma</td>
<td>71%</td>
<td>11%</td>
<td>9%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Some College</td>
<td>81%</td>
<td>7%</td>
<td>6%</td>
<td>2%</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>College Degree</td>
<td>94%</td>
<td>2%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>2%</td>
</tr>
<tr>
<td>Graduate Degree</td>
<td>89%</td>
<td>5%</td>
<td>4%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
</tr>
</tbody>
</table>
Experiences in Jail and Prison

Not surprisingly, the mistreatment and abuse by law enforcement officers that transgender and gender non-conforming people experienced on the street and in their communities continued when respondents were in custody. Harassment and assault at the hands of corrections officers and by other inmates from whom they have no escape was frequent both for transgender and gender non-conforming respondents.

HARASSMENT AND ASSAULT IN JAIL AND PRISON

Harassment

Thirty-five percent (35%) of respondents who served time in jail/prison reported harassment by other inmates. Latino/a (56%), Black (50%), and multiracial (43%) respondents all report much higher incidence of peer harassment than the full sample. MTFs (40%) and transgender (38%) respondents report higher rates of peer harassment than their FTM (29%) and gender non-conforming (29%) peers.

Of respondents who went to jail/prison, 37% reported they were harassed by correctional officers or staff. Respondents of color experienced officer/staff harassment at higher rates (44%-56%) than their white peers. Transgender male inmates experienced officer/staff harassment at higher incidence than their transgender female peers.

“While I only experienced verbal harassment and rape threats during a night in jail, I watched a trans woman arrested with me experience physical and sexual assault from the police that night as well as extensive verbal harassment and humiliation.”
Physical and Sexual Assault

When someone is sent to jail or prison, society agrees that rape should never be part of the sentence. Unfortunately, for many of our respondents, it is. Respondents who went to jail/prison report alarming levels of physical assault (16%) and sexual assault (15%) perpetrated both by other inmates and by staff. Black respondents reported the highest incidence of sexual assault in prison (34%) by other inmates or by staff.

Male-to-female transgender respondents reported higher incidence of physical assault (21%) than their FTM peers (11%). MTF respondents also reported a higher rate of sexual assault (20%) than FTM respondents (6%). Transgender inmates experienced physical and sexual assault at higher frequencies (19% and 16%) than their gender non-conforming peers (4% and 8%).

It is not easy to compare this information with the general population of people who go to jail/prison, since most surveys ask about sexual assault that occurred in the prior year only. One study from California that was not limited to the last year, shows an overall sexual assault rate of 4.4% of all inmates in male California correctional facilities.  

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**Physical Assault in Jail/Prison by Race**

![Physical Assault in Jail/Prison by Race](chart1)

- Physical Assault by Inmates
- Physical Assault by Staff
- Physical Assault by Anyone

( ) Sample size too low for reliable analysis

**Sexual Assault in Jail/Prison by Race**

![Sexual Assault in Jail/Prison by Race](chart2)

- Sexual Assault by Inmates
- Sexual Assault by Staff
- Sexual Assault by Anyone

( ) Sample size too low for reliable analysis
Transgender women of color were particularly vulnerable to sexual assault in jail/prison. Thirty-eight percent (38%) of Black MTF respondents reported being sexually assaulted by either another inmate or a staff member in jail/prison. Unfortunately, breaking our respondents who had gone to jail/prison down both by race and gender created individual sample sizes too small for analysis, including for nearly all FTM respondents. However, we include the following table below to highlight the experiences of transgender women by race. We have indicated where sample size was too low to present reliable data.

“I was arrested one day regarding something minor. Due to my gender being marked as male, I was put in with the men. Within 15 minutes, I was raped by 3 different men. My mother even called and warned the officers NOT to put me in with general population as I would be an easy target. When I got out I tried to seek help from Victims Services but was denied. I was also discouraged from trying to press charges on the men.”
DENIAL OF HEALTH CARE IN PRISON

Respondents also reported abuse through denial of general health care as well as hormone therapy. 12% of those in jails or prisons reported being denied routine health care.

The damaging effects of being denied general health care are self-evident; however, it is important for readers to also understand that denial of hormone treatment to transgender inmates also has serious health consequences. Interruptions in hormone therapy can be physically painful and damaging to a person’s physical and mental health, and the initiation of hormone therapy for those who need it is highly important.

Seventeen percent (17%) reported they were denied hormones by while incarcerated and 12% reported denial of routine medical care because of bias.

Black and multiracial respondents, those with low household incomes, and transgender women all reported higher incidences of hormone and routine health care denial than the full sample.
CONCLUSIONS FOR POLICE AND INCARCERATION

Respondents revealed gross differences in treatment by police and prison systems based on race, with African Americans incarcerated more often and at greater length within a much more abusive and violent context than for others. Latino/a respondents also experienced much worse police abuse, longer sentences and greater harassment and violence than the sample as a whole. While the sample of American Indians who had been incarcerated was too low to report on, the data we do have demonstrate a need for further research. The data also demonstrate gender-based biases, with male-to-female respondents experiencing high rates of physical and sexual assault.

Household income and education level were also relevant to treatment by police and the prison system, with lower educational attainment and household income associated with higher risk for incarceration, harassment and violence; in this regard, our sample reflected the experiences of Americans in general. Male-to-female transgender prisoners of color face violence at the highest numbers and at every turn — whether at the hands of police, corrections officers or other inmates. A nexus of biases based on gender identity, race and household income combine to leave some respondents in this study in particularly desperate circumstances at the hands of the law enforcement system.

All transgender and gender non-conforming people experience high levels of police harassment and abuse. A substantial number have been stopped — arrested or held in a cell — simply because they are transgender or gender non-conforming (known as “Walking While Transgender”). Police harassment and abuse has translated to a lack of trust of police, with about half of transgender and gender non-conforming people uncomfortable asking the police for assistance when needed. Only a third feel comfortable contacting police for help. Given the higher than normal rates of harassment and violence that transgender and gender non-conforming people face, this means that many feel unable to access one of the major resources that society provides to protect the safety of individuals in their time of need.

In jail and prison, abuse and violence continues in situations where transgender and gender non-conforming inmates often have no protection or escape. Correctional staff are frequently cited as participating in harassment, violence, and sexual assault—a serious abuse of authority.

As noted in the health care section, access to health care is a fundamental right often denied to study participants. Data from the prison context confirms this, showing regular denial of both routine and transgender-related health care services.

From every angle, the justice system is broken for transgender and gender non-conforming people. Instead of administering justice, it perpetrates injustice.
RECOMMENDATIONS FOR POLICE AND INCARCERATION

The data provides clarity on what is not working in the justice system. We recommend the following affirmative steps for police departments, corrections systems, and the justice system overall.

- Police departments should reform their approach to transgender and gender non-conforming people:
  - All officers, both new and those who are already serving, should be given comprehensive training to treat transgender and gender non-conforming people respectfully, regardless of whether the person is seeking assistance or is being arrested.
  - In order to sustain and reinforce the effect of training, departments need written policies related to respectful treatment, arrest procedures, and placement in housing, so that all officers know the expected protocols or can consult them when necessary.
  - Officers who fail to follow these policies, or otherwise engage in disrespectful treatment or violent behavior, should face discipline, including termination when warranted.
  - A culture of respect for diversity, including of transgender and gender non-conforming people should be established by departmental leadership.
  - Police departments should establish LGBT liaison units to be an internal voice for fairness, respectful treatment, and appropriate policies. Existing lesbian and gay units should expand to include transgender and gender non-conforming officers and issues as well.

- Jail and prison officials and systems, including the Federal Bureau of Prisons, should reform their approach and policies related to transgender and gender non-conforming inmates:
  - The U.S. Department of Justice should swiftly adopt strong, binding national regulations to implement the Prison Rape Elimination Act of 2003.
  - Until national regulations are established, prisons, jails and detention facilities should fully implement the recommendations of the National Prison Rape Elimination Commission.
  - Corrections staff should be given comprehensive training on how to treat transgender and gender non-conforming inmates with respect, including allowing people to express their gender identity through clothing and grooming.
  - Jail and prison systems need written policies on transgender and gender non-conforming inmates, to ensure they are housed according to their gender identity, unless their safety is jeopardized by this classification; however, this does not mean transgender and gender non-conforming inmates should be held in solitary confinement or administrative segregation or otherwise have their privileges reduced in a misguided attempt to keep them safe.
  - Jail and prison systems should enact policies and procedures that ensure all inmates are free of physical and sexual assault.
  - Jail and prison systems should provide appropriate medical care to transgender and gender non-conforming inmates.
  - Department of corrections must terminate staff who physically or sexually assault prisoners and otherwise ensure that staff are accountable for their actions when they endanger the health and well-being of inmates.
1 We asked respondents to report whether officers had treated them with respect or disrespect, harassed, physically assaulted, or sexually assaulted them. We left it up to respondents to select which terms best described their experience.


3 Generally, a jail is a facility administered by a local jurisdiction to confine people for short periods of time. A prison is administered by the state and used to house convicted criminals for generally longer periods.

A SNAPSHOT OF THE EXPERIENCES OF CROSS-DRESSERS

Study participants included 702 cross-dressers1 who were born male and cross-dress as women, about 11% of our overall sample. This group identified themselves by stating that they strongly identified with the term “cross-dresser.”

They were spread amongst the racial categories, with a bit more concentration in white and Latino/a groups, making up 13% of white respondents, 7% of Latino/as, 5% of Asian and multi-racial respondents, 4% of American Indians, and 3% of African Americans.

As a group, cross-dressers were less “out” to their family, friends and colleagues at work or school, than the rest of the sample. Twenty-eight percent (28%) never tell anyone about their transgender/gender non-conforming identity, 57% tell close friends, 28% tell some family members, 17% tell casual friends, and 7% tell work colleagues. Only 4% tell everyone. Since social isolation can have major impacts on mental and physical health, this reduced level of “outness” deserves further study.

At home, only 32% are out to “all,” with 22% out to “none” and 38% out to a few or some. On the job, 3% are out to “all,” 68% are out to “none,” with 24% out to a few or some. At school, 2% are out to “all,” 81% are out to “none,” with 15% out to some or a few.

In addition, cross-dressers reported being visual conformers; 37% reported that other people never know they are transgender/gender non-conforming if they are not told, 29% reported that other people only occasionally can tell, and 26% reported that others only sometimes can tell. We presume that respondents were answering this question about times when they were not cross-dressed, but there may have been some confusion about whether to answer this question in regard to occasions when they were cross-dressed or not.

About half (46%) indicated that they did not want to transition, and the other half (54%) reported that they did want to transition someday. This implies that for about half of those who identify with the term “cross-dresser,” this may be an interim identity on the way to a transsexual identity. On the other hand, half of these respondents intend to remain in this category, which indicates that it is a permanent identity. This contradicts assumptions that those who identify as cross-dressers are moving toward a transsexual identity.

Cross-dressers were more likely to be partnered (60%) than transgender (46%) and gender non-conforming (57%) respondents; 52% reported being married. Almost half (44%) reported a heterosexual sexual orientation, 38% bisexual, 9% gay/lesbian/same-gender, 3% queer, 3% asexual and 2% other. Accordingly, cross-dressers were much more often heterosexual or bisexual and much less often same-sex oriented or queer than the full sample.3

Thirty-two percent (32%) of cross-dressers served in the military compared to 20% in the full sample, and 10% of the general population.4

“As a part-time lifelong cross-dresser, I would love to see a day when a male can dress as a female, in public, without ridicule and fear of physical abuse. My need to dress on the feminine side is real. It makes me whole as a person. Women have enjoyed cross dressing for 50+ years, and no one gives it a second thought.”

“As a cross-dresser in Atlanta I have had very few problems. I have been stopped at police road blocks 3 times and had no problems other than a few extra questions about the ID/picture issue.”
Education

Because cross-dressers made up only 11% of our overall sample, the sample size of those who were also open about their gender non-conforming status in school was too small to offer meaningful analysis. We can say, however, that 58% of cross-dressers who expressed a transgender identity or gender non-conformity in school experienced some type of problem, including harassment, physical or sexual assault, or expulsion.

Employment

Respondents who identify as cross-dressers reported faring better in the workplace than the overall sample, likely due to higher rates of visual conformity and their much lower rates of being out at work. Only 7% reported being unemployed, which was the unemployment level in the general population during the period of data collection. Thirty-eight percent (38%) reported a household income of $50,000-100,000 per year with another 25% reporting $100,000 per year or above. These household income levels were much higher than the full sample, of which 41% percent earns $50,000 or more annually. Seven percent (7%) of cross-dressers reported household income of $10,000 annually or less, a rate that is higher than the general population’s experience of very low household income (4%), and much lower than the full sample (15%).

However, cross-dressers do experience a range of bias-related negative experiences in the workplace: 13% reported losing a job because of bias, 34% reported harassment at work, 12% reported being denied a promotion, 18% were denied a job they applied for, 4% reported physical assault, and 6% reported sexual assault. The rates of these negative workplace experiences are all lower than the overall sample, except for sexual assault, which was approximately the same.

Thirty percent (30%) reported that private information was shared about them by coworkers or supervisors. Eighty percent (80%) reported that they have hidden their gender or gender transition and 56% have delayed transition. Twenty-seven percent (27%) reported being underemployed. Seven percent (7%) have participated in the underground economy for household income (compared to 16% for the overall sample), including 4% doing sex work and 3% in drug sales.

Public Accommodation

Cross-dressers reported denial of equal treatment and harassment when accessing public accommodation. Of the settings we studied, equal service was denied most often at retail stores (22%) and hotels and restaurants (11%) with troubling rates of denial of equal treatment reported when interacting with government agencies/officials (7%), police (7%), and judges or court officials (4%). Respondents also reported denial of equal treatment when taking buses/trains/taxis (5%) and accessing rape crisis centers (3%).

Harassment was also a major problem. Twenty-two percent (22%) said they had been harassed in a retail store, 11% when using buses, trains or taxis, 11% by hotel/restaurant personnel, 12% by government agencies, 7% by judges or court officials, 8% by airline/airport personnel or the TSA, 8% in doctor’s offices or hospitals, and 3% when accessing ambulances.

Housing

Fifty-eight percent (58%) reported living in a home that they own; this is nearly twice the rate of home ownership as the full sample, and 9 percentage points under the national average. Twenty-seven percent (27%) reported living in a space that they rented. Five percent (5%) reported living in a home that is owned by a partner/spouse, 3% reported living with family or friends temporarily, and 1% reported living in campus housing.

Twenty-three percent (23%) of respondents who are cross-dressers reported having moved into a less expensive home/apartment because of being transgender or gender non-conforming, 7% had become homeless at some point because of bias, 4% reported eviction, 6% were denied an apartment/home, 14% had to find different places to sleep for short periods of time, and 8% had sex in exchange for housing or a place to stay.

“I was intentionally discriminated against by a motel owner. He told me that he would not give me a room because I was a cross-dresser, and to leave the property or he was going to call the police and tell them that a hooker was in the parking lot selling drugs.”
Police/Jails

Cross-dressers reported a substantial degree of police disrespect and mistreatment. Twenty percent (20%) of those interacting with police as a transgender/gender non-conforming person reported that they were generally treated with disrespect and 15% reported harassment. Eight percent (8%) reported being physically attacked by a police officer and 3% reported sexual assault. Twenty-nine percent (29%) indicated they were comfortable seeking police assistance and 46% indicated they were not comfortable seeking police assistance as a transgender or gender non-conforming person. Three percent (3%) reported being arrested or held in a cell solely because of their gender identity/expression.

Health Care

Eleven percent (11%) of respondents who cross-dress reported postponing needed medical care when sick or injured due to bias and 10% reported postponing preventive care due to bias.

Cross-dressers also report having accessed some transition-related health care. Counseling was the most accessed, followed by hormone treatment. About half desire at least one type of surgery, which is consistent with the finding that about half desired to transition some day.

Respondents who identify as cross-dressers reported poorer health outcomes than the general population but much better health outcomes than those with other gender identities/expressions in our sample.

Cross-dressers reported elevated rates of HIV infection at 1.01%, not quite twice the rate of the general population (.6%), but lower than the full sample (2.64%). Cross-dressers also reported drinking or using drugs to cope with the mistreatment they face as transgender/gender non-conforming persons: 6% reported current use and 7% reported former use. By contrast, (8%) of the full sample currently drinks or uses drugs to cope with mistreatment due to bias and (18%) reported former use.

Smoking rates are the same as the full sample; 29% of cross-dressers reported being current smokers compared to 30% of all study participants.

Finally, 21% of cross-dressers reported a suicide attempt — about half the rate of the overall sample (41%), but it is still many times the general population rate of 1.6%.

Family Life

Of those who came out to family, 60% reported their family remained as strong as before they came out. Thirty-one (31%) of those who were in a relationship reported that their relationship with their partner or spouse ended.

Sixty-one percent (61%) of cross-dressers are parents. Eighty-one percent (81%) reported that their children continued to speak and spend time with them, while 19% reported that their children limited contact. Sixteen percent (16%) stated that their former spouse limited or stopped their relationship with their children and 5% reported that a court/judge did so.

Twelve percent (12%) reported they were victims of violence by a family member due to their gender identity/expression.

Thirty-nine (39%) reported losing a close friendship because of their gender identity/expression.

“I am a private cross dresser (male-to-female). Only my wife knows, and she does not approve.”

“My ex-wife seemed to accept my cross-dressing prior to marriage, then rejected it.”
Conclusions

Because cross-dressers may live as or express a gender different than the one assigned to them at birth only part of the time, they have different experiences of discrimination. Because they can often make choices about when and if to come out to others, they seemed to be shielded from some of the hostile environments reported by our other respondents. Nonetheless, a sizable number reported dealing with bias and violence in their lives. This may well stem from the fact that they offer no visual clues about their gender identity when they are not cross-dressed, but may well be identifiable as gender different when they are dressed. It appears that this group is highly vulnerable part of the time and much less vulnerable at other times.

All of these factors deserve further study; statistically we know relatively little about the lives of cross-dressers and additional research would greatly enhance our knowledge.

“20 years in the Army, 2 in Vietnam, 2 Bronze stars, a Purple Heart. I met my wife while serving and told her that I was a transvestite. I dressed at home. After the service, I got a civil service job and stayed in the closet. Now I am retired and I live in a town that is next to a large Marine base. Dressing here would be committing suicide. I dress up at home every day, but never go outside in my feminine attire.”

Endnotes

1 We had a small number of cross-dressers in our sample who were female at birth, and, because of the differing levels of social stigma associated with wearing clothes of a different sex for men and women, we felt it was important to focus here on the experiences of those cross-dressers who were born male.

2 Those respondents who did not strongly identify with any of the terms in Question 4 were then classified based on their “somewhat” applies answers, so some of the cross-dressers in the sample only identified “somewhat” as a cross-dresser. If a respondent chose “strongly” cross-dresser and “strongly” transsexual (or were both “somewhat”), they were put in the transgender category.

3 This may be in part because many define cross-dresser as a term that only applies to heterosexuals, while the term drag queen or drag king is used more by those who identify as gay, lesbian, or bisexual.

POLICY PRIORITIES

We gave respondents a list of 13 policy areas and asked that they select the four that were most important. The nature of this question allowed respondents to identify their own priorities from this list, based on their individual experiences. The results show remarkable concurrence on priorities, and they also reveal the breadth of concerns that individuals prioritize as being the most essential to the improvement of their lives. It is also clear that priorities vary slightly by race and gender, reflecting particular vulnerabilities and unaddressed needs. It is not suggested by this report that these ranked priorities are an appropriate or accurate way for advocacy organizations or activists to prioritize work; rather, they are a reflection of what individuals identified as the policy areas in which they wished to see work or change.

The following are the 13 policy areas ranked in order of the frequency that respondents marked each.

<table>
<thead>
<tr>
<th>Policy Priorities</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protecting transgender/gender non-conforming people from discrimination in hiring and at work</td>
<td>70%</td>
</tr>
<tr>
<td>Getting transgender-related health care covered by insurance</td>
<td>64%</td>
</tr>
<tr>
<td>Passing laws that address hate crimes against transgender/gender non-conforming people</td>
<td>47%</td>
</tr>
<tr>
<td>Access to transgender-sensitive health care</td>
<td>43%</td>
</tr>
<tr>
<td>Better policies on gender and identity documents and other records</td>
<td>40%</td>
</tr>
<tr>
<td>Protecting transgender/gender non-conforming people from discrimination in housing</td>
<td>26%</td>
</tr>
<tr>
<td>The right to equal recognition of marriages involving transgender partners</td>
<td>25%</td>
</tr>
<tr>
<td>Passing anti-bullying laws that make schools safer</td>
<td>21%</td>
</tr>
<tr>
<td>Transgender/gender non-conforming prisoners’ rights</td>
<td>15%</td>
</tr>
<tr>
<td>The right of transgender/gender non-conforming people to parent, including adoption</td>
<td>14%</td>
</tr>
<tr>
<td>HIV prevention, education and treatment</td>
<td>11%</td>
</tr>
<tr>
<td>Allowing transgender/gender non-conforming people to serve in the military</td>
<td>7%</td>
</tr>
<tr>
<td>Immigration policy reform (such as asylum or partner recognition)</td>
<td>5%</td>
</tr>
</tbody>
</table>

Employment non-discrimination was the highest ranking priority for the sample overall as well as for all races and genders except for transgender men. FTM respondents ranked “Getting transgender-related health care covered by insurance” first (72%), followed by “Protecting transgender/gender non-conforming people from discrimination in hiring and at work” (67%).

Although their top priorities were the same as the overall sample, African American respondents marked both “HIV prevention, education, and treatment” (43%) and “Transgender/gender non-conforming prisoner’s rights” (23%) more often than the overall sample (11% and 15%). Also, Latino/a respondents were three times more likely to have marked “Immigration policy reform (such as asylum or partner recognition)” (15%) than the overall sample (5%).
CONCLUSION

This report thoroughly documents the injustices that transgender and gender non-conforming people face at every turn. In fact, study respondents were more likely to have experienced harassment at work, at school, in the doctor’s office, or on the street than to have escaped such mistreatment. Over and over again, respondents were fired, evicted, denied medical care, faced dire poverty or were bullied in school at rates far above the national average. People of color very clearly experienced the compounding and devastating effects of racism, with far higher levels of discrimination and poorer health outcomes than the sample as a whole.

Working on this report has been challenging for the researchers as we have catalogued the many ways in which people are mistreated and abused, and we assume it has been challenging reading as well. Tremendous damage results from institutional structures weighted against transgender and gender non-conforming people and from blatant acts of personal prejudice perpetrated against them just because they are different. Sometimes there are official policies in place that make it acceptable to discriminate against transgender people; in other cases, social customs or culture sanction bias and mistreatment.

We hope, however, that one thing stands out for you as it does for us: the remarkable resilience of transgender and gender non-conforming people and their families. These are people who continue to live and move forward in spite of the most daunting obstacles. They faced serious barriers to health care, and yet were able to access necessary transition-related care. Teachers and other school officials physically and sexually assaulted transgender and gender non-conforming students, and yet, although some were forced to leave school because of extreme bullying, the sample as a whole achieved a high level of educational attainment. Despite the stereotypes of broken families, and in light of all the stresses discrimination places on relationships, respondents maintained relationships with their partners, children and families.

A quarter of respondents have endured multiple acts of discrimination, any one of which would seriously impact a person’s life, and combined would be catastrophic, and yet they persevere.

It is in the spirit of transgender and gender non-conforming people everywhere who continue to thrive and contribute to their communities, despite all of the injustices they suffer and the barriers to their well-being that they face, that we present this report with the determination that it will move us forward as a community. We recognize, too, that there are many, many people we have lost along the way, who have been unable to survive the unremitting discrimination, harassment and violence that they have encountered. We can honor them by working for a world in which transgender and gender non-conforming people are free to live without fearing the marginalization and abuse detailed here, in ways that respect every individual’s right to self-determination and affirm our collective humanity.

“Even had I known the financial, legal, emotional, and physical obstacles that I would face, I would still have chosen to transition and live as I do today.”
AG or Aggressive A masculine identified woman; primarily used in communities of color.

Androgynous Refers to those whose appearance and identity do not conform to conventional views of masculinity or femininity, and who either combine aspects of both femininity and masculinity or who present in a non-gendered way.

Butch An identity term used by some masculine lesbian women. It is also used by others who have a masculine presentation, regardless of their sexual orientation or gender.

Cross-Dresser A term for people who dress in clothing not typically worn by their assigned birth sex, but who generally do not desire to live full-time as the other gender. For the purposes of this study, the term cross-dresser refers to those who identified with the term cross-dresser in Question 4 (for more information, see the Portrait chapter).

Drag King A term generally used to refer to women who occasionally dress as men or express female masculinity for personal satisfaction or for the purpose of entertaining others at bars, clubs or other venues. Some transgender men also use this term to describe their identity.

Drag Queen A term generally used to refer to men who occasionally dress as women for personal satisfaction or for the purpose of entertaining others at bars, clubs or other venues. It is also used incorrectly, sometimes in a derogatory manner, to refer to all transgender women.

Drag Performer A term used to refer to Drag Kings and Drag Queens who entertain others at bars, clubs or other venues. Some transgender people perform drag.

Feminine Male A person assigned male at birth who has a feminine identity or prefers a feminine appearance, or who otherwise express femininity.

FTM A person who transitions “from female to male,” meaning a person who was assigned female at birth, but identifies and lives as or hopes to live as a male. We also use the term “transgender man” as a synonym.

Gender Expression How a person presents or expresses his or her gender identity to others, often through manner, clothing, hairstyles, voice or body characteristics.

Gender Identity In general, this refers to an individual’s internal sense of gender. Since gender identity is internal, one’s gender identity is not necessarily perceived by or visible to others. In this report, we use this term to refer generally to the full range of identities that our respondents identified with, such as MTF, FTM, transgender, genderqueer, etc.

Gender Non-Conforming A term for individuals whose gender expression is different from societal expectations and/or stereotypes related to gender. For the purposes of this report, we include individuals identified with a number of gender non-conforming identities in Question 4 (see the Portrait chapter for more information). Although it is not often abbreviated to GNC, we have done so in this report for labeling charts.

Genderqueer A term used by individuals who identify as neither entirely male nor female, identify as a combination of both, or who present in a non-gendered way.

Gender Variant A synonym for gender non-conforming.

GNC See gender non-conforming.

Hormone Therapy The administration of hormones to facilitate the development of secondary sex characteristics as part of a medical transition process. Those medically transitioning from female to male may take testosterone while those transitioning from male to female may take estrogen and androgen blockers.

Intersex Generally, a term used for people who have Differences of Sex Development, such as being born with external genitalia, chromosomes, or internal reproductive systems that are not traditionally associated with typical medical definitions of male or female. In this survey, we inquired about whether respondents identified with the term intersex, rather than asking about medical diagnoses.

MTF A person who transitions “from male to female,” meaning a person who was assigned male at birth, but identifies and lives as or hopes to live as a female. We also use the term “transgender woman” as a synonym.

Queer A term used to refer to lesbian, gay, bisexual and/or transgender people or the LGBT community. For some, the term is useful to assert a strong sense of identity and community across sexual orientations and gender identities. For others, it refers to the lesbian/gay/bisexual part of the community. Used as a reclaimed epithet for empowerment by many, it is still considered by some to be a derogatory term.
**Sexual Orientation** A term describing a person's attraction to members of the same gender and/or different gender. Usually defined as lesbian, gay, bisexual, or heterosexual and can also include queer, pansexual and asexual, among others.

**Sex Reassignment Surgery** A term that refers to various surgical procedures that change one's body to align gender identity and presentation. Contrary to popular belief, there is not one surgery; in fact there are many different surgeries. “Sex change surgery” is considered a derogatory term by some. Examples of sex reassignment surgery include:

- **Breast Augmentation** The surgical enlargement of breast tissue as part of gender reassignment for male-to-female patients when the breasts do not grow sufficiently with hormone therapy.

- **Chest Surgery** The removal of breasts (mastectomy) in transgender men or the augmentation of breasts for transgender women.

- **Clitoral Release** See metoidioplasty.

- **Hysterectomy** The surgical removal of the uterus.

- **Metoidioplasty** A surgical procedure to create a neopenis by releasing and extending the clitoris, often combined with surgery to allow for urination through the penis.

- **Oophorectomy** The surgical removal of the ovaries.

- **Orchiectomy** The surgical removal of the testes (the scrotum and testicles).

- **Phalloplasty** The surgical creation of a penis.

- **Vaginoplasty** The surgical creation of a vagina.

**Third Gender** A person whose gender identity is neither male nor female but a third option.

**Transgender** Generally, a term for those whose gender identity or expression is different than that typically associated with their assigned sex at birth, including transsexuals, androgynous people, cross-dressers, genderqueers, and other gender non-conforming people who identify as transgender. Some, but not all, of these individuals desire to transition gender; and some, but not all, desire medical changes to their bodies as part of this process. In this report, in order to see the experiences of different types of transgender people more clearly, cross-dressers and gender non-conforming people are not included in the term transgender and are reported about separately. For more information, see the Portrait and Methodology chapters and Appendix B: Survey Instrument—Issues and Analysis.

**Transgender Man** A term for a transgender individual who, assigned female at birth, currently identifies as a man. In this report, we use transgender man, female-to-male transgender person, and FTM interchangeably.

**Transgender Woman** A term for a transgender individual who, assigned male at birth, currently identifies as a woman. In this report, we use transgender woman, male-to-female transgender person, and MTF interchangeably.

**Transition** The period during which a person begins to live as a new gender, as opposed to living as the sex assigned at birth. Transitioning may include changing one’s name, taking hormones, having surgery, or changing documents (e.g. driver’s license, Social Security record, birth certificate) to reflect one’s new gender.

**Transsexual** A term for people whose gender identity is different from their assigned sex at birth and who live in a gender different from their birth sex, or desire to do so. Often, but not always, transsexual people alter or wish to alter their bodies through hormones or surgery in order to align themselves physically with their gender identity.

**Two-Spirit** A term that references historical multiple-gender traditions in some of the native cultures of North America. Some American Indian/Alaska Native people who are lesbian, gay, bisexual, transgender, intersex or gender non-conforming identify as Two-Spirit.

**Underground Economy** A term that refers to marginal or informal economies, such as those relating to drug sales, sex work, panhandling and other street sales. Work in the underground economy may be the only income-generating option for those who experience barriers to formal employment.

**Visual Non-Conformer** A term we developed to describe a person whose gender presentation and/or gender identity are not aligned in the eyes of passing strangers or casual observers. For example a transgender man who is perceived as female by a clerk in a store; or a transgender woman who is seen as male by a front desk person at a hotel. The opposite term is “visual conformer” which refers to people whose gender identity and presentation match in casual situations; this is sometimes called “passing.”

**Additional Note on Usage:**

Throughout the report, we used the phrase “because they were transgender or gender non-conforming” interchangeably with “because of gender identity/expression.”
APPENDIX B:  

THE SURVEY INSTRUMENT — ISSUES AND ANALYSIS

It was our intention to use this first large national survey to broadly explore issues of discrimination. As such, the questionnaire was quite lengthy, yet limited in the depth into each topic we delved. We encourage other researchers to use this as a starting point to dig deeper into areas of particular interest.

As we analyzed our data, we were able to get a better sense of the strengths and weaknesses of our survey instrument. There are choices we made that were appropriate for our study that may not be appropriate for others; some choices have made our work difficult, but may make others’ work more layered and interesting. We consider these possibilities here in the spirit of expanding our collective learning.

We informally tested the questionnaire to attempt to identify and correct problems with specific questions before we fielded the survey. We would have liked more time and resources to test questions more robustly.

Imperfections in the posing of questions emerged during our data analysis phase. Here, we discuss each of the survey questions, provide any notable information about how we analyzed the data that came from the question, and, when relevant, note what we would recommend be changed or could be changed about the question.
The Questionnaire

“Transgender/gender non-conforming” describes people whose gender identity or expression is different, at least part of the time, from the sex assigned to them at birth.

1. Do you consider yourself to be transgender/gender non-conforming in any way?
   - Yes
   - No. If no, do NOT continue.

Anyone who answered “No” to this first question was excluded from our sample. Anyone who left this question blank was included or excluded based on their answers to other questions. We intentionally included respondents in the sample who did not identify as transgender because we wanted to include gender non-conforming people. We understood that by gathering data on gender identity/expression across a broad spectrum, and posing questions in a manner that would make it possible to distinguish transgender and gender non-conforming respondents for analysis, we could discover and report on differences across the spectrum when considerable or relevant.

2. What sex were you assigned at birth, on your original birth certificate?
   - Male
   - Female

See note after question 3.

3. What is your primary gender identity today?
   - Male/Man
   - Female/Woman
   - Part time as one gender, part time as another
   - A gender not listed here, please specify ________________

Anyone who chose one sex/gender for Question 2 and a different sex/gender for Question 3 was included in the sample as a transgender person. Those who marked the same gender for both questions, or chose the “part-time” or “gender not listed here” options in 3, were classified as transgender or gender non-conforming, depending on their answers to other questions.

Going through the write-in answers to Question 3 was time-consuming, but very helpful. We found hundreds of “genders-not-listed-here” among our respondents. We had anticipated that using the answers to Questions 2 and 3 would more easily help us categorize our respondents into MTF transgender, FTM transgender, and gender non-conforming categories. However, we had to rely heavily on questions 4 and 7 to better determine how to fit respondents into these constructs. This showed the value of asking more complicated, qualitative questions about gender identity.

4. For each term listed, please select to what degree it applies to you.

<table>
<thead>
<tr>
<th>Term</th>
<th>Not at all</th>
<th>Somewhat</th>
<th>Strongly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transgender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transsexual</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FTM (female to male)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>MTF (male to female)</td>
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<td></td>
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<tr>
<td>Intersex</td>
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<td></td>
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<tr>
<td>Gender non-conforming or gender variant</td>
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<tr>
<td>Genderqueer</td>
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<tr>
<td>Androgynous</td>
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<tr>
<td>Feminine male</td>
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<tr>
<td>Masculine female or butch</td>
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<tr>
<td>A.G. or Aggressive</td>
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<td></td>
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<tr>
<td>Third gender</td>
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<tr>
<td>Cross dresser</td>
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<td></td>
<td></td>
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<tr>
<td>Drag performer (King/Queen)</td>
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<td></td>
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</tr>
<tr>
<td>Two-spirit</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Other, please specify</td>
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</table>
We used the answers to this question to better craft the categories of MTF and FTM, and transgender and gender non-conforming. In our analysis, we found it very valuable to have asked questions about cross-dressing and living in one’s gender part time (Question 3) because the experiences of people living part-time in one gender and part-time in another, and those of cross-dressers, are often trivialized and little studied.

At the stage of analysis, these multilayered responses provided challenges but also a wealth of opportunities for interpretive work. Asking more simplified identity questions would create more simplified categories. As a project with limited staff resources and seemingly indefatigable volunteers, we found our dedication to nuance and complexity extremely challenging and, in most cases, very worthwhile. We realize that within the LGBT movements, our two study partner organizations collectively have much larger resources to draw from than most state or local community-based organizations. We would caution others to consider these costs when choosing between simple and more complex ways of asking these questions.

5. People can tell I’m transgender/gender non-conforming even if I don’t tell them.
   - Always
   - Most of the time
   - Sometimes
   - Occasionally
   - Never

We included this question so that people who are identifiable as transgender or gender non-conforming by strangers or acquaintances because of how they look or sound could be tracked throughout the study. We used this question to develop the concept of “visual conformers” and “visual non-conformers.” We grouped “never” and “occasionally” into the “conforming” category, and the other answers into the “non-conforming” categories.

6. I tell people that I’m transgender/gender non-conforming. (Mark all that apply.)
   - Never
   - People who are close friends
   - Casual friends
   - Work colleagues
   - Family
   - Everyone

The inclusion of “everyone” as an answer choice left some ambiguity as to which people in the respondents’ lives they have actually told, because it is possible that a respondent did not have people of all the listed types in their lives at the time of the survey. See also the note after question 7.

7. How many people know or believe you are transgender/gender non-conforming in each of the following settings? Mark all that apply.

<table>
<thead>
<tr>
<th></th>
<th>None</th>
<th>A few</th>
<th>Some</th>
<th>Most</th>
<th>All</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>At home</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>On the job</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>At school</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>In private social settings</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>In public social settings</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>When seeking medical care</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
</tbody>
</table>

We used the answers to Questions 6 and 7 to divide respondents into “generally out” and “generally closeted.” People who were out to “most” or “all” on the job, at school, or “in public social settings,” (Question 7) or who said they tell casual friends, work colleagues, or “everyone” they are transgender or gender non-conforming (Question 6) were identified as “generally out.” Everyone else was identified as “generally closeted.” We only found a small number of respondents who were only out to close friends and family members.

Our analysis indicated that the six answer options for each of the six settings in Question 7 was unnecessarily complex.

We also used the answers in Question 7 to determine who was out when seeking medical care, on the job, and at home.

In the questionnaire, there was a typographical error in the question about “medical” care so that it reads “medial.” We do not believe this mistake impacted responses.
8. To the best of your ability, please estimate the following ages, if they apply to you. Mark “N.A.” if not applicable or if you have no desire to transition. Please mark each line.

<table>
<thead>
<tr>
<th>Age in years</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age you first recognized that you were “different” in terms of your gender.</td>
<td></td>
</tr>
<tr>
<td>Age you first recognized your transgender/gender-non-conforming identity</td>
<td></td>
</tr>
<tr>
<td>Age you began to live part time as a transgender/gender non-conforming person.</td>
<td></td>
</tr>
<tr>
<td>Age you began to live full time as a transgender/gender non-conforming person.</td>
<td></td>
</tr>
<tr>
<td>Age that you first got any kind of transgender-related medical treatment.</td>
<td></td>
</tr>
<tr>
<td>Your current age</td>
<td></td>
</tr>
</tbody>
</table>

We used this question to determine current age. We also used the age that a person “began to live full time” as the age that a person transitioned.

The answer field should be limited to accept only numerical data with ages as choices, which was not done here so we needed to clean these data. In addition, it may have been better to list current age at the beginning, to increase response rates.

There is a veritable treasure trove of information here for understanding the trajectory of coming into one’s gender identity and living as one’s preferred gender alongside such issues as health outcomes, family acceptance and discrimination. For example, future researchers could use these data to determine how recently respondents transitioned or when they transitioned by decade.

9. Do you or do you want to live full-time in a gender that is different from you gender at birth?

- Yes, I currently live full-time in a gender different from my birth gender.
- Not full-time yet, but someday I want to.
- No, I do not want to live full-time.

We used this answer to determine who had transitioned, who wanted to, and who did not want to. If they had transitioned, we put them in the transgender category, regardless if they did not use that term to describe themselves in Question 4.

10. What is your zip code?

ZIP _________

We used this information to determine respondents’ state of residence and region, as well as whether they were “urban” or “rural” using the RUCA system. We did not use the rural/urban classification to analyze our data but future researchers may do so.5

11. What is your race/ethnicity? (Mark all that apply.)

- White
- Black or African American
- American Indian or Alaska Native (enrolled or principal tribe)
- Hispanic or Latino
- Asian or Pacific Islander
- Arab or Middle Eastern
- Multiracial or mixed race

We intentionally deviated from the Census-style race question here for the purpose of brevity. Thus, we don’t have exact Census categories to match our sample with the nation as a whole, but we do have a set of categories we can align with Census data. It is usually simpler for comparative purposes to draw on existing questions in federal surveys, but we continue to believe we made the right decision.
12. What is the highest degree or level of school you have completed? Mark ONE box. If you are currently enrolled, please mark the previous grade or highest degree received.

- Elementary and/or junior high
- Some high school to 12th grade
- High school graduate - high school Diploma or the equivalent (for example: GED)
- Some college credit, but less than 1 year
- Technical school degree (such as cosmetology or computer technician)
- One or more years of college, no degree
- Associate degree (for example: AA, AS)
- Bachelor’s degree (for example: BA, AB, BS)
- Master’s degree (for example: MA, MS, MEng, MEd, MSW, MBA)
- Professional degree (for example: MD, DDS, DVM, LLB, JD)
- Doctorate degree (for example: PhD, EdD)

We primarily used these data after grouping respondents into categories. We developed the categories of “no high school diploma,” “high school diploma,” “some college” (which included Associate degrees and technical degrees) “college degree,” and “graduate/professional degree.” For other surveys, it may be simpler to ask about condensed categories like these. However, we opted for a question that used more specific categories so that future researchers will be able to make more precise comparisons with general population data from federal surveys. We would encourage future researchers to design questions in such a way as to best meet their needs for comparative data.

13. What is your current gross annual household income (before taxes)?

- Less than $10,000
- $10,000 to $19,999
- $20,000 to $29,999
- $30,000 to $39,999
- $40,000 to $49,999
- $50,000 to $59,999
- $60,000 to $69,999
- $70,000 to $79,999
- $80,000 to $89,999
- $90,000 to $99,999
- $100,000 to $149,999
- $150,000 to $199,999
- $200,000 to $250,000
- More than $250,000

We asked respondents only about household income, not individual income. Therefore, we do not know to what extent our respondents had access to the income they reported. The income ranges presented in the survey instrument vary slightly from increments commonly reported by the U.S. Census Bureau in tables and fact sheets created from the American Community Survey (ACS) and the Current Population Survey (CPS). We utilized the CPS public use data to construct income ranges that matched ranges reported on our survey instrument, allowing us to compare our sample’s household income to that of the general population.

This way of asking the question did not allow us to say who was above or below the poverty line. Poverty lines are determined separately for individuals and families of various sizes, but our questions did not capture household size nor did the survey ask about income with enough specificity for us to determine whether a given household was above or below the line. This would have been important data.

Asking about household income likely slightly compromised our ability to detect the effect of discrimination on income. For example, if a transgender person who was fired from his or her job lives with a spouse who is working, all we can look at is their joint income. Or, if a gender non-conforming person was fired, and has moved back in with parents, the parents’ income might be included, which would also be misleading.

Future research would get a clearer picture by looking at both individual and household income.

14. How many people live in your household?
Number ______

These data were unusable because we did not clarify whether the person should include his or herself in the answer (thus, an answer of 1 might mean they live alone or it might mean they live with one other person).
15. How many children currently rely on your income?
   Number ______

This question was inartful at best. First, because of the phrase “rely on your income,” this question did not gauge how many children our respondents were raising or had raised in the past. Second, it technically doesn’t even refer to any parental status — children relying on income could refer to a grandchild or niece/nephew or anyone. Simpler, standard questions relating to parental status, number of children and child-rearing responsibilities should be used. It might also be helpful include a question about adult dependants, such as elderly parents.

See note on Question 20 for how we determined parental status.

16. What is your relationship status?
   ☐ Single
   ☐ Partnered
   ☐ Civil union
   ☐ Married
   ☐ Separated
   ☐ Divorced
   ☐ Widowed

This question met our analytic needs because we grouped together all of those in a relationship. Other researchers may desire to further specify “domestic partnership.” Others may also be interested in whether marriages were performed with a marriage license, which is not made clear with the question as written.

Important Note: When we say: “Because you are transgender/gender non-conforming, has one or two of these things happened to you,” we do not mean that your gender identity or expression is causing bad or abusive things to happen. We are trying to find out if people are treating you differently because you are transgender or gender non-conforming.

Notes in the text of questionnaires are generally to be avoided. We added this note after receiving feedback during testing of the questionnaire that the phrase, “because you are transgender/gender non-conforming,” was distressing to some respondents because its meaning and implication was unclear and could be interpreted as blaming a person’s gender identity and expression for societal reactions. We used the phrase throughout the survey so that we could report with confidence on the connection between the discrimination reported and a respondent being targeted based on gender identity or expression. Thus we added this note to clarify our intended meaning.

17. Because I am transgender/gender non-conforming, life in general is:
   ☐ Much improved
   ☐ Somewhat improved
   ☐ The same
   ☐ Somewhat worse
   ☐ Much worse
   ☐ In some ways better, in some ways worse

18. Because I am transgender/gender non-conforming, my housing situation is:
   ☐ Much improved
   ☐ Somewhat improved
   ☐ The same
   ☐ Somewhat worse
   ☐ Much worse
   ☐ In some ways better, in some ways worse

This question could have been improved by including a not applicable option for those who have not come out as transgender/gender non-conforming.

19. If you are or were employed, how has the fact that you are transgender/gender non-conforming changed your employment situation?
   ☐ Much improved
   ☐ Somewhat improved
   ☐ Stayed the same
   ☐ Somewhat worse
   ☐ Much worse
   ☐ In some ways better, in some ways worse
   ☐ Not applicable. I was never employed

The not applicable answer could have been improved by also noting that the question may not apply to people who have never come out to their employer.
20. Because you are transgender/gender non-conforming, how has your situation changed as a parent?

- Much improved
- Somewhat improved
- Stayed the same
- Somewhat worse
- Much worse
- In some ways better, in some ways worse
- Not Applicable. I am not a parent.

We used “Not Applicable, I am not a parent,” from this question to determine parental status. Those who marked other answers were presumed to be a parent. See note in Question 15 for why this was helpful.

21. What are your current living arrangements?

- Homeless
- Living in a shelter
- Living in a group home facility or other foster care situation
- Living in a nursing/adult care facility
- Living in campus/university housing
- Still living with parents or family you grew up with
- Staying with friends or family temporarily
- Living with a partner, spouse or other person who pays for the housing
- Living in a home/apartment/condo I RENT alone or with others
- Living in a home/apartment/condo I OWN alone or with others

Although this question worked for our analysis, others may be interested in what type of shelter people were in when they chose the “Living in a shelter” option.

22. Because you are transgender/gender non-conforming, have you experienced any of the following housing situations? Please mark “Not applicable” if you were never in a position to experience such a housing situation. For example, if you have always owned your home as a transgender/gender non-conforming person, you could not have been evicted.

<table>
<thead>
<tr>
<th>Situation</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>I moved into a less expensive home/apartment.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I became homeless.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have been evicted.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was denied a home/apartment.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I had to move back in with family members or friends.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I had to find different places to sleep for short periods of time, such as on a friend’s couch.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I had to have sex with people to sleep in their bed/at their homes or to pay rent.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I had to use equity in my home to pay for living expenses.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Given the high rates of youth homelessness due to parental rejection, it would have been helpful if we had added options like “I was kicked out of my family home before the age of 18” and “I was kicked out of my family home over the age of 18.”

We also believe we should have asked if respondents had ever been homeless for any reason (not necessarily because they were transgender or gender non-conforming).

Additionally, we could have differentiated between those who were denied a rental home/apartment and those who encountered bias when they attempted to buy a house.

23. If you have experienced homelessness, did you go to a shelter?

- Yes
- No [Go to Question 25]
- Not applicable, I never experienced homelessness [Go to Question 25]
24. Because you are transgender/gender non-conforming, did you experience any of the following when you went to a shelter?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>I was denied access to a shelter.</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>I was thrown out after they learned I was transgender.</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>I was harassed by residents or staff.</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>I was physically assaulted/attacked by residents or staff.</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>I was sexually assaulted/attacked by residents or staff.</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>I was forced to live as the wrong gender in order to be allowed to stay in a shelter.</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>I was forced to live as the wrong gender in order to be made safe in a shelter.</td>
<td>☐</td>
<td>☒</td>
</tr>
<tr>
<td>I decided to leave a shelter even though I had no place to go because of poor treatment/unsafe conditions.</td>
<td>☐</td>
<td>☒</td>
</tr>
</tbody>
</table>

The phrase “forced to live as the wrong gender” used above is somewhat ambiguous. Those marking “yes” could mean either “shelter staff required me to dress or live as the wrong gender in order to stay” or “I dressed/lived as the wrong gender so that I could stay at the shelter because I felt it was necessary.” We suggest future researchers clarify which is desired.

25. What is your current employment status? (Mark all that apply.)

- Full-time
- Part-time
- More than one job
- Self-employed, own your business
- Self-employed, contract worker
- Unemployed but looking
- Unemployed and stopped looking
- On disability
- Student
- Retired
- Homemaker or full-time parent
- Other, please specify _______________________

Our set of responses deviated from those used in surveys of the general population, so we did our best to develop categories that matched available data and met our differing analytic needs. For the purposes of this report, we developed the following categories:

“Employed,” which included both part- and full-time workers (because the U.S. Department of Labor does so in their data), and also included those who checked “more than one job.” This also included both self-employed categories if respondents did not also check “unemployed but looking.”

“Unemployed,” which included those who said they were “unemployed but looking” and contract workers, students, retirees, people on disability, and homemakers if they also checked “unemployed but looking.” To calculate unemployment rates, those who checked “unemployed and stopped looking” were not considered unemployed (and were considered “Out of the Workforce” instead) but for purposes of evaluating harassment and discrimination elsewhere in the study, those who checked “unemployed and stopped looking” were kept in the unemployed category.

“Out of the Workforce,” which included students, retirees, people on disability, and homemakers who did not check “unemployed but looking.” Those who checked “unemployed and stopped looking” were in this category if they also checked student, retiree, on disability, or homemaker. When calculating unemployment rates, those who checked “unemployed and stopped looking” were included in this category.

We also classified those who answered “Other” into the appropriate category above based on their write-in answers. For example, respondents who said they had any kind of job, such as seasonal, part time, under-employment or periodic contract work, or were about to start a job, were categorized as “employed.” Respondents who said they had been fired, were looking, or said they were doing street work were categorized as “unemployed.” Respondents who indicated they were care-giving, were on disability, were waiting for disability, had chronic illnesses, were students with no other evidence of paid work, had inherited wealth or trusts, or were in unpaid intern or volunteer positions were categorized as “out of the workforce.”

We do not have a specific recommendation about how this question should be worded for future research, and we suggest looking at Department of Labor surveys for question design.

We also recommend considering a question about union membership.
26. Have you done any of the following to avoid discrimination because you are transgender or gender non-conforming? If you are/were not employed, mark not applicable.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stayed in a job I’d prefer to leave</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Didn’t seek a promotion or a raise</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Changed jobs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delayed my gender transition</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hid my gender or gender transition</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have not done anything to avoid discrimination</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

27. Because of being transgender/gender non-conforming, which of the following experiences have you had at work? Please mark each row.

<table>
<thead>
<tr>
<th>Experience</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>I feel more comfortable and my performance has improved</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I did not get a job I applied for because of being transgender or gender non-conforming</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I am or have been under-employed, that is working in the field I should not be in or a position for which I am over-qualified</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was removed from direct contact with clients, customers or patients</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was denied a promotion.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I lost my job.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was harassed by someone at work.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was the victim of physical violence by someone at work.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was the victim of sexual assault by someone at work.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was forced to present in the wrong gender to keep my job.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was not able to work out a suitable bathroom situation with my employer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was denied access to appropriate bathrooms.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was asked inappropriate questions about my transgender or surgical status</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was referred to by the wrong pronoun, repeatedly and on purpose</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supervisors or coworkers shared information about me that they should not have</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Generally, this question yielded extremely important results.

We could have included, “I was fired from my job” as an additional query, because “lost my job,” although very informative, also included layoffs that were targeted toward an employee because of bias. This left us unable to directly answer the question of how many people were “fired.” We do believe that the vast majority of those who “lost their job” were fired. However, especially because this survey was conducted just as the economic downturn of 2008-2009 was starting, it would have been helpful to have asked respondents to differentiate between, “I was fired” and “I was laid off due to bias.” If drawing these distinctions, we do believe it is important to still ask about job loss, overall, because other bias-related job losses may not fall neatly into those two categories.

We could have asked more directly about demotions, which could be implied by the “removed from contact” selection but was not entirely captured.

For the first query, “I feel more comfortable and my performance has improved” may have provided us with more specific information if it had been limited to people who had transitioned while in the workforce. It might have been worded “Since I transitioned gender, I feel more comfortable and my performance has improved at work.” (Those for whom it did not apply would then choose “not applicable.”). This could include more specific questions about how respondents’ performance or comfort has improved, such as “morale has improved,” “less distracted,” “less worried about being fired,” etc. One might even ask an open-ended question in which respondents are given the opportunity to describe how their situation has improved for the purpose of qualitative analysis rather than quantitative findings. In addition, future researchers may be interested in asking a series of questions about the experience of transitioning on the job.

The query “forced to present in the wrong gender to keep my job” is also somewhat ambiguous. Those marking “yes” could mean either “my boss required me to present as the wrong gender when I told him I intended to transition” or “I presented as the wrong gender at
work so as to avoid potential firing.” Because the first is what we meant, and the second meaning was covered by options in Question 26, we recommend that future researchers alter the wording of this query.

Last, the “not applicable” option could have been clarified, like most of our other n/a options in the survey, to indicate that the person had not been out as transgender/gender non-conforming on the job, or had not applied for a job, or had not ever been a part of the workforce.

28. Because of being transgender or gender non-conforming, have any of the following people close to you faced any kind of job discrimination?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse or partner</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Children or other family member</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

The wording of this question could be improved by clarifying that we were referring to the respondent’s transgender or gender non-conforming status, not that of the partner or child. The current wording could be interpreted to mean that we were asking if the respondent’s partner or child was transgender or gender non-conforming and experienced discrimination on that basis.

29. If you have ever worked for pay in the street economy, please check all activities in which you have engaged.

- Sex work/sex industry
- Drug sales
- Other, please specify ________________________________
- Not applicable. I have never worked for pay in the street economy.

We wanted to know how many of our respondents were forced into the underground economy that leaves them at risk for arrest and other negative outcomes. Although we believe that the majority of respondents understood the question, the phrase “street economy” may not be the best phrasing. An untested alternative might be “work for money on the street.” We avoided using the terms “illegal” or “criminal,” and “prostitution” in this question because they might cause discomfort for those respondents to whom it applied; we believed that the “street economy” phrase implied that this question was about such activities.

Furthermore, in the first answer choice, “sex industry,” was included next to “sex work.” The term “sex industry” especially, but also the term “sex work,” was potentially interpreted by respondents to include work at strip clubs or in the adult entertainment industry that might not correlate with the same vulnerabilities of criminalized work. This type of legal employment may come with its own risks and could be the subject of another question or could be included in this question as a separate answer choice from the choice more clearly about prostitution, such as “Prostitution” or “sex for pay” or “sex for pay or food.”

Other activities that could have been included are busking (performing on the street for money) and panhandling.
30. Based on being transgender/gender non-conforming, please check whether you have experienced any of the following in these public spaces. (Mark all that apply.)

<table>
<thead>
<tr>
<th>Category</th>
<th>Denied equal service</th>
<th>Verbally harassed or disrespected</th>
<th>Physically attacked or assaulted</th>
<th>Not applicable I have not tried to access this</th>
<th>Not applicable I do not present as transgender here</th>
<th>Not applicable I did not experience negative outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail store</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hotel or restaurant</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bus, train, or taxi</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Airplane or airport staff/TSA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Doctor’s office or hospital</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emergency Room</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rape crisis center</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic violence shelter/program</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mental health clinic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drug treatment program</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ambulance or EMT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Govt. agency/official</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judge or court official</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal services clinic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

We used the answers to these questions for access to health care, public accommodations, and to develop our data on bias-motivated violence. In retrospect, it would have been more valuable to differentiate between being “denied service” and being denied “equal treatment or service.” For the vast majority of these categories, we do not have data on refusal to serve altogether. (Later in the health section, with Question 33, we do ask about denial of treatment by doctors and other medical providers, so we do have data for that category alone.)

Our category, “Ambulance and EMT,” could have been “Ambulance/EMT/Medics” in order to designate a wider range of possible responders.

Also, our inclusion of three “not applicable” options may have been confusing. This is important because when calculating our results, we generally removed respondents for whom a question was not applicable from the analysis of that question. For this question, the second “not applicable” option, “Not applicable, I did not experience these negative outcomes,” should have simply been about facing no negative outcomes without a “not applicable” label in front of it. It should also have been placed before, “Not applicable, I have not tried to access this.” Additionally, the two remaining “not applicable” responses could have been combined.

This question also did not ask (nor did any other question) about harassment/assault that may have happened as the respondents were spending time in public generally, as opposed to in one of the specific places. Had we done so, we would have been able to have a better overall sense of harassment and hate crimes. Also, hate crimes can be broader than harassment and violence — for example, vandalism. When the survey was designed, we made the decision not to ask a series of questions on hate crimes and instead limited the questionnaire to broader instances of discrimination. Therefore, the survey data do not give a full picture of hate crimes committed against transgender and gender non-conforming people, which is unfortunate given the paucity of data on this severe problem.

31. Have you ever interacted with the police as a transgender/gender non-conforming person?
   - Yes [Go to Question 32]
   - No [Go to Question 33]

Depending on the purpose of additional research, researchers may want to differentiate between interactions where the respondent was a crime victim, an alleged perpetrator or some other interaction.
32. Because of being transgender/gender non-conforming, which of the following experiences have you had in your interaction with the police? (Mark all that apply.)

- Officers generally have treated me with respect
- Officers generally have treated me with disrespect
- Officers have harassed me
- Officers have physically assaulted me
- Officers have sexually assaulted me

33. As a transgender/gender non-conforming person, how comfortable do you feel seeking help from the police?

- Very comfortable
- Somewhat comfortable
- Neutral
- Somewhat uncomfortable
- Very uncomfortable

34. Because of being transgender/gender non-conforming, have you ever been arrested or held in a cell?

- Yes
- No

This question could be clarified to allow respondents to indicate if they were not committing a crime and were arrested/held anyway, or if they were targeted for additional scrutiny by police because they were transgender or gender non-conforming.

35. Have you ever been sent to jail or prison for any reason?

- Yes [Go to Question 36]
- No [Go to Question 38]

In this question, we did not explore a) why respondents were in jail, b) when in the course of their transgender journey it happened and c) whether it was related to their being transgender or gender non-conforming. This is an area ripe for additional research.

To have better data for comparison to general population incarceration rates, it would be helpful to break out jail and prison. Prison data for the general population is much more readily available for comparison.

36. How long were you in jail or prison, total?

- Under six months
- Six months to a year
- One to three years
- Three to five years
- Five to ten years
- Ten or more years

37. If you were jailed or in prison, have you ever experienced any of the following because of being transgender/gender non-conforming? (Mark all that apply in each category.)

- Harassed
- Physically assaulted or attacked
- Sexually assaulted or attacked
- Denied hormones
- Denied medical care

From other inmates
From correctional officers or staff

38. Have you attended school at any level (elementary school or higher) as a transgender/gender non-conforming person?

- Yes [Go to Question 39]
- No [Go to Question 41]

We used this question to determine whether or not a respondent was out as transgender or was openly expressing gender non-conforming appearance or behavior at school. If the respondent indicated “no” but still answered question 39, we excluded their answers.

When it came time to analyze the data, we realized that we could not distinguish whether respondents were self-reporting a transgender identity at school, or whether they were gender non-conforming, regardless of their identity today. Furthermore, it is possible that some answered “yes” even though they were not out or expressing any gender non-conformity at all. While some nuances were lost, these data nonetheless provided valuable information about school-based discrimination our respondents faced. An untested alternative would be, “While attending school, did you (a) openly identify as transgender, (b) express gender non-conformity, or (c) did not openly identify as transgender or express gender non-conformity.”
39. Because you are transgender/gender non-conforming, have you been a target of harassment, discrimination or violence at school? (Mark all that apply.)

<table>
<thead>
<tr>
<th>School Level</th>
<th>Did not attend such a school</th>
<th>Not out of transgender or gender non-conforming at that point</th>
<th>Harassed or bullied by staff</th>
<th>Harassed or bullied by teachers or students</th>
<th>Physically assaulted or attacked by staff</th>
<th>Physically assaulted or attacked by teachers or staff</th>
<th>Sexually assaulted or attacked by staff</th>
<th>Sexually assaulted or attacked by students</th>
<th>Physically assaulted or attacked by correctional officers or staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary school</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Junior high/middle school</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>High School</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>College</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Graduate or professional school</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Technical school</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

The data generated by this chart was extremely valuable and very complex to analyze. It may have been easier to have used simplified categories. Also, to determine whether respondents were openly transgender versus gender non-conforming at each school level, a more complex set of responses would need to be developed.

Like Question 30, the “not applicable” responses here may have been confusing. We treated “did not attend such a school” and “not out of transgender or gender non-conforming at that point,” as the true “not applicable” responses, taking those who marked them out of the analysis for that part of the question altogether, but factored in (counted as “no” responses) those who marked “Not Applicable, I did not experience these negative outcomes.” Also, the physical positions of these two response options on the printed page (and online version) should have been switched — with “did not attend such a school” being labeled “not applicable” and with “not applicable” removed from “I did not experience these negative outcomes.”

Last, it may have been clearer to change the words “you are” in the beginning of the question to “I am/was”) because some people are thinking of past experiences to answer this question.

40. Because I am/was transgender/gender non-conforming, which of the following statements are true?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>I had to leave school because the harassment was so bad.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I had to leave school for financial reasons related to my transition.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I lost or could not get financial aid or scholarships.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I was not allowed to have any housing on campus.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I was not allowed to use the appropriate bathrooms or other facilities.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

This question was very valuable. However, it did not distinguish between K-12 and college/technical/graduate school, though some questions like housing and scholarships are more applicable to higher education. For simplicity, it might have been better to separate these questions by school level.

We should have included a question about whether or not “teachers or professors, repeatedly and on purpose, failed to call me by my chosen name or pronouns” and one that asked “I was required to wear clothing that did not match my gender identity.”
41. What type of health insurance do you have? If you have more than one type of coverage, check the ONE that you usually use to cover doctor and hospital bills.
- I have NO health insurance coverage
- Insurance through a current or former employer (employee health plan, COBRA, retiree benefits)
- Insurance through someone else’s employer (spouse, partner, parents, etc.)
- Insurance you or someone in your family purchased
- Medicare
- Medicaid
- Military health care/Champus/Veterans Administration/Tri-Care
- Student insurance through college or university
- Other public (such as state or county level health plans, etc.)
- Other, please specify ___________________________________

We believe it might have been helpful to have clarified the Medicaid choice as “medicaid/public insurance you get from your state” since in many states, people may know it by a state-specific name, such as MediCal.

42. What kind of place do you go to most often when you are sick or need advice about your health? (check one)
- Emergency room
- Doctor’s office
- Health clinic or health center that I or my insurance pays for
- Free health clinic
- V.A. (veteran’s) clinic or hospital
- Alternative medicine provider (acupuncture, herbalist)
- Not applicable. I do not use any health care providers

For our purposes, the answers to this question were primarily important in terms of those who answered “Emergency room,” because we lacked comparable information about the general population for most other answer choices. Future researchers may look more deeply into these data.

43. Because you are transgender/gender non-conforming, have you had any of the following experiences? (Please check an answer for each row. If you have NEVER needed medical care, please check “Not applicable”)

<table>
<thead>
<tr>
<th>Experience</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>I have postponed or tried to get needed medical care when I was sick or injured because I could not afford it.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I have postponed or tried to get checkups or other preventive medical care because I could not afford it.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I have postponed or tried to get needed medical care when I was sick or injured because of disrespect or discrimination from doctors or other healthcare providers.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I have postponed or tried to get checkups or other preventive medical care because of disrespect or discrimination from doctors or other healthcare providers.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>A doctor or other provider refused to treat me because I am transgender/gender non-conforming.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I had to teach my doctor or other provider about transgender/gender non-conforming people in order to get appropriate care.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
44. Please mark below if you received health care related to being transgender/ gender non-conforming.

<table>
<thead>
<tr>
<th>Medical Treatment</th>
<th>Do not want it</th>
<th>Want it someday</th>
<th>Have had it</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counseling</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hormone treatment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Top/chest/breast surgery (chest reduction, enlargement, or reconstruction)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male-to-female removal of the testes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male-to-female genital surgery (removal of penis and creation of a vagina, labia, etc.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female-to-male hysterectomy (removal of the uterus and/or ovaries)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female-to-male genital surgery (clitoral release/metoidioplasty/creation of testes)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female-to-male phalloplasty (creation of a penis)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In this question, we tried to balance medically precise and politically acceptable terms with language that would be accessible to all. Although our final questions were not always consistent, we still believe that the inclusion of medical terms along with more general descriptions of the various surgeries was valuable. In retrospect, the terms vaginoplasty and orchietomy should have been included. We also used the term “genital surgery” in conjunction with clitoral release and creation of testes, which may have implied that other surgeries we listed, including the creation of a penis, the removal of ovaries, and the reduction or enlargement of breasts, are not also genital surgeries.

We should have asked about facial feminization surgery in this question. There are also a range of other procedures that we also should have asked about, such as “laser hair removal or electrolysis” and “surgery to create a more feminine or masculine shape elsewhere on the body.”

We did not differentiate between respondents who acquired hormones without a prescription (such as purchasing them online or on the street) and those who did, and it would be helpful to know this information. (This could have been done by having two hormone categories: “hormone treatment, from a doctor” and “hormone treatment, from online street or other sources.”)

We didn’t ask about medical treatments that are not supervised by licensed/trained medical professionals, another question that would have been valuable. These queries could have been made in this question, or could have been made in a different question that centered around non-medically supervised care, such as the following untested question: “I have acquired the following care NOT supervised by doctors, such as online or buying it on the street: 1) hormones, 2) silicone injections, 3) chest/breast (top) surgeries, 4) lower/bottom surgeries.”

45. Please tell us how much the following procedures have cost if you have had them, or mark the box that says I have NOT had this procedure.

<table>
<thead>
<tr>
<th>Medical Procedure</th>
<th>My insurance paid for all of this and my out of pocket cost was:</th>
<th>My insurance did NOT pay for this and my out of pocket cost was:</th>
<th>I have NOT had this procedure</th>
<th>Don't know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hormone treatment , average MONTHLY cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Visits to the doctor to monitor hormone levels, average YEARLY cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chest/breast/top surgeries and reconstructions/reductions/enhancements TOTAL cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Genital/bottom surgeries TOTAL cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facial surgeries TOTAL cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other transition-related health care TOTAL cost. Please describe type of care here. Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This question was confusing for respondents and for analysts alike. At this point, we have not attempted to tabulate the data for it, although we do think there is usable data that could be gleaned from it. We recommend that future researchers develop a different way of capturing these data and test the question extensively before putting it in the field. Also, a simpler question meant only to determine whether insurance companies were covering transition-related care could have been utilized.
46. Have you ever received a gender-related mental health diagnosis?
   ♦ No
   ♦ Yes. My diagnosis: __________________________

Those interested in deeper analysis around gender-related mental health diagnoses may want to capture whether respondents’ desired to receive a diagnosis or why they sought it out (for example, because some doctors and surgeons provide care only to patients who have received a gender identity diagnosis after evaluation by a mental health professional). These patients may request a diagnosis from a mental health provider, and may receive it, without the clinician or patient truly seeing it as a mental health diagnosis. The perceived stigma attached with mental health diagnoses may impact the treatment patients seek and their response to this question.

47. Not including any gender-related mental health diagnosis, do you have a disability (physical, learning, mental health) that substantially affects a major life activity?
   ♦ Yes
   ♦ No [Go to Question 49]

48. What is your disability? (Mark all that apply.)
   ♦ Physical condition
   ♦ Learning disability
   ♦ Mental health condition

Questions 47 and 48 were not standard questions used on federal surveys and we suggest future researchers investigate questions used more widely.

Future researchers may also want to add another question series to differentiate between disabilities that might be a result of, or aggravated by, discrimination (e.g. depression, anxiety, HIV, etc.) For example, it may be useful to ask a question along these lines (although we are not suggesting this particular wording): “Do you have or did you have any of these health or mental health conditions because of discrimination/rejection because you are transgender or gender non-conforming, or stress from that discrimination/rejection: 1) anxiety, 2) clinical or severe depression, 3) alcohol abuse, 4) drug abuse, 5) heart conditions, 6) weight problems, 7) anorexia, 8) auto-immune problems, 9) smoking, 10) HIV.”

We also could have asked about a range of health, including mental health, conditions NOT necessarily connected to discrimination.

49. What is your HIV status?
   ♦ HIV negative
   ♦ HIV positive
   ♦ Don’t know

Note that we did not ask how people knew of their HIV status, for example, whether or not they have been tested.

50. I drink or misuse drugs to cope with the mistreatment I face or faced as a transgender or gender non-conforming person.
   ♦ Yes
   ♦ Yes, but not currently
   ♦ No
   ♦ Not applicable. I face no mistreatment.

Future researchers may be interested in asking about general usage of alcohol and drugs that was not connected to discrimination that respondents face in order to better compare with general population data. Also, we could have asked separately about alcohol and drugs.

Furthermore, those who are interested in delving deeper into this topic may ask whether drinking (or using drugs) increased or decreased after transition, or if it was connected to a major life event, such as losing a job, getting divorced, etc.

51. Have you ever smoked 100 cigarettes in your life?
   ♦ Yes
   ♦ No

We selected these and the following standard smoking-related questions, working with the Network for LGBT Tobacco Control, replicating questions on federal and state tobacco surveys and allowing us to compare the prevalence of smoking in our sample with the general population.
52. Do you now smoke daily, occasionally, or not at all?
   - Daily
   - Occasionally
   - Not at all

53. If you now smoke, would you like to quit?
   - Yes
   - No
   - Not applicable, I do not smoke now

54. Have you ever attempted suicide?
   - Yes
   - No

Some of the most devastating and most important results from the survey came from this question, which was almost not included because we knew we could not delve deeply enough into the topic and because it made the institutional review process more difficult because the question conceivably could trigger or retrigger thoughts of suicide among respondents. Thus, we included, at the beginning of the survey, a suicide resource, The Trevor Project, which agreed to serve both adult and youth callers. And, in fact, we did receive two calls from respondents who were distressed from filling out the survey and were able to appropriately refer them; we are not sure how many may have called The Trevor Project.

We are incredibly grateful that we included this question. We recommend that future researchers carefully consider how to construct a more complex set of questions about suicidality by looking at federal and other surveys. We recommend that future questions differentiate between attempts at different stages of a respondent’s life. Additionally future studies might differentiate between attempts in the last year as opposed to over a person’s life span to compare to the many studies that only ask about the last year. Furthermore, it would be helpful to ask about ideation and connection with depressive episodes or other mental health conditions.

55. Because of being transgender/gender non-conforming, have you lived through any of the following family issues? If a situation does not apply to you, please mark “Not applicable.”

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>My family is as strong today as before I came out.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My family relationships are slowly improving after coming out.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My relationship with my spouse or partner ended.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My ex limited or stopped my relationship with my children.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A court/judge limited or stopped my relationship with my children.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My children chose not to speak with me or spend time with me.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My parents or family chose not to speak with me or spend time with me.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was a victim of domestic violence by a family member.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have lost close friends.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As mentioned in relation to Question 22, we didn’t ask whether respondents’ parents or guardians forced them to leave the family home for being transgender or gender non-conforming. This question could be included in this batch of question as opposed to in the housing question.

The statement “my relationship with my spouse or partner ended” could have been clarified to indicate “when I came out to them or when I transitioned.”

The statement “I was a victim of domestic violence by a family member” did not distinguish between violence at the hands of parents, siblings and other family members, and intimate partners. Nor did it ask about violence not motivated by bias. If the ability to compare to general population data is desired, this question needs to be further divided.

In a couple of these questions, respondents might be confused whether or not they should mark “no” or “not applicable.” For example, for “A court/judge limited or stopped my relationship with my children” a respondent might indicate “no” when they were divorced by mutual agreement with their spouse, which included agreement about custody of children, but never went in front of a judge to decide custody. We would want them to choose “not applicable” in that scenario but they may have chosen “no.” Thus, redoing the entire structure of this question might better assist respondents to select the appropriate answer choices.
56. Please mark the appropriate response about adoption and foster parenting as a transgender/gender non-conforming person.

<table>
<thead>
<tr>
<th>Response</th>
<th>Yes, my partner's child</th>
<th>A child related to me</th>
<th>Yes, a child is currently unknown to me</th>
<th>No, I have not tried</th>
</tr>
</thead>
<tbody>
<tr>
<td>I have successfully adopted or fostered a child.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I tried to adopt or foster a child and was rejected.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

This question could be improved by specifying whether respondents are to report only official adoptions and foster care placements or unofficial assumption of the parental role. Furthermore, we suspect that those who adopted or fostered a child before they came out as transgender or gender non-conforming may have answered yes. Altering the wording of this question should be able to capture whether the adoption or placement happened before or after coming out and/or transition. Also, the question did not distinguish between adoptions arranged by agencies versus those prompted through changing family circumstances. For these reasons, we made the difficult decision to not report on the results of this question because we believe our respondents misunderstood what turned out to be a poorly-worded question.

57. For each of the following documents, please check whether or not you have been able (allowed) to change the documents or records to reflect your current gender. Mark “Not applicable” if you have no desire to change the gender on the document listed.

<table>
<thead>
<tr>
<th>Document</th>
<th>Yes, changes allowed</th>
<th>No, changes denied</th>
<th>Not tried</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birth certificate</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Drivers license and/or state issued non-driver ID</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Social Security records</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Passport</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Work ID</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Military discharge papers (DD214 or DD215)</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Health insurance records</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Student records</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Professional licenses or credentials</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

From examining the data, we suspect that many respondents chose “not tried” when likely they did not have that particular document and “not applicable” would have been a more accurate choice. Part of this could be due to our instructions asking respondents to “mark ‘not applicable’ if you have no desire to change the gender on the document listed.” We should also have said to mark “not applicable” if they did not have such documents as passports or military discharge papers. However, we also suspect that many may have simply checked the same box (yes on everything, no on everything, etc.) due to the form of this question, which lends itself to repetitive answers as opposed to carefully considered ones for each line.

Those able to do deeper analysis may be interested in whether or not respondents were able to update names on these IDs and records and may want to expand the list to include credit reporting agencies and name on credit card.

58. Have you or your employer ever received notice that the gender your employer has listed for you does not match the gender the government has listed for you?
   ☐ Yes
   ☐ No
   ☐ Not applicable

The relevancy of this question in future studies depends on whether the Social Security Administration continues or ceases such notifications to employers.
59. Have you ever received notice from your state motor vehicle agency that the gender on your driver’s license does not match the gender the federal government has listed for you with Social Security?

- Yes
- No
- Not applicable

60. Thinking about all of your IDs and records, which of the following statements is most true?

- All of my IDs and records list the gender I prefer.
- Some of my IDs and records list the gender I prefer.
- None of my IDs and records list the gender I prefer.

61. When I present documents with my name and gender (like a driver’s license or a passport) that do not match the gender I present as: (Mark all that apply.)

- I have been harassed.
- I have been assaulted/attacked.
- I have been asked to leave.
- I have had no problems.
- Not applicable. I have only presented documents that match.

62. Please check what you believe are the four most important policy priorities affecting transgender/gender non-conforming people in the U.S.

- HIV prevention, education and treatment
- Better policies on gender and identity documents and other records
- Passing anti-bullying laws that make schools safer
- Transgender/gender non-conforming prisoner’s rights
- Immigration policy reform (such as asylum or partner recognition)
- Allowing transgender/gender non-conforming people to serve in the military
- Access to transgender-sensitive health care
- Getting transgender-related health care covered by insurance
- Protecting trans/gender non-conforming people from discrimination in hiring and at work
- Protecting transgender/gender non-conforming people from discrimination in housing
- Passing laws that address hate crimes against transgender/gender non-conforming people
- The right of transgender/gender non-conforming people to parent, including adoption
- The right to equal recognition of marriages involving transgender partners

This question was added as a way to at least superficially gauge respondents’ policy priorities. Because there was only one question on this topic, the findings to this question are interesting, but cannot be considered to be an accurate representation of community or individual priorities. It might also be helpful in future studies to allow participants to rank their choices or write in other options.

63. What is your U.S. citizenship status?

- U.S. citizen
- Documented non-citizen
- Undocumented non-citizen

64. Are you registered to vote?

- Yes
- No

This question could be expanded or altered to ask about participation in the last presidential election or last election.

65. Have you ever been a member of the armed forces?

- Yes [Go to Question 66]
- No [Go to Question 67]
- I was denied entry because I am transgender/gender non-conforming [Go to Question 67]

66. Were you discharged from the service because of being transgender/gender non-conforming?

- Yes
- No or still in the military

The answer choices for this question could have separated out “no” and “still in the military.”
APPENDIX B: THE SURVEY INSTRUMENT — ISSUES AND ANALYSIS

67. What are your household’s current sources of income? (Mark all that apply.)

- Paycheck from a your or your partner’s job
- Money from a business, fees, dividends or rental income
- Aid such as TANF; welfare; WIC; public assistance; general assistance; food stamps or SSI
- Unemployment benefits
- Child support or alimony
- Social security, workers comp, disability, veteran’s benefits or pensions
- Inherited wealth
- Pay from street economies (sex work, other sales)
- Other, please specify ___________________________________

We did not report on the results of this question but future researchers may find these data useful. If we were constructing a shorter survey, this question would be a candidate for deletion.

Note that we did not have a question numbered 68.

69. What is your sexual orientation?

- Gay/Lesbian/Same-gender attraction
- Bisexual
- Queer
- Heterosexual
- Asexual
- Other, please specify ___________________________________

Having the “other, please specify” option cost resources to be spent re-categorizing certain people based on their response which future researchers may want to avoid. There were very few true “others” that didn’t approximate the concepts that were listed. On the other hand, this option allowed us to capture a sense of diversity in respondents’ sexual orientations and the language used to describe them.

70. Anything else you’d like to tell us about your experiences of acceptance or discrimination as a transgender/gender non-conforming person?

____________________________________
____________________________________
____________________________________

This question generated over 200 pages of text. Excerpted quotes were included throughout the report. We believe these narratives brought the data to life in a way that was invaluable.
Other Questions

There were a few other questions, other than those in the survey instrument and suggested above, that we believe should be considered by future researchers. We will not go into the long list of questions that ended up not being used, but instead offer a few other areas for potential research:

- **Religion**  We wish we had asked about what religion (if any) respondents were raised and what their current religious affiliation (if any) was. We especially wanted to know how this question correlated with or had a protective affect against suicidality, family rejection, and poor health outcomes. Those who are interested in delving deeper may want to ask about being out in and acceptance in religious communities as well as rejection by religious communities, potentially both in the communities respondents were raised in or those they participate(d) in since then.

- **Child abuse, including sexual abuse**  Future researchers might ask about these traumatic childhood experiences, separate from and/or motivated by a child's transgender identity or gender non-conformity.

- **Physical and sexual assault**  We asked about physical and sexual assault in a variety of contexts (in high school, in medical settings, etc.), but not in general, so we do not have overall rates of physical and sexual assault. We also did not ask about assault not motivated by a person’s transgender or gender non-conforming status. Future researchers may want to do so.

Endnotes

1. We plan to provide the dataset to additional researchers to perform deeper or different analysis.
2. For more information about the RUCA system, see [http://depts.washington.edu/uwruc/](http://depts.washington.edu/uwruc/).
APPENDIX C:  
THE SURVEY INSTRUMENT (PAPER COPY)

Before using questions from the survey instrument, please read Appendix B: Survey Instrument – Issues and Analysis.
APPENDIX C: THE SURVEY INSTRUMENT

National Survey on Transgender Experiences of Discrimination in the U.S.

Purpose
You are invited to participate in a research project regarding transgender and gender non-conforming people in the United States. Your responses will be part of an important report on transgender people’s experiences of discrimination in housing, employment, health care and education.

Procedures
You will be asked to complete the attached survey. Your participation and responses are confidential. Please answer the questions as openly and honestly as possible. You may skip questions. The survey will take about 20 minutes to complete. You must be 18 years of age or older to participate. When you have completed the survey, please return it in the enclosed envelope directly to:

Susan Rankin, Ph.D
Research Associate, Center for the Study of Higher Education
Pennsylvania State University
University Park, PA 16802
814-863-2655

Comments provided will be analyzed using content analysis and submitted as an appendix to the survey report. Quotes from submitted comments will also be used throughout the report to give “voice” to the quantitative data.

Discomforts and Risks
There are no risks in participating in this research beyond those experienced in everyday life. Some of the questions are personal and might cause discomfort. In the event that any questions asked are disturbing, you may stop responding to the survey at any time. Participants who experience discomfort are encouraged to contact:

The Trevor Project
866-4-U-TREVOR
The Trevor Helpline is the only national crisis and suicide prevention helpline for gay, lesbian, bisexual, transgender and questioning youth; the Helpline can also help transgender and gender non-conforming adults. The Helpline is a free and confidential service that offers hope and someone to talk to, 24/7. Trained counselors listen and understand without judgment.

Benefits
The results of the survey will be part of an important report on discrimination against transgender people by the National Center for Transgender Equality and the National Gay and Lesbian Task Force to help create better opportunities for transgender and gender non-conforming people. We are grateful to Penn State University’s Center for the Study of Higher Education for hosting the survey and maintaining the integrity of our data.

Statement of Confidentiality
You will not be asked to provide any identifying information, such as your name, and information you provide on the survey will remain confidential. In the event of any publication or presentation resulting from the research, no personally identifiable information will be shared. Please also remember that you do not have to answer any question or questions about which you are uncomfortable.

Voluntary Participation
Participation in this research is voluntary. If you decide to participate, you do not have to answer any questions on the survey that you do not wish to answer. Individuals will not be identified and only group data will be reported (e.g., the analysis will include only aggregate data). By completing the survey, your informed consent will be implied. Please note that you can choose to withdraw your responses at any time before you submit your answers. Refusal to take part in this research study will involve no consequences.
Right to Ask Questions

You can ask questions about this research.

Questions concerning this project should be directed to:

Justin Tanis  
National Center for Transgender Equality  
1325 Massachusetts Avenue, NW  Suite 700  
Washington, DC  20005  
202-903-0112  
jtanis@nctequality.org

OR

Susan Rankin, Ph.D  
Research Associate, Center for the Study of Higher Education  
Pennsylvania State University  
University Park, PA  16802  
814-863-2655  
sxr2@psu.edu

Completion of the survey indicates your consent to participate in this study. It is recommended that you keep this statement for your records.
Directions

Please read and answer each question carefully. For each answer, darken the appropriate oval completely. If you want to change an answer, erase your first answer completely and darken the oval of your new answer. You may decline to answer specific questions.

“Transgender/gender non-conforming” describes people whose gender identity or expression is different, at least part of the time, from the sex assigned to them at birth.

1. Do you consider yourself to be transgender/gender non-conforming in any way?
   - Yes
   - No. If no, do NOT continue.

2. What sex were you assigned at birth, on your original birth certificate?
   - Male
   - Female

3. What is your primary gender identity today?
   - Male/Man
   - Female/Woman
   - Part time as one gender, part time as another
   - A gender not listed here, please specify ________________________________

4. For each term listed, please select to what degree it applies to you.

<table>
<thead>
<tr>
<th>Term</th>
<th>Not at all</th>
<th>Somewhat</th>
<th>Strongly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transgender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transsexual</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FTM (female to male)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MTF (male to female)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intersex</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gender non-conforming or gender variant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Genderqueer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Androgynous</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Feminine male</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Masculine female or butch</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A.G. or Aggressive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third gender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross dresser</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drag performer (King/Queen)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Two-spirit</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other, please specify</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. People can tell I’m transgender/gender non-conforming even if I don’t tell them.
   - Always
   - Most of the time
   - Sometimes
   - Occasionally
   - Never
6. I tell people that I’m transgender/gender non-conforming. (Mark all that apply.)
   - Never
   - People who are close friends
   - Casual friends
   - Work colleagues
   - Family
   - Everyone

7. How many people know or believe you are transgender/gender non-conforming in each of the following settings? Mark all that apply.

<table>
<thead>
<tr>
<th>Setting</th>
<th>None</th>
<th>A few</th>
<th>Some</th>
<th>Most</th>
<th>All</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>At home</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>On the job</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>At school</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>In private social settings</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>In public social settings</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>When seeking medical care</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

8. To the best of your ability, please estimate the following ages, if they apply to you. Mark “N.A.” if not applicable or if you have no desire to transition. Please mark each line.

<table>
<thead>
<tr>
<th>Age you first recognized that you were “different” in terms of your gender.</th>
<th>Age you first recognized your transgender/gender-non-conforming identity</th>
<th>Age you began to live part time as a transgender/gender non-conforming person.</th>
<th>Age you began to live full time as a transgender/gender non-conforming person.</th>
<th>Age that you first got any kind of transgender-related medical treatment.</th>
<th>Your current age</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. Do you or do you want to live full-time in a gender that is different from you gender at birth?
   - Yes, I currently live full-time in a gender different from my birth gender.
   - Not full-time yet, but someday I want to.
   - No, I do not want to live full-time.

10. What is your zip code?
    ZIP ____________

11. What is your race/ethnicity? (Mark all that apply.)
    - White
    - Black or African American
    - American Indian or Alaska Native (enrolled or principal tribe) ________________________________
    - Hispanic or Latino
    - Asian or Pacific Islander
    - Arab or Middle Eastern
    - Multiracial or mixed race
12. What is the highest degree or level of school you have completed? Mark ONE box. If you are currently enrolled, please mark the previous grade or highest degree received.
   - Elementary and/or junior high
   - Some high school to 12th grade
   - High school graduate - high school Diploma or the equivalent (for example: GED)
   - Some college credit, but less than 1 year
   - Technical school degree (such as cosmetology or computer technician)
   - One or more years of college, no degree
   - Associate degree (for example: AA, AS)
   - Bachelor’s degree (for example: BA, AB, BS)
   - Master’s degree (for example: MA, MS, MEng, MEd, MSW, MBA)
   - Professional degree (for example: MD, DDS, DVM, LLB, JD)
   - Associate degree (for example: PhD, EdD)

13. What is your current gross annual household income (before taxes)?
   - Less than $10,000
   - $10,000 to $19,999
   - $20,000 to $29,999
   - $30,000 to $39,999
   - $40,000 to $49,999
   - $50,000 to $59,999
   - $60,000 to $69,999
   - $70,000 to $79,999
   - $80,000 to $89,999
   - $90,000 to $99,999
   - $100,000 to $149,999
   - $150,000 to $199,999
   - $200,000 to $250,000
   - More than $250,000

14. How many people live in your household?
   Number _______

15. How many children currently rely on your income?
   Number _______

16. What is your relationship status?
   - Single
   - Partnered
   - Civil union
   - Married
   - Separated
   - Divorced
   - Widowed

Important Note: When we say: “Because you are transgender/gender non-conforming, has one or two of these things happened to you,” we do not mean that your gender identity or expression is causing bad or abusive things to happen. We are trying to find out if people are treating you differently because you are transgender or gender non-conforming.

17. Because I am transgender/gender non-conforming, life in general is:
   - Much improved
   - Somewhat improved
   - The same
   - Somewhat worse
   - Much worse
   - In some ways better, in some ways worse
18. Because I am transgender/gender non-conforming, my housing situation is:
   - Much improved
   - Somewhat improved
   - The same
   - Somewhat worse
   - Much worse
   - In some ways better, in some ways worse

19. If you are or were employed, how has the fact that you are transgender/ gender non-conforming changed your employment situation?
   - Much improved
   - Somewhat improved
   - Stayed the same
   - Somewhat worse
   - Much worse
   - In some ways better, in some ways worse
   - Not applicable. I was never employed

20. Because you are transgender/gender non-conforming, how has your situation changed as a parent?
   - Much improved
   - Somewhat improved
   - Stayed the same
   - Somewhat worse
   - Much worse
   - In some ways better, in some ways worse
   - Not Applicable. I am not a parent.

21. What are your current living arrangements?
   - Homeless
   - Living in a shelter
   - Living in a group home facility or other foster care situation
   - Living in a nursing/adult care facility
   - Living in campus/university housing
   - Still living with parents or family you grew up with
   - Staying with friends or family temporarily
   - Living with a partner, spouse or other person who pays for the housing
   - Living in house/apartment/condo I RENT alone or with others
   - Living in house/apartment/condo I OWN alone or with others

22. Because you are transgender/gender non-conforming, have you experienced any of the following housing situations? Please mark "Not applicable" if you were never in a position to experience such a housing situation. For example, if you have always owned your home as a transgender/gender non-conforming person, you could not have been evicted.

<table>
<thead>
<tr>
<th>Situation</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>I moved into a less expensive home/apartment.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I became homeless.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have been evicted.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was denied a home/apartment.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I had to move back in with family members or friends.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I had to find different places to sleep for short periods of time, such as on a friend's couch.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have had sex with people to sleep in their bed/at their homes or to pay rent.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I had to use equity in my home to pay for living expenses.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
23. If you have experienced homelessness, did you go to a shelter?
  ☐ Yes
  ☐ No [Go to Question 25]
  ☐ Not applicable, I never experienced homelessness [Go to Question 25]

24. Because you are transgender/gender non-conforming, did you experience any of the following when you went to a shelter?

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>I was denied access to a shelter.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I was thrown out after they learned I was transgender.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I was harassed by residents or staff.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I was physically assaulted/attacked by residents or staff.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I was sexually assaulted/attacked by residents or staff.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I was forced to live as the wrong gender in order to be allowed to stay in a shelter.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I was forced to live as the wrong gender in order to be/feel safe in a shelter.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I decided to leave a shelter even though I had no place to go because of poor treatment/unsafe conditions.</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

25. What is your current employment status? (Mark all that apply.)
  ☐ Full-time
  ☐ Part-time
  ☐ More than one job
  ☐ Self-employed, own your business
  ☐ Self-employed, contract worker
  ☐ Unemployed but looking
  ☐ Unemployed and stopped looking
  ☐ On disability
  ☐ Student
  ☐ Retired
  ☐ Homemaker or full-time parent
  ☐ Other, please specify ___________________________________

26. Have you done any of the following to avoid discrimination because you are transgender or gender non-conforming? If you are/were not employed, mark not applicable.

<table>
<thead>
<tr>
<th>Action</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stayed in a job I’d prefer to leave</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Didn’t seek a promotion or a raise</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Changed jobs</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Delayed my gender transition</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Hid my gender or gender transition</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I have not done anything to avoid discrimination</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
27. Because of being transgender/gender non-conforming, which of the following experiences have you had at work? Please mark each row.

<table>
<thead>
<tr>
<th>Experience</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>I feel more comfortable and my performance has improved.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I did not get a job I applied for because of being transgender or gender non-conforming.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I am or have been under-employed, that is working in the field I should not be in or a position for which I am over-qualified.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was removed from direct contact with clients, customers or patients.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was denied a promotion.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I lost my job.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was harassed by someone at work.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was the victim of physical violence by someone at work.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was the victim of sexual assault by someone at work.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was forced to present in the wrong gender to keep my job.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was not able to work out a suitable bathroom situation with my employer</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was denied access to appropriate bathrooms.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was asked inappropriate questions about my transgender or surgical status.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was referred to by the wrong pronoun, repeatedly and on purpose.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supervisors or coworkers shared information about me that they should not have.</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

28. Because of being transgender or gender non-conforming, have any of the following people close to you faced any kind of job discrimination?

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse or partner</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children or other family member</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

29. If you have ever worked for pay in the street economy, please check all activities in which you have engaged.

- [ ] Sex work/sex industry
- [ ] Drug sales
- [ ] Other, please specify __________________________
- [ ] Not applicable. I have never worked for pay in the street economy.
30. Based on being transgender/gender non-conforming, please check whether you have experienced any of the following in these public spaces. (Mark all that apply.)

<table>
<thead>
<tr>
<th>Public Space</th>
<th>Denied equal treatment or service</th>
<th>Verbally harassed or disrespected</th>
<th>Physically attacked or assaulted</th>
<th>Not applicable. I have not tried to access this</th>
<th>Not applicable. I do not present as transgender here</th>
<th>Not applicable. I did not experience these negative outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail store</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hotel or restaurant</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bus, train, or taxi</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Airplane or airport staff/TSA</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Doctor's office or hospital</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emergency Room</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rape crisis center</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic violence shelter/program</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mental health clinic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drug treatment program</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ambulance or EMT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Govt. agency/official</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judge or court official</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal services clinic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

31. Have you ever interacted with the police as a transgender/gender non-conforming person?
   - Yes [Go to Question 32]
   - No [Go to Question 33]

32. Because of being transgender/gender non-conforming, which of the following experiences have you had in your interaction with the police? (Mark all that apply.)
   - Officers generally have treated me with respect
   - Officers generally have treated me with disrespect
   - Officers have harassed me
   - Officers have physically assaulted me
   - Officers have sexually assaulted me

33. As a transgender/gender non-conforming person, how comfortable do you feel seeking help from the police?
   - Very comfortable
   - Somewhat comfortable
   - Neutral
   - Somewhat uncomfortable
   - Very uncomfortable

34. Because of being transgender/gender non-conforming, have you ever been arrested or held in a cell?
   - Yes
   - No

35. Have you ever been sent to jail or prison for any reason?
   - Yes [Go to Question 36]
   - No [Go to Question 38]

36. How long were you in jail or prison, total?
   - Under six months
   - Six months to a year
   - One to three years
   - Three to five years
   - Five to ten years
   - Ten or more years
37. If you were jailed or in prison, have you ever experienced any of the following because of being transgender/gender non-conforming? (Mark all that apply in each category.)

<table>
<thead>
<tr>
<th>From other inmates</th>
<th>From correctional officers or staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

38. Have you attended school at any level (elementary school or higher) as a transgender/gender non-conforming person?
- ☑ Yes [Go to Question 39]
- ☑ No [Go to Question 41]

39. Because you are transgender/gender non-conforming, have you been a target of harassment, discrimination or violence at school? (Mark all that apply.)

<table>
<thead>
<tr>
<th>Did not attend such a school</th>
<th>Not out as transgender/gender non-conforming at that point</th>
<th>Harassed or bullied by students</th>
<th>Physically assaulted or attacked by students</th>
<th>Physically assaulted or attacked by teachers or staff</th>
<th>Sexually assaulted or attacked by students</th>
<th>Sexually assaulted or attacked by teachers or staff</th>
<th>Expelled, thrown out, or denied enrollment</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Elementary school

Junior high/middle school

High School

College

Graduate or professional school

Technical school

40. Because I am/was transgender/gender non-conforming, which of the following statements are true?

<table>
<thead>
<tr>
<th>I had to leave school because the harassment was so bad.</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I had to leave school for financial reasons related to my transition.</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I lost or could not get financial aid or scholarships.</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I was not allowed to have any housing on campus.</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I was not allowed gender appropriate housing on campus.</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I was not allowed to use the appropriate bathrooms or other facilities.</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑</td>
<td>☑</td>
<td>☑</td>
</tr>
</tbody>
</table>
41. What type of health insurance do you have? If you have more than one type of coverage, check the ONE that you usually use to cover doctor and hospital bills.
   - I have NO health insurance coverage
   - Insurance through a current or former employer (employee health plan, COBRA, retiree benefits)
   - Insurance through someone else’s employer (spouse, partner, parents, etc.)
   - Insurance you or someone in your family purchased
   - Medicare
   - Medicaid
   - Military health care/Champus/Veterans Administration/Tri-Care
   - Student insurance through college or university
   - Other public (such as state or county level health plans, etc.)
   - Other, please specify ___________________________________

42. What kind of place do you go to most often when you are sick or need advice about your health? (check one)
   - Emergency room
   - Doctor’s office
   - Health clinic or health center that I or my insurance pays for
   - Free health clinic
   - V.A. (veteran’s) clinic or hospital
   - Alternative medicine provider (acupuncture, herbalist)
   - Not applicable. I do not use any health care providers

43. Because you are transgender/gender non-conforming, have you had any of the following experiences? (Please check an answer for each row. If you have NEVER needed medical care, please check “Not applicable”)

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>I have postponed or not tried to get needed medical care when I was sick or injured because I could not afford it.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I have postponed or not tried to get checkups or other preventive medical care because I could not afford it</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I have postponed or not tried to get needed medical care when I was sick or injured because of disrespect or discrimination from doctors or other healthcare providers.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I have postponed or not tried to get checkups or other preventive medical care because of disrespect or discrimination from doctors or other healthcare providers.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>A doctor or other provider refused to treat me because I am transgender/gender non-conforming.</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>I had to teach my doctor or other provider about transgender/gender non-conforming people in order to get appropriate care.</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
44. Please mark below if you received health care related to being transgender/gender non-conforming.

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Do not want it</th>
<th>Want it someday</th>
<th>Have had it</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counseling</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hormone treatment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Top/chest/breast surgery (chest reduction, enlargement, or reconstruction)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male-to-female removal of the testes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male-to-female genital surgery (removal of penis and creation of a vagina, labia, etc.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female-to-male hysterectomy (removal of the uterus and/or ovaries)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female-to-male genital surgery (clitoral release/metoidioplasty/creation of testes)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female-to-male phalloplasty (creation of a penis)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

45. Please tell us how much the following procedures have cost if you have had them, or mark the box that says I have NOT had this procedure.

<table>
<thead>
<tr>
<th>Procedure</th>
<th>My insurance paid for some or all of this and my out of pocket cost was:</th>
<th>My insurance did NOT pay for this and my out of pocket cost was:</th>
<th>I have NOT had procedure</th>
<th>Don't know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hormone treatment , average MONTHLY cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Visits to the doctor to monitor hormone levels, average YEARLY cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chest/breast/top surgeries and reconstructions/reductions/enhancements TOTAL cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Genital/bottom surgeries TOTAL cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facial surgeries TOTAL cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other transition-related health care TOTAL cost. Please describe type of care here. Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

46. Have you ever received a gender-related mental health diagnosis?
- No
- Yes. My diagnosis: __________________________

47. Not including any gender-related mental health diagnosis, do you have a disability (physical, learning, mental health) that substantially affects a major life activity?
- Yes
- No [Go to Question 49]

48. What is your disability? (Mark all that apply.)
- Physical condition
- Learning disability
- Mental health condition

49. What is your HIV status?
- HIV negative
- HIV positive
- Don’t know
50. I drink or misuse drugs to cope with the mistreatment I face or faced as a transgender or gender non-conforming person.
- Yes
- Yes, but not currently
- No
- Not applicable. I face no mistreatment.

51. Have you ever smoked 100 cigarettes in your life?
- Yes
- No

52. Do you now smoke daily, occasionally, or not at all?
- Daily
- Occasionally
- Not at all

53. If you now smoke, would you like to quit?
- Yes
- No
- Not applicable, I do not smoke now

54. Have you ever attempted suicide?
- Yes
- No

55. Because of being transgender/gender non-conforming, have you lived through any of the following family issues? If a situation does not apply to you, please mark “Not applicable.”

<table>
<thead>
<tr>
<th>Issue</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>My family is as strong today as before I came out.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My family relationships are slowly improving after coming out.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My relationship with my spouse or partner ended.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My ex limited or stopped my relationship with my children.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A court/judge limited or stopped my relationship with my children.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My children chose not to speak with me or spend time with me.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My parents or family chose not to speak with me or spend time with me.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I was a victim of domestic violence by a family member.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I have lost close friends.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

56. Please mark the appropriate response about adoption and foster parenting as a transgender/gender non-conforming person.

<table>
<thead>
<tr>
<th>Adoption/Foster Parenting</th>
<th>Yes my partner's child or children</th>
<th>Adopted a child to me</th>
<th>Yes, a child medically unattended to me</th>
<th>No, I have not tried</th>
</tr>
</thead>
<tbody>
<tr>
<td>I have successfully adopted or fostered a child.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I tried to adopt or foster a child and was rejected.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
57. For each of the following documents, please check whether or not you have been able (allowed) to change the documents or records to reflect your current gender. Mark “Not applicable” if you have no desire to change the gender on the document listed.

<table>
<thead>
<tr>
<th>Document</th>
<th>Yes, changes allowed</th>
<th>No, changes denied</th>
<th>Not tried</th>
<th>Not applicable</th>
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<tr>
<td>Birth certificate</td>
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<td>Drivers license and/or state issued non-driver ID</td>
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<td>Social Security records</td>
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<td>Passport</td>
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<td>Work ID</td>
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<td>Military discharge papers (DD214 or DD215)</td>
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<td>Health insurance records</td>
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<td>Student records</td>
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<td>Professional licenses or credentials</td>
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58. Have you or your employer ever received notice that the gender your employer has listed for you does not match the gender the government has listed for you?
- Yes
- No
- Not applicable

59. Have you ever received notice from your state motor vehicle agency that the gender on your driver’s license does not match the gender the federal government has listed for you with Social Security?
- Yes
- No
- Not applicable

60. Thinking about all of your IDs and records, which of the following statements is most true?
- All of my IDs and records list the gender I prefer.
- Some of my IDs and records list the gender I prefer.
- None of my IDs and records list the gender I prefer.

61. When I present documents with my name and gender (like a driver’s license or a passport) that do not match the gender I present as: (Mark all that apply.)
- I have been harassed.
- I have been assaulted/attacked.
- I have been asked to leave.
- I have had no problems.
- Not applicable. I have only presented documents that match.

62. Please check what you believe are the four most important policy priorities affecting transgender/gender non-conforming people in the U.S.
- HIV prevention, education and treatment
- Better policies on gender and identity documents and other records
- Passing anti-bullying laws that make schools safer
- Transgender/gender non-conforming prisoner’s rights
- Immigration policy reform (such as asylum or partner recognition)
- Allowing transgender/gender non-conforming people to serve in the military
- Access to transgender-sensitive health care
- Getting transgender-related health care covered by insurance
- Protecting transgender/gender non-conforming people from discrimination in hiring and at work
- Protecting transgender/gender non-conforming people from discrimination in housing
- Passing laws that address hate crimes against transgender/gender non-conforming people
- The right of transgender/gender non-conforming people to parent, including adoption
- The right to equal recognition of marriages involving transgender partners
63. What is your U.S. citizenship status?
   ☑ U.S. citizen
   ☑ Documented non-citizen
   ☑ Undocumented non-citizen

64. Are you registered to vote?
   ☑ Yes
   ☑ No

65. Have you ever been a member of the armed forces?
   ☑ Yes [Go to Question 66]
   ☑ No [Go to Question 67]
   ☑ I was denied entry because I am transgender/gender non-conforming [Go to Question 67]

66. Were you discharged from the service because of being transgender/gender non-conforming?
   ☑ Yes
   ☑ No or still in the military

67. What are your household’s current sources of income? (Mark all that apply.)
   ☑ Paycheck from a you or your partner’s job
   ☑ Money from a business, fees, dividends or rental income
   ☑ Aid such as TANF; welfare; WIC; public assistance; general assistance; food stamps or SSI
   ☑ Unemployment benefits
   ☑ Child support or alimony
   ☑ Social security, workers comp, disability, veteran’s benefits or pensions
   ☑ Inherited wealth
   ☑ Pay from street economies (sex work, other sales)
   ☑ Other, please specify _______________

69. What is your sexual orientation?
   ☑ Gay/Lesbian/Same-gender attraction
   ☑ Bisexual
   ☑ Queer
   ☑ Heterosexual
   ☑ Asexual
   ☑ Other, please specify _______________

70. Anything else you’d like to tell us about your experiences of acceptance or discrimination as a transgender/gender non-conforming person?
   ______________________________________________________________________________________
   ______________________________________________________________________________________
   ______________________________________________________________________________________
   ______________________________________________________________________________________
ABOUT THE AUTHORS

Dr. Jaime M. Grant is the founding Executive Director of the Arcus Center for Social Justice Leadership (ACSJL) at Kalamazoo College, where she also serves as an Assistant Professor. ACSJL aims to invigorate social justice scholarship and activism in the academy while nurturing social justice leaders and projects around the globe. Prior to her work in Kalamazoo, she served as director of the Policy Institute at the National Gay and Lesbian Task Force where she spearheaded a Census advocacy campaign, deepened the Task Force’s sexual liberation work, and authored its recent contribution to the field of LGBT aging, Outing Age 2010. Grant holds a B.A. from Wesleyan University and a Ph. D. in Women’s Studies from the Union Institute. Her scholarly work has appeared in Signs, a feminist journal of culture and society and in Diana E. H. Russell’s landmark anthology, Femicide. Her critique of racism in the women’s and queer movements has appeared in The Reader’s Companion to U.S. Women’s History and the journal of the National Women’s Studies Association.

Lisa Mottet, Esq. is the Director of the Transgender Civil Rights Project at the National Gay and Lesbian Task Force, which she has led since 2001. The Project’s primary focus is to assist LGBT activists and allies with passing and implementing non-discrimination laws and policies from the local to the federal level, with a secondary focus of enacting transgender-friendly policies such as those related to driver’s licenses, birth certificates, and health care. Mottet co-authored Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People, working with the National Coalition for the Homeless. She also co-authored Opening the Door to the Inclusion of Transgender People: The Nine Keys to Making Lesbian, Gay, Bisexual and Transgender Organizations Fully Transgender-Inclusive. Lisa graduated from the University of Washington in 1998 and received her J.D. from the Georgetown University Law Center in 2001.

Dr. Justin E. Tanis is on the staff of the National Center for Transgender Equality (NCTE) and has worked in LGBT organizations for close to 25 years as a community organizer, leader, educator and program specialist. He is the author of Trans-Gendered: Theology, Ministry, and Communities of Faith (Pilgrim Press, 2003), which was the result of his doctoral research into the experiences of transgender people in communities of faith. Among his other writing credits, he and Lisa Mottet collaborated on Opening the Door to the Inclusion of Transgender People: The Nine Keys to Making Lesbian, Gay, Bisexual and Transgender Organizations Fully Transgender-Inclusive. He holds a bachelor’s degree from Mount Holyoke College, a Master’s degree from Harvard University, and a doctorate from San Francisco Theological Seminary.

Jack Harrison is a Vaid Fellow at the National Gay and Lesbian Task Force Policy Institute, where he has served since 2009. Prior to this report, he contributed to the Task Force publication, Outing Age 2010: Public Policy Issues Affecting Lesbian, Gay, Bisexual and Transgender Elders by Dr. Jaime M. Grant. Jack graduated from Georgetown University in December of 2008 and is now pursuing an M.A. in Communication, Culture, and Technology from the same university. He has previously interned for the National Center for Transgender Equality and Khemara, a women’s organization in Phnom Penh, Cambodia.

Dr. Jody L. Herman is a consulting researcher for the National Gay and Lesbian Task Force. She graduated from Illinois State University and now holds a Ph.D in Public Policy and Public Administration in the field of Gender and Social Policy from The George Washington University, where she also earned her M.A. in Public Policy with a concentration in Women’s Studies. She currently serves as the Peter J. Cooper Public Policy Fellow at the Williams Institute at the UCLA School of Law.

Mara Keisling is the founding Executive Director of the National Center for Transgender Equality. She is considered one of the foremost authorities on discrimination against transgender people in the United States and has almost twenty-five years of professional experience in social marketing and opinion research. A Pennsylvania native and a transgender woman, Mara completed her undergraduate studies at Penn State University and did her graduate work at Harvard University in American Government.
“My mother disowned me. I was fired from my job after 18 years of loyal employment. I was forced onto public assistance to survive. But still I have pressed forward, started a new career, and rebuilt my immediate family. You are defined not by falling, but how well you rise after falling. I’m a licensed practical nurse now and am studying to become an RN. I have walked these streets and been harassed nearly every day, but I will not change. I am back out there the next day with my head up.”

—Survey Respondent
Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL. v. JACKSON WOMEN’S HEALTH ORGANIZATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 19–1392. Argued December 1, 2021—Decided June 24, 2022

Mississippi’s Gestational Age Act provides that “[e]xcept in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform . . . or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.” Miss. Code Ann. §41–41–191. Respondents—Jackson Women’s Health Organization, an abortion clinic, and one of its doctors—challenged the Act in Federal District Court, alleging that it violated this Court’s precedents establishing a constitutional right to abortion, in particular Roe v. Wade, 410 U. S. 113, and Planned Parenthood of Southeastern Pa. v. Casey, 505 U. S. 833. The District Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act, reasoning that Mississippi’s 15-week restriction on abortion violates this Court’s cases forbidding States to ban abortion pre-viability. The Fifth Circuit affirmed. Before this Court, petitioners defend the Act on the grounds that Casey’s controlling opinion skipped over that question and reaffirmed Roe solely on the basis of stare decisis. A proper application of stare decisis, however, requires an assessment of the strength of the grounds on which Roe
was based. The Court therefore turns to the question that the *Casey* plurality did not consider. Pp. 8–32.

(1) First, the Court reviews the standard that the Court’s cases have used to determine whether the Fourteenth Amendment’s reference to “liberty” protects a particular right. The Constitution makes no express reference to a right to obtain an abortion, but several constitutional provisions have been offered as potential homes for an implicit constitutional right. *Roe* held that the abortion right is part of a right to privacy that springs from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. See 410 U. S., at 152–153. The *Casey* Court grounded its decision solely on the theory that the right to obtain an abortion is part of the “liberty” protected by the Fourteenth Amendment’s Due Process Clause. Others have suggested that support can be found in the Fourteenth Amendment’s Equal Protection Clause, but that theory is squarely foreclosed by the Court’s precedents, which establish that a State’s regulation of abortion is not a sex-based classification and is thus not subject to the heightened scrutiny that applies to such classifications. See *Geduldig v. Aiello*, 417 U. S. 484, 496, n. 20; *Bray v. Alexandria Women’s Health Clinic*, 506 U. S. 263, 273–274. Rather, regulations and prohibitions of abortion are governed by the same standard of review as other health and safety measures. Pp. 9–11.

(2) Next, the Court examines whether the right to obtain an abortion is rooted in the Nation’s history and tradition and whether it is an essential component of “ordered liberty.” The Court finds that the right to abortion is not deeply rooted in the Nation’s history and tradition. The underlying theory on which *Casey* rested—that the Fourteenth Amendment’s Due Process Clause provides substantive, as well as procedural, protection for “liberty”—has long been controversial.

The Court’s decisions have held that the Due Process Clause protects two categories of substantive rights—those rights guaranteed by the first eight Amendments to the Constitution and those rights deemed fundamental that are not mentioned anywhere in the Constitution. In deciding whether a right falls into either of these categories, the question is whether the right is “deeply rooted in [our] history and tradition” and whether it is essential to this Nation’s “scheme of ordered liberty.” *Timbs v. Indiana*, 586 U. S. __, __ (internal quotation marks omitted). The term “liberty” alone provides little guidance. Thus, historical inquiries are essential whenever the Court is asked to recognize a new component of the “liberty” interest protected by the Due Process Clause. In interpreting what is meant by “liberty,” the Court must guard against the natural human tendency to confuse what the Fourteenth Amendment protects with the Court’s own ardent views about the liberty that Americans should enjoy. For this reason,
the Court has been “reluctant” to recognize rights that are not mentioned in the Constitution. *Collins v. Harker Heights*, 503 U. S. 115, 125.

Guided by the history and tradition that map the essential components of the Nation’s concept of ordered liberty, the Court finds the Fourteenth Amendment clearly does not protect the right to an abortion. Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. No state constitutional provision had recognized such a right. Until a few years before *Roe*, no federal or state court had recognized such a right. Nor had any scholarly treatise. Indeed, abortion had long been a crime in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time the Fourteenth Amendment was adopted, three-quarters of the States had made abortion a crime at any stage of pregnancy. This consensus endured until the day *Roe* was decided. *Roe* either ignored or misstated this history, and *Casey* declined to reconsider *Roe*’s faulty historical analysis.

Respondents’ argument that this history does not matter flies in the face of the standard the Court has applied in determining whether an asserted right that is nowhere mentioned in the Constitution is nevertheless protected by the Fourteenth Amendment. The Solicitor General repeats *Roe*’s claim that it is “doubtful . . . abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus,” 410 U. S., at 136, but the great common-law authorities—Bracton, Coke, Hale, and Blackstone—all wrote that a post-quickening abortion was a crime. Moreover, many authorities asserted that even a pre-quickening abortion was “unlawful” and that, as a result, an abortionist was guilty of murder if the woman died from the attempt. The Solicitor General suggests that history supports an abortion right because of the common law’s failure to criminalize abortion before quickening, but the insistence on quickening was not universal, see *Mills v. Commonwealth*, 13 Pa. 631, 633; *State v. Slagle*, 83 N. C. 630, 632, and regardless, the fact that many States in the late 18th and early 19th century did not criminalize pre-quickening abortions does not mean that anyone thought the States lacked the authority to do so.

Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of *Roe* and *Casey* contend that the abortion right is an integral part of a broader entrenched right. *Roe* termed this a right to privacy, 410 U. S., at 154, and *Casey* described it as the freedom to make “intimate and personal choices” that are “central to personal dignity and autonomy,” 505 U. S., at 851. Ordered
Syllabus

liberty sets limits and defines the boundary between competing interests. *Roe* and *Casey* each struck a particular balance between the interests of a woman who wants an abortion and the interests of what they termed “potential life.” *Roe*, 410 U. S., at 150; *Casey*, 505 U. S., at 852. But the people of the various States may evaluate those interests differently. The Nation’s historical understanding of ordered liberty does not prevent the people’s elected representatives from deciding how abortion should be regulated. Pp. 11–30.

(3) Finally, the Court considers whether a right to obtain an abortion is part of a broader entrenched right that is supported by other precedents. The Court concludes the right to obtain an abortion cannot be justified as a component of such a right. Attempts to justify abortion through appeals to a broader right to autonomy and to define one’s “concept of existence” prove too much. *Casey*, 505 U. S., at 851. Those criteria, at a high level of generality, could license fundamental rights to illicit drug use, prostitution, and the like. What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion is different because it destroys what *Roe* termed “potential life” and what the law challenged in this case calls an “unborn human being.” None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. Accordingly, those cases do not support the right to obtain an abortion, and the Court’s conclusion that the Constitution does not confer such a right does not undermine them in any way. Pp. 30–32.


The Court’s cases have identified factors that should be considered in deciding when a precedent should be overruled. *Janus v. State, County, and Municipal Employees*, 585 U. S. ___, ___. Five factors

(1) The nature of the Court’s error. Like the infamous decision in Plessy v. Ferguson, Roe was also egregiously wrong and on a collision course with the Constitution from the day it was decided. Casey perpetuated its errors, calling both sides of the national controversy to resolve their debate, but in doing so, Casey necessarily declared a winning side. Those on the losing side—those who sought to advance the State’s interest in fetal life—could no longer seek to persuade their elected representatives to adopt policies consistent with their views. The Court short-circuited the democratic process by closing it to the large number of Americans who disagreed with Roe. Pp. 43–45.

(2) The quality of the reasoning. Without any grounding in the constitutional text, history, or precedent, Roe imposed on the entire country a detailed set of rules for pregnancy divided into trimesters much like those that one might expect to find in a statute or regulation. See 410 U. S., at 163–164. Roe’s failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong. Then, after surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee, and did not explain why the sources on which it relied shed light on the meaning of the Constitution. As to precedent, citing a broad array of cases, the Court found support for a constitutional “right of personal privacy.” Id., at 152. But Roe conflated the right to shield information from disclosure and the right to make and implement important personal decisions without governmental interference. See Whalen v. Roe, 429 U. S. 589, 599–600. None of these decisions involved what is distinctive about abortion: its effect on what Roe termed “potential life.” When the Court summarized the basis for the scheme it imposed on the country, it asserted that its rules were “consistent with,” among other things, “the relative weights of the respective interests involved” and “the demands of the profound problems of the present day.” Roe, 410 U. S., at 165. These are precisely the sort of considerations that legislative bodies often take into account when they draw lines that accommodate competing interests. The scheme Roe produced looked like legislation, and the Court provided the sort of explanation that might be expected from a legislative body. An even more glaring deficiency was Roe’s failure to justify the critical distinction it drew between pre- and post-viability abortions. See id., at 163. The arbitrary viability line, which Casey termed Roe’s central rule, has not found much support among philosophers and ethicists who have attempted to justify a right to abortion. The most obvious problem with any such
argument is that viability has changed over time and is heavily dependent on factors—such as medical advances and the availability of quality medical care—that have nothing to do with the characteristics of a fetus.

When Casey revisited Roe almost 20 years later, it reaffirmed Roe’s central holding, but pointedly refrained from endorsing most of its reasoning. The Court abandoned any reliance on a privacy right and instead grounded the abortion right entirely on the Fourteenth Amendment’s Due Process Clause. 505 U. S., at 846. The controlling opinion criticized and rejected Roe’s trimester scheme, 505 U. S., at 872, and substituted a new and obscure “undue burden” test. Casey, in short, either refused to reaffirm or rejected important aspects of Roe’s analysis, failed to remedy glaring deficiencies in Roe’s reasoning, endorsed what it termed Roe’s central holding while suggesting that a majority might not have thought it was correct, provided no new support for the abortion right other than Roe’s status as precedent, and imposed a new test with no firm grounding in constitutional text, history, or precedent. Pp. 45–56.

(3) Workability. Deciding whether a precedent should be overruled depends in part on whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner. Casey’s “undue burden” test has scored poorly on the workability scale. The Casey plurality tried to put meaning into the “undue burden” test by setting out three subsidiary rules, but these rules created their own problems. And the difficulty of applying Casey’s new rules surfaced in that very case. Compare 505 U. S., at 881–887, with id., at 920–922 (Stevens, J., concurring in part and dissenting in part). The experience of the Courts of Appeals provides further evidence that Casey’s “line between” permissible and unconstitutional restrictions “has proved to be impossible to draw with precision.” Janus, 585 U. S., at ___. Casey has generated a long list of Circuit conflicts. Continued adherence to Casey’s unworkable “undue burden” test would undermine, not advance, the “evenhanded, predictable, and consistent development of legal principles.” Payne, 501 U. S., at 827. Pp. 56–62.

(4) Effect on other areas of law. Roe and Casey have led to the distortion of many important but unrelated legal doctrines, and that effect provides further support for overruling those decisions. See Ramos v. Louisiana, 590 U. S. ___, ___ (KAVANAUGH, J., concurring in part). Pp. 62–63.

(5) Reliance interests. Overruling Roe and Casey will not upend concrete reliance interests like those that develop in “cases involving property and contract rights.” Payne, 501 U. S., at 828. In Casey, the controlling opinion conceded that traditional reliance interests were
not implicated because getting an abortion is generally “unplanned activity,” and “reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.” 505 U. S., at 856. Instead, the opinion perceived a more intangible form of reliance, namely, that “people [had] organized intimate relationships and made choices that define their views of themselves and their places in society . . . in reliance on the availability of abortion in the event that contraception should fail” and that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” Ibid. The contending sides in this case make impassioned and conflicting arguments about the effects of the abortion right on the lives of women as well as the status of the fetus. The Casey plurality’s speculative attempt to weigh the relative importance of the interests of the fetus and the mother represent a departure from the “original constitutional proposition” that “courts do not substitute their social and economic beliefs for the judgment of legislative bodies.” Ferguson v. Skrupa, 372 U. S. 726, 729–730.

The Solicitor General suggests that overruling Roe and Casey would threaten the protection of other rights under the Due Process Clause. The Court emphasizes that this decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion. Pp. 63–66.

c Casey identified another concern, namely, the danger that the public will perceive a decision overruling a controversial “watershed” decision, such as Roe, as influenced by political considerations or public opinion. 505 U. S., at 866–867. But the Court cannot allow its decisions to be affected by such extraneous concerns. A precedent of this Court is subject to the usual principles of stare decisis under which adherence to precedent is the norm but not an inexorable command. If the rule were otherwise, erroneous decisions like Plessy would still be the law. The Court’s job is to interpret the law, apply longstanding principles of stare decisis, and decide this case accordingly. Pp. 66–69.

d Under the Court’s precedents, rational-basis review is the appropriate standard to apply when state abortion regulations undergo constitutional challenge. Given that procuring an abortion is not a fundamental constitutional right, it follows that the States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot “substitute their social and economic beliefs for the judgment of legislative bodies.” Ferguson, 372 U. S., at 729–730. That applies even when the laws at issue concern matters of great social significance and moral substance. A law regulating abortion, like other health and welfare laws, is entitled to a
Syllabus

“strong presumption of validity.” *Heller v. Doe*, 509 U. S. 312, 319. It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. *Id.*, at 320.

Mississippi’s Gestational Age Act is supported by the Mississippi Legislature’s specific findings, which include the State’s asserted interest in “protecting the life of the unborn.” §2(b)(i). These legitimate interests provide a rational basis for the Gestational Age Act, and it follows that respondents’ constitutional challenge must fail. Pp. 76–78.

(e) Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. The Court overrules those decisions and returns that authority to the people and their elected representatives. Pp. 78–79.

945 F. 3d 265, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which THOMAS, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. THOMAS, J., and KAVANAUGH, J., filed concurring opinions. ROBERTS, C. J., filed an opinion concurring in the judgment. BREYER, SOTOMAYOR, and KAGAN, JJ., filed a dissenting opinion.
Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 19–1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL., PETITIONERS v. JACKSON WOMEN’S HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 24, 2022]

JUSTICE ALITO delivered the opinion of the Court.

Abortion presents a profound moral issue on which Americans hold sharply conflicting views. Some believe fervently that a human person comes into being at conception and that abortion ends an innocent life. Others feel just as strongly that any regulation of abortion invades a woman’s right to control her own body and prevents women from achieving full equality. Still others in a third group think that abortion should be allowed under some but not all circumstances, and those within this group hold a variety of views about the particular restrictions that should be imposed.

For the first 185 years after the adoption of the Constitution, each State was permitted to address this issue in accordance with the views of its citizens. Then, in 1973, this Court decided Roe v. Wade, 410 U. S. 113. Even though the Constitution makes no mention of abortion, the Court held that it confers a broad right to obtain one. It did not claim that American law or the common law had ever recognized
such a right, and its survey of history ranged from the constitutionally irrelevant (e.g., its discussion of abortion in antiquity) to the plainly incorrect (e.g., its assertion that abortion was probably never a crime under the common law). After cataloging a wealth of other information having no bearing on the meaning of the Constitution, the opinion concluded with a numbered set of rules much like those that might be found in a statute enacted by a legislature.

Under this scheme, each trimester of pregnancy was regulated differently, but the most critical line was drawn at roughly the end of the second trimester, which, at the time, corresponded to the point at which a fetus was thought to achieve “viability,” i.e., the ability to survive outside the womb. Although the Court acknowledged that States had a legitimate interest in protecting “potential life,” it found that this interest could not justify any restriction on pre-viability abortions. The Court did not explain the basis for this line, and even abortion supporters have found it hard to defend Roe’s reasoning. One prominent constitutional scholar wrote that he “would vote for a statute very much like the one the Court end[ed] up drafting” if he were “a legislator,” but his assessment of Roe was memorable and brutal: Roe was “not constitutional law” at all and gave “almost no sense of an obligation to try to be.”

At the time of Roe, 30 States still prohibited abortion at all stages. In the years prior to that decision, about a third of the States had liberalized their laws, but Roe abruptly ended that political process. It imposed the same highly restrictive regime on the entire Nation, and it effectively struck down the abortion laws of every single State. As

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Opinion of the Court

Justice Byron White aptly put it in his dissent, the decision represented the “exercise of raw judicial power,” 410 U. S., at 222, and it sparked a national controversy that has embittered our political culture for a half century. 4

Eventually, in Planned Parenthood of Southeastern Pa. v. Casey, 505 U. S. 833 (1992), the Court revisited Roe, but the Members of the Court split three ways. Two Justices expressed no desire to change Roe in any way.5 Four others wanted to overrule the decision in its entirety.6 And the three remaining Justices, who jointly signed the controlling opinion, took a third position.7 Their opinion did not endorse Roe’s reasoning, and it even hinted that one or more of its authors might have “reservations” about whether the Constitution protects a right to abortion.8 But the opinion concluded that stare decisis, which calls for prior decisions to be followed in most instances, required adherence to what it called Roe’s “central holding”—that a State may not constitutionally protect fetal life before “viability”—even if that holding was wrong.9 Anything less, the opinion claimed, would undermine respect for this Court and the rule of law.

Paradoxically, the judgment in Casey did a fair amount of overruling. Several important abortion decisions were

4 See R. Ginsburg, Speaking in a Judicial Voice, 67 N. Y. U. L. Rev. 1185, 1208 (1992) (“Roe . . . halted a political process that was moving in a reform direction and thereby, I believed, prolonged divisiveness and deferred stable settlement of the issue”).
5 See 505 U. S., at 911 (Stevens, J., concurring in part and dissenting in part); id., at 922 (Blackmun, J., concurring in part, concurring in judgment in part, and dissenting in part).
6 See id., at 944 (Rehnquist, C. J., concurring in judgment in part and dissenting in part); id., at 979 (Scalia, J., concurring in judgment in part and dissenting in part).
7 See id., at 843 (joint opinion of O’Connor, Kennedy, and Souter, JJ.).
8 Id., at 853.
9 Id., at 860.
overruled in toto, and Roe itself was overruled in part.\textsuperscript{10} Casey threw out Roe’s trimester scheme and substituted a new rule of uncertain origin under which States were forbidden to adopt any regulation that imposed an “undue burden” on a woman’s right to have an abortion.\textsuperscript{11} The decision provided no clear guidance about the difference between a “due” and an “undue” burden. But the three Justices who authored the controlling opinion “call[ed] the contending sides of a national controversy to end their national division” by treating the Court’s decision as the final settlement of the question of the constitutional right to abortion.\textsuperscript{12}

As has become increasingly apparent in the intervening years, Casey did not achieve that goal. Americans continue to hold passionate and widely divergent views on abortion, and state legislatures have acted accordingly. Some have recently enacted laws allowing abortion, with few restrictions, at all stages of pregnancy. Others have tightly restricted abortion beginning well before viability. And in this case, 26 States have expressly asked this Court to overrule Roe and Casey and allow the States to regulate or prohibit pre-viability abortions.

Before us now is one such state law. The State of Mississippi asks us to uphold the constitutionality of a law that generally prohibits an abortion after the 15th week of pregnancy—several weeks before the point at which a fetus is now regarded as “viable” outside the womb. In defending this law, the State’s primary argument is that we should reconsider and overrule Roe and Casey and once again allow each State to regulate abortion as its citizens wish. On the other side, respondents and the Solicitor General ask us to


\textsuperscript{11} 505 U. S., at 874.

\textsuperscript{12} Id., at 867.
reaffirm Roe and Casey, and they contend that the Mississippi law cannot stand if we do so. Allowing Mississippi to prohibit abortions after 15 weeks of pregnancy, they argue, “would be no different than overruling Casey and Roe entirely.” Brief for Respondents 43. They contend that “no half-measures” are available and that we must either reaffirm or overrule Roe and Casey. Brief for Respondents 50.

We hold that Roe and Casey must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of Roe and Casey now chiefly rely—the Due Process Clause of the Fourteenth Amendment. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” Washington v. Glucksberg, 521 U. S. 702, 721 (1997) (internal quotation marks omitted).

The right to abortion does not fall within this category. Until the latter part of the 20th century, such a right was entirely unknown in American law. Indeed, when the Fourteenth Amendment was adopted, three quarters of the States made abortion a crime at all stages of pregnancy. The abortion right is also critically different from any other right that this Court has held to fall within the Fourteenth Amendment’s protection of “liberty.” Roe’s defenders characterize the abortion right as similar to the rights recognized in past decisions involving matters such as intimate sexual relations, contraception, and marriage, but abortion is fundamentally different, as both Roe and Casey acknowledged, because it destroys what those decisions called “fetal life” and what the law now before us describes as an “unborn human being.”

Stare decisis, the doctrine on which Casey’s controlling

opinion was based, does not compel unending adherence to 
Roe's abuse of judicial authority. Roe was egregiously 
wrong from the start. Its reasoning was exceptionally 
weak, and the decision has had damaging consequences. 
And far from bringing about a national settlement of the 
abortion issue, Roe and Casey have enflamed debate and 
deepened division.

It is time to heed the Constitution and return the issue of 
abortion to the people's elected representatives. “The per-
missibility of abortion, and the limitations, upon it, are to 
be resolved like most important questions in our democ-

ty of the Court

I

The law at issue in this case, Mississippi’s Gestational
Age Act, see Miss. Code Ann. §41–41–191 (2018), contains
this central provision: “Except in a medical emergency or in
the case of a severe fetal abnormality, a person shall not
intentionally or knowingly perform . . . or induce an abor-
tion of an unborn human being if the probable gestational
age of the unborn human being has been determined to be
greater than fifteen (15) weeks.” §4(b).¹⁴

To support this Act, the legislature made a series of fac-
tual findings. It began by noting that, at the time of enact-
ment, only six countries besides the United States “per-
mit[ted] nontherapeutic or elective abortion-on-demand
after the twentieth week of gestation.”¹⁵ §2(a). The legisla-

¹⁴The Act defines “gestational age” to be “the age of an unborn human
being as calculated from the first day of the last menstrual period of the
pregnant woman.” §3(f).

¹⁵Those other six countries were Canada, China, the Netherlands,
tute then found that at 5 or 6 weeks’ gestational age an “unborn human being’s heart begins beating”; at 8 weeks the “unborn human being begins to move about in the womb”; at 9 weeks “all basic physiological functions are present”; at 10 weeks “vital organs begin to function,” and “[h]air, fingernails, and toenails . . . begin to form”; at 11 weeks “an unborn human being’s diaphragm is developing,” and he or she may “move about freely in the womb”; and at 12 weeks the “unborn human being” has “taken on ‘the human form’ in all relevant respects.” §2(b)(i) (quoting Gonzales v. Carhart, 550 U. S. 124, 160 (2007)). It found that most abortions after 15 weeks employ “dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child,” and it concluded that the “intentional commitment of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession.” §2(b)(i)(8).

Respondents are an abortion clinic, Jackson Women’s Health Organization, and one of its doctors. On the day the Gestational Age Act was enacted, respondents filed suit in Federal District Court against various Mississippi officials, alleging that the Act violated this Court’s precedents establishing a constitutional right to abortion. The District

Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act, reasoning that “viability marks the earliest point at which the State’s interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions” and that 15 weeks’ gestational age is “prior to viability.” Jackson Women’s Health Org. v. Currier, 349 F. Supp. 3d 536, 539–540 (SD Miss. 2019) (internal quotation marks omitted). The Fifth Circuit affirmed. 945 F. 3d 265 (2019).

We granted certiorari, 593 U. S. ___ (2021), to resolve the question whether “all pre-viability prohibitions on elective abortions are unconstitutional,” Pet. for Cert. i. Petitioners’ primary defense of the Mississippi Gestational Age Act is that Roe and Casey were wrongly decided and that “the Act is constitutional because it satisfies rational-basis review.” Brief for Petitioners 49. Respondents answer that allowing Mississippi to ban pre-viability abortions “would be no different than overruling Casey and Roe entirely.” Brief for Respondents 43. They tell us that “no half-measures” are available: We must either reaffirm or overrule Roe and Casey. Brief for Respondents 50.

II

We begin by considering the critical question whether the Constitution, properly understood, confers a right to obtain an abortion. Skipping over that question, the controlling opinion in Casey reaffirmed Roe’s “central holding” based solely on the doctrine of stare decisis, but as we will explain, proper application of stare decisis required an assessment of the strength of the grounds on which Roe was based. See infra, at 45–56.

We therefore turn to the question that the Casey plurality did not consider, and we address that question in three steps. First, we explain the standard that our cases have used in determining whether the Fourteenth Amendment’s reference to “liberty” protects a particular right. Second,
we examine whether the right at issue in this case is rooted in our Nation's history and tradition and whether it is an essential component of what we have described as “ordered liberty.” Finally, we consider whether a right to obtain an abortion is part of a broader entrenched right that is supported by other precedents.

A

Constitutional analysis must begin with “the language of the instrument,” *Gibbons v. Ogden*, 9 Wheat. 1, 186–189 (1824), which offers a “fixed standard” for ascertaining what our founding document means, 1 J. Story, Commentaries on the Constitution of the United States §399, p. 383 (1833). The Constitution makes no express reference to a right to obtain an abortion, and therefore those who claim that the right is somehow implicit in the constitutional text.

*Roe*, however, was remarkably loose in its treatment of the constitutional text. It held that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned. See 410 U. S., at 152–153. And that privacy right, *Roe* observed, had been found to spring from no fewer than five different constitutional provisions—the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. *Id.*, at 152.

The Court’s discussion left open at least three ways in which some combination of these provisions could protect the abortion right. One possibility was that the right was “founded . . . in the Ninth Amendment’s reservation of rights to the people.” *Id.*, at 153. Another was that the right was rooted in the First, Fourth, or Fifth Amendment, or in some combination of those provisions, and that this right had been “incorporated” into the Due Process Clause of the Fourteenth Amendment just as many other Bill of Rights provisions had by then been incorporated. *Ibid*; see
also *McDonald v. Chicago*, 561 U. S. 742, 763–766 (2010) (majority opinion) (discussing incorporation). And a third path was that the First, Fourth, and Fifth Amendments played no role and that the right was simply a component of the “liberty” protected by the Fourteenth Amendment’s Due Process Clause. *Roe*, 410 U. S., at 153. *Roe* expressed the “feel[ing]” that the Fourteenth Amendment was the provision that did the work, but its message seemed to be that the abortion right could be found somewhere in the Constitution and that specifying its exact location was not of paramount importance.16 The *Casey* Court did not defend this unfocused analysis and instead grounded its decision solely on the theory that the right to obtain an abortion is part of the “liberty” protected by the Fourteenth Amendment’s Due Process Clause.

We discuss this theory in depth below, but before doing so, we briefly address one additional constitutional provision that some of respondents’ *amici* have now offered as yet another potential home for the abortion right: the Fourteenth Amendment’s Equal Protection Clause. See Brief for United States as Amicus Curiae 24 (Brief for United States); see also Brief for Equal Protection Constitutional Law Scholars as Amici Curiae. Neither *Roe* nor *Casey* saw fit to invoke this theory, and it is squarely foreclosed by our precedents, which establish that a State’s regulation of abortion is not a sex-based classification and is thus not subject to the “heightened scrutiny” that applies to such classifications.17 The regulation of a medical procedure that

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16 The Court’s words were as follows: “This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” 410 U. S., at 153.

only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a “mere pretext designed to effect an invidious discrimination against members of one sex or the other.” *Geduldig v. Aiello*, 417 U. S. 484, 496, n. 20 (1974). And as the Court has stated, the “goal of preventing abortion” does not constitute “invidiously discriminatory animus” against women. *Bray v. Alexandria Women’s Health Clinic*, 506 U. S. 263, 273–274 (1993) (internal quotation marks omitted). Accordingly, laws regulating or prohibiting abortion are not subject to heightened scrutiny. Rather, they are governed by the same standard of review as other health and safety measures. 18

With this new theory addressed, we turn to *Casey’s* bold assertion that the abortion right is an aspect of the “liberty” protected by the Due Process Clause of the Fourteenth Amendment. 505 U. S., at 846; Brief for Respondents 17; Brief for United States 21–22.

2

The underlying theory on which this argument rests—that the Fourteenth Amendment’s Due Process Clause provides substantive, as well as procedural, protection for “liberty”—has long been controversial. But our decisions have held that the Due Process Clause protects two categories of substantive rights.

The first consists of rights guaranteed by the first eight Amendments. Those Amendments originally applied only to the Federal Government, *Barron ex rel. Tiernan v. Mayor of Baltimore*, 7 Pet. 243, 247–251 (1833) (opinion for the Court by Marshall, C. J.), but this Court has held that the Due Process Clause of the Fourteenth Amendment “incorporates” the great majority of those rights and thus makes them equally applicable to the States. See *McDonald*, 561

18 We discuss this standard in Part VI of this opinion.
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U. S., at 763–767, and nn. 12–13. The second category—which is the one in question here—comprises a select list of fundamental rights that are not mentioned anywhere in the Constitution.

In deciding whether a right falls into either of these categories, the Court has long asked whether the right is “deeply rooted in [our] history and tradition” and whether it is essential to our Nation’s “scheme of ordered liberty.” *Timbs v. Indiana*, 586 U. S. __, ___ (2019) (slip op., at 3) (internal quotation marks omitted); *McDonald*, 561 U. S., at 764, 767 (internal quotation marks omitted); *Glucksberg*, 521 U. S., at 721 (internal quotation marks omitted). And in conducting this inquiry, we have engaged in a careful analysis of the history of the right at issue.

Justice Ginsburg’s opinion for the Court in *Timbs* is a recent example. In concluding that the Eighth Amendment’s protection against excessive fines is “fundamental to our scheme of ordered liberty” and “deeply rooted in this Nation’s history and tradition,” 586 U. S., at ___ (slip op., at 7) (internal quotation marks omitted), her opinion traced the right back to Magna Carta, Blackstone’s Commentaries, and 35 of the 37 state constitutions in effect at the ratification of the Fourteenth Amendment. 586 U. S., at ___–___ (slip op., at 3–7).

A similar inquiry was undertaken in *McDonald*, which held that the Fourteenth Amendment protects the right to keep and bear arms. The lead opinion surveyed the origins of the Second Amendment, the debates in Congress about

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19See also, *e.g.*, *Duncan v. Louisiana*, 391 U. S. 145, 148 (1968) (asking whether “a right is among those ‘fundamental principles of liberty and justice which lie at the base of our civil and political institutions’”); *Palko v. Connecticut*, 302 U. S. 319, 325 (1937) (requiring “a ‘principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental’” (quoting *Snyder v. Massachusetts*, 291 U. S. 97, 105 (1934))).
the adoption of the Fourteenth Amendment, the state constitutions in effect when that Amendment was ratified (at least 22 of the 37 States protected the right to keep and bear arms), federal laws enacted during the same period, and other relevant historical evidence. 561 U. S., at 767–777. Only then did the opinion conclude that “the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.” Id., at 778; see also id., at 822–850 (THOMAS, J., concurring in part and concurring in judgment) (surveying history and reaching the same result under the Fourteenth Amendment’s Privileges or Immunities Clause).

Timbs and McDonald concerned the question whether the Fourteenth Amendment protects rights that are expressly set out in the Bill of Rights, and it would be anomalous if similar historical support were not required when a putative right is not mentioned anywhere in the Constitution. Thus, in Glucksberg, which held that the Due Process Clause does not confer a right to assisted suicide, the Court surveyed more than 700 years of “Anglo-American common law tradition,” 521 U. S., at 711, and made clear that a fundamental right must be “objectively, deeply rooted in this Nation’s history and tradition,” id., at 720–721.

Historical inquiries of this nature are essential whenever we are asked to recognize a new component of the “liberty” protected by the Due Process Clause because the term “liberty” alone provides little guidance. “Liberty” is a capacious term. As Lincoln once said: “We all declare for Liberty; but in using the same word we do not all mean the same thing.”20 In a well-known essay, Isaiah Berlin reported that “[h]istorians of ideas” had cataloged more than

200 different senses in which the term had been used.\textsuperscript{21}

In interpreting what is meant by the Fourteenth Amendment’s reference to “liberty,” we must guard against the natural human tendency to confuse what that Amendment protects with our own ardent views about the liberty that Americans should enjoy. That is why the Court has long been “reluctant” to recognize rights that are not mentioned in the Constitution. \textit{Collins v. Harker Heights}, 503 U. S. 115, 125 (1992). “Substantive due process has at times been a treacherous field for this Court,” \textit{Moore v. East Cleveland}, 431 U. S. 494, 503 (1977) (plurality opinion), and it has sometimes led the Court to usurp authority that the Constitution entrusts to the people’s elected representatives. See \textit{Regents of Univ. of Mich. v. Ewing}, 474 U. S. 214, 225–226 (1985). As the Court cautioned in \textit{Glucksberg}, “[w]e must . . . exercise the utmost care whenever we are asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court.” 521 U. S., at 720 (internal quotation marks and citation omitted).

On occasion, when the Court has ignored the “[a]ppropriate limits” imposed by “‘respect for the teachings of history,’” \textit{Moore}, 431 U. S., at 503 (plurality opinion), it has fallen into the freewheeling judicial policymaking that characterized discredited decisions such as \textit{Lochner v. New York}, 198 U. S. 45 (1905). The Court must not fall prey to such an unprincipled approach. Instead, guided by the history and tradition that map the essential components of our Nation’s concept of ordered liberty, we must ask what the \textit{Fourteenth Amendment} means by the term “liberty.” When we engage in that inquiry in the present case, the clear answer is that the Fourteenth Amendment does not protect

\textsuperscript{21} Four Essays on Liberty 121 (1969).
Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. No state constitutional provision had recognized such a right. Until a few years before Roe was handed down, no federal or state court had recognized such a right. Nor had any scholarly treatise of which we are aware. And although law review articles are not reticent about advocating new rights, the earliest article proposing a constitutional right to abortion that has come to our attention was published only a few years before Roe.

22 That is true regardless of whether we look to the Amendment’s Due Process Clause or its Privileges or Immunities Clause. Some scholars and Justices have maintained that the Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights. See, e.g., McDonald v. Chicago, 561 U. S. 742, 813–850 (2010) (THOMAS, J., concurring in part and concurring in judgment); Duncan, 391 U. S., at 165–166 (Black, J., concurring); A. Amar, Bill of Rights: Creation and Reconstruction 163–180 (1998) (Amar); J. Ely, Democracy and Distrust 22–30 (1980); 2 W. Crosskey, Politics and the Constitution in the History of the United States 1089–1095 (1953). But even on that view, such a right would need to be rooted in the Nation’s history and tradition. See Corfield v. Coryell, 6 F. Cas. 546, 551–552 (No. 3,230) (CC ED Pa. 1823) (describing unenumerated rights under the Privileges and Immunities Clause, Art. IV, §2, as those “fundamental” rights “which have, at all times, been enjoyed by the citizens of the several states”); Amar 176 (relying on Corfield to interpret the Privileges or Immunities Clause); cf. McDonald, 561 U. S., at 819–820, 832, 854 (opinion of THOMAS, J.) (reserving the question whether the Privileges or Immunities Clause protects “any rights besides those enumerated in the Constitution”).

23 See R. Lucas, Federal Constitutional Limitations on the Enforcement and Administration of State Abortion Statutes, 46 N. C. L. Rev. 730 (1968) (Lucas); see also D. Garrow, Liberty and Sexuality 334–335 (1994) (Garrow) (stating that Lucas was “undeniably the first person to fully
Not only was there no support for such a constitutional right until shortly before Roe, but abortion had long been a crime in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time of the adoption of the Fourteenth Amendment, three-quarters of the States had made abortion a crime at any stage of pregnancy, and the remaining States would soon follow.

Roe either ignored or misstated this history, and Casey declined to reconsider Roe’s faulty historical analysis. It is therefore important to set the record straight.

We begin with the common law, under which abortion was a crime at least after “quickening”—i.e., the first felt movement of the fetus in the womb, which usually occurs between the 16th and 18th week of pregnancy.24

articulate on paper” the argument that “a woman’s right to choose abortion was a fundamental individual freedom protected by the U. S. Constitution’s guarantee of personal liberty”).

24 The exact meaning of “quickening” is subject to some debate. Compare Brief for Scholars of Jurisprudence as Amici Curiae 12–14, and n. 32 (emphasis deleted) (“a quick child” meant simply a “live” child, and under the era’s outdated knowledge of embryology, a fetus was thought to become “quick” at around the sixth week of pregnancy), with Brief for American Historical Association et al. as Amici Curiae 6, n. 2 (“quick” and “quickening” consistently meant “the woman’s perception of fetal movement”). We need not wade into this debate. First, it suffices for present purposes to show that abortion was criminal by at least the 16th or 18th week of pregnancy. Second, as we will show, during the relevant period—i.e., the period surrounding the enactment of the Fourteenth Amendment—the quickening distinction was abandoned as States criminalized abortion at all stages of pregnancy. See infra, at 21–
The “eminent common-law authorities (Blackstone, Coke, Hale, and the like),” *Kahler v. Kansas*, 589 U. S. ___, ___ (2020) (slip op., at 7), all describe abortion after quickening as criminal. Henry de Bracton’s 13th-century treatise explained that if a person has “struck a pregnant woman, or has given her poison, whereby he has caused abortion, if the foetus be already formed and animated, and particularly if it be animated, he commits homicide.” 2 De Legibus et Consuetudinibus Angliae 279 (T. Twiss ed. 1879); see also 1 Fleta, c. 23, reprinted in 72 Selden Soc. 60–61 (H. Richardson & G. Sayles eds. 1955) (13th-century treatise).25

Sir Edward Coke’s 17th-century treatise likewise asserted that abortion of a quick child was “murder” if the “childe be born alive” and a “great misprision” if the “childe dieth in her body.” 3 Institutes of the Laws of England 50–51 (1644). (“Misprision” referred to “some heynous offence under the degree of felony.” *Id.*, at 139.) Two treatises by Sir Matthew Hale likewise described abortion of a quick child who died in the womb as a “great crime” and a “great misprision.” Pleas of the Crown 53 (P. Glazebrook ed. 1972); 1 History of the Pleas of the Crown 433 (1736) (Hale). And writing near the time of the adoption of our Constitution, William Blackstone explained that abortion of a “quick” child was “by the ancient law homicide or manslaughter” (citing Bracton), and at least a very “heinous misdemeanor” (citing Coke). 1 Commentaries on the Laws of England 129–130 (7th ed. 1775) (Blackstone).

English cases dating all the way back to the 13th century corroborate the treatises’ statements that abortion was a crime. See generally J. Dellapenna, Dispelling the Myths

25 Even before Bracton’s time, English law imposed punishment for the killing of a fetus. See Leges Henrici Primi 222–223 (L. Downer ed. 1972) (imposing penalty for any abortion and treating a woman who aborted a “quick” child “as if she were a murderess”).
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of Abortion History 126, and n. 16, 134–142, 188–194, and nn. 84–86 (2006) (Dellapenna); J. Keown, Abortion, Doctors and the Law 3–12 (1988) (Keown). In 1732, for example, Eleanor Beare was convicted of “destroying the Foetus in the Womb” of another woman and “thereby causing her to miscarry.”

For that crime and another “misdemeanor,” Beare was sentenced to two days in the pillory and three years’ imprisonment.

Although a pre-quickening abortion was not itself considered homicide, it does not follow that abortion was permissible at common law—much less that abortion was a legal right. Cf. Glucksberg, 521 U. S., at 713 (removal of “common law’s harsh sanctions did not represent an acceptance of suicide”). Quite to the contrary, in the 1732 case mentioned above, the judge said of the charge of abortion (with no mention of quickening) that he had “never met with a case so barbarous and unnatural.”

Similarly, an indictment from 1602, which did not distinguish between a pre-quickening and post-quickening abortion, described abortion as “pernicious” and “against the peace of our Lady the Queen, her crown and dignity.” Keown 7 (discussing R. v. Webb, Calendar of Assize Records, Surrey Indictments 512 (1980)).

That the common law did not condone even pre-quickening abortions is confirmed by what one might call a proto-felony-murder rule. Hale and Blackstone explained a way in which a pre-quickening abortion could rise to the level of a homicide. Hale wrote that if a physician gave a woman “with child” a “potion” to cause an abortion, and the woman died, it was “murder” because the potion was given “unlawfully to destroy her child within her.” 1 Hale 429–430 (emphasis added). As Blackstone explained, to be

27 Id., at 932.
28 Ibid.
“murder” a killing had to be done with “malice aforethought, . . . either express or implied.” 4 Blackstone 198 (emphasis deleted). In the case of an abortionist, Blackstone wrote, “the law will imply [malice]” for the same reason that it would imply malice if a person who intended to kill one person accidentally killed a different person:

“[I]f one shoots at A and misses him, but kills B, this is murder; because of the previous felonious intent, which the law transfers from one to the other. The same is the case, where one lays poison for A; and B, against whom the prisoner had no malicious intent, takes it, and it kills him; this is likewise murder. So also, if one gives a woman with child a medicine to procure abortion, and it operates so violently as to kill the woman, this is murder in the person who gave it.” Id., at 200–201 (emphasis added; footnote omitted).29

Notably, Blackstone, like Hale, did not state that this proto-felony-murder rule required that the woman be “with quick child”—only that she be “with child.” Id., at 201. And it is revealing that Hale and Blackstone treated abortionists differently from other physicians or surgeons who caused the death of a patient “without any intent of doing [the patient] any bodily hurt.” Hale 429; see 4 Blackstone 197. These other physicians—even if “unlicensed”—would not be “guilty of murder or manslaughter.” Hale 429. But a physician performing an abortion would, precisely because his aim was an “unlawful” one.

In sum, although common-law authorities differed on the severity of punishment for abortions committed at different

29 Other treatises restated the same rule. See 1 W. Russell & C. Greaves, Crimes and Misdemeanors 540 (5th ed. 1845) (“So where a person gave medicine to a woman to procure an abortion, and where a person put skewers into the woman for the same purpose, by which in both cases the women were killed, these acts were clearly held to be murder” (footnotes omitted)); 1 E. East, Pleas of the Crown 230 (1803) (similar).
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points in pregnancy, none endorsed the practice. Moreover, we are aware of no common-law case or authority, and the parties have not pointed to any, that remotely suggests a positive right to procure an abortion at any stage of pregnancy.

b

In this country, the historical record is similar. The “most important early American edition of Blackstone’s Commentaries,” District of Columbia v. Heller, 554 U. S. 570, 594 (2008), reported Blackstone’s statement that abortion of a quick child was at least “a heinous misdemeanor,” 2 St. George Tucker, Blackstone’s Commentaries 129–130 (1803), and that edition also included Blackstone’s discussion of the proto-felony-murder rule, 5 id., at 200–201. Manuals for justices of the peace printed in the Colonies in the 18th century typically restated the common-law rule on abortion, and some manuals repeated Hale’s and Blackstone’s statements that anyone who prescribed medication “unlawfully to destroy the child” would be guilty of murder if the woman died. See, e.g., J. Parker, Conductor Generalis 220 (1788); 2 R. Burn, Justice of the Peace, and Parish Officer 221–222 (7th ed. 1762) (English manual stating the same).30

30 For manuals restating one or both rules, see J. Davis, Criminal Law 96, 102–103, 339 (1838); Conductor Generalis 194–195 (1801) (printed in Philadelphia); Conductor Generalis 194–195 (1794) (printed in Albany); Conductor Generalis 220 (1788) (printed in New York); Conductor Generalis 198 (1749) (printed in New York); G. Webb, Office and Authority of a Justice of Peace 232 (1736) (printed in Williamsburg); Conductor Generalis 161 (1722) (printed in Philadelphia); see also J. Conley, Doing It by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America, 6 J. Legal Hist. 257, 265, 267 (1985) (noting that these manuals were the justices’ “primary source of legal reference” and of “practical value for a wider audience than the justices”).

For cases stating the proto-felony-murder rule, see, e.g., Commonwealth v. Parker, 50 Mass. 263, 265 (1845); People v. Sessions, 58 Mich.
The few cases available from the early colonial period corroborate that abortion was a crime. See generally Dellapenna 215–228 (collecting cases). In Maryland in 1652, for example, an indictment charged that a man “Murderously endeavoured to destroy or Murther the Child by him begotten in the Womb.” Proprietary v. Mitchell, 10 Md. Archives 80, 183 (1652) (W. Browne ed. 1891). And by the 19th century, courts frequently explained that the common law made abortion of a quick child a crime. See, e.g., Smith v. Gaffard, 31 Ala. 45, 51 (1857); Smith v. State, 33 Me. 48, 55 (1851); State v. Cooper, 22 N. J. L. 52, 52–55 (1849); Commonwealth v. Parker, 50 Mass. 263, 264–268 (1845).

c

The original ground for drawing a distinction between pre- and post-quickening abortions is not entirely clear, but some have attributed the rule to the difficulty of proving that a pre-quickening fetus was alive. At that time, there were no scientific methods for detecting pregnancy in its early stages, and thus, as one court put it in 1872: “[U]ntil the period of quickening there is no evidence of life; and whatever may be said of the foetus, the law has fixed upon this period of gestation as the time when the child is endowed with life” because “foetal movements are the first clearly marked and well defined evidences of life.” Evans v. People, 49 N. Y. 86, 90 (emphasis added); Cooper, 22 N. J. L., at 56 (“In contemplation of law life commences at the moment of quickening, at that moment when the embryo gives the first physical proof of life, no matter when it first received it” (emphasis added)).

See E. Rigby, A System of Midwifery 73 (1841) (“Under all circumstances, the diagnosis of pregnancy must ever be difficult and obscure during the early months”); see also id., at 74–80 (discussing rudimentary techniques for detecting early pregnancy); A. Taylor, A Manual of Medical Jurisprudence 418–421 (6th Am. ed. 1866) (same).
The Solicitor General offers a different explanation of the basis for the quickening rule, namely, that before quickening the common law did not regard a fetus “as having a ‘separate and independent existence.’” Brief for United States 26 (quoting *Parker*, 50 Mass., at 266). But the case on which the Solicitor General relies for this proposition also suggested that the criminal law’s quickening rule was out of step with the treatment of prenatal life in other areas of law, noting that “to many purposes, in reference to civil rights, an infant in ventre sa mere is regarded as a person in being.” *Ibid.* (citing 1 Blackstone 129); see also *Evans*, 49 N. Y., at 89; *Mills v. Commonwealth*, 13 Pa. 631, 633 (1850); *Morrow v. Scott*, 7 Ga. 535, 537 (1849); *Hall v. Hancock*, 32 Mass. 255, 258 (1834); *Thellusson v. Woodford*, 4 Ves. 227, 321–322, 31 Eng. Rep. 117, 163 (1789).

At any rate, the original ground for the quickening rule is of little importance for present purposes because the rule was abandoned in the 19th century. During that period, treatise writers and commentators criticized the quickening distinction as “neither in accordance with the result of medical experience, nor with the principles of the common law.” F. Wharton, Criminal Law §1220, p. 606 (rev. 4th ed. 1857) (footnotes omitted); see also J. Beck, Researches in Medicine and Medical Jurisprudence 26–28 (2d ed. 1835) (describing the quickening distinction as “absurd” and “injurious”). In 1803, the British Parliament made abortion

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32 See *Mitchell v. Commonwealth*, 78 Ky. 204, 209–210 (1879) (acknowledging the common-law rule but arguing that “the law should punish abortions and miscarriages, willfully produced, at any time during the period of gestation”); *Mills v. Commonwealth*, 13 Pa., 631, 633 (1850) (the quickening rule “never ought to have been the law anywhere”); J. Bishop, Commentaries on the Law of Statutory Crimes §744, p. 471 (1873) (“If we look at the reason of the law, we shall prefer” a rule that “discard[s] this doctrine of the necessity of a quickening”); I. Dana, Report of the Committee on the Production of Abortion, in 5 Transactions
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a crime at all stages of pregnancy and authorized the imposition of severe punishment. See Lord Ellenborough’s Act, 43 Geo. 3, c. 58 (1803). One scholar has suggested that Parliament’s decision “may partly have been attributable to the medical man’s concern that fetal life should be protected by the law at all stages of gestation.” Keown 22.

In this country during the 19th century, the vast majority of the States enacted statutes criminalizing abortion at all stages of pregnancy. See Appendix A, infra (listing state statutory provisions in chronological order).\(^3\) By 1868, the year when the Fourteenth Amendment was ratified, three-quarters of the States, 28 out of 37, had enacted statutes making abortion a crime even if it was performed before quickening.\(^3\) See ibid. Of the nine States that had not yet


\(^3\)Some scholars assert that only 27 States prohibited abortion at all stages. See, e.g., Dellapenna 315; Witherspoon 34–35, and n. 15. Those scholars appear to have overlooked Rhode Island, which criminalized abortion at all stages in 1861. See Acts and Resolves R. I. 1861, ch. 371, §1, p. 133 (criminalizing the attempt to “procure the miscarriage” of “any pregnant woman” or “any woman supposed by such person to be pregnant,” without mention of quickening). The amicus brief for the American Historical Association asserts that only 26 States prohibited abortion at all stages, but that brief incorrectly excludes West Virginia and Nebraska from its count. Compare Brief for American Historical Association 27–28 (citing Quay), with Appendix A, infra.
criminalized abortion at all stages, all but one did so by 1910. See ibid.

The trend in the Territories that would become the last 13 States was similar: All of them criminalized abortion at all stages of pregnancy between 1850 (the Kingdom of Hawaii) and 1919 (New Mexico). See Appendix B, infra; see also Casey, 505 U. S., at 952 (Rehnquist, C. J., concurring in judgment in part and dissenting in part); Dellapenna 317–319. By the end of the 1950s, according to the Roe Court’s own count, statutes in all but four States and the District of Columbia prohibited abortion “however and whenever performed, unless done to save or preserve the life of the mother.” 410 U. S., at 139.35

This overwhelming consensus endured until the day Roe was decided. At that time, also by the Roe Court’s own count, a substantial majority—30 States—still prohibited abortion at all stages except to save the life of the mother. See id., at 118, and n. 2 (listing States). And though Roe discerned a “trend toward liberalization” in about “one-third of the States,” those States still criminalized some abortions and regulated them more stringently than Roe would allow. Id., at 140, and n. 37; Tribe 2. In short, the

35 The statutes of three States (Massachusetts, New Jersey, and Pennsylvania) prohibited abortions performed “unlawfully” or “without lawful justification.” Roe, 410 U. S., at 139 (internal quotation marks omitted). In Massachusetts, case law held that abortion was allowed when, according to the judgment of physicians in the relevant community, the procedure was necessary to preserve the woman’s life or her physical or emotional health. Commonwealth v. Wheeler, 315 Mass. 394, 395, 53 N. E. 2d 4, 5 (1944). In the other two States, however, there is no clear support in case law for the proposition that abortion was lawful where the mother’s life was not at risk. See State v. Brandenberg, 137 N. J. L. 124, 58 A. 2d 709 (1948); Commonwealth v. Trombetta, 131 Pa. Super. 487, 200 A. 107 (1938).

Statutes in the two remaining jurisdictions (the District of Columbia and Alabama) permitted “abortion to preserve the mother’s health.” Roe, 410 U. S., at 139. Case law in those jurisdictions does not clarify the breadth of these exceptions.
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“Court’s opinion in Roe itself convincingly refutes the notion that the abortion liberty is deeply rooted in the history or tradition of our people.” Thornburgh v. American College of Obstetricians and Gynecologists, 476 U. S. 747, 793 (1986) (White, J., dissenting).

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The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation’s history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973. The Court in Roe could have said of abortion exactly what Glucksberg said of assisted suicide: “Attitudes toward [abortion] have changed since Bracton, but our laws have consistently condemned, and continue to prohibit, [that practice].” 521 U. S., at 719.

Respondents and their amici have no persuasive answer to this historical evidence.

Neither respondents nor the Solicitor General disputes the fact that by 1868 the vast majority of States criminalized abortion at all stages of pregnancy. See Brief for Petitioners 12–13; see also Brief for American Historical Association et al. as Amici Curiae 27–28, and nn. 14–15 (conceding that 26 out of 37 States prohibited abortion before quickening); Tr. of Oral Arg. 74–75 (respondents’ counsel conceding the same). Instead, respondents are forced to argue that it “does [not] matter that some States prohibited abortion at the time Roe was decided or when the Fourteenth Amendment was adopted.” Brief for Respondents 21. But that argument flies in the face of the standard we have applied in determining whether an asserted right that is nowhere mentioned in the Constitution is nevertheless protected by the Fourteenth Amendment.

Not only are respondents and their amici unable to show
that a constitutional right to abortion was established when the Fourteenth Amendment was adopted, but they have found no support for the existence of an abortion right that predates the latter part of the 20th century—no state constitutional provision, no statute, no judicial decision, no learned treatise. The earliest sources called to our attention are a few district court and state court decisions decided shortly before Roe and a small number of law review articles from the same time period.36

A few of respondents’ amici muster historical arguments, but they are very weak. The Solicitor General repeats Roe’s claim that it is “‘doubtful’ . . . ‘abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus.’” Brief for United States 26 (quoting Roe, 410 U. S., at 136). But as we have seen, great common-law authorities like Bracton, Coke, Hale, and Blackstone all wrote that a post-quickening abortion was a crime—and a serious one at that. Moreover, Hale and Blackstone (and many other authorities following them) asserted that even a pre-quickening abortion was “unlawful” and that, as a result, an abortionist was guilty of murder if the woman died from the attempt.

Instead of following these authorities, Roe relied largely on two articles by a pro-abortion advocate who claimed that Coke had intentionally misstated the common law because of his strong anti-abortion views.37 These articles have


been discredited, and it has come to light that even members of Jane Roe’s legal team did not regard them as serious scholarship. An internal memorandum characterized this author’s work as donning “the guise of impartial scholarship while advancing the proper ideological goals.” Continued reliance on such scholarship is unsupportable.

The Solicitor General next suggests that history supports an abortion right because the common law’s failure to criminalize abortion before quickening means that “at the Founding and for decades thereafter, women generally could terminate a pregnancy, at least in its early stages.” Brief for United States 26–27; see also Brief for Respondents 21. But the insistence on quickening was not universal, see Mills, 13 Pa., at 633; State v. Slagle, 83 N. C. 630, 632 (1880), and regardless, the fact that many States in the

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39 Garrow 500–501, and n. 41 (internal quotation marks omitted).

40 In any event, Roe, Casey, and other related abortion decisions imposed substantial restrictions on a State’s capacity to regulate abortions performed after quickening. See, e.g., June Medical Services L. L. C. v. Russo, 591 U. S. ___ (2020) (holding a law requiring doctors performing abortions to secure admitting privileges to be unconstitutional); Whole Woman’s Health v. Hellerstedt, 579 U. S. 582 (2016) (similar); Casey, 505 U. S., at 846 (declaring that prohibitions on “abortion before viability” are unconstitutional); id., at 887–898 (holding that a spousal notification provision was unconstitutional). In addition, Doe v. Bolton, 410 U. S. 179 (1973), has been interpreted by some to protect a broad right to obtain an abortion at any stage of pregnancy provided that a physician is willing to certify that it is needed due to a woman’s “emotional” needs or “familial” concerns. Id., at 192. See, e.g., Women’s Medical Professional Corp. v. Voinovich, 130 F. 3d 187, 209 (CA6 1997), cert. denied, 523 U. S. 1036 (1998); but see id., at 1039 (THOMAS, J., dissenting from denial of certiorari).
late 18th and early 19th century did not criminalize pre-quickening abortions does not mean that anyone thought the States lacked the authority to do so. When legislatures began to exercise that authority as the century wore on, no one, as far as we are aware, argued that the laws they enacted violated a fundamental right. That is not surprising since common-law authorities had repeatedly condemned abortion and described it as an “unlawful” act without regard to whether it occurred before or after quickening. See supra, at 16–21.

Another amicus brief relied upon by respondents (see Brief for Respondents 21) tries to dismiss the significance of the state criminal statutes that were in effect when the Fourteenth Amendment was adopted by suggesting that they were enacted for illegitimate reasons. According to this account, which is based almost entirely on statements made by one prominent proponent of the statutes, important motives for the laws were the fear that Catholic immigrants were having more babies than Protestants and that the availability of abortion was leading White Protestant women to “shirk[ their] maternal duties.” Brief for American Historical Association et al. as Amici Curiae 20.

Resort to this argument is a testament to the lack of any real historical support for the right that Roe and Casey recognized. This Court has long disfavored arguments based on alleged legislative motives. See, e.g., Erie v. Pap’s A. M., 529 U. S. 277, 292 (2000) (plurality opinion); Turner Broadcasting System, Inc. v. FCC, 512 U. S. 622, 652 (1994); United States v. O’Brien, 391 U. S. 367, 383 (1968); Arizona v. California, 283 U. S. 423, 455 (1931) (collecting cases). The Court has recognized that inquiries into legislative motives “are a hazardous matter.” O’Brien, 391 U. S., at 383. Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, we
have been reluctant to attribute those motives to the legis-
lative body as a whole. “What motivates one legislator to
make a speech about a statute is not necessarily what mo-
tivates scores of others to enact it.” Id., at 384.

Here, the argument about legislative motive is not even
based on statements by legislators, but on statements made
by a few supporters of the new 19th-century abortion laws,
and it is quite a leap to attribute these motives to all the
legislators whose votes were responsible for the enactment
of those laws. Recall that at the time of the adoption of the
Fourteenth Amendment, over three-quarters of the States
had adopted statutes criminalizing abortion (usually at all
stages of pregnancy), and that from the early 20th century
until the day Roe was handed down, every single State had
such a law on its books. Are we to believe that the hundreds
of lawmakers whose votes were needed to enact these laws
were motivated by hostility to Catholics and women?

There is ample evidence that the passage of these laws
was instead spurred by a sincere belief that abortion kills a
human being. Many judicial decisions from the late 19th
and early 20th centuries made that point. See, e.g., Nash
v. Meyer, 54 Idaho 283, 301, 31 P. 2d 273, 280 (1934); State
(1917); Trent v. State, 15 Ala. App. 485, 488, 73 S. 834, 836
(1916); State v. Miller, 90 Kan. 230, 233, 133 P. 878, 879
(1913); State v. Tippie, 89 Ohio St. 35, 39–40, 105 N. E. 75,
77 (1913); State v. Gedicke, 43 N. J. L. 86, 90 (1881);
Dougherty v. People, 1 Colo. 514, 522–523 (1873); State v.
Moore, 25 Iowa 128, 131–132 (1868); Smith, 33 Me., at 57;
see also Memphis Center for Reproductive Health v. Slatery,
14 F. 4th 409, 446, and n. 11 (CA6 2021) (Thapar, J., con-
curring in judgment in part and dissenting in part) (citing
cases).

One may disagree with this belief (and our decision is not
based on any view about when a State should regard pre-
natal life as having rights or legally cognizable interests),
but even Roe and Casey did not question the good faith of abortion opponents. See, e.g., Casey, 505 U. S., at 850 (“Men and women of good conscience can disagree . . . about the profound moral and spiritual implications of terminating a pregnancy even in its earliest stage”). And we see no reason to discount the significance of the state laws in question based on these amici’s suggestions about legislative motive.41

Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of Roe and Casey contend that the abortion right is an integral part of a broader entrenched right. Roe termed this a right to privacy, 410 U. S., at 154, and Casey described it as the freedom to make “intimate and personal choices” that are “central to personal dignity and autonomy,” 505 U. S., at 851. Casey elaborated: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” Ibid.

The Court did not claim that this broadly framed right is absolute, and no such claim would be plausible. While individuals are certainly free to think and to say they

41 Other amicus briefs present arguments about the motives of proponents of liberal access to abortion. They note that some such supporters have been motivated by a desire to suppress the size of the African-American population. See Brief for African-American Organization et al. as Amici Curiae 14–21; see also Box v. Planned Parenthood of Ind. and Ky., Inc., 587 U. S. ___–___ (2019) (THOMAS, J., concurring) (slip op., at 1–4). And it is beyond dispute that Roe has had that demographic effect. A highly disproportionate percentage of aborted fetuses are Black. See, e.g., Dept. of Health and Human Servs., Centers for Disease Control and Prevention (CDC), K. Kortsmit et al., Abortion Surveillance—United States, 2019, 70 Morbidity and Mortality Report, Surveillance Summaries, p. 20 (Nov. 26, 2021) (Table 6). For our part, we do not question the motives of either those who have supported or those who have opposed laws restricting abortions.
wish about “existence,” “meaning,” the “universe,” and “the mystery of human life,” they are not always free to act in accordance with those thoughts. License to act on the basis of such beliefs may correspond to one of the many understandings of “liberty,” but it is certainly not “ordered liberty.”

Ordered liberty sets limits and defines the boundary between competing interests. *Roe* and *Casey* each struck a particular balance between the interests of a woman who wants an abortion and the interests of what they termed “potential life.” *Roe*, 410 U. S., at 150 (emphasis deleted); *Casey*, 505 U. S., at 852. But the people of the various States may evaluate those interests differently. In some States, voters may believe that the abortion right should be even more extensive than the right that *Roe* and *Casey* recognized. Voters in other States may wish to impose tight restrictions based on their belief that abortion destroys an “unborn human being.” Miss. Code Ann. §41–41–191(4)(b). Our Nation’s historical understanding of ordered liberty does not prevent the people’s elected representatives from deciding how abortion should be regulated.


These attempts to justify abortion through appeals to a broader right to autonomy and to define one’s “concept of existence” prove too much. *Casey*, 505 U. S., at 851. Those criteria, at a high level of generality, could license fundamental rights to illicit drug use, prostitution, and the like. See *Compassion in Dying v. Washington*, 85 F. 3d 1440, 1444 (CA9 1996) (O'Scannlain, J., dissenting from denial of rehearing en banc). None of these rights has any claim to being deeply rooted in history. *Id.*, at 1440, 1445.

What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion destroys what those decisions call “potential life” and what the law at issue in this case regards as the life of an “unborn human being.” See *Roe*, 410 U. S., at 159 (abortion is “inherently different”); *Casey*, 505 U. S., at 852 (abortion is “a unique act”). None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. They are therefore inapposite. They do not support the right to obtain an abortion, and by the same token, our conclusion that the Constitution does not confer such a right does not undermine them in any way.

In drawing this critical distinction between the abortion right and other rights, it is not necessary to dispute *Casey’s* claim (which we accept for the sake of argument) that “the
specific practices of States at the time of the adoption of the Fourteenth Amendment” do not “mar[k] the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects.” 505 U. S., at 848. Abortion is nothing new. It has been addressed by lawmakers for centuries, and the fundamental moral question that it poses is ageless.

Defenders of Roe and Casey do not claim that any new scientific learning calls for a different answer to the underlying moral question, but they do contend that changes in society require the recognition of a constitutional right to obtain an abortion. Without the availability of abortion, they maintain, people will be inhibited from exercising their freedom to choose the types of relationships they desire, and women will be unable to compete with men in the workplace and in other endeavors.

Americans who believe that abortion should be restricted press countervailing arguments about modern developments. They note that attitudes about the pregnancy of unmarried women have changed drastically; that federal and state laws ban discrimination on the basis of pregnancy;\(^\text{42}\) that leave for pregnancy and childbirth are now guaranteed by law in many cases;\(^\text{43}\) that the costs of medical care asso-

\(^{42}\) See, \textit{e.g.}, Pregnancy Discrimination Act, 92 Stat. 2076, 42 U. S. C. §2000e(k) (federal law prohibiting pregnancy discrimination in employment); Dept. of Labor, Women’s Bureau, Employment Protections for Workers Who Are Pregnant or Nursing, https://www.dol.gov/agencies/wb/pregnant-nursing-employment-protections (showing that 46 States and the District of Columbia have employment protections against pregnancy discrimination).

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associated with pregnancy are covered by insurance or government assistance;44 that States have increasingly adopted “safe haven” laws, which generally allow women to drop off babies anonymously;45 and that a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home.46 They also claim that many people now have a new appreciation of fetal life and that when prospective parents who want to have a child view a sonogram, they typically have no doubt that what they see is their daughter or son.

and-unpaid-family-leave-in-2018.htm (showing that 89 percent of civilian workers had access to unpaid family leave in 2018).

44 The Affordable Care Act (ACA) requires non-grandfathered health plans in the individual and small group markets to cover certain essential health benefits, which include maternity and newborn care. See 124 Stat. 163, 42 U. S. C. §18022(b)(1)(D). The ACA also prohibits annual limits, see §300gg–11, and limits annual cost-sharing obligations on such benefits, §18022(c). State Medicaid plans must provide coverage for pregnancy-related services—including, but not limited to, prenatal care, delivery, and postpartum care—as well as services for other conditions that might complicate the pregnancy. 42 CFR §§440.210(a)(2)(i)–(ii) (2020). State Medicaid plans are also prohibited from imposing deductions, cost-sharing, or similar charges for pregnancy-related services for pregnant women. 42 U. S. C. §§1396o(a)(2)(B), (b)(2)(B).


46 See, e.g., CDC, Adoption Experiences of Women and Men and Demand for Children To Adopt by Women 18–44 Years of Age in the United States 16 (Aug. 2008) (“[N]early 1 million women were seeking to adopt children in 2002 (i.e., they were in demand for a child), whereas the domestic supply of infants relinquished at birth or within the first month of life and available to be adopted had become virtually nonexistent”); CDC, National Center for Health Statistics, Adoption and Nonbiological Parenting, https://www.cdc.gov/nchs/nsfg/key_statistics/a-keystat.htm# adoption (showing that approximately 3.1 million women between the ages of 18–49 had ever “[t]aken steps to adopt a child” based on data collected from 2015–2019).
Both sides make important policy arguments, but supporters of Roe and Casey must show that this Court has the authority to weigh those arguments and decide how abortion may be regulated in the States. They have failed to make that showing, and we thus return the power to weigh those arguments to the people and their elected representatives.

The dissent is very candid that it cannot show that a constitutional right to abortion has any foundation, let alone a “deeply rooted” one, “in this Nation’s history and tradition.” Glucksberg, 521 U. S., at 721; see post, at 12–14 (joint opinion of BREYER, SOTOMAYOR, and KAGAN, JJ.). The dissent does not identify any pre-Roe authority that supports such a right—no state constitutional provision or statute, no federal or state judicial precedent, not even a scholarly treatise. Compare post, at 12–14, n. 2, with supra, at 15–16, and n. 23. Nor does the dissent dispute the fact that abortion was illegal at common law at least after quickening; that the 19th century saw a trend toward criminalization of pre-quickening abortions; that by 1868, a supermajority of States (at least 26 of 37) had enacted statutes criminalizing abortion at all stages of pregnancy; that by the late 1950s at least 46 States prohibited abortion “however and whenever performed” except if necessary to save “the life of the mother,” Roe, 410 U. S., at 139; and that when Roe was decided in 1973 similar statutes were still in effect in 30 States. Compare post, at 12–14, nn. 2–3, with supra, at 23–25, and nn. 33–34.47

The dissent’s failure to engage with this long tradition is

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47 By way of contrast, at the time Griswold v. Connecticut, 381 U. S. 479 (1965), was decided, the Connecticut statute at issue was an extreme outlier. See Brief for Planned Parenthood Federation of America, Inc. as Amicus Curiae in Griswold v. Connecticut, O. T. 1964, No. 496, p. 27.
devastating to its position. We have held that the “established method of substantive-due-process analysis” requires that an unenumerated right be “deeply rooted in this Nation’s history and tradition” before it can be recognized as a component of the “liberty” protected in the Due Process Clause. Glucksberg, 521 U. S., at 721; cf. Timbs, 586 U. S., at ___ (slip op., at 7). But despite the dissent’s professed fidelity to stare decisis, it fails to seriously engage with that important precedent—which it cannot possibly satisfy.

The dissent attempts to obscure this failure by misrepresenting our application of Glucksberg. The dissent suggests that we have focused only on “the legal status of abortion in the 19th century,” post, at 26, but our review of this Nation’s tradition extends well past that period. As explained, for more than a century after 1868—including “another half-century” after women gained the constitutional right to vote in 1920, see post, at 15; Amdt. 19—it was firmly established that laws prohibiting abortion like the Texas law at issue in Roe were permissible exercises of state regulatory authority. And today, another half century later, more than half of the States have asked us to overrule Roe and Casey. The dissent cannot establish that a right to abortion has ever been part of this Nation’s tradition.

Because the dissent cannot argue that the abortion right is rooted in this Nation’s history and tradition, it contends that the “constitutional tradition” is “not captured whole at a single moment,” and that its “meaning gains content from the long sweep of our history and from successive judicial precedents.” Post, at 18 (internal quotation marks omitted). This vague formulation imposes no clear restraints on what Justice White called the “exercise of raw judicial power,” Roe, 410 U. S., at 222 (dissenting opinion), and while the dissent claims that its standard “does not mean
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anything goes,” *post*, at 17, any real restraints are hard to discern.

The largely limitless reach of the dissenters’ standard is illustrated by the way they apply it here. First, if the “long sweep of history” imposes any restraint on the recognition of unenumerated rights, then *Roe* was surely wrong, since abortion was never allowed (except to save the life of the mother) in a majority of States for over 100 years before that decision was handed down. Second, it is impossible to defend *Roe* based on prior precedent because all of the precedents *Roe* cited, including *Griswold* and *Eisenstadt*, were critically different for a reason that we have explained: None of those cases involved the destruction of what *Roe* called “potential life.” See *supra*, at 32.

So without support in history or relevant precedent, *Roe*’s reasoning cannot be defended even under the dissent’s proposed test, and the dissent is forced to rely solely on the fact that a constitutional right to abortion was recognized in *Roe* and later decisions that accepted *Roe*’s interpretation. Under the doctrine of *stare decisis*, those precedents are entitled to careful and respectful consideration, and we engage in that analysis below. But as the Court has reiterated time and time again, adherence to precedent is not “‘an inexorable command.’” *Kimble v. Marvel Entertainment, LLC*, 576 U. S. 446, 455 (2015). There are occasions when past decisions should be overruled, and as we will explain, this is one of them.

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The most striking feature of the dissent is the absence of any serious discussion of the legitimacy of the States’ interest in protecting fetal life. This is evident in the analogy that the dissent draws between the abortion right and the rights recognized in *Griswold* (contraception), *Eisenstadt* (same), *Lawrence* (sexual conduct with member of the same sex), and *Obergefell* (same-sex marriage). Perhaps this is
designed to stoke unfounded fear that our decision will imperil those other rights, but the dissent’s analogy is objectionable for a more important reason: what it reveals about the dissent’s views on the protection of what Roe called “potential life.” The exercise of the rights at issue in Griswold, Eisenstadt, Lawrence, and Obergefell does not destroy a “potential life,” but an abortion has that effect. So if the rights at issue in those cases are fundamentally the same as the right recognized in Roe and Casey, the implication is clear: The Constitution does not permit the States to regard the destruction of a “potential life” as a matter of any significance.

That view is evident throughout the dissent. The dissent has much to say about the effects of pregnancy on women, the burdens of motherhood, and the difficulties faced by poor women. These are important concerns. However, the dissent evinces no similar regard for a State’s interest in protecting prenatal life. The dissent repeatedly praises the “balance,” post, at 2, 6, 8, 10, 12, that the viability line strikes between a woman’s liberty interest and the State’s interest in prenatal life. But for reasons we discuss later, see infra, at 50–54, 55–56, and given in the opinion of THE CHIEF JUSTICE, post, at 2–5 (opinion concurring in judgment), the viability line makes no sense. It was not adequately justified in Roe, and the dissent does not even try to defend it today. Nor does it identify any other point in a pregnancy after which a State is permitted to prohibit the destruction of a fetus.

Our opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth. The dissent, by contrast, would impose on the people a particular theory about when the rights of personhood begin. According to the dissent, the Constitution requires the States to regard a fetus as lacking even the most basic human right—to live—at least until an arbitrary point in a pregnancy has passed. Nothing in the Constitution or in
our Nation’s legal traditions authorizes the Court to adopt that “‘theory of life.’” Post, at 8.

III

We next consider whether the doctrine of stare decisis counsels continued acceptance of Roe and Casey. Stare decisis plays an important role in our case law, and we have explained that it serves many valuable ends. It protects the interests of those who have taken action in reliance on a past decision. See Casey, 505 U. S., at 856 (joint opinion); see also Payne v. Tennessee, 501 U. S. 808, 828 (1991). It “reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.” Kimble, 576 U. S., at 455. It fosters “evenhanded” decisionmaking by requiring that like cases be decided in a like manner. Payne, 501 U. S., at 827. It “contributes to the actual and perceived integrity of the judicial process.” Ibid. And it restrains judicial hubris and reminds us to respect the judgment of those who have grappled with important questions in the past. “Precedent is a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges.” N. Gorsuch, A Republic, If You Can Keep It 217 (2019).

We have long recognized, however, that stare decisis is “not an inexorable command,” Pearson v. Callahan, 555 U. S. 223, 233 (2009) (internal quotation marks omitted), and it “is at its weakest when we interpret the Constitution,” Agostini v. Felton, 521 U. S. 203, 235 (1997). It has been said that it is sometimes more important that an issue “be settled than that it be settled right.” Kimble, 576 U. S., at 455 (quoting Burnet v. Coronado Oil & Gas Co., 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting)). But when it comes to the interpretation of the Constitution—the “great charter of our liberties,” which was meant “to en-
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dure through a long lapse of ages,” *Martin v. Hunter’s Lessee*, 1 Wheat. 304, 326 (1816) (opinion for the Court by Story, J.)—we place a high value on having the matter “settled right.” In addition, when one of our constitutional decisions goes astray, the country is usually stuck with the bad decision unless we correct our own mistake. An erroneous constitutional decision can be fixed by amending the Constitution, but our Constitution is notoriously hard to amend. See Art. V; *Kimble*, 576 U. S., at 456. Therefore, in appropriate circumstances we must be willing to reconsider and, if necessary, overrule constitutional decisions.

Some of our most important constitutional decisions have overruled prior precedents. We mention three. In *Brown v. Board of Education*, 347 U. S. 483 (1954), the Court repudiated the “separate but equal” doctrine, which had allowed States to maintain racially segregated schools and other facilities. *Id.*, at 488 (internal quotation marks omitted). In so doing, the Court overruled the infamous decision in *Plessy v. Ferguson*, 163 U. S. 537 (1896), along with six other Supreme Court precedents that had applied the separate-but-equal rule. See *Brown*, 347 U. S., at 491.

In *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937), the Court overruled *Adkins v. Children’s Hospital of D. C.*, 261 U. S. 525 (1923), which had held that a law setting minimum wages for women violated the “liberty” protected by the Fifth Amendment’s Due Process Clause. *Id.*, at 545. *West Coast Hotel* signaled the demise of an entire line of important precedents that had protected an individual liberty right against state and federal health and welfare legislation. See *Lochner v. New York*, 198 U. S. 45 (1905) (holding invalid a law setting maximum working hours); *Coppage v. Kansas*, 236 U. S. 1 (1915) (holding invalid a law banning contracts forbidding employees to join a union); *Jay Burns Baking Co. v. Bryan*, 264 U. S. 504 (1924) (holding invalid laws fixing the weight of loaves of bread).

Finally, in *West Virginia Bd. of Ed. v. Barnette*, 319 U. S.
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624 (1943), after the lapse of only three years, the Court overruled Minersville School Dist. v. Gobitis, 310 U. S. 586 (1940), and held that public school students could not be compelled to salute the flag in violation of their sincere beliefs. Barnette stands out because nothing had changed during the intervening period other than the Court’s belated recognition that its earlier decision had been seriously wrong.

On many other occasions, this Court has overruled important constitutional decisions. (We include a partial list in the footnote that follows.48) Without these decisions,

Metropolitan Transit Authority, 469 U. S. 528, 530 (1985) (rejecting the principle that the Commerce Clause does not empower Congress to enforce requirements, such as minimum wage laws, against the States “in areas of traditional governmental functions”), overruling National League of Cities v. Usery, 426 U. S. 833 (1976); Illinois v. Gates, 462 U. S. 213 (1983) (the Fourth Amendment requires a totality of the circumstances approach for determining whether an informant’s tip establishes probable cause), overruling Aguilar v. Texas, 378 U. S. 108 (1964), and Spinelli v. United States, 393 U. S. 410 (1969); United States v. Scott, 437 U. S. 82 (1978) (the Double Jeopardy Clause does not apply to Government appeals from orders granting defense motions to terminate a trial before verdict), overruling United States v. Jenkins, 420 U. S. 358 (1975); Craig v. Boren, 429 U. S. 190 (1976) (gender-based classifications are subject to intermediate scrutiny under the Equal Protection Clause), overruling Goesaert v. Cleary, 335 U. S. 464 (1948); Taylor v. Louisiana, 419 U. S. 522 (1975) (jury system which operates to exclude women from jury service violates the defendant’s Sixth and Fourteenth Amendment right to an impartial jury), overruling Hoyt v. Florida, 368 U. S. 57 (1961); Brandenburg v. Ohio, 395 U. S. 444 (1969) (per curiam) (the mere advocacy of violence is protected under the First Amendment unless it is directed to incite or produce imminent lawless action), overruling Whitney v. California, 274 U. S. 357 (1927); Katz v. United States, 389 U. S. 347, 351 (1967) (Fourth Amendment “protects people, not places,” and extends to what a person “seeks to preserve as private”), overruling Olmstead v. United States, 277 U. S. 438 (1928), and Goldman v. United States, 316 U. S. 129 (1942); Miranda v. Arizona, 384 U. S. 436 (1966) (procedural safeguards to protect the Fifth Amendment privilege against self-incrimination), overruling Crooker v. California, 357 U. S. 433 (1958), and Cicenia v. Lagay, 357 U. S. 504 (1958); Malloy v. Hogan, 378 U. S. 1 (1964) (the Fifth Amendment privilege against self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States), overruling Twining v. New Jersey, 211 U. S. 78 (1908), and Adamson v. California, 332 U. S. 46 (1947); Wesberry v. Sanders, 376 U. S. 1, 7–8 (1964) (congressional districts should be apportioned so that “as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s”), overruling in effect Colegrove v. Green, 328 U. S. 549 (1946); Gideon v. Wainwright, 372 U. S. 335 (1963) (right to counsel for indigent defendant in a criminal prosecution in state court under the Sixth and Fourteenth Amendments), overruling Betts v. Brady, 316 U. S. 455 (1942); Baker v. Carr, 369 U. S. 186 (1962) (federal courts have jurisdiction to consider constitutional challenges to state redistricting plans), effectively overruling in part Colegrove, 328 U. S. 549;
American constitutional law as we know it would be unrecognizable, and this would be a different country.

No Justice of this Court has ever argued that the Court should never overrule a constitutional decision, but overruling a precedent is a serious matter. It is not a step that should be taken lightly. Our cases have attempted to provide a framework for deciding when a precedent should be overruled, and they have identified factors that should be considered in making such a decision. Janus v. State, County, and Municipal Employees, 585 U. S. ___, ___–___ (2018) (slip op., at 34–35); Ramos v. Louisiana, 590 U. S. ___, ___–___ (2020) (KAVANAUGH, J., concurring in part) (slip op., at 7–9).

In this case, five factors weigh strongly in favor of overruling Roe and Casey: the nature of their error, the quality of their reasoning, the “workability” of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance.

A

The nature of the Court’s error. An erroneous interpretation of the Constitution is always important, but some are more damaging than others.

The infamous decision in Plessy v. Ferguson, was one
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such decision. It betrayed our commitment to “equality before the law.” 163 U. S., at 562 (Harlan, J., dissenting). It was “egregiously wrong” on the day it was decided, see Ramos, 590 U. S., at ___ (opinion of KAVANAUGH, J.) (slip op., at 7), and as the Solicitor General agreed at oral argument, it should have been overruled at the earliest opportunity, see Tr. of Oral Arg. 92–93.

*Roe* was also egregiously wrong and deeply damaging. For reasons already explained, *Roe*’s constitutional analysis was far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed.

*Roe* was on a collision course with the Constitution from the day it was decided, *Casey* perpetuated its errors, and those errors do not concern some arcane corner of the law of little importance to the American people. Rather, wielding nothing but “raw judicial power,” *Roe*, 410 U. S., at 222 (White, J., dissenting), the Court usurped the power to address a question of profound moral and social importance that the Constitution unequivocally leaves for the people. *Casey* described itself as calling both sides of the national controversy to resolve their debate, but in doing so, *Casey* necessarily declared a winning side. Those on the losing side—those who sought to advance the State’s interest in fetal life—could no longer seek to persuade their elected representatives to adopt policies consistent with their views. The Court short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*. “*Roe* fanned into life an issue that has inflamed our national politics in general, and has obscured with its smoke the selection of Justices to this Court in particular, ever since.” *Casey*, 505 U. S., at 995–996 (opinion of Scalia, J.). Together, *Roe* and *Casey* represent an error that cannot be allowed to stand.

As the Court’s landmark decision in *West Coast Hotel* illustrates, the Court has previously overruled decisions that
wrongly removed an issue from the people and the democratic process. As Justice White later explained, “decisions that find in the Constitution principles or values that cannot fairly be read into that document usurp the people’s authority, for such decisions represent choices that the people have never made and that they cannot disavow through corrective legislation. For this reason, it is essential that this Court maintain the power to restore authority to its proper possessors by correcting constitutional decisions that, on reconsideration, are found to be mistaken.” *Thornburgh*, 476 U. S., at 787 (dissenting opinion).

**B**

*The quality of the reasoning.* Under our precedents, the quality of the reasoning in a prior case has an important bearing on whether it should be reconsidered. See *Janus*, 585 U. S., at ___ (slip op., at 38); *Ramos*, 590 U. S., at ___–___ (opinion of KAVANAUGH, J.) (slip op., at 7–8). In Part II, *supra*, we explained why *Roe* was incorrectly decided, but that decision was more than just wrong. It stood on exceptionally weak grounds.

*Roe* found that the Constitution implicitly conferred a right to obtain an abortion, but it failed to ground its decision in text, history, or precedent. It relied on an erroneous historical narrative; it devoted great attention to and presumably relied on matters that have no bearing on the meaning of the Constitution; it disregarded the fundamental difference between the precedents on which it relied and the question before the Court; it concocted an elaborate set of rules, with different restrictions for each trimester of pregnancy, but it did not explain how this veritable code could be teased out of anything in the Constitution, the history of abortion laws, prior precedent, or any other cited source; and its most important rule (that States cannot protect fetal life prior to “viability”) was never raised by any
party and has never been plausibly explained. Roe’s reasoning quickly drew scathing scholarly criticism, even from supporters of broad access to abortion.

The Casey plurality, while reaffirming Roe’s central holding, pointedly refrained from endorsing most of its reasoning. It revised the textual basis for the abortion right, silently abandoned Roe’s erroneous historical narrative, and jettisoned the trimester framework. But it replaced that scheme with an arbitrary “undue burden” test and relied on an exceptional version of stare decisis that, as explained below, this Court had never before applied and has never invoked since.

1

The weaknesses in Roe’s reasoning are well-known. Without any grounding in the constitutional text, history, or precedent, it imposed on the entire country a detailed set of rules much like those that one might expect to find in a statute or regulation. See 410 U. S., at 163–164. Dividing pregnancy into three trimesters, the Court imposed special rules for each. During the first trimester, the Court announced, “the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman’s attending physician.” Id., at 164. After that point, a State’s interest in regulating abortion for the sake of a woman’s health became compelling, and accordingly, a State could “regulate the abortion procedure in ways that are reasonably related to maternal health.” Ibid. Finally, in “the stage subsequent to viability,” which in 1973 roughly coincided with the beginning of the third trimester, the State’s interest in “the potentiality of human life” became compelling, and therefore a State could “regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.” Id., at 164–165.
This elaborate scheme was the Court’s own brainchild. Neither party advocated the trimester framework; nor did either party or any amicus argue that “viability” should mark the point at which the scope of the abortion right and a State’s regulatory authority should be substantially transformed. See Brief for Appellant and Brief for Appellee in Roe v. Wade, O. T. 1972, No. 70–18; see also C. Forsythe, Abuse of Discretion: The Inside Story of Roe v. Wade 127, 141 (2012).

Not only did this scheme resemble the work of a legislature, but the Court made little effort to explain how these rules could be deduced from any of the sources on which constitutional decisions are usually based. We have already discussed Roe’s treatment of constitutional text, and the opinion failed to show that history, precedent, or any other cited source supported its scheme. Roe featured a lengthy survey of history, but much of its discussion was irrelevant, and the Court made no effort to explain why it was included. For example, multiple paragraphs were devoted to an account of the views and practices of ancient civilizations where infanticide was widely accepted. See 410 U. S., at 130–132 (discussing ancient Greek and Roman practices). When it came to the most important historical fact—how the States regulated abortion when the Fourteenth Amendment was adopted—the Court said almost nothing. It allowed that States had tightened their abortion laws “in the middle and late 19th century,” id., at 139, but it implied that these laws might have

been enacted not to protect fetal life but to further “a Victorian social concern” about “illicit sexual conduct,” id., at 148.

*Roe’s* failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong. Relying on two discredited articles by an abortion advocate, the Court erroneously suggested—contrary to Bracton, Coke, Hale, Blackstone, and a wealth of other authority—that the common law had probably never really treated post-quickening abortion as a crime. See id., at 136 (“[I]t now appear[s] doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus”). This erroneous understanding appears to have played an important part in the Court’s thinking because the opinion cited “the lenity of the common law” as one of the four factors that informed its decision. *Id.*, at 165.

After surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee. This included a lengthy account of the “position of the American Medical Association” and “[t]he position of the American Public Health Association,” as well as the vote by the American Bar Association’s House of Delegates in February 1972 on proposed abortion legislation. *Id.*, at 141, 144, 146 (emphasis deleted). Also noted were a British judicial decision handed down in 1939 and a new British abortion law enacted in 1967. *Id.*, at 137–138. The Court did not explain why these sources shed light on the meaning of the Constitution, and not one of them adopted or advocated anything like the scheme that *Roe* imposed on the country.

Finally, after all this, the Court turned to precedent. Citing a broad array of cases, the Court found support for a constitutional “right of personal privacy,” *id.*, at 152, but it conflated two very different meanings of the term: the right
to shield information from disclosure and the right to make and implement important personal decisions without governmental interference. See *Whalen v. Roe*, 429 U. S. 589, 599–600 (1977). Only the cases involving this second sense of the term could have any possible relevance to the abortion issue, and some of the cases in that category involved personal decisions that were obviously very, very far afield. See *Pierce*, 268 U. S. 510 (right to send children to religious school); *Meyer*, 262 U. S. 390 (right to have children receive German language instruction).

What remained was a handful of cases having something to do with marriage, *Loving*, 388 U. S. 1 (right to marry a person of a different race), or procreation, *Skinner*, 316 U. S. 535 (right not to be sterilized); *Griswold*, 381 U. S. 479 (right of married persons to obtain contraceptives); *Eisenstadt*, 405 U. S. 438 (same, for unmarried persons). But none of these decisions involved what is distinctive about abortion: its effect on what *Roe* termed “potential life.”

When the Court summarized the basis for the scheme it imposed on the country, it asserted that its rules were “consistent with” the following: (1) “the relative weights of the respective interests involved,” (2) “the lessons and examples of medical and legal history,” (3) “the lenity of the common law,” and (4) “the demands of the profound problems of the present day.” *Roe*, 410 U. S., at 165. Put aside the second and third factors, which were based on the Court’s flawed account of history, and what remains are precisely the sort of considerations that legislative bodies often take into account when they draw lines that accommodate competing interests. The scheme *Roe* produced looked like legislation, and the Court provided the sort of explanation that might be expected from a legislative body.

c

What *Roe* did not provide was any cogent justification for the lines it drew. Why, for example, does a State have no
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authority to regulate first trimester abortions for the purpose of protecting a woman’s health? The Court’s only explanation was that mortality rates for abortion at that stage were lower than the mortality rates for childbirth. Id., at 163. But the Court did not explain why mortality rates were the only factor that a State could legitimately consider. Many health and safety regulations aim to avoid adverse health consequences short of death. And the Court did not explain why it departed from the normal rule that courts defer to the judgments of legislatures “in areas fraught with medical and scientific uncertainties.” Marshall v. United States, 414 U. S. 417, 427 (1974).

An even more glaring deficiency was Roe’s failure to justify the critical distinction it drew between pre- and post-viability abortions. Here is the Court’s entire explanation:

“With respect to the State’s important and legitimate interest in potential life, the ‘compelling’ point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the womb.” 410 U. S., at 163.

As Professor Laurence Tribe has written, “[c]learly, this mistakes a definition for a syllogism.” Tribe 4 (quoting Ely 924). The definition of a “viable” fetus is one that is capable of surviving outside the womb, but why is this the point at which the State’s interest becomes compelling? If, as Roe held, a State’s interest in protecting prenatal life is compelling “after viability,” 410 U. S., at 163, why isn’t that interest “equally compelling before viability”? Webster v. Reproductive Health Services, 492 U. S. 490, 519 (1989) (plurality opinion) (quoting Thornburgh, 476 U. S., at 795 (White, J., dissenting)). Roe did not say, and no explanation is apparent.

This arbitrary line has not found much support among philosophers and ethicists who have attempted to justify a right to abortion. Some have argued that a fetus should not
be entitled to legal protection until it acquires the characteristics that they regard as defining what it means to be a "person." Among the characteristics that have been offered as essential attributes of "personhood" are sentience, self-awareness, the ability to reason, or some combination thereof. By this logic, it would be an open question whether even born individuals, including young children or those afflicted with certain developmental or medical conditions, merit protection as "persons." But even if one takes the view that "personhood" begins when a certain attribute or combination of attributes is acquired, it is very hard to see why viability should mark the point where "personhood" begins.

The most obvious problem with any such argument is that viability is heavily dependent on factors that have nothing to do with the characteristics of a fetus. One is the

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50 See, e.g., P. Singer, Rethinking Life & Death 218 (1994) (defining a person as "a being with awareness of her or his own existence over time, and the capacity to have wants and plans for the future"); B. Steinbock, Life Before Birth: The Moral and Legal Status of Embryos and Fetuses 9–13 (1992) (arguing that "the possession of interests is both necessary and sufficient for moral status" and that the "capacity for conscious awareness is a necessary condition for the possession of interests" (emphasis deleted)); M. Warren, On the Moral and Legal Status of Abortion, 57 The Monist 1, 5 (1973) (arguing that, to qualify as a person, a being must have at least one of five traits that are "central to the concept of personhood": (1) "consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain"; (2) "reasoning (the developed capacity to solve new and relatively complex problems)"; (3) "self-motivated activity (activity which is relatively independent of either genetic or direct external control)"; (4) "the capacity to communicate, by whatever means, messages of an indefinite variety of types"; and (5) "the presence of self-concepts, and self-awareness, either individual or racial, or both" (emphasis deleted)); M. Tooley, Abortion & Infanticide, 2 Philosophy & Pub. Affairs 37, 49 (Autumn 1972) (arguing that "having a right to life presupposes that one is capable of desiring to continue existing as a subject of experiences and other mental states").
state of neonatal care at a particular point in time. Due to the development of new equipment and improved practices, the viability line has changed over the years. In the 19th century, a fetus may not have been viable until the 32d or 33d week of pregnancy or even later. When *Roe* was decided, viability was gauged at roughly 28 weeks. See 410 U. S., at 160. Today, respondents draw the line at 23 or 24 weeks. Brief for Respondents 8. So, according to *Roe's* logic, States now have a compelling interest in protecting a fetus with a gestational age of, say, 26 weeks, but in 1973 States did not have an interest in protecting an identical fetus. How can that be?

Viability also depends on the “quality of the available medical facilities.” *Colautti v. Franklin*, 439 U. S. 379, 396 (1979). Thus, a 24-week-old fetus may be viable if a woman gives birth in a city with hospitals that provide advanced care for very premature babies, but if the woman travels to a remote area far from any such hospital, the fetus may no longer be viable. On what ground could the constitutional status of a fetus depend on the pregnant woman’s location? And if viability is meant to mark a line having universal moral significance, can it be that a fetus that is viable in a big city in the United States has a privileged moral status

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51 See W. Lusk, Science and the Art of Midwifery 74–75 (1882) (explaining that “[w]ith care, the life of a child born within [the eighth month of pregnancy] may be preserved”); *id.*., at 326 (“Where the choice lies with the physician, the provocation of labor is usually deferred until the thirty-third or thirty-fourth week”); J. Beck, Researches in Medicine and Medical Jurisprudence 68 (2d ed. 1835) (“Although children born before the completion of the seventh month have occasionally survived, and been reared, yet in a medico-legal point of view, no child ought to be considered as capable of sustaining an independent existence until the seventh month has been fully completed”); see also J. Baker, The Incubator and the Medical Discovery of the Premature Infant, J. Perinatology 322 (2000) (explaining that, in the 19th century, infants born at seven to eight months' gestation were unlikely to survive beyond “the first days of life”).
not enjoyed by an identical fetus in a remote area of a poor country?

In addition, as the Court once explained, viability is not really a hard-and-fast line. *Ibid.* A physician determining a particular fetus’s odds of surviving outside the womb must consider “a number of variables,” including “gestational age,” “fetal weight,” a woman’s “general health and nutrition,” the “quality of the available medical facilities,” and other factors. *Id.*, at 395–396. It is thus “only with difficulty” that a physician can estimate the “probability” of a particular fetus’s survival. *Id.*, at 396. And even if each fetus’s probability of survival could be ascertained with certainty, settling on a “probability of survival” that should count as “viability” is another matter. *Ibid.* Is a fetus viable with a 10 percent chance of survival? 25 percent? 50 percent? Can such a judgment be made by a State? And can a State specify a gestational age limit that applies in all cases? Or must these difficult questions be left entirely to the individual “attending physician on the particular facts of the case before him”? *Id.*, at 388.

The viability line, which *Casey* termed *Roe*’s central rule, makes no sense, and it is telling that other countries almost uniformly eschew such a line.52 The Court thus asserted raw judicial power to impose, as a matter of constitutional law, a uniform viability rule that allowed the States less freedom to regulate abortion than the majority of western democracies enjoy.

d

All in all, *Roe*’s reasoning was exceedingly weak, and academic commentators, including those who agreed with the

decision as a matter of policy, were unsparing in their criticism. John Hart Ely famously wrote that Roe was “not constitutional law and gave almost no sense of an obligation to try to be.” Ely 947 (emphasis deleted). Archibald Cox, who served as Solicitor General under President Kennedy, commented that Roe “read[s] like a set of hospital rules and regulations” that “[n]either historian, layman, nor lawyer will be persuaded . . . are part of . . . the Constitution.” The Role of the Supreme Court in American Government 113–114 (1976). Laurence Tribe wrote that “even if there is a need to divide pregnancy into several segments with lines that clearly identify the limits of governmental power, ‘interest-balancing’ of the form the Court pursues fails to justify any of the lines actually drawn.” Tribe 4–5. Mark Tushnet termed Roe a “totally unreasoned judicial opinion.” Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988). See also P. Bobbitt, Constitutional Fate 157 (1982); A. Amar, Foreword: The Document and the Doctrine, 114 Harv. L. Rev. 26, 110 (2000).

Despite Roe’s weaknesses, its reach was steadily extended in the years that followed. The Court struck down laws requiring that second-trimester abortions be performed only in hospitals, Akron v. Akron Center for Reproductive Health, Inc., 462 U. S. 416, 433–439 (1983); that minors obtain parental consent, Planned Parenthood of Central Mo. v. Danforth, 428 U. S. 52, 74 (1976); that women give written consent after being informed of the status of the developing prenatal life and the risks of abortion, Akron, 462 U. S., at 442–445; that women wait 24 hours for an abortion, id., at 449–451; that a physician determine viability in a particular manner, Colautti, 439 U. S., at 390–397; that a physician performing a post-viability abortion use the technique most likely to preserve the life of the fetus, id., at 397–401; and that fetal remains be treated in a humane and sanitary manner, Akron, 462 U. S., at 451–452.
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Justice White complained that the Court was engaging in “unrestrained imposition of its own extraconstitutional value preferences.” *Thornburgh*, 476 U. S., at 794 (dissenting opinion). And the United States as amicus curiae asked the Court to overrule *Roe* five times in the decade before *Casey*, see 505 U. S., at 844 (joint opinion), and then asked the Court to overrule it once more in *Casey* itself.

When *Casey* revisited *Roe* almost 20 years later, very little of *Roe*’s reasoning was defended or preserved. The Court abandoned any reliance on a privacy right and instead grounded the abortion right entirely on the Fourteenth Amendment’s Due Process Clause. 505 U. S., at 846. The Court did not reaffirm *Roe*’s erroneous account of abortion history. In fact, none of the Justices in the majority said anything about the history of the abortion right. And as for precedent, the Court relied on essentially the same body of cases that *Roe* had cited. Thus, with respect to the standard grounds for constitutional decisionmaking—text, history, and precedent—*Casey* did not attempt to bolster *Roe*’s reasoning.

The Court also made no real effort to remedy one of the greatest weaknesses in *Roe*’s analysis: its much-criticized discussion of viability. The Court retained what it called *Roe*’s “central holding”—that a State may not regulate pre-viability abortions for the purpose of protecting fetal life—but it provided no principled defense of the viability line. 505 U. S., at 860, 870–871. Instead, it merely rephrased what *Roe* had said, stating that viability marked the point at which “the independent existence of a second life can in reason and fairness be the object of state protection that now overrides the rights of the woman.” 505 U. S., at 870. Why “reason and fairness” demanded that the line be drawn at viability the Court did not explain. And the Justices who authored the controlling opinion conspicuously
failed to say that they agreed with the viability rule; instead, they candidly acknowledged “the reservations [some] of us may have in reaffirming [that] holding of Roe.” *Id.*, at 853.

The controlling opinion criticized and rejected *Roe’s* trimester scheme, 505 U. S., at 872, and substituted a new “undue burden” test, but the basis for this test was obscure. And as we will explain, the test is full of ambiguities and is difficult to apply.

*Casey*, in short, either refused to reaffirm or rejected important aspects of *Roe’s* analysis, failed to remedy glaring deficiencies in *Roe’s* reasoning, endorsed what it termed *Roe’s* central holding while suggesting that a majority might not have thought it was correct, provided no new support for the abortion right other than *Roe’s* status as precedent, and imposed a new and problematic test with no firm grounding in constitutional text, history, or precedent.

As discussed below, *Casey* also deployed a novel version of the doctrine of [*stare decisis*](https://en.wikipedia.org/wiki/Stare_decisis). See *infra*, at 64–69. This new doctrine did not account for the profound wrongness of the decision in *Roe*, and placed great weight on an intangible form of reliance with little if any basis in prior case law. *Stare decisis* does not command the preservation of such a decision.

**C**

**Workability.** Our precedents counsel that another important consideration in deciding whether a precedent should be overruled is whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner. *Montejo v. Louisiana*, 556 U. S. 778, 792 (2009); *Patterson v. McLean Credit Union*, 491 U. S. 164, 173 (1989); *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U. S. 271, 283–284 (1988). *Casey’s* “undue burden” test has scored poorly on the workability scale.
Problems begin with the very concept of an “undue burden.” As Justice Scalia noted in his *Casey* partial dissent, determining whether a burden is “due” or “undue” is “inherently standardless.” 505 U. S., at 992; see also *June Medical Services L. L. C. v. Russo*, 591 U. S. ___, ___ (2020) (GORSUCH, J., dissenting) (slip op., at 17) (“[W]hether a burden is deemed undue depends heavily on which factors the judge considers and how much weight he accords each of them” (internal quotation marks and alterations omitted)).

The *Casey* plurality tried to put meaning into the “undue burden” test by setting out three subsidiary rules, but these rules created their own problems. The first rule is that “a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.” 505 U. S., at 878 (emphasis added); see also *id.*, at 877. But whether a particular obstacle qualifies as “substantial” is often open to reasonable debate. In the sense relevant here, “substantial” means “of ample or considerable amount, quantity, or size.” Random House Webster’s Unabridged Dictionary 1897 (2d ed. 2001). Huge burdens are plainly “substantial,” and trivial ones are not, but in between these extremes, there is a wide gray area.

This ambiguity is a problem, and the second rule, which applies at all stages of a pregnancy, muddies things further. It states that measures designed “to ensure that the woman’s choice is informed” are constitutional so long as they do not impose “an undue burden on the right.” *Casey*, 505 U. S., at 878. To the extent that this rule applies to pre-viability abortions, it overlaps with the first rule and appears to impose a different standard. Consider a law that imposes an insubstantial obstacle but serves little purpose. As applied to a pre-viability abortion, would such a regulation be constitutional on the ground that it does not impose a “substantial obstacle”? Or would it be unconstitutional on
the ground that it creates an “undue burden” because the burden it imposes, though slight, outweighs its negligible benefits? Casey does not say, and this ambiguity would lead to confusion down the line. Compare June Medical, 591 U. S., at ___–___ (plurality opinion) (slip op., at 1–2), with id., at ___–____ (ROBERTS, C. J., concurring) (slip op., at 5–6).

The third rule complicates the picture even more. Under that rule, “[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right.” Casey, 505 U. S., at 878 (emphasis added). This rule contains no fewer than three vague terms. It includes the two already discussed—“undue burden” and “substantial obstacle”—even though they are inconsistent. And it adds a third ambiguous term when it refers to “unnecessary health regulations.” The term “necessary” has a range of meanings—from “essential” to merely “useful.” See Black’s Law Dictionary 928 (5th ed. 1979); American Heritage Dictionary of the English Language 877 (1971). Casey did not explain the sense in which the term is used in this rule.

In addition to these problems, one more applies to all three rules. They all call on courts to examine a law’s effect on women, but a regulation may have a very different impact on different women for a variety of reasons, including their places of residence, financial resources, family situations, work and personal obligations, knowledge about fetal development and abortion, psychological and emotional disposition and condition, and the firmness of their desire to obtain abortions. In order to determine whether a regulation presents a substantial obstacle to women, a court needs to know which set of women it should have in mind and how many of the women in this set must find that an obstacle is “substantial.”

Casey provided no clear answer to these questions. It said that a regulation is unconstitutional if it imposes a
substantial obstacle “in a large fraction of cases in which [it] is relevant,” 505 U. S., at 895, but there is obviously no clear line between a fraction that is “large” and one that is not. Nor is it clear what the Court meant by “cases in which” a regulation is “relevant.” These ambiguities have caused confusion and disagreement. Compare *Whole Woman’s Health v. Hellerstedt*, 579 U. S. 582, 627–628 (2016), with *id.*, at 666–667, and n. 11 (ALITO, J., dissenting).

2

The difficulty of applying *Casey’s* new rules surfaced in that very case. The controlling opinion found that Pennsylvania’s 24-hour waiting period requirement and its informed-consent provision did not impose “undue burden[s],” *Casey*, 505 U. S., at 881–887, but Justice Stevens, applying the same test, reached the opposite result, *id.*, at 920–922 (opinion concurring in part and dissenting in part). That did not bode well, and then-Chief Justice Rehnquist aptly observed that “the undue burden standard presents nothing more workable than the trimester framework.” *Id.*, at 964–966 (dissenting opinion).

The ambiguity of the “undue burden” test also produced disagreement in later cases. In *Whole Woman’s Health*, the Court adopted the cost-benefit interpretation of the test, stating that “[t]he rule announced in *Casey* . . . requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer.” 579 U. S., at 607 (emphasis added). But five years later, a majority of the Justices rejected that interpretation. See *June Medical*, 591 U. S. ___. Four Justices reaffirmed *Whole Woman’s Health’s* instruction to “weigh” a law’s “benefits” against “the burdens it imposes on abortion access.” 591 U. S., at ___ (plurality opinion) (slip op., at 2) (internal quotation marks omitted). But THE CHIEF JUSTICE—who cast
the deciding vote—argued that “[n]othing about Casey sug-
vised that a weighing of costs and benefits of an abortion regula-
tion was a job for the courts.” Id., at ___ (opinion con-
curring in judgment) (slip op., at 6). And the four Justices in
dissent rejected the plurality’s interpretation of Casey.
See 591 U. S., at ___ (opinion of ALITO, J., joined in relevant
part by THOMAS, GORSUCH, and KAVANAUGH, JJ.) (slip op.,
at 4); id., at ___–___ (opinion of GORSUCH, J.) (slip op., at
15–18); id., at ___–___ (opinion of KAVANAUGH, J.) (slip op.,
at 1–2) (“[F]ive Members of the Court reject the Whole
Woman’s Health cost-benefit standard”).

This Court’s experience applying Casey has confirmed
Chief Justice Rehnquist’s prescient diagnosis that the
undue-burden standard was “not built to last.” Casey, 505
U. S., at 965 (opinion concurring in judgment in part and
dissenting in part).

3

The experience of the Courts of Appeals provides further
evidence that Casey’s “line between” permissible and un-
constitutional restrictions “has proved to be impossible to
draw with precision.” Janus, 585 U. S., at ___ (slip op., at
38).

Casey has generated a long list of Circuit conflicts. Most
recently, the Courts of Appeals have disagreed about
whether the balancing test from Whole Woman’s Health
correctly states the undue-burden framework. They have
disagreed on the legality of parental notification rules.

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53 Compare Whole Woman’s Health v. Paxton, 10 F. 4th 430, 440 (CA5
2021), EMW Women’s Surgical Center, P.S.C. v. Friedlander, 978 F. 3d
418, 437 (CA6 2020), and Hopkins v. Jegley, 968 F. 3d 912, 915 (CA8
2020) (per curiam), with Planned Parenthood of Ind. & Ky., Inc. v. Box,
991 F. 3d 740, 751–752 (CA7 2021).

54 Compare Planned Parenthood of Blue Ridge v. Camblos, 155 F. 3d
352, 367 (CA4 1998), with Planned Parenthood of Ind. & Ky., Inc. v. Ad-
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They have disagreed about bans on certain dilation and evacuation procedures. They have disagreed about when an increase in the time needed to reach a clinic constitutes an undue burden. And they have disagreed on whether a State may regulate abortions performed because of the fetus's race, sex, or disability.

The Courts of Appeals have experienced particular difficulty in applying the large-fr action-of-relevant-cases test. They have criticized the assignment while reaching unpredictable results. And they have candidly outlined Casey's many other problems.
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Casey’s “undue burden” test has proved to be unworkable. “[P]lucked from nowhere,” 505 U. S., at 965 (opinion of Rehnquist, C. J.), it “seems calculated to perpetuate give-it-a-try litigation” before judges assigned an unwieldy and inappropriate task. Lehnert v. Ferris Faculty Assn., 500 U. S. 507, 551 (1991) (Scalia, J., concurring in judgment in part and dissenting in part). Continued adherence to that standard would undermine, not advance, the “evenhanded, predictable, and consistent development of legal principles.” Payne, 501 U. S., at 827.

D

Effect on other areas of law. Roe and Casey have led to the distortion of many important but unrelated legal doctrines, and that effect provides further support for overruling those decisions. See Ramos, 590 U. S., at ___ (opinion of KAVANAUGH, J.) (slip op., at 8); Janus, 585 U. S., at ___ (slip op., at 34).

Members of this Court have repeatedly lamented that “no legal rule or doctrine is safe from ad hoc nullification by this Court when an occasion for its application arises in a case involving state regulation of abortion.” Thornburgh, 476 U. S., at 814 (O’Connor, J., dissenting); see Madsen v. Women’s Health Center, Inc., 512 U. S. 753, 785 (1994) (Scalia, J., concurring in judgment in part and dissenting

Health, 888 F. 3d 300, 313 (CA7 2018) (Manion, J., concurring in judgment in part and dissenting in part); Planned Parenthood of Ind. & Ky., Inc. v. Box, 949 F. 3d 997, 999 (CA7 2019) (Easterbrook, J., concurring in denial of reh’g en banc) (“How much burden is ‘undue’ is a matter of judgment, which depends on what the burden would be . . . and whether that burden is excessive (a matter of weighing costs against benefits, which one judge is apt to do differently from another, and which judges as a group are apt to do differently from state legislators”); National Abortion Federation v. Gonzales, 437 F. 3d 278, 290–296 (CA2 2006) (Walker, C. J., concurring); Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens, 287 F. 3d 910, 931 (CA10 2002) (Baldock, J., dissenting).
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The Court’s abortion cases have diluted the strict standard for facial constitutional challenges. They have ignored the Court’s third-party standing doctrine. They have disregarded standard *res judicata* principles. They have flouted the ordinary rules on the severability of unconstitutional provisions, as well as the rule that statutes should be read where possible to avoid unconstitutionality. And they have distorted First Amendment doctrines.

When vindicating a doctrinal innovation requires courts to engineer exceptions to longstanding background rules, the doctrine “has failed to deliver the ‘principled and intelligible’ development of the law that *stare decisis* purports to secure.” *Id.*, at ___ (THOMAS, J., dissenting) (slip op., at 19) (quoting *Vasquez v. Hillery*, 474 U. S. 254, 265 (1986)).

E

Reliance interests. We last consider whether overruling *Roe* and *Casey* will upend substantial reliance interests.

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62 Compare *id.*, at 598–606 (majority opinion), with *id.*, at 645–666 (ALITO, J., dissenting).

63 Compare *id.*, at 623–626 (majority opinion), with *id.*, at 644–645 (ALITO, J., dissenting).


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1

Traditional reliance interests arise “where advance planning of great precision is most obviously a necessity.” *Casey*, 505 U. S., at 856 (joint opinion); see also *Payne*, 501 U. S., at 828. In *Casey*, the controlling opinion conceded that those traditional reliance interests were not implicated because getting an abortion is generally “unplanned activity,” and “reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.” 505 U. S., at 856. For these reasons, we agree with the *Casey* plurality that conventional, concrete reliance interests are not present here.

2

Unable to find reliance in the conventional sense, the controlling opinion in *Casey* perceived a more intangible form of reliance. It wrote that “people [had] organized intimate relationships and made choices that define their views of themselves and their places in society . . . in reliance on the availability of abortion in the event that contraception should fail” and that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” Ibid. But this Court is ill-equipped to assess “generalized assertions about the national psyche.” *Id.,* at 957 (opinion of Rehnquist, C. J.). *Casey*’s notion of reliance thus finds little support in our cases, which instead emphasize very concrete reliance interests, like those that develop in “cases involving property and contract rights.” *Payne*, 501 U. S., at 828.

When a concrete reliance interest is asserted, courts are equipped to evaluate the claim, but assessing the novel and
intangible form of reliance endorsed by the *Casey* plurality is another matter. That form of reliance depends on an empirical question that is hard for anyone—and in particular, for a court—to assess, namely, the effect of the abortion right on society and in particular on the lives of women. The contending sides in this case make impassioned and conflicting arguments about the effects of the abortion right on the lives of women. Compare Brief for Petitioners 34–36; Brief for Women Scholars et al. as *Amici Curiae* 13–20, 29–41, with Brief for Respondents 36–41; Brief for National Women’s Law Center et al. as *Amici Curiae* 15–32. The contending sides also make conflicting arguments about the status of the fetus. This Court has neither the authority nor the expertise to adjudicate those disputes, and the *Casey* plurality’s speculations and weighing of the relative importance of the fetus and mother represent a departure from the “original constitutional proposition” that “courts do not substitute their social and economic beliefs for the judgment of legislative bodies.” *Ferguson v. Skrupa*, 372 U. S. 726, 729–730 (1963).

Our decision returns the issue of abortion to those legislative bodies, and it allows women on both sides of the abortion issue to seek to affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office. Women are not without electoral or political power. It is noteworthy that the percentage of women who register to vote and cast ballots is consistently higher than the percentage of men who do so.\(^66\) In the last election in November 2020, women, who make up around 51.5 percent of the population of Mississippi,\(^67\) constituted

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\(^{66}\)See Dept. of Commerce, U. S. Census Bureau (Census Bureau), An Analysis of the 2018 Congressional Election 6 (Dec. 2021) (Fig. 5) (showing that women made up over 50 percent of the voting population in every congressional election between 1978 and 2018).

\(^{67}\)Census Bureau, QuickFacts, Mississippi (July 1, 2021), https://www.
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55.5 percent of the voters who cast ballots.\(^{68}\)

3

Unable to show concrete reliance on *Roe* and *Casey* themselves, the Solicitor General suggests that overruling those decisions would “threaten the Court’s precedents holding that the Due Process Clause protects other rights.” Brief for United States 26 (citing *Obergefell*, 576 U. S. 644; *Lawrence*, 539 U. S. 558; *Griswold*, 381 U. S. 479). That is not correct for reasons we have already discussed. As even the *Casey* plurality recognized, “[a]bortion is a unique act” because it terminates “life or potential life.” 505 U. S., at 852; see also *Roe*, 410 U. S., at 159 (abortion is “inherently different from marital intimacy,” “marriage,” or “procreation”). And to ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion.

IV

Having shown that traditional *stare decisis* factors do not weigh in favor of retaining *Roe* or *Casey*, we must address one final argument that featured prominently in the *Casey* plurality opinion.

The argument was cast in different terms, but stated simply, it was essentially as follows. The American people’s belief in the rule of law would be shaken if they lost respect for this Court as an institution that decides important cases based on principle, not “social and political pressures.” 505 U. S., at 865. There is a special danger that the public will

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perceive a decision as having been made for unprincipled reasons when the Court overrules a controversial “watershed” decision, such as Roe. 505 U. S., at 866–867. A decision overruling Roe would be perceived as having been made “under fire” and as a “surrender to political pressure,” 505 U. S., at 867, and therefore the preservation of public approval of the Court weighs heavily in favor of retaining Roe, see 505 U. S., at 869.

This analysis starts out on the right foot but ultimately veers off course. The Casey plurality was certainly right that it is important for the public to perceive that our decisions are based on principle, and we should make every effort to achieve that objective by issuing opinions that carefully show how a proper understanding of the law leads to the results we reach. But we cannot exceed the scope of our authority under the Constitution, and we cannot allow our decisions to be affected by any extraneous influences such as concern about the public’s reaction to our work. Cf. Texas v. Johnson, 491 U. S. 397 (1989); Brown, 347 U. S. 483. That is true both when we initially decide a constitutional issue and when we consider whether to overrule a prior decision. As Chief Justice Rehnquist explained, “The Judicial Branch derives its legitimacy, not from following public opinion, but from deciding by its best lights whether legislative enactments of the popular branches of Government comport with the Constitution. The doctrine of stare decisis is an adjunct of this duty, and should be no more subject to the vagaries of public opinion than is the basic judicial task.” Casey, 505 U. S., at 963 (opinion concurring in judgment in part and dissenting in part). In suggesting otherwise, the Casey plurality went beyond this Court’s role in our constitutional system.

The Casey plurality “call[ed] the contending sides of a national controversy to end their national division,” and claimed the authority to impose a permanent settlement of the issue of a constitutional abortion right simply by saying
that the matter was closed. *Id.*, at 867. That unprecedented claim exceeded the power vested in us by the Constitution. As Alexander Hamilton famously put it, the Constitution gives the judiciary “neither Force nor Will.” The Federalist No. 78, p. 523 (J. Cooke ed. 1961). Our sole authority is to exercise “judgment”—which is to say, the authority to judge what the law means and how it should apply to the case at hand. *Ibid.* The Court has no authority to decree that an erroneous precedent is permanently exempt from evaluation under traditional *stare decisis* principles. A precedent of this Court is subject to the usual principles of *stare decisis* under which adherence to precedent is the norm but not an inexorable command. If the rule were otherwise, erroneous decisions like *Plessy* and *Lochner* would still be the law. That is not how *stare decisis* operates.

The *Casey* plurality also misjudged the practical limits of this Court’s influence. *Roe* certainly did not succeed in ending division on the issue of abortion. On the contrary, *Roe* “inflamed” a national issue that has remained bitterly divisive for the past half century. *Casey*, 505 U. S., at 995 (opinion of Scalia, J.); see also R. Ginsburg, Speaking in a Judicial Voice, 67 N. Y. U. L. Rev. 1185, 1208 (1992) (*Roe* may have “halted a political process,” “prolonged divisiveness,” and “deferred stable settlement of the issue”). And for the past 30 years, *Casey* has done the same.

Neither decision has ended debate over the issue of a constitutional right to obtain an abortion. Indeed, in this case, 26 States expressly ask us to overrule *Roe* and *Casey* and to return the issue of abortion to the people and their elected representatives. This Court’s inability to end debate on the issue should not have been surprising. This Court cannot bring about the permanent resolution of a rancorous national controversy simply by dictating a settlement and telling the people to move on. Whatever influence the Court may have on public attitudes must stem from the
strength of our opinions, not an attempt to exercise “raw judicial power.” *Roe*, 410 U. S., at 222 (White, J., dissenting).

We do not pretend to know how our political system or society will respond to today’s decision overruling *Roe* and *Casey*. And even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision. We can only do our job, which is to interpret the law, apply longstanding principles of *stare decisis*, and decide this case accordingly.

We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.

V
A
1

The dissent argues that we have “abandon[ed]” *stare decisis*, *post*, at 30, but we have done no such thing, and it is the dissent’s understanding of *stare decisis* that breaks with tradition. The dissent’s foundational contention is that the Court should never (or perhaps almost never) overrule an egregiously wrong constitutional precedent unless the Court can “poin[t] to major legal or factual changes undermining [the] decision’s original basis.” *Post*, at 37. To support this contention, the dissent claims that *Brown v. Board of Education*, 347 U. S. 483, and other landmark cases overruling prior precedents “responded to changed law and to changed facts and attitudes that had taken hold throughout society.” *Post*, at 43. The unmistakable implication of this argument is that only the passage of time and new developments justified those decisions. Recognition that the cases they overruled were egregiously wrong on the day they were handed down was not enough.

The Court has never adopted this strange new version of
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_stare decisis_—and with good reason. Does the dissent really maintain that overruling _Plessy_ was not justified until the country had experienced more than a half-century of state-sanctioned segregation and generations of Black school children had suffered all its effects? _Post_, at 44–45.

Here is another example. On the dissent’s view, it must have been wrong for _West Virginia Bd. of Ed. v. Barnette_, 319 U. S. 624, to overrule _Minersville School Dist. v. Gobitis_, 310 U. S. 586, a bare three years after it was handed down. In both cases, children who were Jehovah’s Witnesses refused on religious grounds to salute the flag or recite the pledge of allegiance. The _Barnette_ Court did not claim that its reexamination of the issue was prompted by any intervening legal or factual developments, so if the Court had followed the dissent’s new version of _stare decisis_, it would have been compelled to adhere to _Gobitis_ and countenance continued First Amendment violations for some unspecified period.

Precedents should be respected, but sometimes the Court errs, and occasionally the Court issues an important decision that is egregiously wrong. When that happens, _stare decisis_ is not a straitjacket. And indeed, the dissent eventually admits that a decision could “be overruled just because it is terribly wrong,” though the dissent does not explain when that would be so. _Post_, at 45.

2

Even if the dissent were correct in arguing that an egregiously wrong decision should (almost) never be overruled unless its mistake is later highlighted by “major legal or factual changes,” reexamination of _Roe_ and _Casey_ would be amply justified. We have already mentioned a number of post-Casey developments, see _supra_, at 33–34, 59–63, but the most profound change may be the failure of the _Casey_ plurality’s call for “the contending sides” in the controversy about abortion “to end their national division,” 505 U. S., at
867. That has not happened, and there is no reason to think that another decision sticking with Roe would achieve what Casey could not.

The dissent, however, is undeterred. It contends that the "very controversy surrounding Roe and Casey" is an important stare decisis consideration that requires upholding those precedents. See post, at 55–57. The dissent characterizes Casey as a "precedent about precedent" that is permanently shielded from further evaluation under traditional stare decisis principles. See post, at 57. But as we have explained, Casey broke new ground when it treated the national controversy provoked by Roe as a ground for refusing to reconsider that decision, and no subsequent case has relied on that factor. Our decision today simply applies longstanding stare decisis factors instead of applying a version of the doctrine that seems to apply only in abortion cases.

Finally, the dissent suggests that our decision calls into question Griswold, Eisenstadt, Lawrence, and Obergefell. Post, at 4–5, 26–27, n. 8. But we have stated unequivocally that “[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion.” Supra, at 66. We have also explained why that is so: rights regarding contraception and same-sex relationships are inherently different from the right to abortion because the latter (as we have stressed) uniquely involves what Roe and Casey termed “potential life.” Roe, 410 U. S., at 150 (emphasis deleted); Casey, 505 U. S., at 852. Therefore, a right to abortion cannot be justified by a purported analogy to the rights recognized in those other cases or by “appeals to a broader right to autonomy.” Supra, at 32. It is hard to see how we could be clearer. Moreover, even putting aside that these cases are distinguishable, there is a further point that the dissent ignores: Each precedent is subject to its own stare
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decisis analysis, and the factors that our doctrine instructs us to consider like reliance and workability are different for these cases than for our abortion jurisprudence.

B

1

We now turn to the concurrence in the judgment, which reproves us for deciding whether Roe and Casey should be retained or overruled. That opinion (which for convenience we will call simply “the concurrence”) recommends a “more measured course,” which it defends based on what it claims is “a straightforward stare decisis analysis.” Post, at 1 (opinion of ROBERTS, C. J.). The concurrence would “leave for another day whether to reject any right to an abortion at all,” post, at 7, and would hold only that if the Constitution protects any such right, the right ends once women have had “a reasonable opportunity” to obtain an abortion, post, at 1. The concurrence does not specify what period of time is sufficient to provide such an opportunity, but it would hold that 15 weeks, the period allowed under Mississippi’s law, is enough—at least “absent rare circumstances.” Post, at 2, 10.

There are serious problems with this approach, and it is revealing that nothing like it was recommended by either party. As we have recounted, both parties and the Solicitor General have urged us either to reaffirm or overrule Roe and Casey. See supra, at 4–5. And when the specific approach advanced by the concurrence was broached at oral argument, both respondents and the Solicitor General emphatically rejected it. Respondents’ counsel termed it “completely unworkable” and “less principled and less workable than viability.” Tr. of Oral Arg. 54. The Solicitor General argued that abandoning the viability line would leave courts and others with “no continued guidance.” Id., at 101. What is more, the concurrence has not identified any of the
more than 130 amicus briefs filed in this case that advocated its approach. The concurrence would do exactly what it criticizes Roe for doing: pulling “out of thin air” a test that “[n]o party or amicus asked the Court to adopt.” Post, at 3.

2

The concurrence’s most fundamental defect is its failure to offer any principled basis for its approach. The concurrence would “discard[d]” “the rule from Roe and Casey that a woman’s right to terminate her pregnancy extends up to the point that the fetus is regarded as ‘viable’ outside the womb.” Post, at 2. But this rule was a critical component of the holdings in Roe and Casey, and stare decisis is “a doctrine of preservation, not transformation,” Citizens United v. Federal Election Comm’n, 558 U. S. 310, 384 (2010) (ROBERTS, C. J., concurring). Therefore, a new rule that discards the viability rule cannot be defended on stare decisis grounds.

The concurrence concedes that its approach would “not be available” if “the rationale of Roe and Casey were inextricably entangled with and dependent upon the viability standard.” Post, at 7. But the concurrence asserts that the viability line is separable from the constitutional right they recognized, and can therefore be “discarded” without disturbing any past precedent. Post, at 7–8. That is simply incorrect.

Roe’s trimester rule was expressly tied to viability, see 410 U. S., at 163–164, and viability played a critical role in later abortion decisions. For example, in Planned Parenthood of Central Mo. v. Danforth, 428 U. S. 52, the Court reiterated Roe’s rule that a “State may regulate an abortion to protect the life of the fetus and even may proscribe abortion” at “the stage subsequent to viability.” 428 U. S., at 61 (emphasis added). The Court then rejected a challenge to Missouri’s definition of viability, holding that the State’s definition was consistent with Roe’s. 428 U. S.,
at 63–64. If viability was not an essential part of the rule adopted in Roe, the Court would have had no need to make that comparison.

The holding in Colautti v. Franklin, 439 U. S. 379, is even more instructive. In that case, the Court noted that prior cases had “stressed viability” and reiterated that “[v]iability is the critical point” under Roe. 439 U. S., at 388–389. It then struck down Pennsylvania’s definition of viability, id., at 389–394, and it is hard to see how the Court could have done that if Roe’s discussion of viability was not part of its holding.

When the Court reconsidered Roe in Casey, it left no doubt about the importance of the viability rule. It described the rule as Roe’s “central holding,” 505 U. S., at 860, and repeatedly stated that the right it reaffirmed was “the right of the woman to choose to have an abortion before viability.” Id., at 846 (emphasis added). See id., at 871 (“The woman’s right to terminate her pregnancy before viability is the most central principle of Roe v. Wade. It is a rule of law and a component of liberty we cannot renounce” (emphasis added)); id., at 872 (A “woman has a right to choose to terminate or continue her pregnancy before viability” (emphasis added)); id., at 879 (“[A] State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability” (emphasis added)).

Our subsequent cases have continued to recognize the centrality of the viability rule. See Whole Women’s Health, 579 U. S., at 589–590 (“[A] provision of law is constitutionally invalid, if the ‘purpose or effect’ of the provision ‘is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability’” (emphasis deleted and added)); id., at 627 (“[W]e now use ‘viability’ as the relevant point at which a State may begin limiting women’s access to abortion for reasons unrelated to maternal health” (emphasis added)).
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Not only is the new rule proposed by the concurrence inconsistent with Casey’s unambiguous “language,” post, at 8, it is also contrary to the judgment in that case and later abortion cases. In Casey, the Court held that Pennsylvania’s spousal-notification provision was facially unconstitutional, not just that it was unconstitutional as applied to abortions sought prior to the time when a woman has had a reasonable opportunity to choose. See 505 U. S., at 887–898. The same is true of Whole Women’s Health, which held that certain rules that required physicians performing abortions to have admitting privileges at a nearby hospital were facially unconstitutional because they placed “a substantial obstacle in the path of women seeking a previability abortion.” 579 U. S., at 591 (emphasis added).

For all these reasons, stare decisis cannot justify the new “reasonable opportunity” rule propounded by the concurrence. If that rule is to become the law of the land, it must stand on its own, but the concurrence makes no attempt to show that this rule represents a correct interpretation of the Constitution. The concurrence does not claim that the right to a reasonable opportunity to obtain an abortion is “‘deeply rooted in this Nation’s history and tradition’” and “‘implicit in the concept of ordered liberty.’” Glucksberg, 521 U. S., at 720–721. Nor does it propound any other theory that could show that the Constitution supports its new rule. And if the Constitution protects a woman’s right to obtain an abortion, the opinion does not explain why that right should end after the point at which all “reasonable” women will have decided whether to seek an abortion. While the concurrence is moved by a desire for judicial minimalism, “we cannot embrace a narrow ground of decision simply because it is narrow; it must also be right.” Citizens United, 558 U. S., at 375 (ROBERTS, C. J., concurring). For the reasons that we have explained, the concurrence’s approach is not.
The concurrence would “leave for another day whether to reject any right to an abortion at all,” post, at 7, but “another day” would not be long in coming. Some States have set deadlines for obtaining an abortion that are shorter than Mississippi’s. See, e.g., Memphis Center for Reproductive Health v. Slatery, 14 F. 4th, at 414 (considering law with bans “at cascading intervals of two to three weeks” beginning at six weeks), reh’g en banc granted, 14 F. 4th 550 (CA6 2021). If we held only that Mississippi’s 15-week rule is constitutional, we would soon be called upon to pass on the constitutionality of a panoply of laws with shorter deadlines or no deadline at all. The “measured course” charted by the concurrence would be fraught with turmoil until the Court answered the question that the concurrence seeks to defer.

Even if the Court ultimately adopted the new rule suggested by the concurrence, we would be faced with the difficult problem of spelling out what it means. For example, if the period required to give women a “reasonable” opportunity to obtain an abortion were pegged, as the concurrence seems to suggest, at the point when a certain percentage of women make that choice, see post, at 1–2, 9–10, we would have to identify the relevant percentage. It would also be necessary to explain what the concurrence means when it refers to “rare circumstances” that might justify an exception. Post, at 10. And if this new right aims to give women a reasonable opportunity to get an abortion, it would be necessary to decide whether factors other than promptness in deciding might have a bearing on whether such an opportunity was available.

In sum, the concurrence’s quest for a middle way would only put off the day when we would be forced to confront the question we now decide. The turmoil wrought by Roe and Casey would be prolonged. It is far better—for this Court
and the country—to face up to the real issue without further delay.

VI

We must now decide what standard will govern if state abortion regulations undergo constitutional challenge and whether the law before us satisfies the appropriate standard.

A

Under our precedents, rational-basis review is the appropriate standard for such challenges. As we have explained, procuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution’s text or in our Nation’s history. See supra, at 8–39.


A law regulating abortion, like other health and welfare laws, is entitled to a “strong presumption of validity.” Heller v. Doe, 509 U. S. 312, 319 (1993). It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. Id., at 320; FCC v. Beach Communications, Inc., 508 U. S.
These legitimate interests include respect for and preservation of prenatal life at all stages of development, *Gonzales*, 550 U. S., at 157–158; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability. See *id.*, at 156–157; *Roe*, 410 U. S., at 150; cf. *Glucksberg*, 521 U. S., at 728–731 (identifying similar interests).

B

These legitimate interests justify Mississippi’s Gestational Age Act. Except “in a medical emergency or in the case of a severe fetal abnormality,” the statute prohibits abortion “if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.” Miss. Code Ann. §41–41–191(4)(b). The Mississippi Legislature’s findings recount the stages of “human prenatal development” and assert the State’s interest in “protecting the life of the unborn.” §2(b)(i). The legislature also found that abortions performed after 15 weeks typically use the dilation and evacuation procedure, and the legislature found the use of this procedure “for nontherapeutic or elective reasons [to be] a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession.” §2(b)(i)(8); see also *Gonzales*, 550 U. S., at 135–143 (describing such procedures). These legitimate interests provide a rational basis for the Gestational Age Act, and it follows that respondents’ constitutional challenge must fail.

VII

We end this opinion where we began. Abortion presents
a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. 

Roe and Casey arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.

The judgment of the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

APPENDICES

A

This appendix contains statutes criminalizing abortion at all stages of pregnancy in the States existing in 1868. The statutes appear in chronological order.

1. Missouri (1825):

   Sec. 12. “That every person who shall wilfully and maliciously administer or cause to be administered to or taken by any person, any poison, or other noxious, poisonous or destructive substance or liquid, with an intention to harm him or her thereby to murder, or thereby to cause or procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall suffer imprisonment not exceeding seven years, and be fined not exceeding three thousand dollars.”

2. Illinois (1827):

   Sec. 46. “Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison, or other noxious or

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69 1825 Mo. Laws p. 283 (emphasis added); see also, Mo. Rev. Stat., Art. II, §§10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion) (emphasis added).
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destructive substance or liquid, with an intention to cause the death of such person, or to procure the miscarriage of any woman, then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and be fined in a sum not exceeding one thousand dollars.” 70

3. New York (1828):

Sec. 9. “Every person who shall administer to any pregnant woman with a quick child, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.”

Sec. 21. “Every person who shall willfully administer to any pregnant woman, any medicine, drug, substance or thing whatever, or shall use or employ any instrument of other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose; shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.” 71

70 Ill. Rev. Code §46 (1827) (emphasis added); see also Ill. Rev. Code §46 (1833) (same); 1867 Ill. Laws p. 89 (extending liability to abortions “by means of any instrument[s]” and raising penalties to imprisonment “not less than two nor more than ten years”).

71 N. Y. Rev. Stat., pt. 4, ch. 1, Tit. 2, §9 (emphasis added); Tit. 6, §21
4. **Ohio (1834):**

Sec. 1. “Be it enacted by the General Assembly of State of Ohio, That any physician, or other person, who shall wilfully administer to any pregnant woman any medicine, drug, substance, or thing whatever, or shall use any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.”

Sec. 2. “That any physician, or other person, who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case of the death of such child or mother in consequence thereof, be deemed guilty of high misdemeanor, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than seven years, nor less than one year.”

5. **Indiana (1835):**

Sec. 3. “That every person who shall wilfully administer to any pregnant woman, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with intent

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(1828) (emphasis added); 1829 N. Y. Laws p. 19 (codifying these provisions in the revised statutes).

72 1834 Ohio Laws pp. 20–21 (emphasis deleted and added).
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thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, shall upon conviction be punished by imprisonment in the county jail any term of [time] not exceeding twelve months and be fined any sum not exceeding five hundred dollars.”

6. Maine (1840):

Sec. 13. “Every person, who shall administer to any woman pregnant with child, whether such child be quick or not, any medicine, drug or substance whatever, or shall use or employ any instrument or other means whatever, with intent to destroy such child, and shall thereby destroy such child before its birth, unless the same shall have been done as necessary to preserve the life of the mother, shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.”

Sec. 14. “Every person, who shall administer to any woman, pregnant with child, whether such child shall be quick or not, any medicine, drug or substance whatever, or shall use or employ any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same shall have been done, as necessary to preserve her life, shall be punished by imprisonment in the county jail, not more than one year, or by fine, not exceeding one thousand dollars.”

7. Alabama (1841):

Sec. 2. “Every person who shall wilfully administer to any pregnant woman any medicines, drugs, substance or thing whatever, or shall use and employ any

73 1835 Ind. Laws p. 66 (emphasis added).
instrument or means whatever with intent thereby to procure the miscarriage of such woman, unless the same shall be necessary to preserve her life, or shall have been advised by a respect able physician to be necessary for that purpose, shall upon conviction, be punished by fine not exceeding five hundred dollars, and by imprisonment in the county jail, not less than three, and not exceeding six months.”

8. Massachusetts (1845):

Ch. 27. “Whoever, maliciously or without lawful justification, with intent to cause and procure the miscarriage of *a woman then pregnant with child*, shall administer to her, prescribe for her, or advise or direct her to take or swallow, any poison, drug, medicine or noxious thing, or shall cause or procure her with like intent, to take or swallow any poison, drug, medicine or noxious thing; and whoever maliciously and without lawful justification, shall use any instrument or means whatever with the like intent, and every person, with the like intent, knowingly aiding and assisting such offender or offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned not more than twenty years, nor less than five years in the State Prison; and if the woman doth not die in consequence thereof, such offender shall be guilty of a misdemeanor, and shall be punished by imprisonment not exceeding seven years, nor less than one year, in the state prison or house of correction, or common jail, and by fine not exceeding two thousand dollars.”

9. Michigan (1846):

Sec. 33. “Every person who shall administer to any
woman pregnant with a quick child, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter.”

Sec. 34. “Every person who shall wilfully administer to any pregnant woman any medicine, drug, substance or thing whatever, or shall employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.”

10. Vermont (1846):

Sec. 1. “Whoever maliciously, or without lawful justification with intent to cause and procure the miscarriage of a woman, then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine or noxious thing, or shall cause or procure her, with like intent, to take or swallow any poison, drug, medicine or noxious thing, and whoever maliciously and without lawful justification, shall use any instrument or means whatever, with the like intent, and every person, with the like intent, knowingly aiding and assisting such offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned in

the state prison, not more than ten years, nor less than five years; and if the woman does not die in consequence thereof, such offenders shall be deemed guilty of a misdemeanor; and shall be punished by imprisonment in the state prison not exceeding three years, nor less than one year, and pay a fine not exceeding two hundred dollars.”

11. Virginia (1848):

Sec. 9. “Any free person who shall administer to any pregnant woman, any medicine, drug or substance whatever, or use or employ any instrument or other means with intent thereby to destroy the child with which such woman may be pregnant, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, unless the same shall have been done to preserve the life of such woman, shall be punished, if the death of a quick child be thereby produced, by confinement in the penitentiary, for not less than one nor more than five years, or if the death of a child, not quick, be thereby produced, by confinement in the jail for not less than one nor more than twelve months.”

12. New Hampshire (1849):

Sec. 1. “That every person, who shall wilfully administer to any pregnant woman, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or means whatever with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail.

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not more than one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment at the discretion of the Court.”

Sec. 2. “Every person who shall administer to any woman pregnant with a quick child, any medicine, drug or substance whatever, or shall use or employ any instrument or means whatever, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for such purpose, shall, upon conviction, be punished by fine not exceeding one thousand dollars, and by confinement to hard labor not less than one year, nor more than ten years.”

13. New Jersey (1849):

“That if any person or persons, maliciously or without lawful justification, with intent to cause and procure the miscarriage of a woman then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine, or noxious thing; and if any person or persons maliciously, and without lawful justification, shall use any instrument or means whatever, with the like intent; and every person, with the like intent, knowingly aiding and assisting such offender or offenders, shall, on conviction thereof, be adjudged guilty of a high misdemeanor; and if the woman die in consequence thereof, shall be punished by fine, not exceeding one thousand dollars, or imprisonment at hard labour for any term not exceeding fifteen years, or both; and if the woman doth not die in consequence thereof, such offender shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punished by fine, not exceed-

80 1849 N. H. Laws p. 708 (emphasis added).
ing five hundred dollars, or imprisonment at hard labour, for any term not exceeding seven years, or both.”

14. California (1850):

Sec. 45. “And every person who shall administer or cause to be administered or taken, any medical substances, or shall use or cause to be used any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than two years, nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.”

15. Texas (1854):

Sec. 1. “If any person, with the intent to procure the miscarriage of any woman being with child, unlawfully and maliciously shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use any instrument or any means whatever, with like intent, every such offender, and every person counselling or aiding or abetting such offender, shall be punished by confinement to hard labor in the Penitentiary not exceeding ten years.”

16. Louisiana (1856):

Sec. 24. “Whoever shall feloniously administer or cause to be administered any drug, potion, or any other thing to any woman, for the purpose of procuring a premature delivery, and whoever shall administer or

81 1849 N. J. Laws pp. 266–267 (emphasis added).
82 1850 Cal. Stats. p. 233 (emphasis added and deleted).
cause to be administered to any woman pregnant with child, any drug, potion, or any other thing, for the purpose of procuring abortion, or a premature delivery, shall be imprisoned at hard labor, for not less than one, nor more than ten years.”

17. Iowa (1858):

Sec. 1. “That every person who shall willfully administer to any pregnant woman, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with the intent thereby to procure the miscarriage of any such woman, unless the same shall be necessary to preserve the life of such woman, shall upon conviction thereof, be punished by imprisonment in the county jail for a term of not exceeding one year, and be fined in a sum not exceeding one thousand dollars.”

18. Wisconsin (1858):

Sec. 11. “Every person who shall administer to any woman pregnant with a child any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.”

Sec. 58. “Every person who shall administer to any pregnant woman, or prescribe for any such woman, or advise or procure any such woman to take, any medicine, drug, or substance or thing whatever, or shall use

85 1858 Iowa Acts p. 93 (codified in Iowa Rev. Laws §4221) (emphasis added).
or employ any instrument or other means whatever, or advise or procure the same to be used, with intent thereby to procure the miscarriage of any such woman, shall upon conviction be punished by imprisonment in a county jail, not more than one year nor less than three months, or by fine, not exceeding five hundred dollars, or by both fine and imprisonment, at the discretion of the court.”

19. Kansas (1859):

Sec. 10. “Every person who shall administer to any woman, pregnant with a quick child, any medicine, drug or substance whatsoever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for that purpose, shall be deemed guilty of manslaughter in the second degree.”

Sec. 37. “Every physician or other person who shall wilfully administer to any pregnant woman any medicine, drug or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.”

20. Connecticut (1860):

Sec. 1. “That any person with intent to procure the
miscarriage or abortion of any woman, shall give or administer to her, prescribe for her, or advise, or direct, or cause or procure her to take, any medicine, drug or substance whatever, or use or advise the use of any instrument, or other means whatever, with the like intent, unless the same shall have been necessary to preserve the life of such woman, or of her unborn child, shall be deemed guilty of felony, and upon due conviction thereof shall be punished by imprisonment in the Connecticut state prison, not more than five years or less than one year, or by a fine of one thousand dollars, or both, at the discretion of the court.”


Sec. 87. “If any person shall unlawfully administer to any woman, pregnant or quick with child, or supposed and believed to be pregnant or quick with child, any drug, poison, or other substance whatsoever, or shall unlawfully use any instrument or other means whatsoever, with the intent to procure the miscarriage of such woman, and such woman, or any child with which she may be quick, shall die in consequence of either of said unlawful acts, the person so offending shall be guilty of felony, and shall be sentenced to pay a fine not exceeding five hundred dollars, and to undergo an imprisonment, by separate or solitary confinement at labor, not exceeding seven years.”

Sec. 88. “If any person, with intent to procure the miscarriage of any woman, shall unlawfully administer to her any poison, drug or substance whatsoever, or shall unlawfully use any instrument, or other means whatsoever, with the like intent, such person shall be guilty of felony, and being thereof convicted, shall be sentenced to pay a fine not exceeding five hundred dol-

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... and undergo an imprisonment, by separate or solitary confinement at labor, not exceeding three years.”

22. Rhode Island (1861):

Sec. 1. “Every person who shall be convicted of wilfully administering to any pregnant woman, or to any woman supposed by such person to be pregnant, anything whatever, or shall employ any means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be imprisoned not exceeding one year, or fined not exceeding one thousand dollars.”

23. Nevada (1861):

Sec. 42. “[E]very person who shall administer, or cause to be administered or taken, any medicinal substance, or shall use, or cause to be used, any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison, for a term not less than two years, nor more than five years; provided, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.”

24. West Virginia (1863):

West Virginia’s Constitution adopted the laws of Virginia when it became its own State:

“Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries

91 1861 Nev. Laws p. 63 (emphasis added and deleted).
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of the State of West Virginia, when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature.”92

The Virginia law in force in 1863 stated:

Sec. 8. “Any free person who shall administer to, or cause to be taken, by a woman, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be confined in the penitentiary not less than one, nor more than five years. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child.”93

25. Oregon (1864):

Sec. 509. “If any person shall administer to any woman pregnant with child, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter.”94

26. Nebraska (1866):

Sec. 42. “Every person who shall willfully and maliciously administer or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to

93 Va. Code, Tit. 54, ch. 191, §8 (1849) (emphasis added); see also W. Va. Code, ch. 144, §8 (1870) (similar).
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cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year and not more than seven years. And every person who shall administer or cause to be administered or taken, any such poison, substance or liquid, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars.”

27. Maryland (1868):

Sec. 2. “And be it enacted, That any person who shall knowingly advertise, print, publish, distribute or circulate, or knowingly cause to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper notice, advertisement or reference containing words or language, giving or conveying any notice, hint or reference to any person, or to the name of any person real or fictitious, from whom; or to any place, house, shop or office, when any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever; for the purpose of producing abortion, or who shall knowingly sell, or cause to be sold any such poison, drug, mixture, preparation, medicine or noxious thing or instrument of any kind whatever; or where any advice, direction, information or knowledge may be obtained for the purpose of causing the miscarriage or abortion of any woman pregnant with child, at any period of her pregnancy, or shall knowingly sell or cause to be sold any medicine, or who shall knowingly use or cause to be used any means

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95 Neb. Rev. Stat., Tit. 4, ch. 4, §42 (1866) (emphasis added); see also Neb. Gen. Stat., ch. 58, §§6, 39 (1873) (expanding criminal liability for abortions by other means, including instruments).
whatsoever for that purpose, shall be punished by imprisonment in the penitentiary for not less than three years, or by a fine of not less than five hundred nor more than one thousand dollars, or by both, in the discretion of the Court; and in case of fine being imposed, one half thereof shall be paid to the State of Maryland, and one-half to the School Fund of the city or county where the offence was committed; provided, however, that nothing herein contained shall be construed so as to prohibit the supervision and management by a regular practitioner of medicine of all cases of abortion occurring spontaneously, either as the result of accident, constitutional debility, or any other natural cause, or the production of abortion by a regular practitioner of medicine when, after consulting with one or more respectable physicians, he shall be satisfied that the foetus is dead, or that no other method will secure the safety of the mother.”

28. Florida (1868):

Ch. 3, Sec. 11. “Every person who shall administer to any woman pregnant with a quick child any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.”

Ch. 8, Sec. 9. “Whoever, with intent to procure miscarriage of any woman, unlawfully administers to her, or advises, or prescribes for her, or causes to be taken by her, any poison, drug, medicine, or other noxious thing, or unlawfully uses any instrument or other

96 1868 Md. Laws p. 315 (emphasis deleted and added).
means whatever with the like intent, or with like intent aids or assists therein, shall, if the woman does not die in consequence thereof, be punished by imprisonment in the State penittentiary not exceeding seven years, nor less than one year, or by fine not exceeding one thousand dollars.\textsuperscript{97}

29. Minnesota (1873):

Sec. 1. “That any person who shall administer \textit{to any woman with child}, or prescribe for any such woman, or suggest to, or advise, or procure her to take any medicine, drug, substance or thing whatever, or who shall use or employ, or advise or suggest the use or employment of any instrument or other means or force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not more than ten (10) years nor less than three (3) years.”

Sec. 2. “Any person who shall administer \textit{to any woman with child}, or prescribe, or procure, or provide for any such woman, or suggest to, or advise, or procure any such woman to take any medicine, drug, substance or thing whatever, or shall use or employ, or suggest, or advise the use or employment of any instrument or other means or force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, shall upon conviction thereof be punished by imprisonment in the state prison for a term not more than two years nor less than

\textsuperscript{97} 1868 Fla. Laws, ch. 1637, pp. 64, 97 (emphasis added).
one year, or by fine not more than five thousand dollars
nor less than five hundred dollars, or by such fine and
imprisonment both, at the discretion of the court.”98

30. Arkansas (1875):

Sec. 1. “That it shall be unlawful for any one to ad-
minister or prescribe any medicine or drugs to any
woman with child, with intent to produce an abortion,
or premature delivery of any foetus before the period of
quickening, or to produce or attempt to produce such
abortion by any other means; and any person offending
against the provision of this section, shall be fined in
any sum not exceeding one thousand ($1000) dollars,
and imprisoned in the penitentiary not less than one
(1) nor more than five (5) years; provided, that this sec-
tion shall not apply to any abortion produced by any
regular practicing physician, for the purpose of saving
the mother’s life.”99

31. Georgia (1876):

Sec. 2. “That every person who shall administer to
any woman pregnant with a child, any medicine, drug,
or substance whatever, or shall use or employ any in-
strument or other means, with intent thereby to de-
stroy such child, unless the same shall have been nec-
essary to preserve the life of such mother, or shall have
been advised by two physicians to be necessary for such
purpose, shall, in case the death of such child or mother
be thereby produced, be declared guilty of an assault
with intent to murder.”

Sec. 3. “That any person who shall wilfully adminis-
ter to any pregnant woman any medicine, drug or sub-
stance, or anything whatever, or shall employ any in-
strument or means whatever, with intent thereby to

98 1873 Minn. Laws pp. 117–118 (emphasis added).
procure the miscarriage or abortion of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished as prescribed in section 4310 of the Revised Code of Georgia.”

32. North Carolina (1881):

Sec. 1. “That every person who shall wilfully administer to any woman either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy said child, unless the same shall have been necessary to preserve the life of such mother, shall be guilty of a felony, and shall be imprisoned in the state penitentiary for not less than one year nor more than ten years, and be fined at the discretion of the court.”

Sec. 2. “That every person who shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or any thing whatsoever, with intent thereby to procure the miscarriage of any such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, shall be guilty of a misdemeanor, and, on conviction, shall be imprisoned in the jail or state penitentiary for not less than one year or more than five years, and fined at the discretion of the court.”

33. Delaware (1883):

Sec. 2. “Every person who, with the intent to procure

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100 1876 Ga. Acts & Resolutions p. 113 (emphasis added).
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the miscarriage of any pregnant woman or women supposed by such person to be pregnant, unless the same be necessary to preserve her life, shall administer to her, advise, or prescribe for her, or cause to be taken by her any poison, drug, medicine, or other noxious thing, or shall use any instrument or other means whatsoever, or shall aid, assist, or counsel any person so intending to procure a miscarriage, whether said miscarriage be accomplished or not, shall be guilty of a felony, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars and be imprisoned for a term not exceeding five years nor less than one year.”  

34. Tennessee (1883):

Sec. 1. “That every person who shall administer to any woman pregnant with child, whether such child be quick or not, any medicine, drug or substance whatever, or shall use or employ any instrument, or other means whatever with intent to destroy such child, and shall thereby destroy such child before its birth, unless the same shall have been done with a view to preserve the life of the mother, shall be punished by imprisonment in the penitentiary not less than one nor more than five years.”

Sec. 2. “Every person who shall administer any substance with the intention to procure the miscarriage of a woman then being with child, or shall use or employ any instrument or other means with such intent, unless the same shall have been done with a view to preserve the life of such mother, shall be punished by imprisonment in the penitentiary not less than one nor more than three years.”

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102 1883 Del. Laws, ch. 226 (emphasis added).
103 1883 Tenn. Acts pp. 188–189 (emphasis added).
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35. South Carolina (1883):

Sec. 1. “That any person who shall administer to any woman with child, or prescribe for any such woman, or suggest to or advise or procure her to take, any medicine, substance, drug or thing whatever, or who shall use or employ, or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the Penitentiary for a term not more than twenty years nor less than five years.”

Sec. 2. “That any person who shall administer to any woman with child, or prescribe or procure or provide for any such woman, or advise or procure any such woman to take, any medicine, drug, substance or thing whatever, or shall use or employ or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, shall, upon conviction thereof, be punished by imprisonment in the Penitentiary for a term not more than five years, or by fine not more than five thousand dollars, or by such fine and imprisonment both, at the discretion of the Court; but no conviction shall be had under the provisions of Section 1 or 2 of this Act upon the uncorroborated evidence of such woman.”

36. Kentucky (1910):

Sec. 1. “It shall be unlawful for any person to prescribe or administer to any pregnant woman, or to any

104 1883 S. C. Acts pp. 547–548 (emphasis added).
woman whom he has reason to believe pregnant, at any
time during the period of gestation, any drug, medicine
or substance, whatsoever, with the intent thereby to
procure the miscarriage of such woman, or with like in-
tent, to use any instrument or means whatsoever, un-
less such miscarriage is necessary to preserve her life;
and any person so offending, shall be punished by a fine
of not less than five hundred nor more than one thou-
sand dollars, and imprisoned in the State prison for not
less than one nor more than ten years.”

Sec. 2. “If by reason of any of the acts described in
Section 1 hereof, the miscarriage of such woman is pro-
cured, and she does miscarry, causing the death of the
unborn child, whether before or after quickening time,
the person so offending shall be guilty of a felony, and
confined in the penitentiary for not less than two, nor
more than twenty-one years.”

Sec. 3. “If, by reason of the commission of any of the
acts described in Section 1 hereof, the woman to whom
such drug or substance has been administered, or upon
whom such instrument has been used, shall die, the
person offending shall be punished as now prescribed
by law, for the offense of murder or manslaughter, as
the facts may justify.”

Sec. 4. “The consent of the woman to the perfor-
mance of the operation or administering of the medi-
cines or substances, referred to, shall be no defense,
and she shall be a competent witness in any prosecu-
tion under this act, and for that purpose she shall not
be considered an accomplice.”

37. Mississippi (1952):

Sec. 1. “Whoever, by means of any instrument, med-
icine, drug, or other means whatever shall willfully and

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knowingly cause any woman pregnant with child to abort or miscarry, or attempts to procure or produce an abortion or miscarriage, unless the same were done as necessary for the preservation of the mother’s life, shall be imprisoned in the state penitentiary no less than one (1) year, nor more than ten (10) years; or if the death of the mother results therefrom, the person procuring, causing, or attempting to procure or cause the abortion or miscarriage shall be guilty of murder.”

Sec. 2. “No act prohibited in section 1 hereof shall be considered as necessary for the preservation of the mother’s life unless upon the prior advice, in writing, of two reputable licensed physicians.”

Sec. 3. “The license of any physician or nurse shall be automatically revoked upon conviction under the provisions of this act.”

B

This appendix contains statutes criminalizing abortion at all stages in each of the Territories that became States and in the District of Columbia. The statutes appear in chronological order of enactment.

1. Hawaii (1850):

   Sec. 1. “Whoever maliciously, without lawful justification, administers, or causes or procures to be administered any poison or noxious thing to a woman then with child, in order to produce her miscarriage, or maliciously uses any instrument or other means with like intent, shall, if such woman be then quick with child, be punished by fine not exceeding one thousand dollars and imprisonment at hard labor not more than five years. And if she be then not quick with child, shall be punished by a fine not exceeding five hundred dollars,

\[106\] 1952 Miss. Laws p. 289 (codified at Miss. Code Ann. §2223 (1956) (emphasis added)).
and imprisonment at hard labor not more than two years."

Sec. 2. "Where means of causing abortion are used for the purpose of saving the life of the woman, the surgeon or other person using such means is lawfully justified." 107

2. Washington (1854):

Sec. 37. "Every person who shall administer to any pregnant woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby produced, on conviction thereof, be imprisoned in the penitentiary not more than twenty years, nor less than one year."

Sec. 38. "Every person who shall administer to any pregnant woman, or to any woman who he supposes to be pregnant, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall on conviction thereof, be imprisoned in the penitentiary not more than five years, nor less than one year, or be imprisoned in the county jail not more than twelve months, nor less than one month, and be fined in any sum not exceeding one thousand dollars." 108

3. Colorado (1861):
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Sec. 42. “[E]very person who shall administer substance or liquid, or who shall use or cause to be used any instrument, of whatsoever kind, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and fined in a sum not exceeding one thousand dollars; and if any woman, by reason of such treatment, shall die, the person or persons administering, or causing to be administered, such poison, substance or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished accordingly.”

4. Idaho (1864):

Sec. 42. “[E]very person who shall administer or cause to be administered, or taken, any medicinal substance, or shall use, or cause to be used, any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years: Provided, That no physician shall be affected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.”

5. Montana (1864):

Sec. 41. “[E]very person who shall administer, or cause to be administered, or taken, any medicinal substance, or shall use, or cause to be used, any instru-

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ments whatever, with the intention to produce the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years. Provided, That no physician shall be affected by the last clause of this section, who in the discharge of his professional duties deems it necessary to produce the miscarriage of any woman in order to save her life.”

6. Arizona (1865):

Sec. 45. “[E]very person who shall administer or cause to be administered or taken, any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.”

7. Wyoming (1869):

Sec. 25. “[A]ny person who shall administer, or cause to be administered, or taken, any such poison, substance or liquid, or who shall use, or cause to be used, any instrument of whatsoever kind, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three

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years, in the penitentiary, and fined in a sum not exceeding one thousand dollars; and if any woman by reason of such treatment shall die, the person, or persons, administering, or causing to be administered such poison, substance, or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished by imprisonment for a term not less than three years in the penitentiary, and fined in a sum not exceeding one thousand dollars, unless it appear that such miscarriage was procured or attempted by, or under advice of a physician or surgeon, with intent to save the life of such woman, or to prevent serious and permanent bodily injury to her.”113

8. Utah (1876):

Sec. 142. “Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than two nor more than ten years.”114

9. North Dakota (1877):

Sec. 337. “Every person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs...
any instrument, or other means whatever with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year.”

10. South Dakota (1877): Same as North Dakota.

11. Oklahoma (1890):

Sec. 2187. “Every person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the Territorial prison not exceeding three years, or in a county jail not exceeding one year.”

12. Alaska (1899):

Sec. 8. “That if any person shall administer to any woman pregnant with a child any medicine, drug, or substance whatever, or shall use any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed

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guilty of manslaughter, and shall be punished accordingly.”117

13. New Mexico (1919):

Sec. 1. “Any person who shall administer to any pregnant woman any medicine, drug or substance whatever, or attempt by operation or any other method or means to produce an abortion or miscarriage upon such woman, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than two thousand ($2,000.00) Dollars, nor less than five hundred ($500.00) Dollars, or imprisoned in the penitentiary for a period of not less than one nor more than five years, or by both such fine and imprisonment in the discretion of the court trying the case.”

Sec. 2. “Any person committing such act or acts mentioned in section one hereof which shall culminate in the death of the woman shall be deemed guilty of murder in the second degree; Provided, however, an abortion may be produced when two physicians licensed to practice in the State of New Mexico, in consultation, deem it necessary to preserve the life of the woman, or to prevent serious and permanent bodily injury.”

Sec. 3. “For the purpose of the act, the term “pregnancy” is defined as that condition of a woman from the date of conception to the birth of her child.”118

* * *

District of Columbia (1901):

Sec. 809. “Whoever, with intent to procure the miscarriage of any woman, prescribes or administers to her

any medicine, drug, or substance whatever, or with like intent uses any instrument or means, unless when necessary to preserve her life or health and under the direction of a competent licensed practitioner of medicine, shall be imprisoned for not more than five years; or if the woman or her child dies in consequence of such act, by imprisonment for not less than three nor more than twenty years.”¹¹⁹

¹¹⁹ §809, 31 Stat. 1322 (1901) (emphasis added).
I join the opinion of the Court because it correctly holds that there is no constitutional right to abortion. Respondents invoke one source for that right: the Fourteenth Amendment’s guarantee that no State shall “deprive any person of life, liberty, or property without due process of law.” The Court well explains why, under our substantive due process precedents, the purported right to abortion is not a form of “liberty” protected by the Due Process Clause. Such a right is neither “deeply rooted in this Nation’s history and tradition” nor “implicit in the concept of ordered liberty.” Washington v. Glucksberg, 521 U. S. 702, 721 (1997) (internal quotation marks omitted). “[T]he idea that the Framers of the Fourteenth Amendment understood the Due Process Clause to protect a right to abortion is farcical.” June Medical Services L. L. C. v. Russo, 591 U. S. ___, ___ (2020) (THOMAS, J., dissenting) (slip op., at 17).

I write separately to emphasize a second, more fundamental reason why there is no abortion guarantee lurking in the Due Process Clause. Considerable historical evidence indicates that “due process of law” merely required executive and judicial actors to comply with legislative enactments and the common law when depriving a person of
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life, liberty, or property. See, e.g., Johnson v. United States, 576 U. S. 591, 623 (2015) (THOMAS, J., concurring in judgment). Other sources, by contrast, suggest that “due process of law” prohibited legislatures “from authorizing the deprivation of a person’s life, liberty, or property without providing him the customary procedures to which freemen were entitled by the old law of England.” United States v. Vaello Madero, 596 U. S. ___, ____ (2022) (THOMAS, J., concurring) (slip op., at 3) (internal quotation marks omitted).

Either way, the Due Process Clause at most guarantees process. It does not, as the Court’s substantive due process cases suppose, “forbid the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided.” Reno v. Flores, 507 U. S. 292, 302 (1993); see also, e.g., Collins v. Harker Heights, 503 U. S. 115, 125 (1992).

As I have previously explained, “substantive due process” is an oxymoron that “lack[s] any basis in the Constitution.” Johnson, 576 U. S., at 607–608 (opinion of THOMAS, J.); see also, e.g., Vaello Madero, 596 U. S., at ___ (THOMAS, J., concurring) (slip op., at 3) (“[T]ext and history provide little support for modern substantive due process doctrine”). “The notion that a constitutional provision that guarantees only ‘process’ before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words.” McDonald v. Chicago, 561 U. S. 742, 811 (2010) (THOMAS, J., concurring in part and concurring in judgment); see also United States v. Carlton, 512 U. S. 26, 40 (1994) (Scalia, J., concurring in judgment). The resolution of this case is thus straightforward. Because the Due Process Clause does not secure any substantive rights, it does not secure a right to abortion.

The Court today declines to disturb substantive due process jurisprudence generally or the doctrine’s application in other, specific contexts. Cases like Griswold v. Connecticut,
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381 U. S. 479 (1965) (right of married persons to obtain contraceptives)*; Lawrence v. Texas, 539 U. S. 558 (2003) (right to engage in private, consensual sexual acts); and Obergefell v. Hodges, 576 U. S. 644 (2015) (right to same-sex marriage), are not at issue. The Court’s abortion cases are unique, see ante, at 31–32, 66, 71–72, and no party has asked us to decide “whether our entire Fourteenth Amendment jurisprudence must be preserved or revised,” McDonald, 561 U. S., at 813 (opinion of THOMAS, J.). Thus, I agree that “[n]othing in [the Court’s] opinion should be understood to cast doubt on precedents that do not concern abortion.” Ante, at 66.

For that reason, in future cases, we should reconsider all of this Court’s substantive due process precedents, including Griswold, Lawrence, and Obergefell. Because any substantive due process decision is “demonstrably erroneous,” Ramos v. Louisiana, 590 U. S. ____, ____ (2020) (THOMAS, J., concurring in judgment) (slip op., at 7), we have a duty to “correct the error” established in those precedents, Gamble v. United States, 587 U. S. ____, ____ (2019) (THOMAS, J., concurring) (slip op., at 9). After overruling these demonstrably erroneous decisions, the question would remain whether other constitutional provisions guarantee the myriad rights that our substantive due process cases have generated. For example, we could consider whether any of the rights announced in this Court’s substantive due process cases are “privileges or immunities of citizens of the United States” protected by the Fourteenth Amendment. Amdt.

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14, §1; see McDonald, 561 U. S., at 806 (opinion of THOMAS, J.). To answer that question, we would need to decide important antecedent questions, including whether the Privileges or Immunities Clause protects any rights that are not enumerated in the Constitution and, if so, how to identify those rights. See id., at 854. That said, even if the Clause does protect unenumerated rights, the Court conclusively demonstrates that abortion is not one of them under any plausible interpretive approach. See ante, at 15, n. 22.

Moreover, apart from being a demonstrably incorrect reading of the Due Process Clause, the “legal fiction” of substantive due process is “particularly dangerous.” McDonald, 561 U. S., at 811 (opinion of THOMAS, J.); accord, Obergefell, 576 U. S., at 722 (THOMAS, J., dissenting). At least three dangers favor jettisoning the doctrine entirely.

First, “substantive due process exalts judges at the expense of the People from whom they derive their authority.” Ibid. Because the Due Process Clause “speaks only to ‘process,’ the Court has long struggled to define what substantive rights it protects.” Timbs v. Indiana, 586 U. S. ___, ___ (2019) (THOMAS, J., concurring in judgment) (slip op., at 2) (internal quotation marks omitted). In practice, the Court’s approach for identifying those “fundamental” rights “unquestionably involves policymaking rather than neutral legal analysis.” Carlton, 512 U. S., at 41–42 (opinion of Scalia, J.); see also McDonald, 561 U. S., at 812 (opinion of THOMAS, J.) (substantive due process is “a jurisprudence devoid of a guiding principle”). The Court divines new rights in line with “its own, extraconstitutional value preferences” and nullifies state laws that do not align with the judicially created guarantees. Thornburgh v. American College of Obstetricians and Gynecologists, 476 U. S. 747, 794 (1986) (White, J., dissenting).

Nowhere is this exaltation of judicial policymaking clearer than this Court’s abortion jurisprudence. In Roe v. Wade, 410 U. S. 113 (1973), the Court divined a right to
abortion because it “fe[lt]” that “the Fourteenth Amendment’s concept of personal liberty” included a “right of privacy” that “is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” *Id.*, at 153. In *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992), the Court likewise identified an abortion guarantee in “the liberty protected by the Fourteenth Amendment,” but, rather than a “right of privacy,” it invoked an ethereal “right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” *Id.*, at 851. As the Court’s preferred manifestation of “liberty” changed, so, too, did the test used to protect it, as *Roe*’s author lamented. See *Casey*, 505 U. S., at 930 (Blackmun, J., concurring in part and dissenting in part) (“[T]he *Roe* framework is far more administrable, and far less manipulable, than the ‘undue burden’ standard”).

Now, in this case, the nature of the purported “liberty” supporting the abortion right has shifted yet again. Respondents and the United States propose no fewer than three different interests that supposedly spring from the Due Process Clause. They include “bodily integrity,” “personal autonomy in matters of family, medical care, and faith,” Brief for Respondents 21, and “women’s equal citizenship,” Brief for United States as *Amicus Curiae* 24. That 50 years have passed since *Roe* and abortion advocates still cannot coherently articulate the right (or rights) at stake proves the obvious: The right to abortion is ultimately a policy goal in desperate search of a constitutional justification.

Second, substantive due process distorts other areas of constitutional law. For example, once this Court identifies a “fundamental” right for one class of individuals, it invokes the Equal Protection Clause to demand exacting scrutiny of statutes that deny the right to others. See, *e.g.*, *Eisenstadt v. Baird*, 405 U. S. 438, 453–454 (1972) (relying on *Griswold* to invalidate a state statute prohibiting distribution

Substantive due process is the core inspiration for many of the Court’s constitutionally unmoored policy judgments.

Third, substantive due process is often wielded to “disastrous ends.” *Gamble*, 587 U. S., at ___ (THOMAS, J., concurring) (slip op., at 16). For instance, in *Dred Scott v. Sandford*, 19 How. 393 (1857), the Court invoked a species of substantive due process to announce that Congress was powerless to emancipate slaves brought into the federal territories. See *id.*, at 452. While *Dred Scott* “was overruled on the battlefields of the Civil War and by constitutional amendment after Appomattox,” *Obergefell*, 576 U. S., at 696 (ROBERTS, C. J., dissenting), that overruling was “[p]urchased at the price of immeasurable human suffering,” *Adarand Constructors, Inc. v. Peña*, 515 U. S. 200, 240 (1995) (THOMAS, J., concurring in part and concurring in judgment). Now today, the Court rightly overrules *Roe* and
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*Casey*—two of this Court’s “most notoriously incorrect” substantive due process decisions, *Timbs*, 586 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 2)—after more than 63 million abortions have been performed, see National Right to Life Committee, Abortion Statistics (Jan. 2022), https://www.nrlc.org/uploads/factsheets/FS01AbortionintheUS.pdf. The harm caused by this Court’s forays into substantive due process remains immeasurable.

* * *

Because the Court properly applies our substantive due process precedents to reject the fabrication of a constitutional right to abortion, and because this case does not present the opportunity to reject substantive due process entirely, I join the Court’s opinion. But, in future cases, we should “follow the text of the Constitution, which sets forth certain substantive rights that cannot be taken away, and adds, beyond that, a right to due process when life, liberty, or property is to be taken away.” *Carlton*, 512 U. S., at 42 (opinion of Scalia, J.). Substantive due process conflicts with that textual command and has harmed our country in many ways. Accordingly, we should eliminate it from our jurisprudence at the earliest opportunity.
Abortion is a profoundly difficult and contentious issue because it presents an irreconcilable conflict between the interests of a pregnant woman who seeks an abortion and the interests in protecting fetal life. The interests on both sides of the abortion issue are extraordinarily weighty.

On the one side, many pro-choice advocates forcefully argue that the ability to obtain an abortion is critically important for women’s personal and professional lives, and for women’s health. They contend that the widespread availability of abortion has been essential for women to advance in society and to achieve greater equality over the last 50 years. And they maintain that women must have the freedom to choose for themselves whether to have an abortion.

On the other side, many pro-life advocates forcefully argue that a fetus is a human life. They contend that all human life should be protected as a matter of human dignity.
and fundamental morality. And they stress that a significant percentage of Americans with pro-life views are women.

When it comes to abortion, one interest must prevail over the other at any given point in a pregnancy. Many Americans of good faith would prioritize the interests of the pregnant woman. Many other Americans of good faith instead would prioritize the interests in protecting fetal life—at least unless, for example, an abortion is necessary to save the life of the mother. Of course, many Americans are conflicted or have nuanced views that may vary depending on the particular time in pregnancy, or the particular circumstances of a pregnancy.

The issue before this Court, however, is not the policy or morality of abortion. The issue before this Court is what the Constitution says about abortion. The Constitution does not take sides on the issue of abortion. The text of the Constitution does not refer to or encompass abortion. To be sure, this Court has held that the Constitution protects unenumerated rights that are deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty. But a right to abortion is not deeply rooted in American history and tradition, as the Court today thoroughly explains.¹

On the question of abortion, the Constitution is therefore neither pro-life nor pro-choice. The Constitution is neutral and leaves the issue for the people and their elected representatives to resolve through the democratic process in the

¹The Court’s opinion today also recounts the pre-constitutional common-law history in England. That English history supplies background information on the issue of abortion. As I see it, the dispositive point in analyzing American history and tradition for purposes of the Fourteenth Amendment inquiry is that abortion was largely prohibited in most American States as of 1868 when the Fourteenth Amendment was ratified, and that abortion remained largely prohibited in most American States until Roe was decided in 1973.
KAVANAUGH, J., concurring

States or Congress—like the numerous other difficult questions of American social and economic policy that the Constitution does not address.

Because the Constitution is neutral on the issue of abortion, this Court also must be scrupulously neutral. The nine unelected Members of this Court do not possess the constitutional authority to override the democratic process and to decree either a pro-life or a pro-choice abortion policy for all 330 million people in the United States.

Instead of adhering to the Constitution’s neutrality, the Court in Roe took sides on the issue and unilaterally decreed that abortion was legal throughout the United States up to the point of viability (about 24 weeks of pregnancy). The Court’s decision today properly returns the Court to a position of neutrality and restores the people’s authority to address the issue of abortion through the processes of democratic self-government established by the Constitution.

Some amicus briefs argue that the Court today should not only overrule Roe and return to a position of judicial neutrality on abortion, but should go further and hold that the Constitution outlaws abortion throughout the United States. No Justice of this Court has ever advanced that position. I respect those who advocate for that position, just as I respect those who argue that this Court should hold that the Constitution legalizes pre-viability abortion throughout the United States. But both positions are wrong as a constitutional matter, in my view. The Constitution neither outlaws abortion nor legalizes abortion.

To be clear, then, the Court’s decision today does not outlaw abortion throughout the United States. On the contrary, the Court’s decision properly leaves the question of abortion for the people and their elected representatives in the democratic process. Through that democratic process, the people and their representatives may decide to allow or limit abortion. As Justice Scalia stated, the “States may, if they wish, permit abortion on demand, but the Constitution
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Today’s decision therefore does not prevent the numerous States that readily allow abortion from continuing to readily allow abortion. That includes, if they choose, the amici States supporting the plaintiff in this Court: New York, California, Illinois, Maine, Massachusetts, Rhode Island, Vermont, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Michigan, Wisconsin, Minnesota, New Mexico, Colorado, Nevada, Oregon, Washington, and Hawaii. By contrast, other States may maintain laws that more strictly limit abortion. After today’s decision, all of the States may evaluate the competing interests and decide how to address this consequential issue.2

In arguing for a constitutional right to abortion that would override the people’s choices in the democratic process, the plaintiff Jackson Women’s Health Organization and its amici emphasize that the Constitution does not freeze the American people’s rights as of 1791 or 1868. I fully agree. To begin, I agree that constitutional rights apply to situations that were unforeseen in 1791 or 1868—such as applying the First Amendment to the Internet or the Fourth Amendment to cars. Moreover, the Constitution authorizes the creation of new rights—state and federal, statutory and constitutional. But when it comes to creating new rights, the Constitution directs the people to the various processes of democratic self-government contemplated by the Constitution—state legislation, state constitutional amendments, federal legislation, and federal constitutional

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2In his dissent in Roe, Justice Rehnquist indicated that an exception to a State’s restriction on abortion would be constitutionally required when an abortion is necessary to save the life of the mother. See Roe v. Wade, 410 U. S. 113, 173 (1973). Abortion statutes traditionally and currently provide for an exception when an abortion is necessary to protect the life of the mother. Some statutes also provide other exceptions.

The Constitution does not grant the nine unelected Members of this Court the unilateral authority to rewrite the Constitution to create new rights and liberties based on our own moral or policy views. As Justice Rehnquist stated, this Court has not “been granted a roving commission, either by the Founding Fathers or by the framers of the Fourteenth Amendment, to strike down laws that are based upon notions of policy or morality suddenly found unacceptable by a majority of this Court.” Furman v. Georgia, 408 U. S. 238, 467 (1972) (dissenting opinion); see Washington v. Glucksberg, 521 U. S. 702, 720–721 (1997); Cruzan v. Director, Mo. Dept. of Health, 497 U. S. 261, 292–293 (1990) (Scalia, J., concurring).

This Court therefore does not possess the authority either to declare a constitutional right to abortion or to declare a constitutional prohibition of abortion. See Casey, 505 U. S., at 953 (Rehnquist, C. J., concurring in judgment in part and dissenting in part); id., at 980 (opinion of Scalia, J.); Roe v. Wade, 410 U. S. 113, 177 (1973) (Rehnquist, J., dissenting); Doe v. Bolton, 410 U. S. 179, 222 (1973) (White, J., dissenting).

In sum, the Constitution is neutral on the issue of abortion and allows the people and their elected representatives to address the issue through the democratic process. In my respectful view, the Court in Roe therefore erred by taking sides on the issue of abortion.

II

The more difficult question in this case is stare decisis—that is, whether to overrule the Roe decision.

The principle of stare decisis requires respect for the
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Court's precedents and for the accumulated wisdom of the judges who have previously addressed the same issue. Stare decisis is rooted in Article III of the Constitution and is fundamental to the American judicial system and to the stability of American law.

Adherence to precedent is the norm, and stare decisis imposes a high bar before this Court may overrule a precedent. This Court's history shows, however, that stare decisis is not absolute, and indeed cannot be absolute. Otherwise, as the Court today explains, many long-since-overruled cases such as Plessy v. Ferguson, 163 U. S. 537 (1896); Lochner v. New York, 198 U. S. 45 (1905); Minersville School Dist. v. Gobitis, 310 U. S. 586 (1940); and Bowers v. Hardwick, 478 U. S. 186 (1986), would never have been overruled and would still be the law.

In his canonical Burnet opinion in 1932, Justice Brandeis stated that in "cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions." Burnet v. Coronado Oil & Gas Co., 285 U. S. 393, 406-407 (1932) (dissenting opinion). That description of the Court's practice remains accurate today. Every current Member of this Court has voted to overrule precedent. And over the last 100 years beginning with Chief Justice Taft's appointment in 1921, every one of the 48 Justices appointed to this Court has voted to overrule precedent. Many of those Justices have voted to overrule a substantial number of very significant and longstanding precedents. See, e.g., Obergefell v. Hodges, 576 U. S. 644 (2015) (overruling Baker v. Nelson); Brown v. Board of Education, 347 U. S. 483 (1954) (overruling Plessy v. Ferguson); West Coast Hotel Co. v. Parrish, 300 U. S. 379 (1937) (overruling Adkins v. Children's Hospital of D. C. and in effect Lochner v. New York).

But that history alone does not answer the critical question: When precisely should the Court overrule an erroneous constitutional precedent? The history of stare decisis in
this Court establishes that a constitutional precedent may be overruled only when (i) the prior decision is not just wrong, but is egregiously wrong, (ii) the prior decision has caused significant negative jurisprudential or real-world consequences, and (iii) overruling the prior decision would not unduly upset legitimate reliance interests. See Ramos v. Louisiana, 590 U. S. ___, ___−___ (2020) (KAVANAUGH, J., concurring in part) (slip op., at 7–8).

Applying those factors, I agree with the Court today that Roe should be overruled. The Court in Roe erroneously assigned itself the authority to decide a critically important moral and policy issue that the Constitution does not grant this Court the authority to decide. As Justice Byron White succinctly explained, Roe was “an improvident and extravagant exercise of the power of judicial review” because “nothing in the language or history of the Constitution” supports a constitutional right to abortion. Bolton, 410 U. S., at 221−222 (dissenting opinion).

Of course, the fact that a precedent is wrong, even egregiously wrong, does not alone mean that the precedent should be overruled. But as the Court today explains, Roe has caused significant negative jurisprudential and real-world consequences. By taking sides on a difficult and contentious issue on which the Constitution is neutral, Roe overreached and exceeded this Court’s constitutional authority; gravely distorted the Nation’s understanding of this Court’s proper constitutional role; and caused significant harm to what Roe itself recognized as the State’s “important and legitimate interest” in protecting fetal life. 410 U. S., at 162. All of that explains why tens of millions of Americans—and the 26 States that explicitly ask the Court to overrule Roe—do not accept Roe even 49 years later.

Under the Court’s longstanding stare decisis principles, Roe
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should be overruled.3

But the stare decisis analysis here is somewhat more complicated because of Casey. In 1992, 19 years after Roe, Casey acknowledged the continuing dispute over Roe. The Court sought to find common ground that would resolve the abortion debate and end the national controversy. After careful and thoughtful consideration, the Casey plurality reaffirmed a right to abortion through viability (about 24 weeks), while also allowing somewhat more regulation of abortion than Roe had allowed.4

I have deep and unyielding respect for the Justices who wrote the Casey plurality opinion. And I respect the Casey plurality’s good-faith effort to locate some middle ground or compromise that could resolve this controversy for America. But as has become increasingly evident over time, Casey’s...
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well-intentioned effort did not resolve the abortion debate. The national division has not ended. In recent years, a significant number of States have enacted abortion restrictions that directly conflict with *Roe*. Those laws cannot be dismissed as political stunts or as outlier laws. Those numerous state laws collectively represent the sincere and deeply held views of tens of millions of Americans who continue to fervently believe that allowing abortions up to 24 weeks is far too radical and far too extreme, and does not sufficiently account for what *Roe* itself recognized as the State’s “important and legitimate interest” in protecting fetal life. 410 U. S., at 162. In this case, moreover, a majority of the States—26 in all—ask the Court to overrule *Roe* and return the abortion issue to the States.

In short, *Casey’s* *stare decisis* analysis rested in part on a predictive judgment about the future development of state laws and of the people’s views on the abortion issue. But that predictive judgment has not borne out. As the Court today explains, the experience over the last 30 years conflicts with *Casey’s* predictive judgment and therefore undermines *Casey’s* precedential force.5

In any event, although *Casey* is relevant to the *stare decisis* analysis, the question of whether to overrule *Roe* cannot be dictated by *Casey* alone. To illustrate that *stare decisis* point, consider an example. Suppose that in 1924 this Court had expressly reaffirmed *Plessy v. Ferguson* and upheld the States’ authority to segregate people on the basis of race. Would the Court in *Brown* some 30 years later in

5To be clear, public opposition to a prior decision is not a basis for overruling (or reaffirming) that decision. Rather, the question of whether to overrule a precedent must be analyzed under this Court’s traditional *stare decisis* factors. The only point here is that *Casey* adopted a special *stare decisis* principle with respect to *Roe* based on the idea of resolving the national controversy and ending the national division over abortion. The continued and significant opposition to *Roe*, as reflected in the laws and positions of numerous States, is relevant to assessing *Casey* on its own terms.
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KAVANAUGH, J., concurring

1954 have reaffirmed Plessy and upheld racially segregated schools simply because of that intervening 1924 precedent? Surely the answer is no.

In sum, I agree with the Court’s application today of the principles of stare decisis and its conclusion that Roe should be overruled.

III

After today’s decision, the nine Members of this Court will no longer decide the basic legality of pre-viability abortion for all 330 million Americans. That issue will be resolved by the people and their representatives in the democratic process in the States or Congress. But the parties’ arguments have raised other related questions, and I address some of them here.

First is the question of how this decision will affect other precedents involving issues such as contraception and marriage—in particular, the decisions in Griswold v. Connecticut, 381 U. S. 479 (1965); Eisenstadt v. Baird, 405 U. S. 438 (1972); Loving v. Virginia, 388 U. S. 1 (1967); and Obergefell v. Hodges, 576 U. S. 644 (2015). I emphasize what the Court today states: Overruling Roe does not mean the overruling of those precedents, and does not threaten or cast doubt on those precedents.

Second, as I see it, some of the other abortion-related legal questions raised by today’s decision are not especially difficult as a constitutional matter. For example, may a State bar a resident of that State from traveling to another State to obtain an abortion? In my view, the answer is no based on the constitutional right to interstate travel. May a State retroactively impose liability or punishment for an abortion that occurred before today’s decision takes effect? In my view, the answer is no based on the Due Process Clause or the Ex Post Facto Clause. Cf. Bouie v. City of Columbia, 378 U. S. 347 (1964).

Other abortion-related legal questions may emerge in the
future. But this Court will no longer decide the fundamental question of whether abortion must be allowed throughout the United States through 6 weeks, or 12 weeks, or 15 weeks, or 24 weeks, or some other line. The Court will no longer decide how to evaluate the interests of the pregnant woman and the interests in protecting fetal life throughout pregnancy. Instead, those difficult moral and policy questions will be decided, as the Constitution dictates, by the people and their elected representatives through the constitutional processes of democratic self-government.

* * *

The Roe Court took sides on a consequential moral and policy issue that this Court had no constitutional authority to decide. By taking sides, the Roe Court distorted the Nation’s understanding of this Court’s proper role in the American constitutional system and thereby damaged the Court as an institution. As Justice Scalia explained, Roe “destroyed the compromises of the past, rendered compromise impossible for the future, and required the entire issue to be resolved uniformly, at the national level.” Casey, 505 U. S., at 995 (opinion concurring in judgment in part and dissenting in part).

The Court’s decision today properly returns the Court to a position of judicial neutrality on the issue of abortion, and properly restores the people’s authority to resolve the issue of abortion through the processes of democratic self-government established by the Constitution.

To be sure, many Americans will disagree with the Court’s decision today. That would be true no matter how the Court decided this case. Both sides on the abortion issue believe sincerely and passionately in the rightness of their cause. Especially in those difficult and fraught circumstances, the Court must scrupulously adhere to the Constitution’s neutral position on the issue of abortion.

Since 1973, more than 20 Justices of this Court have now
grappled with the divisive issue of abortion. I greatly respect all of the Justices, past and present, who have done so. Amidst extraordinary controversy and challenges, all of them have addressed the abortion issue in good faith after careful deliberation, and based on their sincere understandings of the Constitution and of precedent. I have endeavored to do the same.

In my judgment, on the issue of abortion, the Constitution is neither pro-life nor pro-choice. The Constitution is neutral, and this Court likewise must be scrupulously neutral. The Court today properly heeds the constitutional principle of judicial neutrality and returns the issue of abortion to the people and their elected representatives in the democratic process.
ROBERTS, C. J., concurring in the judgment.

SUPREME COURT OF THE UNITED STATES

No. 19–1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL., PETITIONERS v. JACKSON WOMEN’S HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 24, 2022]

CHIEF JUSTICE ROBERTS, concurring in the judgment.

We granted certiorari to decide one question: “Whether all pre-viability prohibitions on elective abortions are unconstitutional.” Pet. for Cert. i. That question is directly implicated here: Mississippi’s Gestational Age Act, Miss. Code Ann. §41–41–191 (2018), generally prohibits abortion after the fifteenth week of pregnancy—several weeks before a fetus is regarded as “viable” outside the womb. In urging our review, Mississippi stated that its case was “an ideal vehicle” to “reconsider the bright-line viability rule,” and that a judgment in its favor would “not require the Court to overturn” Roe v. Wade, 410 U. S. 113 (1973), and Planned Parenthood of Southeastern Pa. v. Casey, 505 U. S. 833 (1992). Pet. for Cert. 5.

Today, the Court nonetheless rules for Mississippi by doing just that. I would take a more measured course. I agree with the Court that the viability line established by Roe and Casey should be discarded under a straightforward stare decisis analysis. That line never made any sense. Our abortion precedents describe the right at issue as a woman’s right to choose to terminate her pregnancy. That right should therefore extend far enough to ensure a reasonable opportunity to choose, but need not extend any further—
certainly not all the way to viability. Mississippi’s law allows a woman three months to obtain an abortion, well beyond the point at which it is considered “late” to discover a pregnancy. See A. Ayoola, Late Recognition of Unintended Pregnancies, 32 Pub. Health Nursing 462 (2015) (pregnancy is discoverable and ordinarily discovered by six weeks of gestation). I see no sound basis for questioning the adequacy of that opportunity.

But that is all I would say, out of adherence to a simple yet fundamental principle of judicial restraint: If it is not necessary to decide more to dispose of a case, then it is necessary not to decide more. Perhaps we are not always perfect in following that command, and certainly there are cases that warrant an exception. But this is not one of them. Surely we should adhere closely to principles of judicial restraint here, where the broader path the Court chooses entails repudiating a constitutional right we have not only previously recognized, but also expressly reaffirmed applying the doctrine of *stare decisis*. The Court’s opinion is thoughtful and thorough, but those virtues cannot compensate for the fact that its dramatic and consequential ruling is unnecessary to decide the case before us.

I

Let me begin with my agreement with the Court, on the only question we need decide here: whether to retain the rule from *Roe* and *Casey* that a woman’s right to terminate her pregnancy extends up to the point that the fetus is regarded as “viable” outside the womb. I agree that this rule should be discarded.

First, this Court seriously erred in *Roe* in adopting viability as the earliest point at which a State may legislate to advance its substantial interests in the area of abortion. See *ante*, at 50–53. *Roe* set forth a rigid three-part framework anchored to viability, which more closely resembled a regulatory code than a body of constitutional law. That
framework, moreover, came out of thin air. Neither the Texas statute challenged in *Roe* nor the Georgia statute at issue in its companion case, *Doe v. Bolton*, 410 U. S. 179 (1973), included any gestational age limit. No party or amicus asked the Court to adopt a bright line viability rule. And as for *Casey*, arguments for or against the viability rule played only a *de minimis* role in the parties’ briefing and in the oral argument. See Tr. of Oral Arg. 17–18, 51 (fleeting discussion of the viability rule).

It is thus hardly surprising that neither *Roe* nor *Casey* made a persuasive or even colorable argument for why the time for terminating a pregnancy must extend to viability. The Court’s jurisprudence on this issue is a textbook illustration of the perils of deciding a question neither presented nor briefed. As has been often noted, *Roe*’s defense of the line boiled down to the circular assertion that the State’s interest is compelling only when an unborn child can live outside the womb, because that is when the unborn child can live outside the womb. See 410 U. S., at 163–164; see also J. Ely, The Wages of Crying Wolf: A Comment on *Roe v. Wade*, 82 Yale L. J. 920, 924 (1973) (*Roe*’s reasoning “mis[s]ake[s] a definition for a syllogism”).

Twenty years later, the best defense of the viability line the *Casey* plurality could conjure up was workability. See 505 U. S., at 870. But see ante, at 53 (opinion of the Court) (discussing the difficulties in applying the viability standard). Although the plurality attempted to add more content by opining that “it might be said that a woman who fails to act before viability has consented to the State’s intervention on behalf of the developing child,” *Casey*, 505 U. S., at 870, that mere suggestion provides no basis for choosing viability as the critical tipping point. A similar implied consent argument could be made with respect to a law banning abortions after fifteen weeks, well beyond the point at which nearly all women are aware that they are pregnant, A. Ayoola, M. Nettleman, M. Stommel, & R. Canady, Time

This Court’s jurisprudence since Casey, moreover, has “eroded” the “underpinnings” of the viability line, such as they were. United States v. Gaudin, 515 U. S. 506, 521 (1995). The viability line is a relic of a time when we recognized only two state interests warranting regulation of abortion: maternal health and protection of “potential life.” Roe, 410 U. S., at 162–163. That changed with Gonzales v. Carhart, 550 U. S. 124 (2007). There, we recognized a broader array of interests, such as drawing “a bright line that clearly distinguishes abortion and infanticide,” maintaining societal ethics, and preserving the integrity of the medical profession. Id., at 157–160. The viability line has nothing to do with advancing such permissible goals. Cf. id., at 171 (Ginsburg, J., dissenting) (Gonzales “blur[red] the line, firmly drawn in Casey, between previability and postviability abortions”); see also R. Beck, Gonzales, Casey, and the Viability Rule, 103 Nw. U. L. Rev. 249, 276–279 (2009).

Consider, for example, statutes passed in a number of jurisdictions that forbid abortions after twenty weeks of pregnancy, premised on the theory that a fetus can feel pain at that stage of development. See, e.g., Ala. Code §26–23B–2 (2018). Assuming that prevention of fetal pain is a legitimate state interest after Gonzales, there seems to be no reason why viability would be relevant to the permissibility of such laws. The same is true of laws designed to “protect[] the integrity and ethics of the medical profession” and restrict procedures likely to “coarsen society” to the “dignity of human life.” Gonzales, 550 U. S., at 157. Mississippi’s law, for instance, was premised in part on the legislature’s finding that the “dilation and evacuation” procedure is a “barbaric practice, dangerous for the maternal patient, and
demeaning to the medical profession.” Miss. Code Ann. §41–41–191(2)(b)(i)(8). That procedure accounts for most abortions performed after the first trimester—two weeks before the period at issue in this case—and “involve[s] the use of surgical instruments to crush and tear the unborn child apart.” Ibid.; see also Gonzales, 550 U. S., at 135. Again, it would make little sense to focus on viability when evaluating a law based on these permissible goals.

In short, the viability rule was created outside the ordinary course of litigation, is and always has been completely unreasoned, and fails to take account of state interests since recognized as legitimate. It is indeed “telling that other countries almost uniformly eschew” a viability line. Ante, at 53 (opinion of the Court). Only a handful of countries, among them China and North Korea, permit elective abortions after twenty weeks; the rest have coalesced around a 12–week line. See The World’s Abortion Laws, Center for Reproductive Rights (Feb. 23, 2021) (online source archived at www.supremecourt.gov) (Canada, China, Iceland, Guinea-Bissau, the Netherlands, North Korea, Singapore, and Vietnam permit elective abortions after twenty weeks). The Court rightly rejects the arbitrary viability rule today.

II

None of this, however, requires that we also take the dramatic step of altogether eliminating the abortion right first recognized in Roe. Mississippi itself previously argued as much to this Court in this litigation.

When the State petitioned for our review, its basic request was straightforward: “clarify whether abortion prohibitions before viability are always unconstitutional.” Pet. for Cert. 14. The State made a number of strong arguments that the answer is no, id., at 15–26—arguments that, as discussed, I find persuasive. And it went out of its way to make clear that it was not asking the Court to repudiate
entirely the right to choose whether to terminate a pregnancy: “To be clear, the questions presented in this petition do not require the Court to overturn Roe or Casey.” Id., at 5. Mississippi tempered that statement with an oblique one-sentence footnote intimating that, if the Court could not reconcile Roe and Casey with current facts or other cases, it “should not retain erroneous precedent.” Pet. for Cert. 5–6, n. 1. But the State never argued that we should grant review for that purpose.

After we granted certiorari, however, Mississippi changed course. In its principal brief, the State bluntly announced that the Court should overrule Roe and Casey. The Constitution does not protect a right to an abortion, it argued, and a State should be able to prohibit elective abortions if a rational basis supports doing so. See Brief for Petitioners 12–13.

The Court now rewards that gambit, noting three times that the parties presented “no half-measures” and argued that “we must either reaffirm or overrule Roe and Casey.” Ante, at 5, 8, 72. Given those two options, the majority picks the latter.

This framing is not accurate. In its brief on the merits, Mississippi in fact argued at length that a decision simply rejecting the viability rule would result in a judgment in its favor. See Brief for Petitioners 5, 38–48. But even if the State had not argued as much, it would not matter. There is no rule that parties can confine this Court to disposing of their case on a particular ground—let alone when review was sought and granted on a different one. Our established practice is instead not to “formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.” Washington State Grange v. Washington State Republican Party, 552 U. S. 442, 450 (2008) (quoting Ashwander v. TVA, 297 U. S. 288, 347 (1936) (Brandeis, J., concurring)); see also United States v. Raines, 362 U. S. 17, 21 (1960).
Following that “fundamental principle of judicial restraint,” Washington State Grange, 552 U. S., at 450, we should begin with the narrowest basis for disposition, proceeding to consider a broader one only if necessary to resolve the case at hand. See, e.g., Office of Personnel Management v. Richmond, 496 U. S. 414, 423 (1990). It is only where there is no valid narrower ground of decision that we should go on to address a broader issue, such as whether a constitutional decision should be overturned. See Federal Election Comm’n v. Wisconsin Right to Life, Inc., 551 U. S. 449, 482 (2007) (declining to address the claim that a constitutional decision should be overruled when the appellant prevailed on its narrower constitutional argument).

Here, there is a clear path to deciding this case correctly without overruling Roe all the way down to the studs: recognize that the viability line must be discarded, as the majority rightly does, and leave for another day whether to reject any right to an abortion at all. See Webster v. Reproductive Health Services, 492 U. S. 490, 518, 521 (1989) (plurality opinion) (rejecting Roe’s viability line as “rigid” and “indeterminate,” while also finding “no occasion to revisit the holding of Roe” that, under the Constitution, a State must provide an opportunity to choose to terminate a pregnancy).

Of course, such an approach would not be available if the rationale of Roe and Casey was inextricably entangled with and dependent upon the viability standard. It is not. Our precedents in this area ground the abortion right in a woman’s “right to choose.” See Carey v. Population Services Int’l, 431 U. S. 678, 688–689 (1977) (“underlying foundation of the holdings” in Roe and Griswold v. Connecticut, 381 U. S. 479 (1965), was the “right of decision in matters of childbearing”); Maher v. Roe, 432 U. S. 464, 473 (1977) (Roe and other cases “recognize a constitutionally protected interest in making certain kinds of important decisions free from governmental compulsion” (internal quotation marks
omitted)); id., at 473–474 (Roe “did not declare an unqualified constitutional right to an abortion,” but instead protected “the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy” (internal quotation marks omitted)); Webster, 492 U. S., at 520 (plurality opinion) (Roe protects “the claims of a woman to decide for herself whether or not to abort a fetus she [is] carrying’); Gonzales, 550 U. S., at 146 (a State may not “prohibit any woman from making the ultimate decision to terminate her pregnancy”). If that is the basis for Roe, Roe’s viability line should be scrutinized from the same perspective. And there is nothing inherent in the right to choose that requires it to extend to viability or any other point, so long as a real choice is provided. See Webster, 492 U. S., at 519 (plurality opinion) (finding no reason “why the State’s interest in protecting potential human life should come into existence only at the point of viability”).

To be sure, in reaffirming the right to an abortion, Casey termed the viability rule Roe’s “central holding.” 505 U. S., at 860. Other cases of ours have repeated that language. See, e.g., Gonzales, 550 U. S., at 145–146. But simply declaring it does not make it so. The question in Roe was whether there was any right to abortion in the Constitution. See Brief for Appellants and Brief for Appellees, in Roe v. Wade, O. T. 1971, No. 70–18. How far the right extended was a concern that was separate and subsidiary, and—not surprisingly—entirely unbriefed.

The Court in Roe just chose to address both issues in one opinion: It first recognized a right to “choose to terminate [a] pregnancy” under the Constitution, see 410 U. S., at 129–159, and then, having done so, explained that a line should be drawn at viability such that a State could not prescribe abortion before that period, see id., at 163. The viability line is a separate rule fleshing out the metes and bounds of Roe’s core holding. Applying principles of stare decisis, I would excise that additional rule—and only that
rule—from our jurisprudence.

The majority lists a number of cases that have stressed the importance of the viability rule to our abortion precedents. See ante, at 73–74. I agree that—whether it was originally holding or dictum—the viability line is clearly part of our “past precedent,” and the Court has applied it as such in several cases since Roe. Ante, at 73. My point is that Roe adopted two distinct rules of constitutional law: one, that a woman has the right to choose to terminate a pregnancy; two, that such right may be overridden by the State’s legitimate interests when the fetus is viable outside the womb. The latter is obviously distinct from the former. I would abandon that timing rule, but see no need in this case to consider the basic right.

The Court contends that it is impossible to address Roe’s conclusion that the Constitution protects the woman’s right to abortion, without also addressing Roe’s rule that the State’s interests are not constitutionally adequate to justify a ban on abortion until viability. See ibid. But we have partially overruled precedents before, see, e.g., United States v. Miller, 471 U. S. 130, 142–144 (1985); Daniels v. Williams, 474 U. S. 327, 328–331 (1986); Batson v. Kentucky, 476 U. S. 79, 90–93 (1986), and certainly have never held that a distinct holding defining the contours of a constitutional right must be treated as part and parcel of the right itself.

Overruling the subsidiary rule is sufficient to resolve this case in Mississippi’s favor. The law at issue allows abortions up through fifteen weeks, providing an adequate opportunity to exercise the right Roe protects. By the time a pregnant woman has reached that point, her pregnancy is well into the second trimester. Pregnancy tests are now inexpensive and accurate, and a woman ordinarily discovers she is pregnant by six weeks of gestation. See A. Branum & K. Ahrens, Trends in Timing of Pregnancy Awareness Among US Women, 21 Maternal & Child Health J. 715, 722
Almost all know by the end of the first trimester. Pregnancy Recognition 39. Safe and effective abortifacients, moreover, are now readily available, particularly during those early stages. See I. Adibi et al., Abortion, 22 Geo. J. Gender & L. 279, 303 (2021). Given all this, it is no surprise that the vast majority of abortions happen in the first trimester. See Centers for Disease Control and Prevention, Abortion Surveillance—United States 1 (2020). Presumably most of the remainder would also take place earlier if later abortions were not a legal option. Ample evidence thus suggests that a 15-week ban provides sufficient time, absent rare circumstances, for a woman “to decide for herself” whether to terminate her pregnancy. Webster, 492 U. S., at 520 (plurality opinion).*

III

Whether a precedent should be overruled is a question “entirely within the discretion of the court.” Hertz v. Woodward, 218 U. S. 205, 212 (1910); see also Payne v. Tennessee, 501 U. S. 808, 828 (1991) (stare decisis is a “principle of policy”). In my respectful view, the sound exercise of that discretion should have led the Court to resolve the case on the narrower grounds set forth above, rather than overruling Roe and Casey entirely. The Court says there is no “principled basis” for this approach, ante, at 73, but in fact it is firmly grounded in basic principles of stare decisis and judicial restraint.

*The majority contends that “nothing like [my approach] was recommended by either party.” Ante, at 72. But as explained, Mississippi in fact pressed a similar argument in its filings before this Court. See Pet. for Cert. 15–26; Brief for Petitioners 5, 38–48 (urging the Court to reject the viability rule and reverse); Reply Brief 20–22 (same). The approach also finds support in prior opinions. See Webster, 492 U. S., at 518–521 (plurality opinion) (abandoning “key elements” of the Roe framework under stare decisis while declining to reconsider Roe’s holding that the Constitution protects the right to an abortion).
The Court’s decision to overrule *Roe* and *Casey* is a serious jolt to the legal system—regardless of how you view those cases. A narrower decision rejecting the misguided viability line would be markedly less unsettling, and nothing more is needed to decide this case.

Our cases say that the effect of overruling a precedent on reliance interests is a factor to consider in deciding whether to take such a step, and respondents argue that generations of women have relied on the right to an abortion in organizing their relationships and planning their futures. Brief for Respondents 36–41; see also *Casey*, 505 U. S., at 856 (making the same point). The Court questions whether these concerns are pertinent under our precedents, see *ante*, at 64–65, but the issue would not even arise with a decision rejecting only the viability line: It cannot reasonably be argued that women have shaped their lives in part on the assumption that they would be able to abort up to viability, as opposed to fifteen weeks.

In support of its holding, the Court cites three seminal constitutional decisions that involved overruling prior precedents: *Brown v. Board of Education*, 347 U. S. 483 (1954), *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624 (1943), and *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937). See *ante*, at 40–41. The opinion in *Brown* was unanimous and eleven pages long; this one is neither. *Barnette* was decided only three years after the decision it overruled, three Justices having had second thoughts. And *West Coast Hotel* was issued against a backdrop of unprecedented economic despair that focused attention on the fundamental flaws of existing precedent. It also was part of a sea change in this Court’s interpretation of the Constitution, “signal[ing] the demise of an entire line of important precedents,” *ante*, at 40—a feature the Court expressly disclaims in today’s decision, see *ante*, at 32, 66. None of these leading cases, in short, provides a template for what the Court does today.
The Court says we should consider whether to overrule Roe and Casey now, because if we delay we would be forced to consider the issue again in short order. See ante, at 76–77. There would be “turmoil” until we did so, according to the Court, because of existing state laws with “shorter deadlines or no deadline at all.” Ante, at 76. But under the narrower approach proposed here, state laws outlawing abortion altogether would still violate binding precedent. And to the extent States have laws that set the cutoff date earlier than fifteen weeks, any litigation over that timeframe would proceed free of the distorting effect that the viability rule has had on our constitutional debate. The same could be true, for that matter, with respect to legislative consideration in the States. We would then be free to exercise our discretion in deciding whether and when to take up the issue, from a more informed perspective.

* * *

Both the Court’s opinion and the dissent display a relentless freedom from doubt on the legal issue that I cannot share. I am not sure, for example, that a ban on terminating a pregnancy from the moment of conception must be treated the same under the Constitution as a ban after fifteen weeks. A thoughtful Member of this Court once counseled that the difficulty of a question “admonishes us to observe the wise limitations on our function and to confine ourselves to deciding only what is necessary to the disposition of the immediate case.” Whitehouse v. Illinois Central R. Co., 349 U. S. 366, 372–373 (1955) (Frankfurter, J., for the Court). I would decide the question we granted review to answer—whether the previously recognized abortion right bars all abortion restrictions prior to viability, such that a ban on abortions after fifteen weeks of pregnancy is necessarily unlawful. The answer to that question is no, and there is no need to go further to decide this case.

I therefore concur only in the judgment.
For half a century, Roe v. Wade, 410 U. S. 113 (1973), and Planned Parenthood of Southeastern Pa. v. Casey, 505 U. S. 833 (1992), have protected the liberty and equality of women. Roe held, and Casey reaffirmed, that the Constitution safeguards a woman’s right to decide for herself whether to bear a child. Roe held, and Casey reaffirmed, that in the first stages of pregnancy, the government could not make that choice for women. The government could not control a woman’s body or the course of a woman’s life: It could not determine what the woman’s future would be. See Casey, 505 U. S., at 853; Gonzales v. Carhart, 550 U. S. 124, 171–172 (2007) (Ginsburg, J., dissenting). Respecting a woman as an autonomous being, and granting her full equality, meant giving her substantial choice over this most personal and most consequential of all life decisions.

Roe and Casey well understood the difficulty and divisiveness of the abortion issue. The Court knew that Americans hold profoundly different views about the “moral[ity]” of “terminating a pregnancy, even in its earliest stage.” Casey, 505 U. S., at 850. And the Court recognized that “the
State has legitimate interests from the outset of the pregnancy in protecting the "life of the fetus that may become a child." \textit{Id.}, at 846. So the Court struck a balance, as it often does when values and goals compete. It held that the State could prohibit abortions after fetal viability, so long as the ban contained exceptions to safeguard a woman's life or health. It held that even before viability, the State could regulate the abortion procedure in multiple and meaningful ways. But until the viability line was crossed, the Court held, a State could not impose a "substantial obstacle" on a woman's "right to elect the procedure" as she (not the government) thought proper, in light of all the circumstances and complexities of her own life. \textit{Ibid.}

Today, the Court discards that balance. It says that from the very moment of fertilization, a woman has no rights to speak of. A State can force her to bring a pregnancy to term, even at the steepest personal and familial costs. An abortion restriction, the majority holds, is permissible whenever rational, the lowest level of scrutiny known to the law. And because, as the Court has often stated, protecting fetal life is rational, States will feel free to enact all manner of restrictions. The Mississippi law at issue here bars abortions after the 15th week of pregnancy. Under the majority's ruling, though, another State's law could do so after ten weeks, or five or three or one—or, again, from the moment of fertilization. States have already passed such laws, in anticipation of today's ruling. More will follow. Some States have enacted laws extending to all forms of abortion procedure, including taking medication in one's own home. They have passed laws without any exceptions for when the woman is the victim of rape or incest. Under those laws, a woman will have to bear her rapist's child or a young girl her father's—no matter if doing so will destroy her life. So too, after today's ruling, some States may compel women to carry to term a fetus with severe physical anomalies—for example, one afflicted with Tay-Sachs disease, sure to die
within a few years of birth. States may even argue that a prohibition on abortion need make no provision for protecting a woman from risk of death or physical harm. Across a vast array of circumstances, a State will be able to impose its moral choice on a woman and coerce her to give birth to a child.

Enforcement of all these draconian restrictions will also be left largely to the States’ devices. A State can of course impose criminal penalties on abortion providers, including lengthy prison sentences. But some States will not stop there. Perhaps, in the wake of today’s decision, a state law will criminalize the woman’s conduct too, incarcerating or fining her for daring to seek or obtain an abortion. And as Texas has recently shown, a State can turn neighbor against neighbor, enlisting fellow citizens in the effort to root out anyone who tries to get an abortion, or to assist another in doing so.

The majority tries to hide the geographically expansive effects of its holding. Today’s decision, the majority says, permits “each State” to address abortion as it pleases. Ante, at 79. That is cold comfort, of course, for the poor woman who cannot get the money to fly to a distant State for a procedure. Above all others, women lacking financial resources will suffer from today’s decision. In any event, interstate restrictions will also soon be in the offing. After this decision, some States may block women from traveling out of State to obtain abortions, or even from receiving abortion medications from out of State. Some may criminalize efforts, including the provision of information or funding, to help women gain access to other States’ abortion services. Most threatening of all, no language in today’s decision stops the Federal Government from prohibiting abortions nationwide, once again from the moment of conception and without exceptions for rape or incest. If that happens, “the views of [an individual State’s] citizens” will not matter. Ante, at 1. The challenge for a woman will be to finance a

Whatever the exact scope of the coming laws, one result of today’s decision is certain: the curtailment of women’s rights, and of their status as free and equal citizens. Yesterday, the Constitution guaranteed that a woman confronted with an unplanned pregnancy could (within reasonable limits) make her own decision about whether to bear a child, with all the life-transforming consequences that act involves. And in thus safeguarding each woman’s reproductive freedom, the Constitution also protected “[t]he ability of women to participate equally in [this Nation’s] economic and social life.” *Casey*, 505 U. S., at 856. But no longer. As of today, this Court holds, a State can always force a woman to give birth, prohibiting even the earliest abortions. A State can thus transform what, when freely undertaken, is a wonder into what, when forced, may be a nightmare. Some women, especially women of means, will find ways around the State’s assertion of power. Others—those without money or childcare or the ability to take time off from work—will not be so fortunate. Maybe they will try an unsafe method of abortion, and come to physical harm, or even die. Maybe they will undergo pregnancy and have a child, but at significant personal or familial cost. At the least, they will incur the cost of losing control of their lives. The Constitution will, today’s majority holds, provide no shield, despite its guarantees of liberty and equality for all.

And no one should be confident that this majority is done with its work. The right *Roe* and *Casey* recognized does not stand alone. To the contrary, the Court has linked it for decades to other settled freedoms involving bodily integrity, familial relationships, and procreation. Most obviously, the right to terminate a pregnancy arose straight out of the right to purchase and use contraception. See *Griswold v. Connecticut*, 381 U. S. 479 (1965); *Eisenstadt v. Baird*, 405 U. S. 438 (1972). In turn, those rights led, more recently,
to rights of same-sex intimacy and marriage. See Lawrence v. Texas, 539 U. S. 558 (2003); Obergefell v. Hodges, 576 U. S. 644 (2015). They are all part of the same constitutional fabric, protecting autonomous decisionmaking over the most personal of life decisions. The majority (or to be more accurate, most of it) is eager to tell us today that nothing it does “cast[s] doubt on precedents that do not concern abortion.” Ante, at 66; cf. ante, at 3 (THOMAS, J., concurring) (advocating the overruling of Griswold, Lawrence, and Obergefell). But how could that be? The lone rationale for what the majority does today is that the right to elect an abortion is not “deeply rooted in history”: Not until Roe, the majority argues, did people think abortion fell within the Constitution’s guarantee of liberty. Ante, at 32. The same could be said, though, of most of the rights the majority claims it is not tampering with. The majority could write just as long an opinion showing, for example, that until the mid-20th century, “there was no support in American law for a constitutional right to obtain [contraceptives].” Ante, at 15. So one of two things must be true. Either the majority does not really believe in its own reasoning. Or if it does, all rights that have no history stretching back to the mid-19th century are insecure. Either the mass of the majority’s opinion is hypocrisy, or additional constitutional rights are under threat. It is one or the other.

One piece of evidence on that score seems especially salient: The majority’s cavalier approach to overturning this Court’s precedents. *Stare decisis* is the Latin phrase for a foundation stone of the rule of law: that things decided should stay decided unless there is a very good reason for change. It is a doctrine of judicial modesty and humility. Those qualities are not evident in today’s opinion. The majority has no good reason for the upheaval in law and society it sets off. Roe and Casey have been the law of the land for decades, shaping women’s expectations of their choices when an unplanned pregnancy occurs. Women have relied
on the availability of abortion both in structuring their relationships and in planning their lives. The legal framework Roe and Casey developed to balance the competing interests in this sphere has proved workable in courts across the country. No recent developments, in either law or fact, have eroded or cast doubt on those precedents. Nothing, in short, has changed. Indeed, the Court in Casey already found all of that to be true. Casey is a precedent about precedent. It reviewed the same arguments made here in support of overruling Roe, and it found that doing so was not warranted. The Court reverses course today for one reason and one reason only: because the composition of this Court has changed. Stare decisis, this Court has often said, “contributes to the actual and perceived integrity of the judicial process” by ensuring that decisions are “founded in the law rather than in the proclivities of individuals.” Payne v. Tennessee, 501 U. S. 808, 827 (1991); Vasquez v. Hillery, 474 U. S. 254, 265 (1986). Today, the proclivities of individuals rule. The Court departs from its obligation to faithfully and impartially apply the law. We dissent.

I

We start with Roe and Casey, and with their deep connections to a broad swath of this Court’s precedents. To hear the majority tell the tale, Roe and Casey are aberrations: They came from nowhere, went nowhere—and so are easy to excise from this Nation’s constitutional law. That is not true. After describing the decisions themselves, we explain how they are rooted in—and themselves led to—other rights giving individuals control over their bodies and their most personal and intimate associations. The majority does not wish to talk about these matters for obvious reasons; to do so would both ground Roe and Casey in this Court’s precedents and reveal the broad implications of today’s decision. But the facts will not so handily disappear. Roe and Casey were from the beginning, and are even more now, embedded
in core constitutional concepts of individual freedom, and of the equal rights of citizens to decide on the shape of their lives. Those legal concepts, one might even say, have gone far toward defining what it means to be an American. For in this Nation, we do not believe that a government controlling all private choices is compatible with a free people. So we do not (as the majority insists today) place everything within “the reach of majorities and [government] officials.”

\textit{West Virginia Bd. of Ed. v. Barnette}, 319 U. S. 624, 638 (1943). We believe in a Constitution that puts some issues off limits to majority rule. Even in the face of public opposition, we uphold the right of individuals—yes, including women—to make their own choices and chart their own futures. Or at least, we did once.

Some half-century ago, \textit{Roe} struck down a state law making it a crime to perform an abortion unless its purpose was to save a woman’s life. The \textit{Roe} Court knew it was treading on difficult and disputed ground. It understood that different people’s “experiences,” “values,” and “religious training” and beliefs led to “opposing views” about abortion. 410 U. S., at 116. But by a 7-to-2 vote, the Court held that in the earlier stages of pregnancy, that contested and contestable choice must belong to a woman, in consultation with her family and doctor. The Court explained that a long line of precedents, “founded in the Fourteenth Amendment’s concept of personal liberty,” protected individual decisionmaking related to “marriage, procreation, contraception, family relationships, and child rearing and education.” \textit{Id.}, at 152–153 (citations omitted). For the same reasons, the Court held, the Constitution must protect “a woman’s decision whether or not to terminate her pregnancy.” \textit{Id.}, at 153. The Court recognized the myriad ways bearing a child can alter the “life and future” of a woman and other

At the same time, though, the Court recognized “valid interest[s]” of the State “in regulating the abortion decision.” *Id.*, at 153. The Court noted in particular “important interests” in “protecting potential life,” “maintaining medical standards,” and “safeguarding [the] health” of the woman. *Id.*, at 154. No “absolut[ist]” account of the woman’s right could wipe away those significant state claims. *Ibid.*

The Court therefore struck a balance, turning on the stage of the pregnancy at which the abortion would occur. The Court explained that early on, a woman’s choice must prevail, but that “at some point the state interests” become “dominant.” *Id.*, at 155. It then set some guideposts. In the first trimester of pregnancy, the State could not interfere at all with the decision to terminate a pregnancy. At any time after that point, the State could regulate to protect the pregnant woman’s health, such as by insisting that abortion providers and facilities meet safety requirements. And after the fetus’s viability—the point when the fetus “has the capability of meaningful life outside the mother’s womb”—the State could ban abortions, except when necessary to preserve the woman’s life or health. *Id.*, at 163–164.

In the 20 years between *Roe* and *Casey*, the Court expressly reaffirmed *Roe* on two occasions, and applied it on many more. Recognizing that “arguments [against *Roe*] continue to be made,” we responded that the doctrine of *stare decisis* “demands respect in a society governed by the rule of law.” *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U. S. 416, 419–420 (1983). And we avowed that the “vitality” of “constitutional principles cannot be allowed to yield simply because of disagreement with them.” *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U. S. 747, 759 (1986). So the Court, over and

Then, in Casey, the Court considered the matter anew, and again upheld Roe’s core precepts. Casey is in significant measure a precedent about the doctrine of precedent—until today, one of the Court’s most important. But we leave for later that aspect of the Court’s decision. The key thing now is the substantive aspect of the Court’s considered conclusion that “the essential holding of Roe v. Wade should be retained and once again reaffirmed.” 505 U. S., at 846.

Central to that conclusion was a full-throated restatement of a woman’s right to choose. Like Roe, Casey grounded that right in the Fourteenth Amendment’s guarantee of “liberty.” That guarantee encompasses realms of conduct not specifically referenced in the Constitution: “Marriage is mentioned nowhere” in that document, yet the Court was “no doubt correct” to protect the freedom to marry “against state interference.” 505 U. S., at 847–848. And the guarantee of liberty encompasses conduct today that was not protected at the time of the Fourteenth Amendment. See id., at 848. “It is settled now,” the Court said—though it was not always so—that “the Constitution places limits on a State’s right to interfere with a person’s most basic decisions about family and parenthood, as well as bodily integrity.” Id., at 849 (citations omitted); see id., at 851 (similarly describing the constitutional protection given to “personal decisions relating to marriage, procreation, contraception, [and] family relationships”). Especially
important in this web of precedents protecting an individual’s most “personal choices” were those guaranteeing the right to contraception. *Ibid.*; see *id.*, at 852–853. In those cases, the Court had recognized “the right of the individual” to make the vastly consequential “decision whether to bear” a child. *Id.*, at 851 (emphasis deleted). So too, *Casey* reasoned, the liberty clause protects the decision of a woman confronting an unplanned pregnancy. Her decision about abortion was central, in the same way, to her capacity to chart her life’s course. See *id.*, at 853.

In reaffirming the right *Roe* recognized, the Court took full account of the diversity of views on abortion, and the importance of various competing state interests. Some Americans, the Court stated, “deem [abortion] nothing short of an act of violence against innocent human life.” 505 U. S., at 852. And each State has an interest in “the protection of potential life”—as *Roe* itself had recognized. 505 U. S., at 871 (plurality opinion). On the one hand, that interest was not conclusive. The State could not “resolve” the “moral and spiritual” questions raised by abortion in “such a definitive way that a woman lacks all choice in the matter.” *Id.*, at 850 (majority opinion). It could not force her to bear the “pain” and “physical constraints” of “carry[ing] a child to full term” when she would have chosen an early abortion. *Id.*, at 852. But on the other hand, the State had, as *Roe* had held, an exceptionally significant interest in disallowing abortions in the later phase of a pregnancy. And it had an ever-present interest in “ensur[ing] that the woman’s choice is informed” and in presenting the case for “choos[ing] childbirth over abortion.” 505 U. S., at 878 (plurality opinion).

So *Casey* again struck a balance, differing from *Roe*’s in only incremental ways. It retained *Roe*’s “central holding” that the State could bar abortion only after viability. 505 U. S., at 860 (majority opinion). The viability line, *Casey* thought, was “more workable” than any other in marking
the place where the woman’s liberty interest gave way to a State’s efforts to preserve potential life. \textit{Id.}, at 870 (plurality opinion). At that point, a “second life” was capable of “independent existence.” \textit{Ibid.} If the woman even by then had not acted, she lacked adequate grounds to object to “the State’s intervention on [the developing child’s] behalf.” \textit{Ibid.} At the same time, \textit{Casey} decided, based on two decades of experience, that the \textit{Roe} framework did not give States sufficient ability to regulate abortion prior to viability. In that period, \textit{Casey} now made clear, the State could regulate not only to protect the woman’s health but also to “promot[e] prenatal life.” 505 U. S., at 873 (plurality opinion). In particular, the State could ensure informed choice and could try to promote childbirth. See \textit{id.}, at 877–878. But the State still could not place an “undue burden”—or “substantial obstacle”—“in the path of a woman seeking an abortion.” \textit{Id.}, at 878. Prior to viability, the woman, consistent with the constitutional “meaning of liberty,” must “retain the ultimate control over her destiny and her body.” \textit{Id.}, at 869.

We make one initial point about this analysis in light of the majority’s insistence that \textit{Roe} and \textit{Casey}, and we defending them, are dismissive of a “State’s interest in protecting prenatal life.” \textit{Ante}, at 38. Nothing could get those decisions more wrong. As just described, \textit{Roe} and \textit{Casey} invoked powerful state interests in that protection, operative at every stage of the pregnancy and overriding the woman’s liberty after viability. The strength of those state interests is exactly why the Court allowed greater restrictions on the abortion right than on other rights deriving from the Fourteenth Amendment.\footnote{For this reason, we do not understand the majority’s view that our analogy between the right to an abortion and the rights to contraception and same-sex marriage shows that we think “[t]he Constitution does not permit the States to regard the destruction of a ‘potential life’ as a matter}
freedom and equality are likewise involved. That fact—the presence of countervailing interests—is what made the abortion question hard, and what necessitated balancing. The majority scoffs at that idea, castigating us for “repeatedly prais[ing] the ‘balance’” the two cases arrived at (with the word “balance” in scare quotes). *Ante*, at 38. To the majority “balance” is a dirty word, as moderation is a foreign concept. The majority would allow States to ban abortion from conception onward because it does not think forced childbirth at all implicates a woman’s rights to equality and freedom. Today’s Court, that is, does not think there is anything of constitutional significance attached to a woman’s control of her body and the path of her life. *Roe* and *Casey* thought that one-sided view misguided. In some sense, that is the difference in a nutshell between our precedents and the majority opinion. The constitutional regime we have lived in for the last 50 years recognized competing interests, and sought a balance between them. The constitutional regime we enter today erases the woman’s interest and recognizes only the State’s (or the Federal Government’s).

The majority makes this change based on a single question: Did the reproductive right recognized in *Roe* and *Casey* of any significance.” *Ante*, at 38. To the contrary. The liberty interests underlying those rights are, as we will describe, quite similar. See *infra*, at 22–24. But only in the sphere of abortion is the state interest in protecting potential life involved. So only in that sphere, as both *Roe* and *Casey* recognized, may a State impinge so far on the liberty interest (barring abortion after viability and discouraging it before). The majority’s failure to understand this fairly obvious point stems from its rejection of the idea of balancing interests in this (or maybe in any) constitutional context. Cf. *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U. S. ___, ___ (2022) (slip op., at 8, 15–17). The majority thinks that a woman has no liberty or equality interest in the decision to bear a child, so a State’s interest in protecting fetal life necessarily prevails.
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eexist in “1868, the year when the Fourteenth Amendment was ratified”? *Ante*, at 23. The majority says (and with this much we agree) that the answer to this question is no: In 1868, there was no nationwide right to end a pregnancy, and no thought that the Fourteenth Amendment provided one.

Of course, the majority opinion refers as well to some later and earlier history. On the one side of 1868, it goes back as far as the 13th (the 13th!) century. See *ante*, at 17. But that turns out to be wheel-spinning. First, it is not clear what relevance such early history should have, even to the majority. See *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U. S. ___, ___ (2022) (slip op., at 26) (“Historical evidence that long predates [ratification] may not illumine the scope of the right”). If the early history obviously supported abortion rights, the majority would no doubt say that only the views of the Fourteenth Amendment’s ratifiers are germane. See *ibid.* (It is “better not to go too far back into antiquity,” except if olden “law survived to become our Founders’ law”). Second—and embarrassingly for the majority—early law in fact does provide some support for abortion rights. Common-law authorities did not treat abortion as a crime before “quickening”—the point when the fetus moved in the womb. See *ibid.* And early American law followed the common-law rule. So the criminal law of that early time might be taken as roughly consonant with

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3See J. Mohr, Abortion in America: The Origins and Evolution of National Policy, 1800–1900, pp. 3–4 (1978). The majority offers no evidence to the contrary—no example of a founding-era law making pre-quickening abortion a crime (except when a woman died). See *ante*, at 20–21. And even in the mid-19th century, more than 10 States continued to allow pre-quickening abortions. See Brief for American Historical Association et al. as Amici Curiae 27, and n. 14.
Roe’s and Casey’s different treatment of early and late abortions. Better, then, to move forward in time. On the other side of 1868, the majority occasionally notes that many States barred abortion up to the time of Roe. See ante, at 24, 36. That is convenient for the majority, but it is window dressing. As the same majority (plus one) just informed us, “post-ratification adoption or acceptance of laws that are inconsistent with the original meaning of the constitutional text obviously cannot overcome or alter that text.” New York State Rifle & Pistol Assn., Inc., 597 U. S., at ___–___ (slip op., at 27–28). Had the pre-Roe liberalization of abortion laws occurred more quickly and more widely in the 20th century, the majority would say (once again) that only the ratifiers’ views are germane.

The majority’s core legal postulate, then, is that we in the 21st century must read the Fourteenth Amendment just as its ratifiers did. And that is indeed what the majority emphasizes over and over again. See ante, at 47 (“[T]he most important historical fact [is] how the States regulated abortion when the Fourteenth Amendment was adopted”); see also ante, at 5, 16, and n. 24, 23, 25, 28. If the ratifiers did not understand something as central to freedom, then neither can we. Or said more particularly: If those people did not understand reproductive rights as part of the guarantee of liberty conferred in the Fourteenth Amendment, then those rights do not exist.

As an initial matter, note a mistake in the just preceding sentence. We referred there to the “people” who ratified the Fourteenth Amendment: What rights did those “people” have in their heads at the time? But, of course, “people” did not ratify the Fourteenth Amendment. Men did. So it is perhaps not so surprising that the ratifiers were not perfectly attuned to the importance of reproductive rights for women’s liberty, or for their capacity to participate as equal members of our Nation. Indeed, the ratifiers—both in 1868 and when the original Constitution was approved in 1788—
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did not understand women as full members of the community embraced by the phrase “We the People.” In 1868, the first wave of American feminists were explicitly told—of course by men—that it was not their time to seek constitutional protections. (Women would not get even the vote for another half-century.) To be sure, most women in 1868 also had a foreshortened view of their rights: If most men could not then imagine giving women control over their bodies, most women could not imagine having that kind of autonomy. But that takes away nothing from the core point. Those responsible for the original Constitution, including the Fourteenth Amendment, did not perceive women as equals, and did not recognize women’s rights. When the majority says that we must read our foundational charter as viewed at the time of ratification (except that we may also check it against the Dark Ages), it consigns women to second-class citizenship.

Casey itself understood this point, as will become clear. See infra, at 23–24. It recollected with dismay a decision this Court issued just five years after the Fourteenth Amendment’s ratification, approving a State’s decision to deny a law license to a woman and suggesting as well that a woman had no legal status apart from her husband. See 505 U. S., at 896–897 (majority opinion) (citing Bradwell v. State, 16 Wall. 130 (1873)). “There was a time,” Casey explained, when the Constitution did not protect “men and women alike.” 505 U. S., at 896. But times had changed. A woman’s place in society had changed, and constitutional law had changed along with it. The relegation of women to inferior status in either the public sphere or the family was “no longer consistent with our understanding” of the Constitution. Id., at 897. Now, “[t]he Constitution protects all individuals, male or female,” from “the abuse of governmental power” or “unjustified state interference.” Id., at 896, 898.

So how is it that, as Casey said, our Constitution, read
now, grants rights to women, though it did not in 1868? How is it that our Constitution subjects discrimination against them to heightened judicial scrutiny? How is it that our Constitution, through the Fourteenth Amendment’s liberty clause, guarantees access to contraception (also not legally protected in 1868) so that women can decide for themselves whether and when to bear a child? How is it that until today, that same constitutional clause protected a woman’s right, in the event contraception failed, to end a pregnancy in its earlier stages?

The answer is that this Court has rejected the majority’s pinched view of how to read our Constitution. “The Founders,” we recently wrote, “knew they were writing a document designed to apply to ever-changing circumstances over centuries.” NLRB v. Noel Canning, 573 U. S. 513, 533–534 (2014). Or in the words of the great Chief Justice John Marshall, our Constitution is “intended to endure for ages to come,” and must adapt itself to a future “seen dimly,” if at all. McCulloch v. Maryland, 4 Wheat. 316, 415 (1819). That is indeed why our Constitution is written as it is. The Framers (both in 1788 and 1868) understood that the world changes. So they did not define rights by reference to the specific practices existing at the time. Instead, the Framers defined rights in general terms, to permit future evolution in their scope and meaning. And over the course of our history, this Court has taken up the Framers’ invitation. It has kept true to the Framers’ principles by applying them in new ways, responsive to new societal understandings and conditions.

Nowhere has that approach been more prevalent than in construing the majestic but open-ended words of the Fourteenth Amendment—the guarantees of “liberty” and “equality” for all. And nowhere has that approach produced prouder moments, for this country and the Court. Consider an example Obergefell used a few years ago. The Court
there confronted a claim, based on *Washington v. Glucksberg*, 521 U. S. 702 (1997), that the Fourteenth Amendment “must be defined in a most circumscribed manner, with central reference to specific historical practices”—exactly the view today’s majority follows. *Obergefell*, 576 U. S., at 671. And the Court specifically rejected that view.4 In doing so, the Court reflected on what the proposed, historically circumscribed approach would have meant for interracial marriage. See *ibid.* The Fourteenth Amendment’s ratifiers did not think it gave black and white people a right to marry each other. To the contrary, contemporaneous practice deemed that act quite as unprotected as abortion. Yet the Court in *Loving v. Virginia*, 388 U. S. 1 (1967), read the Fourteenth Amendment to embrace the Lovings’ union. If, *Obergefell* explained, “rights were defined by who exercised them in the past, then received practices could serve as their own continued justification”—even when they conflict with “liberty” and “equality” as later and more broadly understood. 576 U. S., at 671. The Constitution does not freeze for all time the original view of what those rights guarantee, or how they apply.

That does not mean anything goes. The majority wishes people to think there are but two alternatives: (1) accept the original applications of the Fourteenth Amendment and no others, or (2) surrender to judges’ “own ardent views,” ungrounded in law, about the “liberty that Americans should enjoy.” *Ante*, at 14. At least, that idea is what the majority sometimes tries to convey. At other times, the majority (or, rather, most of it) tries to assure the public that it has no designs on rights (for example, to contraception) that arose only in the back half of the 20th century—in other words,

4The majority ignores that rejection. See *ante*, at 5, 13, 36. But it is unequivocal: The *Glucksberg* test, *Obergefell* said, “may have been appropriate” in considering physician-assisted suicide, but “is inconsistent with the approach this Court has used in discussing other fundamental rights, including marriage and intimacy.” 576 U. S., at 671.
that it is happy to pick and choose, in accord with individual preferences. See ante, at 32, 66, 71–72; ante, at 10 (KAVANAUGH, J., concurring); but see ante, at 3 (THOMAS, J., concurring). But that is a matter we discuss later. See infra, at 24–29. For now, our point is different: It is that applications of liberty and equality can evolve while remaining grounded in constitutional principles, constitutional history, and constitutional precedents. The second Justice Harlan discussed how to strike the right balance when he explained why he would have invalidated a State’s ban on contraceptive use. Judges, he said, are not “free to roam where unguided speculation might take them.” Poe v. Ullman, 367 U. S. 497, 542 (1961) (dissenting opinion). Yet they also must recognize that the constitutional “tradition” of this country is not captured whole at a single moment. Ibid. Rather, its meaning gains content from the long sweep of our history and from successive judicial precedents—each looking to the last and each seeking to apply the Constitution’s most fundamental commitments to new conditions. That is why Americans, to go back to Obergefell’s example, have a right to marry across racial lines. And it is why, to go back to Justice Harlan’s case, Americans have a right to use contraceptives so they can choose for themselves whether to have children.

All that is what Casey understood. Casey explicitly rejected the present majority’s method. “[T]he specific practices of States at the time of the adoption of the Fourteenth Amendment,” Casey stated, do not “mark[] the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects.” 505 U. S., at 848.5 To hold otherwise—as the majority does today—“would be inconsistent

5In a perplexing paragraph in its opinion, the majority declares that it need not say whether that statement from Casey is true. See ante, at 32–33. But how could that be? Has not the majority insisted for the prior 30 or so pages that the “specific practice[]” respecting abortion at the
with our law.” *Id.*, at 847. Why? Because the Court has “vindicated [the] principle” over and over that (no matter the sentiment in 1868) “there is a realm of personal liberty which the government may not enter”—especially relating to “bodily integrity” and “family life.” *Id.*, at 847, 849, 851. *Casey* described in detail the Court’s contraception cases. See *id.*, at 848–849, 851–853. It noted decisions protecting the right to marry, including to someone of another race. See *id.*, at 847–848 (“[I]nterracial marriage was illegal in most States in the 19th century, but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference”). In reviewing decades and decades of constitutional law, *Casey* could draw but one conclusion: Whatever was true in 1868, “[i]t is settled now, as it was when the Court heard arguments in *Roe v. Wade*, that the Constitution places limits on a State’s right to interfere with a person’s most basic decisions about family and parenthood.” *Id.*, at 849.

And that conclusion still held good, until the Court’s intervention here. It was settled at the time of *Roe*, settled at the time of *Casey*, and settled yesterday that the Constitution places limits on a State’s power to assert control over an individual’s body and most personal decisionmaking. A multitude of decisions supporting that principle led to *Roe*’s recognition and *Casey*’s reaffirmation of the right to choose; and *Roe* and *Casey* in turn supported additional protections for intimate and familial relations. The majority has em-
barrassingly little to say about those precedents. It (liter-
ally) rattles them off in a single paragraph; and it implies
that they have nothing to do with each other, or with the
right to terminate an early pregnancy. See ante, at 31–32
(asserting that recognizing a relationship among them, as
addressing aspects of personal autonomy, would inelucta-
ibly “license fundamental rights” to illegal “drug use [and]
prostitution”). But that is flat wrong. The Court’s prece-
dents about bodily autonomy, sexual and familial relations,
and procreation are all interwoven—all part of the fabric of
our constitutional law, and because that is so, of our lives.
Especially women’s lives, where they safeguard a right to
self-determination.

And eliminating that right, we need to say before further
describing our precedents, is not taking a “neutral” posi-
tion, as JUSTICE KAVANAUGH tries to argue. Ante, at 2–3,
5, 7, 11–12 (concurring opinion). His idea is that neutrality
lies in giving the abortion issue to the States, where some
can go one way and some another. But would he say that
the Court is being “scrupulously neutral” if it allowed New
York and California to ban all the guns they want? Ante, at
3. If the Court allowed some States to use unanimous juries
and others not? If the Court told the States: Decide for
yourselves whether to put restrictions on church attend-
ance? We could go on—and in fact we will. Suppose
JUSTICE KAVANAUGH were to say (in line with the majority
opinion) that the rights we just listed are more textually or
historically grounded than than the right to choose. What, then,
of the right to contraception or same-sex marriage? Would
it be “scrupulously neutral” for the Court to eliminate those
rights too? The point of all these examples is that when it
comes to rights, the Court does not act “neutrally” when it
leaves everything up to the States. Rather, the Court acts
neutrally when it protects the right against all comers. And
to apply that point to the case here: When the Court deci-
mates a right women have held for 50 years, the Court is
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not being “scrupulously neutral.” It is instead taking sides: against women who wish to exercise the right, and for States (like Mississippi) that want to bar them from doing so. Justice Kavanaugh cannot obscure that point by appropriating the rhetoric of even-handedness. His position just is what it is: A brook-no-compromise refusal to recognize a woman’s right to choose, from the first day of a pregnancy. And that position, as we will now show, cannot be squared with this Court’s longstanding view that women indeed have rights (whatever the state of the world in 1868) to make the most personal and consequential decisions about their bodies and their lives.

Consider first, then, the line of this Court’s cases protecting “bodily integrity.” Casey, 505 U. S., at 849. “No right,” in this Court’s time-honored view, “is held more sacred, or is more carefully guarded,” than “the right of every individual to the possession and control of his own person.” Union Pacific R. Co. v. Botsford, 141 U. S. 250, 251 (1891); see Cruzan v. Director, Mo. Dept. of Health, 497 U. S. 261, 269 (1990) (Every adult “has a right to determine what shall be done with his own body”). Or to put it more simply: Everyone, including women, owns their own bodies. So the Court has restricted the power of government to interfere with a person’s medical decisions or compel her to undergo medical procedures or treatments. See, e.g., Winston v. Lee, 470 U. S. 753, 766–767 (1985) (forced surgery); Rochin v. California, 342 U. S. 165, 166, 173–174 (1952) (forced stomach pumping); Washington v. Harper, 494 U. S. 210, 229, 236 (1990) (forced administration of antipsychotic drugs).

Casey recognized the “doctrinal affinity” between those precedents and Roe. 505 U. S., at 857. And that doctrinal affinity is born of a factual likeness. There are few greater incursions on a body than forcing a woman to complete a pregnancy and give birth. For every woman, those experiences involve all manner of physical changes, medical treatments (including the possibility of a cesarean section), and
medical risk. Just as one example, an American woman is 14 times more likely to die by carrying a pregnancy to term than by having an abortion. See Whole Woman’s Health v. Hellerstedt, 579 U. S. 582, 618 (2016). That women happily undergo those burdens and hazards of their own accord does not lessen how far a State impinges on a woman’s body when it compels her to bring a pregnancy to term. And for some women, as Roe recognized, abortions are medically necessary to prevent harm. See 410 U. S., at 153. The majority does not say—which is itself ominous—whether a State may prevent a woman from obtaining an abortion when she and her doctor have determined it is a needed medical treatment.

So too, Roe and Casey fit neatly into a long line of decisions protecting from government intrusion a wealth of private choices about family matters, child rearing, intimate relationships, and procreation. See Casey, 505 U. S., at 851, 857; Roe, 410 U. S., at 152–153; see also ante, at 31–32 (listing the myriad decisions of this kind that Casey relied on). Those cases safeguard particular choices about whom to marry; whom to have sex with; what family members to live with; how to raise children—and crucially, whether and when to have children. In varied cases, the Court explained that those choices—“the most intimate and personal” a person can make—reflect fundamental aspects of personal identity; they define the very “attributes of personhood.” Casey, 505 U. S., at 851. And they inevitably shape the nature and future course of a person’s life (and often the lives of those closest to her). So, the Court held, those choices belong to the individual, and not the government. That is the essence of what liberty requires.

And liberty may require it, this Court has repeatedly said, even when those living in 1868 would not have recognized the claim—because they would not have seen the person making it as a full-fledged member of the community. Throughout our history, the sphere of protected liberty has
expanded, bringing in individuals formerly excluded. In
that way, the constitutional values of liberty and equality
go hand in hand; they do not inhabit the hermetically sealed
containers the majority portrays. Compare Obergefell, 576
U. S., at 672–675, with ante, at 10–11. So before Roe and
Casey, the Court expanded in successive cases those who
could claim the right to marry—though their relationships
would have been outside the law’s protection in the mid-
19th century. See, e.g., Loving, 388 U. S. 1 (interracial cou-
pies); Turner v. Safley, 482 U. S. 78 (1987) (prisoners); see
also, e.g., Stanley v. Illinois, 405 U. S. 645, 651–652 (1972)
(offering constitutional protection to untraditional “family
unit[s]”). And after Roe and Casey, of course, the Court con-
tinued in that vein. With a critical stop to hold that the
Fourteenth Amendment protected same-sex intimacy, the
Court resolved that the Amendment also conferred on
same-sex couples the right to marry. See Lawrence, 539
U. S. 558; Obergefell, 576 U. S. 644. In considering that
question, the Court held, “[h]istory and tradition,” espe-
cially as reflected in the course of our precedent, “guide and
discipline [the] inquiry.” Id., at 664. But the sentiments of
1868 alone do not and cannot “rule the present.” Ibid.
Casey similarly recognized the need to extend the consti-
tutional sphere of liberty to a previously excluded group.
The Court then understood, as the majority today does not,
that the men who ratified the Fourteenth Amendment and
wrote the state laws of the time did not view women as full
and equal citizens. See supra, at 15. A woman then, Casey
wrote, “had no legal existence separate from her husband.”
505 U. S., at 897. Women were seen only “as the center of
home and family life,” without “full and independent legal
status under the Constitution.” Ibid. But that could not be
true any longer: The State could not now insist on the his-
torically dominant “vision of the woman’s role.” Id., at 852.
And equal citizenship, Casey realized, was inescapably con-
nected to reproductive rights. “The ability of women to participate equally” in the “life of the Nation”—in all its economic, social, political, and legal aspects—“has been facilitated by their ability to control their reproductive lives.” *Id.*, at 856. Without the ability to decide whether and when to have children, women could not—in the way men took for granted—determine how they would live their lives, and how they would contribute to the society around them.

For much that reason, *Casey* made clear that the precedents *Roe* most closely tracked were those involving contraception. Over the course of three cases, the Court had held that a right to use and gain access to contraception was part of the Fourteenth Amendment’s guarantee of liberty. See *Griswold*, 381 U. S. 479; *Eisenstadt*, 405 U. S. 438; *Carey v. Population Services Int’l*, 431 U. S. 678 (1977). That clause, we explained, necessarily conferred a right “to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.” *Eisenstadt*, 405 U. S., at 453; see *Carey*, 431 U. S., at 684–685. *Casey* saw *Roe* as of a piece: In “critical respects the abortion decision is of the same character.” 505 U. S., at 852. “[R]easonable people,” the Court noted, could also oppose contraception; and indeed, they could believe that “some forms of contraception” similarly implicate a concern with “potential life.” *Id.*, at 853, 859. Yet the views of others could not automatically prevail against a woman’s right to control her own body and make her own choice about whether to bear, and probably to raise, a child. When an unplanned pregnancy is involved—because either contraception or abortion is outlawed—“the liberty of the woman is at stake in a sense unique to the human condition.” *Id.*, at 852. No State could undertake to resolve the moral questions raised “in such a definitive way” as to deprive a woman of all choice. *Id.*, at 850.

Faced with all these connections between *Roe/Casey* and judicial decisions recognizing other constitutional rights,
the majority tells everyone not to worry. It can (so it says) neatly extract the right to choose from the constitutional edifice without affecting any associated rights. (Think of someone telling you that the Jenga tower simply will not collapse.) Today’s decision, the majority first says, “does not undermine” the decisions cited by Roe and Casey—the ones involving “marriage, procreation, contraception, [and] family relationships”—“in any way.” Ante, at 32; Casey, 505 U. S., at 851. Note that this first assurance does not extend to rights recognized after Roe and Casey, and partly based on them—in particular, rights to same-sex intimacy and marriage. See supra, at 23. On its later tries, though, the majority includes those too: “Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion.” Ante, at 66; see ante, at 71–72. That right is unique, the majority asserts, “because [abortion] terminates life or potential life.” Ante, at 66 (internal quotation marks omitted); see ante, at 32, 71–72. So the majority depicts today’s decision as “a restricted railroad ticket, good for this day and train only.” Smith v. Allwright, 321 U. S. 649, 669 (1944) (Roberts, J., dissenting). Should the audience for these too-much-repeated protestations be duly satisfied? We think not.

The first problem with the majority’s account comes from JUSTICE THOMAS’s concurrence—which makes clear he is not with the program. In saying that nothing in today’s opinion casts doubt on non-abortion precedents, JUSTICE THOMAS explains, he means only that they are not at issue

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6And note, too, that the author of the majority opinion recently joined a statement, written by another member of the majority, lamenting that Obergefell deprived States of the ability “to resolve th[e] question [of same-sex marriage] through legislation.” Davis v. Ermold, 592 U. S. ___ (2020) (statement of THOMAS, J.) (slip op., at 1). That might sound familiar. Cf. ante, at 44 (lamenting that Roe “short-circuited the democratic process”). And those two Justices hardly seemed content to let the matter rest: The Court, they said, had “created a problem that only it can fix.” Davis, 592 U. S., at ___ (slip op., at 4).
in this very case. See ante, at 7 (“[T]his case does not present the opportunity to reject” those precedents). But he lets us know what he wants to do when they are. “[I]n future cases,” he says, “we should reconsider all of this Court’s substantive due process precedents, including Griswold, Lawrence, and Obergefell.” Ante, at 3; see also supra, at 25, and n. 6. And when we reconsider them? Then “we have a duty” to “overrul[e] these demonstrably erroneous decisions.” Ante, at 3. So at least one Justice is planning to use the ticket of today’s decision again and again and again.

Even placing the concurrence to the side, the assurance in today’s opinion still does not work. Or at least that is so if the majority is serious about its sole reason for overturning Roe and Casey: the legal status of abortion in the 19th century. Except in the places quoted above, the state interest in protecting fetal life plays no part in the majority’s analysis. To the contrary, the majority takes pride in not expressing a view “about the status of the fetus.” Ante, at 65; see ante, at 32 (aligning itself with Roe’s and Casey’s stance of not deciding whether life or potential life is involved); ante, at 38–39 (similar). The majority’s departure from Roe and Casey rests instead—and only—on whether a woman’s decision to end a pregnancy involves any Fourteenth Amendment liberty interest (against which Roe and Casey balanced the state interest in preserving fetal life). 7

7 Indulge a few more words about this point. The majority had a choice of two different ways to overrule Roe and Casey. It could claim that those cases underrated the State’s interest in fetal life. Or it could claim that they overrated a woman’s constitutional liberty interest in choosing an abortion. (Or both.) The majority here rejects the first path, and we can see why. Taking that route would have prevented the majority from claiming that it means only to leave this issue to the democratic process—that it does not have a dog in the fight. See ante, at 38–39, 65. And indeed, doing so might have suggested a revolutionary proposition: that the fetus is itself a constitutionally protected “person,” such that an abortion ban is constitutionally mandated. The majority therefore chooses the second path, arguing that the Fourteenth Amendment does
According to the majority, no liberty interest is present—because (and only because) the law offered no protection to the woman’s choice in the 19th century. But here is the rub. The law also did not then (and would not for ages) protect a wealth of other things. It did not protect the rights recognized in Lawrence and Obergefell to same-sex intimacy and marriage. It did not protect the right recognized in Loving to marry across racial lines. It did not protect the right recognized in Griswold to contraceptive use. For that matter, it did not protect the right recognized in Skinner v. Oklahoma ex rel. Williamson, 316 U. S. 535 (1942), not to be sterilized without consent. So if the majority is right in its legal analysis, all those decisions were wrong, and all those matters properly belong to the States too—whatever the particular state interests involved. And if that is true, it is impossible to understand (as a matter of logic and principle) how the majority can say that its opinion today does not threaten—does not even “undermine”—any number of other constitutional rights. Ante, at 32.8

Nor does it even help just to take the majority at its word. Assume the majority is sincere in saying, for whatever reason, that it will go so far and no further. Scout’s honor. Still, the future significance of today’s opinion will be decided in the future. And law often has a way of evolving not conceive of the abortion decision as implicating liberty, because the law in the 19th century gave that choice no protection. The trouble is that the chosen path—which is, again, the solitary rationale for the Court’s decision—provides no way to distinguish between the right to choose an abortion and a range of other rights, including contraception.

8 The majority briefly (very briefly) gestures at the idea that some stare decisis factors might play out differently with respect to these other constitutional rights. But the majority gives no hint as to why. And the majority’s (mis)treatment of stare decisis in this case provides little reason to think that the doctrine would stand as a barrier to the majority’s redoing any other decision it considered egregiously wrong. See infra, at 30–57.
without regard to original intentions—a way of actually following where logic leads, rather than tolerating hard-to-explain lines. Rights can expand in that way. Dissenting in Lawrence, Justice Scalia explained why he took no comfort in the Court’s statement that a decision recognizing the right to same-sex intimacy did “not involve” same-sex marriage. 539 U. S., at 604. That could be true, he wrote, “only if one entertains the belief that principle and logic have nothing to do with the decisions of this Court.” Id., at 605. Score one for the dissent, as a matter of prophecy. And logic and principle are not one-way ratchets. Rights can contract in the same way and for the same reason—because whatever today’s majority might say, one thing really does lead to another. We fervently hope that does not happen because of today’s decision. We hope that we will not join Justice Scalia in the book of prophets. But we cannot understand how anyone can be confident that today’s opinion will be the last of its kind.

Consider, as our last word on this issue, contraception. The Constitution, of course, does not mention that word. And there is no historical right to contraception, of the kind the majority insists on. To the contrary, the American legal landscape in the decades after the Civil War was littered with bans on the sale of contraceptive devices. So again, there seem to be two choices. See supra, at 5, 26–27. If the majority is serious about its historical approach, then Griswold and its progeny are in the line of fire too. Or if it is not serious, then . . . what is the basis of today’s decision? If we had to guess, we suspect the prospects of this Court approving bans on contraception are low. But once again, the future significance of today’s opinion will be decided in the future. At the least, today’s opinion will fuel the fight to get contraception, and any other issues with a moral dimension, out of the Fourteenth Amendment and into state
Anyway, today’s decision, taken on its own, is catastrophic enough. As a matter of constitutional method, the majority’s commitment to replicate in 2022 every view about the meaning of liberty held in 1868 has precious little to recommend it. Our law in this constitutional sphere, as in most, has for decades upon decades proceeded differently. It has considered fundamental constitutional principles, the whole course of the Nation’s history and traditions, and the step-by-step evolution of the Court’s precedents. It is disciplined but not static. It relies on accumulated judgments, not just the sentiments of one long-ago generation of men (who themselves believed, and drafted the Constitution to reflect, that the world progresses). And by doing so, it includes those excluded from that olden conversation, rather than perpetuating its bounds.

As a matter of constitutional substance, the majority’s opinion has all the flaws its method would suggest. Because laws in 1868 deprived women of any control over their bodies, the majority approves States doing so today. Because those laws prevented women from charting the course of their own lives, the majority says States can do the same again. Because in 1868, the government could tell a pregnant woman—even in the first days of her pregnancy—that she could do nothing but bear a child, it can once more impose that command. Today’s decision strips women of agency over what even the majority agrees is a

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contested and contestable moral issue. It forces her to carry out the State’s will, whatever the circumstances and whatever the harm it will wreak on her and her family. In the Fourteenth Amendment’s terms, it takes away her liberty. Even before we get to *stare decisis*, we dissent.

II

By overruling *Roe*, *Casey*, and more than 20 cases reaffirming or applying the constitutional right to abortion, the majority abandons *stare decisis*, a principle central to the rule of law. “*Stare decisis*” means “to stand by things decided.” Black’s Law Dictionary 1696 (11th ed. 2019). Blackstone called it the “established rule to abide by former precedents.” 1 Blackstone 69. *Stare decisis* “promotes the evenhanded, predictable, and consistent development of legal principles.” *Payne*, 501 U. S., at 827. It maintains a stability that allows people to order their lives under the law. See H. Hart & A. Sacks, The Legal Process: Basic Problems in the Making and Application of Law 568–569 (1994).

*Stare decisis* also “contributes to the integrity of our constitutional system of government” by ensuring that decisions “are founded in the law rather than in the proclivities of individuals.” *Vasquez*, 474 U. S., at 265. As Hamilton wrote: It “avoid[s] an arbitrary discretion in the courts.” The Federalist No. 78, p. 529 (J. Cooke ed. 1961) (A. Hamilton). And as Blackstone said before him: It “keep[s] the scale of justice even and steady, and not liable to waver with every new judge’s opinion.” 1 Blackstone 69. The “glory” of our legal system is that it “gives preference to precedent rather than . . . jurists.” H. Humble, Departure From Precedent, 19 Mich. L. Rev. 608, 614 (1921). That is why, the story goes, Chief Justice John Marshall donned a plain black robe when he swore the oath of office. That act personified an American tradition. Judges’ personal preferences do not make law; rather, the law speaks through
That means the Court may not overrule a decision, even a constitutional one, without a “special justification.” *Gamble v. United States*, 587 U. S. ___, ___ (2019) (slip op., at 11). *Stare decisis* is, of course, not an “inexorable command”; it is sometimes appropriate to overrule an earlier decision. *Pearson v. Callahan*, 555 U. S. 223, 233 (2009). But the Court must have a good reason to do so over and above the belief “that the precedent was wrongly decided.” *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U. S. 258, 266 (2014). “[I]t is not alone sufficient that we would decide a case differently now than we did then.” *Kimble v. Marvel Entertainment, LLC*, 576 U. S. 446, 455 (2015).

The majority today lists some 30 of our cases as overruling precedent, and argues that they support overruling *Roe* and *Casey*. But none does, as further described below and in the Appendix. See *infra*, at 61–66. In some, the Court only partially modified or clarified a precedent. And in the rest, the Court relied on one or more of the traditional *stare decisis* factors in reaching its conclusion. The Court found, for example, (1) a change in legal doctrine that undermined or made obsolete the earlier decision; (2) a factual change that had the same effect; or (3) an absence of reliance because the earlier decision was less than a decade old. (The majority is wrong when it says that we insist on a test of changed law or fact alone, although that is present in most of the cases. See *ante*, at 69.) None of those factors apply here: Nothing—and in particular, no significant legal or factual change—supports overturning a half-century of settled law giving women control over their reproductive lives.

First, for all the reasons we have given, *Roe* and *Casey* were correct. In holding that a State could not “resolve” the debate about abortion “in such a definitive way that a woman lacks all choice in the matter,” the Court protected women’s liberty and women’s equality in a way comporting with our Fourteenth Amendment precedents. *Casey*, 505
U. S., at 850. Contrary to the majority’s view, the legal status of abortion in the 19th century does not weaken those decisions. And the majority’s repeated refrain about “usurp[ing]” state legislatures’ “power to address” a publicly contested question does not help it on the key issue here. *Ante*, at 44; see *ante*, at 1. To repeat: The point of a right is to shield individual actions and decisions “from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.” *Barnette*, 319 U. S., at 638; *supra*, at 7. However divisive, a right is not at the people’s mercy.

In any event “[w]hether or not we . . . agree” with a prior precedent is the beginning, not the end, of our analysis—and the remaining “principles of stare decisis weigh heavily against overruling” *Roe* and *Casey*. *Dickerson v. United States*, 530 U. S. 428, 443 (2000). *Casey* itself applied those principles, in one of this Court’s most important precedents about precedent. After assessing the traditional *stare decisis* factors, *Casey* reached the only conclusion possible—that *stare decisis* operates powerfully here. It still does. The standards *Roe* and *Casey* set out are perfectly workable. No changes in either law or fact have eroded the two decisions. And tens of millions of American women have relied, and continue to rely, on the right to choose. So under traditional *stare decisis* principles, the majority has no special justification for the harm it causes.

And indeed, the majority comes close to conceding that point. The majority barely mentions any legal or factual changes that have occurred since *Roe* and *Casey*. It suggests that the two decisions are hard for courts to implement, but cannot prove its case. In the end, the majority says, all it must say to override *stare decisis* is one thing: that it believes *Roe* and *Casey* “egregiously wrong.” *Ante*, at 70. That rule could equally spell the end of any precedent with which a bare majority of the present Court disagrees.
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So how does that approach prevent the “scale of justice” from “waver[ing] with every new judge’s opinion”? 1 Blackstone 69. It does not. It makes radical change too easy and too fast, based on nothing more than the new views of new judges. The majority has overruled Roe and Casey for one and only one reason: because it has always despised them, and now it has the votes to discard them. The majority thereby substitutes a rule by judges for the rule of law.

A

Contrary to the majority’s view, there is nothing unworkable about Casey’s “undue burden” standard. Its primary focus on whether a State has placed a “substantial obstacle” on a woman seeking an abortion is “the sort of inquiry familiar to judges across a variety of contexts.” June Medical Services L. L. C. v. Russo, 591 U. S. ___, ___ (2020) (slip op., at 6) (ROBERTS, C. J., concurring in judgment). And it has given rise to no more conflict in application than many standards this Court and others unhesitatingly apply every day.

General standards, like the undue burden standard, are ubiquitous in the law, and particularly in constitutional adjudication. When called on to give effect to the Constitution’s broad principles, this Court often crafts flexible standards that can be applied case-by-case to a myriad of unforeseeable circumstances. See Dickerson, 530 U. S., at 441 (“No court laying down a general rule can possibly foresee the various circumstances” in which it must apply). So, for example, the Court asks about undue or substantial burdens on speech, on voting, and on interstate commerce. See, e.g., Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett, 564 U. S. 721, 748 (2011); Burdick v. Takushi, 504 U. S. 428, 433–434 (1992); Pike v. Bruce Church, Inc., 397 U. S. 137, 142 (1970). The Casey undue burden standard is the same. It also resembles general standards that courts
work with daily in other legal spheres—like the “rule of rea-
son” in antitrust law or the “arbitrary and capricious”
standard for agency decisionmaking. See Standard Oil Co. of N. J. v. United States, 221 U. S. 1, 62 (1911); Motor Vehi-
cle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Au-
eral standards to particular cases is, in many contexts, just
what it means to do law.

And the undue burden standard has given rise to no un-
usual difficulties. Of course, it has provoked some disagree-
ment among judges. Casey knew it would: That much “is to be
expected in the application of any legal standard which
must accommodate life’s complexity.” 505 U. S., at 878
(plurality opinion). Which is to say: That much is to be ex-
pected in the application of any legal standard. But the ma-
jority vastly overstates the divisions among judges applying
the standard. We count essentially two. THE CHIEF
JUSTICE disagreed with other Justices in the June Medical
majority about whether Casey called for weighing the ben-
efits of an abortion regulation against its burdens. See 591
U. S., at ___–___ (slip op., at 6–7); ante, at 59, 60, and
n. 53.10 We agree that the June Medical difference is a dif-
ference—but not one that would actually make a difference
in the result of most cases (it did not in June Medical), and
not one incapable of resolution were it ever to matter. As
for lower courts, there is now a one-year-old, one-to-one Cir-
cuit split about how the undue burden standard applies to
state laws that ban abortions for certain reasons, like fetal
abnormality. See ante, at 61, and n. 57. That is about it,
as far as we can see.11 And that is not much. This Court

10 Some lower courts then differed over which opinion in June Medical
was controlling—but that is a dispute not about the undue burden stan-
dard, but about the “Marks rule,” which tells courts how to determine the
precedential effects of a divided decision.
11 The rest of the majority’s supposed splits are, shall we say, unim-
mostly does not even grant certiorari on one-year-old, one-to-one Circuit splits, because we know that a bit of disagreement is an inevitable part of our legal system. To borrow an old saying that might apply here: Not one or even a couple of swallows can make the majority’s summer.

Anyone concerned about workability should consider the majority’s substitute standard. The majority says a law regulating or banning abortion “must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests.” Ante, at 77. And the majority lists interests like “respect for and preservation of prenatal life,” “protection of maternal health,” elimination of certain “medical procedures,” “mitigation of fetal pain,” and others. Ante, at 78. This Court will surely face critical questions about how that test applies. Must a state law allow abortions when necessary to protect a woman’s life and health? And if so, exactly when? How much risk to a woman’s life can a State force

pressive. The majority says that lower courts have split over how to apply the undue burden standard to parental notification laws. See ante, at 60, and n. 54. But that is not so. The state law upheld had an exemption for minors demonstrating adequate maturity, whereas the ones struck down did not. Compare Planned Parenthood of Blue Ridge v. Camblos, 155 F. 3d 352, 383–384 (CA4 1998), with Planned Parenthood of Ind. & Ky., Inc. v. Adams, 937 F. 3d 973, 981 (CA7 2019), cert. granted, judgment vacated, 591 U. S. ___ (2020), and Planned Parenthood, Sioux Falls Clinic v. Miller, 63 F. 3d 1452, 1460 (CA8 1995). The majority says there is a split about bans on certain types of abortion procedures. See ante, at 61, and n. 55. But the one court to have separated itself on that issue did so based on a set of factual findings significantly different from those in other cases. Compare Whole Woman’s Health v. Paxton, 10 F. 4th 430, 447–453 (CA5 2021), with EMW Women’s Surgical Center, P.S.C. v. Friedlander, 960 F. 3d 785, 798–806 (CA6 2020), and West Ala. Women’s Center v. Williamson, 900 F. 3d 1310, 1322–1324 (CA11 2018). Finally, the majority says there is a split about whether an increase in travel time to reach a clinic is an undue burden. See ante, at 61, and n. 56. But the cases to which the majority refers predate this Court’s decision in Whole Woman’s Health v. Hellerstedt, 579 U. S. 582 (2016), which clarified how to apply the undue burden standard to that context.
her to incur, before the Fourteenth Amendment’s protection of life kicks in? Suppose a patient with pulmonary hypertension has a 30-to-50 percent risk of dying with ongoing pregnancy; is that enough? And short of death, how much illness or injury can the State require her to accept, consistent with the Amendment’s protection of liberty and equality? Further, the Court may face questions about the application of abortion regulations to medical care most people view as quite different from abortion. What about the morning-after pill? IUDs? In vitro fertilization? And how about the use of dilation and evacuation or medication for miscarriage management? See generally L. Harris, Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade, 386 New England J. Med. 2061 (2022).12

Finally, the majority’s ruling today invites a host of questions about interstate conflicts. See supra, at 3; see generally D. Cohen, G. Donley, & R. Rebouché, The New Abortion Battleground, 123 Colum. L. Rev. (forthcoming 2023), https://ssrn.com/abstract=4032931. Can a State bar women from traveling to another State to obtain an abortion? Can a State prohibit advertising out-of-state abortions or helping women get to out-of-state providers? Can a State inter-

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fere with the mailing of drugs used for medication abortions? The Constitution protects travel and speech and interstate commerce, so today’s ruling will give rise to a host of new constitutional questions. Far from removing the Court from the abortion issue, the majority puts the Court at the center of the coming “interjurisdictional abortion wars.” Id., at ___ (draft, at 1).

In short, the majority does not save judges from unwieldy tests or extricate them from the sphere of controversy. To the contrary, it discards a known, workable, and predictable standard in favor of something novel and probably far more complicated. It forces the Court to wade further into hotly contested issues, including moral and philosophical ones, that the majority criticizes Roe and Casey for addressing.

B

When overruling constitutional precedent, the Court has almost always pointed to major legal or factual changes undermining a decision’s original basis. A review of the Appendix to this dissent proves the point. See infra, at 61–66. Most “successful proponent[s] of overruling precedent,” this Court once said, have carried “the heavy burden of persuading the Court that changes in society or in the law dictate that the values served by stare decisis yield in favor of a greater objective.” Vasquez, 474 U. S., at 266. Certainly, that was so of the main examples the majority cites: Brown v. Board of Education, 347 U. S. 483 (1954), and West Coast Hotel Co. v. Parrish, 300 U. S. 379 (1937). But it is not so today. Although nodding to some arguments others have made about “modern developments,” the majority does not really rely on them, no doubt seeing their slimness. Ante, at 33; see ante, at 34. The majority briefly invokes the current controversy over abortion. See ante, at 70–71. But it has to acknowledge that the same dispute has existed for
decades: Conflict over abortion is not a change but a constant. (And as we will later discuss, the presence of that continuing division provides more of a reason to stick with, than to jettison, existing precedent. See infra, at 55–57.) In the end, the majority throws longstanding precedent to the winds without showing that anything significant has changed to justify its radical reshaping of the law. See ante, at 43.

1

Subsequent legal developments have only reinforced Roe and Casey. The Court has continued to embrace all the decisions Roe and Casey cited, decisions which recognize a constitutional right for an individual to make her own choices about “intimate relationships, the family,” and contraception. Casey, 505 U. S., at 857. Roe and Casey have themselves formed the legal foundation for subsequent decisions protecting these profoundly personal choices. As discussed earlier, the Court relied on Casey to hold that the Fourteenth Amendment protects same-sex intimate relationships. See Lawrence, 539 U. S., at 578; supra, at 23. The Court later invoked the same set of precedents to accord constitutional recognition to same-sex marriage. See Obergefell, 576 U. S., at 665–666; supra, at 23. In sum, Roe and Casey are inextricably interwoven with decades of precedent about the meaning of the Fourteenth Amendment. See supra, at 21–24. While the majority might wish it otherwise, Roe and Casey are the very opposite of “obsolete constitutional thinking.” Agostini v. Felton, 521 U. S. 203, 236 (1997) (quoting Casey, 505 U. S., at 857).

Moreover, no subsequent factual developments have undermined Roe and Casey. Women continue to experience unplanned pregnancies and unexpected developments in pregnancies. Pregnancies continue to have enormous physical, social, and economic consequences. Even an uncompli-
cated pregnancy imposes significant strain on the body, unavoidably involving significant physiological change and excruciating pain. For some women, pregnancy and childbirth can mean life-altering physical ailments or even death. Today, as noted earlier, the risks of carrying a pregnancy to term dwarf those of having an abortion. See supra, at 22. Experts estimate that a ban on abortions increases maternal mortality by 21 percent, with white women facing a 13 percent increase in maternal mortality while black women face a 33 percent increase.\(^\text{13}\) Pregnancy and childbirth may also impose large-scale financial costs. The majority briefly refers to arguments about changes in laws relating to healthcare coverage, pregnancy discrimination, and family leave. See ante, at 33–34. Many women, however, still do not have adequate healthcare coverage before and after pregnancy; and, even when insurance coverage is available, healthcare services may be far away.\(^\text{14}\) Women also continue to face pregnancy discrimination that interferes with their ability to earn a living. Paid family leave remains inaccessible to many who need it most. Only 20 percent of private-sector workers have access to paid family leave, including a mere 8 percent of workers in the bottom

\(^{13}\) See L. Harris, Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade, 386 New England J. Med. 2061, 2063 (2022). This projected racial disparity reflects existing differences in maternal mortality rates for black and white women. Black women are now three to four times more likely to die during or after childbirth than white women, often from preventable causes. See Brief for Howard University School of Law Human and Civil Rights Clinic as Amicus Curiae 18.

quartile of wage earners.¹⁵

The majority briefly notes the growing prevalence of safe haven laws and demand for adoption, see ante, at 34, and nn. 45–46, but, to the degree that these are changes at all, they too are irrelevant.¹⁶ Neither reduces the health risks or financial costs of going through pregnancy and childbirth. Moreover, the choice to give up parental rights after giving birth is altogether different from the choice not to carry a pregnancy to term. The reality is that few women denied an abortion will choose adoption.¹⁷ The vast majority will continue, just as in Roe and Casey’s time, to shoulder the costs of childrearing. Whether or not they choose to parent, they will experience the profound loss of autonomy and dignity that coerced pregnancy and birth always impose.¹⁸


¹⁶Safe haven laws, which allow parents to leave newborn babies in designated safe spaces without threat of prosecution, were not enacted as an alternative to abortion, but in response to rare situations in which birthing mothers in crisis would kill their newborns or leave them to die. See Centers for Disease Control and Prevention (CDC), R. Wilson, J. Klevens, D. Williams, & L. Xu, Infant Homicides Within the Context of Safe Haven Laws—United States, 2008–2017, 69 Morbidity and Mortality Weekly Report 1385 (2020).

¹⁷A study of women who sought an abortion but were denied one because of gestational limits found that only 9 percent put the child up for adoption, rather than parenting themselves. See G. Sisson, L. Ralph, H. Gould, & D. Foster, Adoption Decision Making Among Women Seeking Abortion, 27 Women’s Health Issues 136, 139 (2017).

¹⁸The majority finally notes the claim that “people now have a new appreciation of fetal life,” partly because of viewing sonogram images. Ante, at 34. It is hard to know how anyone would evaluate such a claim and as we have described above, the majority’s reasoning does not rely on any reevaluation of the interest in protecting fetal life. See supra, at 26, and n. 7. It is worth noting that sonograms became widely used in
Mississippi’s own record illustrates how little facts on the ground have changed since Roe and Casey, notwithstanding the majority’s supposed “modern developments.” Ante, at 33. Sixty-two percent of pregnancies in Mississippi are unplanned, yet Mississippi does not require insurance to cover contraceptives and prohibits educators from demonstrating proper contraceptive use. The State neither bans pregnancy discrimination nor requires provision of paid parental leave. Brief for Yale Law School Information Society Project as Amicus Curiae 13 (Brief for Yale Law School); Brief for National Women’s Law Center et al. as Amici Curiae 32. It has strict eligibility requirements for Medicaid and nutrition assistance, leaving many women and families without basic medical care or enough food. See Brief for 547 Deans, Chairs, Scholars and Public Health Professionals et al. as Amici Curiae 32–34 (Brief for 547 Deans). Although 86 percent of pregnancy-related deaths in the State are due to postpartum complications, Mississippi rejected federal funding to provide a year’s worth of Medicaid coverage to women after giving birth. See Brief for Yale Law School 12–13. Perhaps unsurprisingly, health outcomes in Mississippi are abysmal for both women and children. Mississippi has the highest infant mortality rate in the country,

the 1970s, long before Casey. Today, 60 percent of women seeking abortions have at least one child, and one-third have two or more. See CDC, K. Kortsmit et al., Abortion Surveillance—United States, 2019, 70 Morbidity and Mortality Weekly Report 6 (2021). These women know, even as they choose to have an abortion, what it is to look at a sonogram image and to value a fetal life.

and some of the highest rates for preterm birth, low birth-
weight, cesarean section, and maternal death. It is ap-
proximately 75 times more dangerous for a woman in the
State to carry a pregnancy to term than to have an abortion.
See Brief for 547 Deans 9–10. We do not say that every
State is Mississippi, and we are sure some have made gains
since Roe and Casey in providing support for women and
children. But a state-by-state analysis by public health pro-
fessionals shows that States with the most restrictive abor-
tion policies also continue to invest the least in women’s and
children’s health. See Brief for 547 Deans 23–34.

The only notable change we can see since Roe and Casey
cuts in favor of adhering to precedent: It is that American
abortion law has become more and more aligned with other
nations. The majority, like the Mississippi Legislature,
claims that the United States is an extreme outlier when it
comes to abortion regulation. See ante, at 6, and n. 15. The
global trend, however, has been toward increased provision
of legal and safe abortion care. A number of countries, in-
cluding New Zealand, the Netherlands, and Iceland, permit
abortions up to a roughly similar time as Roe and Casey set.
See Brief for International and Comparative Legal Scholars
as Amici Curiae 18–22. Canada has decriminalized abor-
tion at any point in a pregnancy. See id., at 13–15. Most
Western European countries impose restrictions on abor-

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tion after 12 to 14 weeks, but they often have liberal exceptions to those time limits, including to prevent harm to a woman’s physical or mental health. See id., at 24–27; Brief for European Law Professors as Amici Curiae 16–17, Appendix. They also typically make access to early abortion easier, for example, by helping cover its cost.21 Perhaps most notable, more than 50 countries around the world—in Asia, Latin America, Africa, and Europe—have expanded access to abortion in the past 25 years. See Brief for International and Comparative Legal Scholars as Amici Curiae 28–29. In light of that worldwide liberalization of abortion laws, it is American States that will become international outliers after today.

In sum, the majority can point to neither legal nor factual developments in support of its decision. Nothing that has happened in this country or the world in recent decades undermines the core insight of Roe and Casey. It continues to be true that, within the constraints those decisions established, a woman, not the government, should choose whether she will bear the burdens of pregnancy, childbirth, and parenting.

2

In support of its holding, see ante, at 40, the majority invokes two watershed cases overruling prior constitutional precedents: West Coast Hotel Co. v. Parrish and Brown v. Board of Education. But those decisions, unlike today’s, responded to changed law and to changed facts and attitudes that had taken hold throughout society. As Casey recognized, the two cases are relevant only to show—by stark contrast—how unjustified overturning the right to choose is. See 505 U. S., at 861–864.

West Coast Hotel overruled Adkins v. Children’s Hospital

of D. C., 261 U. S. 525 (1923), and a whole line of cases beginning with *Lochner v. New York*, 198 U. S. 45 (1905). *Adkins* had found a state minimum-wage law unconstitutional because, in the Court’s view, the law interfered with a constitutional right to contract. 261 U. S., at 554–555. But then the Great Depression hit, bringing with it unparalleled economic despair. The experience undermined—in fact, it disproved—*Adkins’s* assumption that a wholly unregulated market could meet basic human needs. As Justice Jackson (before becoming a Justice) wrote of that time: “The older world of *laissez faire* was recognized everywhere outside the Court to be dead.” The Struggle for Judicial Supremacy 85 (1941). In *West Coast Hotel*, the Court caught up, recognizing through the lens of experience the flaws of existing legal doctrine. See also ante, at 11 (ROBERTS, C. J., concurring in judgment). The havoc the Depression had worked on ordinary Americans, the Court noted, was “common knowledge through the length and breadth of the land.” 300 U. S., at 399. The *laissez-faire* approach had led to “the exploiting of workers at wages so low as to be insufficient to meet the bare cost of living.” Ibid. And since *Adkins* was decided, the law had also changed. In several decisions, the Court had started to recognize the power of States to implement economic policies designed to enhance their citizens’ economic well-being. See, e.g., *Nebbia v. New York*, 291 U. S. 502 (1934); *O’Gorman & Young, Inc. v. Hartford Fire Ins. Co.*, 282 U. S. 251 (1931). The statements in those decisions, *West Coast Hotel* explained, were “impossible to reconcile” with *Adkins*. 300 U. S., at 398. There was no escaping the need for *Adkins* to go.

*Brown v. Board of Education* overruled *Plessy v. Ferguson*, 163 U. S. 537 (1896), along with its doctrine of “separate but equal.” By 1954, decades of Jim Crow had made clear what *Plessy’s* turn of phrase actually meant: “inherent[ ] [inequal][ity].” *Brown*, 347 U. S., at 495. Segregation
was not, and could not ever be, consistent with the Reconstruction Amendments, ratified to give the former slaves full citizenship. Whatever might have been thought in Plessy’s time, the Brown Court explained, both experience and “modern authority” showed the “detrimental effect[s]” of state-sanctioned segregation: It “affect[ed] [children’s] hearts and minds in a way unlikely ever to be undone.” 347 U. S., at 494. By that point, too, the law had begun to reflect that understanding. In a series of decisions, the Court had held unconstitutional public graduate schools’ exclusion of black students. See, e.g., Sweatt v. Painter, 339 U. S. 629 (1950); Sipuel v. Board of Regents of Univ. of Okla., 332 U. S. 631 (1948) (per curiam); Missouri ex rel. Gaines v. Canada, 305 U. S. 337 (1938). The logic of those cases, Brown held, “appl[ied] with added force to children in grade and high schools.” 347 U. S., at 494. Changed facts and changed law required Plessy’s end.

The majority says that in recognizing those changes, we are implicitly supporting the half-century interlude between Plessy and Brown. See ante, at 70. That is not so. First, if the Brown Court had used the majority’s method of constitutional construction, it might not ever have overruled Plessy, whether 5 or 50 or 500 years later. Brown thought that whether the ratification-era history supported desegregation was “[a]t best . . . inconclusive.” 347 U. S., at 489. But even setting that aside, we are not saying that a decision can never be overruled just because it is terribly wrong. Take West Virginia Bd. of Ed. v. Barnette, 319 U. S. 624, which the majority also relies on. See ante, at 40–41, 70. That overruling took place just three years after the initial decision, before any notable reliance interests had developed. It happened as well because individual Justices changed their minds, not because a new majority wanted to undo the decisions of their predecessors. Both Barnette and Brown, moreover, share another feature setting them apart from the Court’s ruling today. They protected individual
rights with a strong basis in the Constitution’s most fundamental commitments; they did not, as the majority does here, take away a right that individuals have held, and relied on, for 50 years. To take that action based on a new and bare majority’s declaration that two Courts got the result egregiously wrong? And to justify that action by reference to Barnette? Or to Brown—a case in which the Chief Justice also wrote an (11-page) opinion in which the entire Court could speak with one voice? These questions answer themselves.

Casey itself addressed both West Coast Hotel and Brown, and found that neither supported Roe’s overruling. In West Coast Hotel, Casey explained, “the facts of economic life” had proved “different from those previously assumed.” 505 U. S., at 862. And even though “Plessy was wrong the day it was decided,” the passage of time had made that ever more clear to ever more citizens: “Society’s understanding of the facts” in 1954 was “fundamentally different” than in 1896. Id., at 863. So the Court needed to reverse course. “In constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations.” Id., at 864. And because such dramatic change had occurred, the public could understand why the Court was acting. “[T]he Nation could accept each decision” as a “response to the Court’s constitutional duty.” Ibid. But that would not be true of a reversal of Roe—“[b]ecause neither the factual underpinnings of Roe’s central holding nor our understanding of it has changed.” 505 U. S., at 864.

That is just as much so today, because Roe and Casey continue to reflect, not diverge from, broad trends in American society. It is, of course, true that many Americans, including many women, opposed those decisions when issued and do so now as well. Yet the fact remains: Roe and Casey were the product of a profound and ongoing change in women’s roles in the latter part of the 20th century. Only a dozen years before Roe, the Court described women as “the center
of home and family life,” with “special responsibilities” that precluded their full legal status under the Constitution. *Hoyt v. Florida*, 368 U. S. 57, 62 (1961). By 1973, when the Court decided *Roe*, fundamental social change was under-way regarding the place of women—and the law had begun to follow. See *Reed v. Reed*, 404 U. S. 71, 76 (1971) (recognizing that the Equal Protection Clause prohibits sex-based discrimination). By 1992, when the Court decided *Casey*, the traditional view of a woman’s role as only a wife and mother was “no longer consistent with our understanding of the family, the individual, or the Constitution.” 505 U. S., at 897; see *supra*, at 15, 23–24. Under that charter, *Casey* understood, women must take their place as full and equal citizens. And for that to happen, women must have control over their reproductive decisions. Nothing since *Casey*—no changed law, no changed fact—has undermined that promise.

C

The reasons for retaining *Roe* and *Casey* gain further strength from the overwhelming reliance interests those decisions have created. The Court adheres to precedent not just for institutional reasons, but because it recognizes that stability in the law is “an essential thread in the mantle of protection that the law affords the individual.” *Florida Dept. of Health and Rehabilitative Servs. v. Florida Nursing Home Assn.*, 450 U. S. 147, 154 (1981) (Stevens, J., concurring). So when overruling precedent “would dislodge [individuals’] settled rights and expectations,” *stare decisis* has “added force.” *Hilton v. South Carolina Public Railways Comm’n*, 502 U. S. 197, 202 (1991). *Casey* understood that to deny individuals’ reliance on *Roe* was to “refuse to face the fact[s].” 505 U. S., at 856. Today the majority refuses to face the facts. “The most striking feature of the [majority] is the absence of any serious discussion” of how
its ruling will affect women. *Ante*, at 37. By characterizing *Casey*’s reliance arguments as “generalized assertions about the national psyche,” *ante*, at 64, it reveals how little it knows or cares about women’s lives or about the suffering its decision will cause.

In *Casey*, the Court observed that for two decades individuals “have organized intimate relationships and made” significant life choices “in reliance on the availability of abortion in the event that contraception should fail.” 505 U. S., at 856. Over another 30 years, that reliance has solidified. For half a century now, in *Casey*’s words, “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” *Ibid.*; see *supra*, at 23–24. Indeed, all women now of childbearing age have grown up expecting that they would be able to avail themselves of *Roe*’s and *Casey*’s protections.

The disruption of overturning *Roe* and *Casey* will therefore be profound. Abortion is a common medical procedure and a familiar experience in women’s lives. About 18 percent of pregnancies in this country end in abortion, and about one quarter of American women will have an abortion before the age of 45.22 Those numbers reflect the predictable and life-changing effects of carrying a pregnancy, giving birth, and becoming a parent. As *Casey* understood, people today rely on their ability to control and time pregnancies when making countless life decisions: where to live, whether and how to invest in education or careers, how to allocate financial resources, and how to approach intimate and family relationships. Women may count on abortion access for when contraception fails. They may count on abortion access for when contraception cannot be used, for

example, if they were raped. They may count on abortion for when something changes in the midst of a pregnancy, whether it involves family or financial circumstances, unanticipated medical complications, or heartbreaking fetal diagnoses. Taking away the right to abortion, as the majority does today, destroys all those individual plans and expectations. In so doing, it diminishes women’s opportunities to participate fully and equally in the Nation’s political, social, and economic life. See Brief for Economists as Amici Curiae 13 (showing that abortion availability has “large effects on women’s education, labor force participation, occupations, and earnings” (footnotes omitted)).

The majority’s response to these obvious points exists far from the reality American women actually live. The majority proclaims that “‘reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.’” Ante, at 64 (quoting Casey, 505 U. S., at 856).23 The facts are: 45 percent of pregnancies in the United States are unplanned. See Brief for 547 Deans 5. Even the most effective contraceptives fail, and effective contraceptives are not universally accessible.24 Not all sexual activity is consensual and not all contraceptive choices are made by the party who risks pregnancy. See Brief for Legal Voice et al. as Amici Curiae 18–19. The Mississippi law at issue here, for example, has no exception for rape or incest, even for underage women. Finally, the

23 Astoundingly, the majority casts this statement as a “concession” from Casey with which it “agree[s].” Ante, at 64. In fact, Casey used this language as part of describing an argument that it rejected. See 505 U. S., at 856. It is only today’s Court that endorses this profoundly mistaken view.

24 See Brief for 547 Deans 6–7 (noting that 51 percent of women who terminated their pregnancies reported using contraceptives during the month in which they conceived); Brief for Lawyers’ Committee for Civil Rights Under Law et al. as Amici Curiae 12–14 (explaining financial and geographic barriers to access to effective contraceptives).
majority ignores, as explained above, that some women decide to have an abortion because their circumstances change during a pregnancy. See *supra*, at 49. Human bodies care little for hopes and plans. Events can occur after conception, from unexpected medical risks to changes in family circumstances, which profoundly alter what it means to carry a pregnancy to term. In all these situations, women have expected that they will get to decide, perhaps in consultation with their families or doctors but free from state interference, whether to continue a pregnancy. For those who will now have to undergo that pregnancy, the loss of *Roe* and *Casey* could be disastrous.

That is especially so for women without money. When we “count[] the cost of [Roe’s] repudiation” on women who once relied on that decision, it is not hard to see where the greatest burden will fall. *Casey*, 505 U. S., at 855. In States that bar abortion, women of means will still be able to travel to obtain the services they need.25 It is women who cannot afford to do so who will suffer most. These are the women most likely to seek abortion care in the first place. Women living below the federal poverty line experience unintended pregnancies at rates five times higher than higher income women do, and nearly half of women who seek abortion care live in households below the poverty line. See Brief for 547 Deans 7; Brief for Abortion Funds and Practical Support Organizations as *Amici Curiae* 8 (Brief for Abortion Funds).

25 This statement of course assumes that States are not successful in preventing interstate travel to obtain an abortion. See *supra*, at 3, 36–37. Even assuming that is so, increased out-of-state demand will lead to longer wait times and decreased availability of service in States still providing abortions. See Brief for State of California et al. as *Amici Curiae* 25–27. This is what happened in Oklahoma, Kansas, Colorado, New Mexico, and Nevada last fall after Texas effectively banned abortions past six weeks of gestation. See *United States v. Texas*, 595 U. S. ___ (2021) (SOTOMAYOR, J., concurring in part and dissenting in part) (slip op., at 6).
Even with *Roe*’s protection, these women face immense obstacles to raising the money needed to obtain abortion care early in their pregnancy. See Brief for Abortion Funds 7–12. After today, in States where legal abortions are not available, they will lose any ability to obtain safe, legal abortion care. They will not have the money to make the trip necessary; or to obtain childcare for that time; or to take time off work. Many will endure the costs and risks of pregnancy and giving birth against their wishes. Others will turn in desperation to illegal and unsafe abortions. They may lose not just their freedom, but their lives.

Finally, the expectation of reproductive control is integral to many women’s identity and their place in the Nation. See *Casey*, 505 U. S., at 856. That expectation helps define

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26 The average cost of a first-trimester abortion is about $500. See Brief for Abortion Funds 7. Federal insurance generally does not cover the cost of abortion, and 35 percent of American adults do not have cash on hand to cover an unexpected expense that high. Guttmacher Institute, M. Donovan, In Real Life: Federal Restrictions on Abortion Coverage and the Women They Impact (Jan. 5, 2017), https://www.guttmacher.org/gpr/2017/01/real-life-federal-restrictions-abortion-coverage-and-women-they-impact#:~:text=Although%20the%20Hyde%20Amendment%20bars,provide%20abortion%20coverage%20to%20enrollees; Brief for Abortion Funds 11.

27 Mississippi is likely to be one of the States where these costs are highest, though history shows that it will have company. As described above, Mississippi provides only the barest financial support to pregnant women. See *supra*, at 41–42. The State will greatly restrict abortion care without addressing any of the financial, health, and family needs that motivate many women to seek it. The effects will be felt most severely, as they always have been, on the bodies of the poor. The history of state abortion restrictions is a history of heavy costs exacted from the most vulnerable women. It is a history of women seeking illegal abortions in hotel rooms and home kitchens; of women trying to self-induce abortions by douching with bleach, injecting lye, and penetrating themselves with knitting needles, scissors, and coat hangers. See L. Reagan, When Abortion Was a Crime 42–43, 198–199, 208–209 (1997). It is a history of women dying.
a woman as an “equal citizen[],” with all the rights, privileges, and obligations that status entails. *Gonzales*, 550 U. S., at 172 (Ginsburg, J., dissenting); see *supra*, at 23–24. It reflects that she is an autonomous person, and that society and the law recognize her as such. Like many constitutional rights, the right to choose situates a woman in relationship to others and to the government. It helps define a sphere of freedom, in which a person has the capacity to make choices free of government control. As *Casey* recognized, the right “order[s]” her “thinking” as well as her “living.” 505 U. S., at 856. Beyond any individual choice about residence, or education, or career, her whole life reflects the control and authority that the right grants.

Withdrawing a woman’s right to choose whether to continue a pregnancy does not mean that no choice is being made. It means that a majority of today’s Court has wrenched this choice from women and given it to the States. To allow a State to exert control over one of “the most intimate and personal choices” a woman may make is not only to affect the course of her life, monumental as those effects might be. *Id.*, at 851. It is to alter her “views of [herself]” and her understanding of her “place[] in society” as someone with the recognized dignity and authority to make these choices. *Id.*, at 856. Women have relied on *Roe* and *Casey* in this way for 50 years. Many have never known anything else. When *Roe* and *Casey* disappear, the loss of power, control, and dignity will be immense.

The Court’s failure to perceive the whole swath of expectations *Roe* and *Casey* created reflects an impoverished view of reliance. According to the majority, a reliance interest must be “very concrete,” like those involving “property” or “contract.” *Ante*, at 64. While many of this Court’s cases addressing reliance have been in the “commercial context,” *Casey*, 505 U. S., at 855, none holds that interests must be analogous to commercial ones to warrant *stare de-
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This unprecedented assertion is, at bottom, a radical claim to power. By disclaiming any need to consider broad swaths of individuals’ interests, the Court arrogates to itself the authority to overrule established legal principles without even acknowledging the costs of its decisions for the individuals who live under the law, costs that this Court’s *stare decisis* doctrine instructs us to privilege when deciding whether to change course.

The majority claims that the reliance interests women have in *Roe* and *Casey* are too “intangible” for the Court to consider, even if it were inclined to do so. *Ante*, at 65. This is to ignore as judges what we know as men and women. The interests women have in *Roe* and *Casey* are perfectly, viscerally concrete. Countless women will now make different decisions about careers, education, relationships, and whether to try to become pregnant than they would have when *Roe* served as a backstop. Other women will carry pregnancies to term, with all the costs and risk of harm that involves, when they would previously have chosen to obtain an abortion. For millions of women, *Roe* and *Casey* have been critical in giving them control of their bodies and their lives. Closing our eyes to the suffering today’s decision will impose will not make that suffering disappear. The majority cannot escape its obligation to “count[] the cost[s]” of its decision by invoking the “conflicting arguments” of “contending sides.” *Casey*, 505 U. S., at 855; *ante*, at 65. *Stare decisis* requires that the Court calculate the costs of a decision’s repudiation on those who have relied on the decision,

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not on those who have disavowed it. See Casey, 505 U. S., at 855.

More broadly, the majority’s approach to reliance cannot be reconciled with our Nation’s understanding of constitutional rights. The majority’s insistence on a “concrete,” economic showing would preclude a finding of reliance on a wide variety of decisions recognizing constitutional rights—such as the right to express opinions, or choose whom to marry, or decide how to educate children. The Court, on the majority’s logic, could transfer those choices to the State without having to consider a person’s settled understanding that the law makes them hers. That must be wrong. All those rights, like the right to obtain an abortion, profoundly affect and, indeed, anchor individual lives. To recognize that people have relied on these rights is not to dabble in abstractions, but to acknowledge some of the most “concrete” and familiar aspects of human life and liberty. Ante, at 64.

All those rights, like the one here, also have a societal dimension, because of the role constitutional liberties play in our structure of government. See, e.g., Dickerson, 530 U. S., at 443 (recognizing that Miranda “warnings have become part of our national culture” in declining to overrule Miranda v. Arizona, 384 U. S. 436 (1966)). Rescinding an individual right in its entirety and conferring it on the State, an action the Court takes today for the first time in history, affects all who have relied on our constitutional system of government and its structure of individual liberties protected from state oversight. Roe and Casey have of course aroused controversy and provoked disagreement. But the right those decisions conferred and reaffirmed is part of society’s understanding of constitutional law and of how the Court has defined the liberty and equality that women are entitled to claim.

After today, young women will come of age with fewer
rights than their mothers and grandmothers had. The majority accomplishes that result without so much as considering how women have relied on the right to choose or what it means to take that right away. The majority’s refusal even to consider the life-altering consequences of reversing Roe and Casey is a stunning indictment of its decision.

D

One last consideration counsels against the majority’s ruling: the very controversy surrounding Roe and Casey. The majority accuses Casey of acting outside the bounds of the law to quell the conflict over abortion—of imposing an unprincipled “settlement” of the issue in an effort to end “national division.” Ante, at 67. But that is not what Casey did. As shown above, Casey applied traditional principles of stare decisis—which the majority today ignores—in reaffirming Roe. Casey carefully assessed changed circumstances (none) and reliance interests (profound). It considered every aspect of how Roe’s framework operated. It adhered to the law in its analysis, and it reached the conclusion that the law required. True enough that Casey took notice of the “national controversy” about abortion: The Court knew in 1992, as it did in 1973, that abortion was a “divisive issue.” Casey, 505 U. S., at 867–868; see Roe, 410 U. S., at 116. But Casey’s reason for acknowledging public conflict was the exact opposite of what the majority insinuates. Casey addressed the national controversy in order to emphasize how important it was, in that case of all cases, for the Court to stick to the law. Would that today’s majority had done likewise.

Consider how the majority itself summarizes this aspect of Casey:

“The American people’s belief in the rule of law would be shaken if they lost respect for this Court as an institution that decides important cases based on principle, not ‘social and political pressures.’ There is a special
danger that the public will perceive a decision as having been made for unprincipled reasons when the Court overrules a controversial ‘watershed’ decision, such as *Roe*. A decision overruling *Roe* would be perceived as having been made ‘under fire’ and as a ‘surrender to political pressure.’” *Ante*, at 66–67 (citations omitted).

That seems to us a good description. And it seems to us right. The majority responds (if we understand it correctly): well, yes, but we have to apply the law. See *ante*, at 67. To which *Casey* would have said: That is exactly the point. Here, more than anywhere, the Court needs to apply the law—particularly the law of *stare decisis*. Here, we know that citizens will continue to contest the Court’s decision, because “[m]en and women of good conscience” deeply disagree about abortion. *Casey*, 505 U. S., at 850. When that contestation takes place—but when there is no legal basis for reversing course—the Court needs to be steadfast, to stand its ground. That is what the rule of law requires. And that is what respect for this Court depends on.

“The promise of constancy, once given” in so charged an environment, *Casey* explained, “binds its maker for as long as” the “understanding of the issue has not changed so fundamentally as to render the commitment obsolete.” *Id.*, at 868. A breach of that promise is “nothing less than a breach of faith.” *Ibid*. “[A]nd no Court that broke its faith with the people could sensibly expect credit for principle.” *Ibid*. No Court breaking its faith in that way would deserve credit for principle. As one of *Casey*’s authors wrote in another case, “Our legitimacy requires, above all, that we adhere to *stare decisis*” in “sensitive political contexts” where “partisan controversy abounds.” *Bush* v. *Vera*, 517 U. S. 952, 985 (1996) (opinion of O’Connor, J.).

Justice Jackson once called a decision he dissented from a “loaded weapon,” ready to hand for improper uses. *Korematsu* v. *United States*, 323 U. S. 214, 246 (1944). We fear
that today’s decision, departing from stare decisis for no legitimate reason, is its own loaded weapon. Weakening stare decisis threatens to upend bedrock legal doctrines, far beyond any single decision. Weakening stare decisis creates profound legal instability. And as Casey recognized, weakening stare decisis in a hotly contested case like this one calls into question this Court’s commitment to legal principle. It makes the Court appear not restrained but aggressive, not modest but grasping. In all those ways, today’s decision takes aim, we fear, at the rule of law.

III

“Power, not reason, is the new currency of this Court’s decisionmaking.” Payne, 501 U. S., at 844 (Marshall, J., dissenting). Roe has stood for fifty years. Casey, a precedent about precedent specifically confirming Roe, has stood for thirty. And the doctrine of stare decisis—a critical element of the rule of law—stands foursquare behind their continued existence. The right those decisions established and preserved is embedded in our constitutional law, both originating in and leading to other rights protecting bodily integrity, personal autonomy, and family relationships. The abortion right is also embedded in the lives of women—shaping their expectations, influencing their choices about relationships and work, supporting (as all reproductive rights do) their social and economic equality. Since the right’s recognition (and affirmation), nothing has changed to support what the majority does today. Neither law nor facts nor attitudes have provided any new reasons to reach a different result than Roe and Casey did. All that has changed is this Court.

Mississippi—and other States too—knew exactly what they were doing in ginning up new legal challenges to Roe and Casey. The 15-week ban at issue here was enacted in 2018. Other States quickly followed: Between 2019 and 2021, eight States banned abortion procedures after six to
eight weeks of pregnancy, and three States enacted all-out bans.\textsuperscript{29} Mississippi itself decided in 2019 that it had not gone far enough: The year after enacting the law under review, the State passed a 6-week restriction. A state senator who championed both Mississippi laws said the obvious out loud. “[A] lot of people thought,” he explained, that “finally, we have” a conservative Court “and so now would be a good time to start testing the limits of \textit{Roe}.”\textsuperscript{30} In its petition for certiorari, the State had exercised a smidgen of restraint. It had urged the Court merely to roll back \textit{Roe} and \textit{Casey}, specifically assuring the Court that “the questions presented in this petition do not require the Court to overturn” those precedents. Pet. for Cert. 5; see ante, at 5–6 (ROBERTS, C. J., concurring in judgment). But as Mississippi grew ever more confident in its prospects, it resolved to go all in. It urged the Court to overrule \textit{Roe} and \textit{Casey}. Nothing but everything would be enough.

Earlier this Term, this Court signaled that Mississippi’s stratagem would succeed. Texas was one of the fistful of States to have recently banned abortions after six weeks of pregnancy. It added to that “flagrantly unconstitutional” restriction an unprecedented scheme to “evade judicial


“scrutiny.” *Whole Woman’s Health v. Jackson*, 594 U. S. __, ___ (2021) (SOTOMAYOR, J., dissenting) (slip op., at 1). And five Justices acceded to that cynical maneuver. They let Texas defy this Court’s constitutional rulings, nullifying *Roe* and *Casey* ahead of schedule in the Nation’s second largest State.

And now the other shoe drops, courtesy of that same five-person majority. (We believe that THE CHIEF JUSTICE’s opinion is wrong too, but no one should think that there is not a large difference between upholding a 15-week ban on the grounds he does and allowing States to prohibit abortion from the time of conception.) Now a new and bare majority of this Court—acting at practically the first moment possible—overrules *Roe* and *Casey*. It converts a series of dissenting opinions expressing antipathy toward *Roe* and *Casey* into a decision greenlighting even total abortion bans. See ante, at 57, 59, 63, and nn. 61–64 (relying on former dissents). It eliminates a 50-year-old constitutional right that safeguards women’s freedom and equal station. It breaches a core rule-of-law principle, designed to promote constancy in the law. In doing all of that, it places in jeopardy other rights, from contraception to same-sex intimacy and marriage. And finally, it undermines the Court’s legitimacy.

*Casey* itself made the last point in explaining why it would not overrule *Roe*—though some members of its majority might not have joined *Roe* in the first instance. Just as we did here, *Casey* explained the importance of stare decisis; the inappositeness of *West Coast Hotel* and *Brown*; the absence of any “changed circumstances” (or other reason) justifying the reversal of precedent. 505 U. S., at 864; see supra, at 30–33, 37–47. “[T]he Court,” *Casey* explained, “could not pretend” that overruling *Roe* had any “justification beyond a present doctrinal disposition to come out differently from the Court of 1973.” 505 U. S., at 864. And to overrule for that reason? Quoting Justice Stewart, *Casey*
explained that to do so—to reverse prior law “upon a ground no firmer than a change in [the Court’s] membership”— would invite the view that “this institution is little different from the two political branches of the Government.”  Ibid. No view, Casey thought, could do “more lasting injury to this Court and to the system of law which it is our abiding mission to serve.”  Ibid. For overruling Roe, Casey concluded, the Court would pay a “terrible price.”  505 U. S., at 864.

The Justices who wrote those words—O’Connor, Kennedy, and Souter—they were judges of wisdom. They would not have won any contests for the kind of ideological purity some court watchers want Justices to deliver. But if there were awards for Justices who left this Court better than they found it? And who for that reason left this country better? And the rule of law stronger? Sign those Justices up.

They knew that “the legitimacy of the Court [is] earned over time.”  Id., at 868. They also would have recognized that it can be destroyed much more quickly. They worked hard to avert that outcome in Casey. The American public, they thought, should never conclude that its constitutional protections hung by a thread—that a new majority, adhering to a new “doctrinal school,” could “by dint of numbers” alone expunge their rights.  Id., at 864. It is hard—no, it is impossible—to conclude that anything else has happened here. One of us once said that “[i]t is not often in the law that so few have so quickly changed so much.”  S. Breyer, Breaking the Promise of Brown: The Resegregation of America’s Schools 30 (2022). For all of us, in our time on this Court, that has never been more true than today. In overruling Roe and Casey, this Court betrays its guiding principles.

With sorrow—for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection—we dissent.
APPENDIX

This Appendix analyzes in full each of the 28 cases the majority says support today’s decision to overrule Roe v. Wade, 410 U. S. 113 (1973), and Planned Parenthood of Southeastern Pa. v. Casey, 505 U. S. 833 (1992). As explained herein, the Court in each case relied on traditional stare decisis factors in overruling.

A great many of the overrulings the majority cites involve a prior precedent that had been rendered out of step with or effectively abrogated by contemporary case law in light of intervening developments in the broader doctrine. See Ramos v. Louisiana, 590 U. S. __, ___ (2020) (slip op., at 22) (holding the Sixth Amendment requires a unanimous jury verdict in state prosecutions for serious offenses, and overruling Apodaca v. Oregon, 406 U. S. 404 (1972), because “in the years since Apodaca, this Court ha[d] spoken inconsistently about its meaning” and had undercut its validity “on at least eight occasions”); Ring v. Arizona, 536 U. S. 584, 608–609 (2002) (recognizing a Sixth Amendment right to have a jury find the aggravating factors necessary to impose a death sentence and, in so doing, rejecting Walton v. Arizona, 497 U. S. 639 (1990), as overtaken by and irreconcilable with Apprendi v. New Jersey, 530 U. S. 466 (2000)); Agostini v. Felton, 521 U. S. 203, 235–236 (1997) (considering the Establishment Clause’s constraint on government aid to religious instruction, and overruling Aguilar v. Felton, 473 U. S. 402 (1985), in light of several related doctrinal developments that had so undermined Aguilar and the assumption on which it rested as to render it no longer good law); Batson v. Kentucky, 476 U. S. 79, 93–96 (1986) (recognizing that a defendant may make a prima facie showing of purposeful racial discrimination in selection of a jury venire by relying solely on the facts in his case, and, based on subsequent developments in equal protection law, rejecting part of Swain v. Alabama, 380 U. S. 202 (1965), which had imposed a more demanding evidentiary
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burden); Brandenburg v. Ohio, 395 U. S. 444, 447–448 (1969) (per curiam) (holding that mere advocacy of violence is protected by the First Amendment, unless intended to incite it or produce imminent lawlessness, and rejecting the contrary rule in Whitney v. California, 274 U. S. 357 (1927), as having been “thoroughly discredited by later decisions”); Katz v. United States, 389 U. S. 347, 351, 353 (1967) (recognizing that the Fourth Amendment extends to material and communications that a person “seeks to preserve as private,” and rejecting the more limited construction articulated in Olmstead v. United States, 277 U. S. 438 (1928), because “we have since departed from the narrow view on which that decision rested,” and “the underpinnings of Olmstead . . . have been so eroded by our subsequent decisions that the ‘trespass’ doctrine there enunciated can no longer be regarded as controlling”); Miranda v. Arizona, 384 U. S. 436, 463–467, 479, n. 48 (1966) (recognizing that the Fifth Amendment requires certain procedural safeguards for custodial interrogation, and rejecting Crooker v. California, 357 U. S. 433 (1958), and Cicenia v. Lagay, 357 U. S. 504 (1958), which had already been undermined by Escobedo v. Illinois, 378 U. S. 478 (1964)); Malloy v. Hogan, 378 U. S. 1, 6–9 (1964) (explaining that the Fifth Amendment privilege against “self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States,” and rejecting Twining v. New Jersey, 211 U. S. 78 (1908), in light of a “marked shift” in Fifth Amendment precedents that had “necessarily repudiated” the prior decision); Gideon v. Wainwright, 372 U. S. 335, 343–345 (1963) (acknowledging a right to counsel for indigent criminal defendants in state court under the Sixth and Fourteenth Amendments, and overruling the earlier precedent failing to recognize such a right, Betts v. Brady, 316 U. S.
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455 (1942));31 Smith v. Allwright, 321 U. S. 649, 659–662 (1944) (recognizing all-white primaries are unconstitutional after reconsidering in light of “the unitary character of the electoral process” recognized in United States v. Classic, 313 U. S. 299 (1941), and overruling Grovey v. Townsend, 295 U. S. 45 (1935)); United States v. Darby, 312 U. S. 100, 115–117 (1941) (recognizing Congress’s Commerce Clause power to regulate employment conditions and explaining as “inescapable” the “conclusion . . . that Hammer v. Dagenhart, [247 U. S. 251 (1918)],” and its contrary rule had “long since been” overtaken by precedent construing the Commerce Clause power more broadly); Erie R. Co. v. Tompkins, 304 U. S. 64, 78–80 (1938) (applying state substantive law in diversity actions in federal courts and overruling Swift v. Tyson, 16 Pet. 1 (1842), because an intervening decision had “made clear” the “fallacy underlying the rule”).


31 We have since come to understand Gideon as part of a larger doctrinal shift—already underway at the time of Gideon—where “the Court began to hold that the Due Process Clause fully incorporates particular rights contained in the first eight Amendments.” McDonald v. Chicago, 561 U. S. 742, 763 (2010); see also id., at 766.
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out core testimonial evidence, and overruling Ohio v. Roberts, 448 U. S. 56 (1980); Mapp v. Ohio, 367 U. S. 643, 651–652 (1961) (holding that the exclusionary rule under the Fourth Amendment applies to the States, and overruling the contrary rule of Wolf v. Colorado, 338 U. S. 25 (1949), after considering and rejecting “the current validity of the factual grounds upon which Wolf was based”).

Some cited overrulings involved both significant doctrinal developments and changed facts or understandings that had together undermined a basic premise of the prior decision. See Janus v. State, County, and Municipal Employees, 585 U. S. ___–___ (2018) (slip op., at 42, 47–49) (holding that requiring public-sector union dues from nonmembers violates the First Amendment, and overruling Abood v. Detroit Bd. of Ed., 431 U. S. 209 (1977), based on “both factual and legal” developments that had “eroded the decision’s underpinnings and left it an outlier among our First Amendment cases” (internal quotation marks omitted)); Obergefell v. Hodges, 576 U. S. 644, 659–663 (2015) (holding that the Fourteenth Amendment protects the right of same-sex couples to marry in light of doctrinal developments, as well as fundamentally changed social understanding); Lawrence v. Texas, 539 U. S. 558, 572–578 (2003) (overruling Bowers v. Hardwick, 478 U. S. 186 (1986), after finding anti-sodomy laws to be inconsistent with the Fourteenth Amendment in light of developments in the legal doctrine, as well as changed social understanding of sexuality); United States v. Scott, 437 U. S. 82, 101 (1978) (overruling United States v. Jenkins, 420 U. S. 358 (1975), three years after it was decided, because of developments in the Court’s double jeopardy case law, and because intervening practice had shown that government appeals from midtrial dismissals requested by the defendant were practicable, desirable, and consistent with double jeopardy values); Craig v. Boren, 429 U. S. 190, 197–199, 210, n. 23 (1976) (holding that sex-based classifications are subject to intermediate
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scrutiny under the Fourteenth Amendment’s Equal Protection Clause, including because Reed v. Reed, 404 U. S. 71 (1971), and other equal protection cases and social changes had overtaken any “inconsistent” suggestion in Goesaert v. Cleary, 335 U. S. 464 (1948); Taylor v. Louisiana, 419 U. S. 522, 535–537 (1975) (recognizing as “a foregone conclusion from the pattern of some of the Court’s cases over the past 30 years, as well as from legislative developments at both federal and state levels,” that women could not be excluded from jury service, and explaining that the prior decision approving such practice, Hoyt v. Florida, 368 U. S. 57 (1961), had been rendered inconsistent with equal protection jurisprudence).

Other overrulings occurred very close in time to the original decision so did not engender substantial reliance and could not be described as having been “embedded” as “part of our national culture.” Dickerson v. United States, 530 U. S. 428, 443 (2000); see Payne v. Tennessee, 501 U. S. 808 (1991) (revising procedural rules of evidence that had barred admission of certain victim-impact evidence during the penalty phase of capital cases, and overruling South Carolina v. Gathers, 490 U. S. 805 (1989), and Booth v. Maryland, 482 U. S. 496 (1987), which had been decided two and four years prior, respectively); Seminole Tribe of Fla. v. Florida, 517 U. S. 44 (1996) (holding that Congress cannot abrogate state-sovereign immunity under its Article I commerce power, and rejecting the result in Pennsylvania v. Union Gas Co., 491 U. S. 1 (1989), seven years later; the decision in Union Gas never garnered a majority); Garcia v. San Antonio Metropolitan Transit Authority, 469 U. S. 528, 531 (1985) (holding that local governments are not constitutionally immune from federal employment laws, and overruling National League of Cities v. Usery, 426 U. S. 833 (1976), after “eight years” of experience under that regime showed Usery’s standard was unworkable and, in practice, undermined the federalism principles the decision sought
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to protect).


In sum, none of the cases the majority cites is analogous to today’s decision to overrule 50- and 30-year-old watershed constitutional precedents that remain unweakened by any changes of law or fact.
GOP invokes anti-abortion playbook to fight trans youth health care

Efforts to expand states’ power over personal medical decisions will intensify in 2022, advocates on both sides agree.
A rash of bills introduced in at least 20 states would limit trans youth’s access to gender-affirming care — and opponents say they echo some of the arguments anti-abortion groups put forth about women’s safety as they attempted to shut down clinics.

Like abortion restrictions, the trans bills would expand states’ power over highly personal medical decisions. Backers of these bills, and groups that have initiated some court cases related to trans health, also make claims about the treatment’s risks — although leading medical associations say that gender-affirming treatment is safe, and that delaying or blocking it can create harm.

“It’s the same cast of characters,” Elizabeth Nash, a policy expert at the Guttmacher Institute, which studies reproductive health and rights. “Religious groups, conservative think tanks, a host of organizations ... they are seeking to limit human rights and bodily autonomy.”

HHS Assistant Secretary for Health Rachel Levine, the nation’s highest-ranking openly trans public official and a pediatrician who specializes in adolescent medicine, said in an interview that the bills are not grounded in science but are “politically based.”

“It’s egregious,” Levine said, adding that medical groups had scrupulously crafted guidelines and that much of the gender-affirming treatment was provided in leading children’s hospitals. Organizations including the American Academy of Pediatrics and the American Psychiatric Association oppose the state bills.
The tensions over trans rights — from bathrooms, to sports, to health care — have intensified even as the courts and society have grown generally more accepting of gay rights. Most of the bills stalled this year, but supporters plan to reintroduce many of them in 2022 — a year when the conservative Supreme Court will decide a landmark Mississippi abortion case that could overturn or curtail Roe v Wade and when the November congressional elections will determine whether President Joe Biden will retain a Democratic majority in Congress.

“I would expect next year state legislatures to be full of these bills,” said Louise Melling, director of the ACLU’s Center for Liberty which includes programs on reproductive rights and LGBTQ programs. “The same kinds of bills are proposed, and with new variations, in efforts to see what will stick.”

So far, only Tennessee and Arkansas have passed trans legislation — and a federal court has temporarily blocked the more sweeping Arkansas measure, pending a full ruling on the merits of the legal challenge brought by the ACLU.
pending a full ruling on the merits of the legal challenge brought by the ACLU. Other bills, including a proposal in Alabama that made it through the state Senate but too late in the year for the House to act, would have imprisoned doctors for providing such care.

“The primary concern here is the health and well-being of Alabama’s children,” the bill’s sponsor, Shay Shelnutt, told local reporters when the legislation passed the state Senate. “We must protect vulnerable minors who do not have the mental capacity to make life-altering decisions of this caliber.”

Katherine Kraschel, executive director of the Solomon Center for Health Law and Policy at Yale University, said that criminalizing doctors who follow established medical protocols and guidelines is “an extreme position.”

Most of the bills aim to stop doctors from prescribing puberty blockers, which prevent the patient from undergoing physical changes that don’t fit with the individual’s gender identity. Levine and other physicians versed in gender-affirming care say the drugs are only given to youths approaching the onset of puberty, after appropriate mental health counseling, and often at specialized clinics or children’s hospitals.

Cross-sex hormones can be initiated later in the teen years. No treatment, other than counseling or therapy, is given to young children. No surgery is performed before age 18 — if then.

“Puberty blockers are the conservative approach — with a small c,” said Joshua Safer, executive director of the Mount Sinai Center for Transgender Medicine and Surgery and a co-author of the Endocrine Society guidelines for medical care of transgender patients.

“You can turn it off, basically,” he added, explaining that the drugs delay puberty but if the medication is stopped, the physical changes that are part of puberty resume, corresponding to the sex assigned at birth.

But conservative lawmakers and policy groups backing the bills argue that the treatment is risky, with possible ill effects including infertility, osteoporosis and elevated cancer risk. They argue that if states can decide when a teen gets a driver’s license or a tattoo, they have an obligation to protect kids from what could be serious, possibly irreversible medical harm.
“We are talking about children under age 18. State governments have always protected the health and safety of children under 18,” said Emilie Kao, director of the Richard and Helen DeVos Center for Religion and Civil Society at The Heritage Foundation.

And it’s that argument that draws the parallels with the anti-abortion-rights movement, which in recent years has used safety arguments to try to force clinic closures.

For instance, several states sought to shut abortion clinics if doctors didn’t have admitting privileges at a nearby hospital — even though emergencies after an abortion are rare and any patient can be treated at any hospital with or without an affiliated doctor. In fact, there’s a federal law guaranteeing no one is turned away from emergency care, for any condition.

The Supreme Court rejected the admissions requirements twice, in cases from Texas and Louisiana. Courts have also rebuffed some states that tried to impose physical requirements — like corridors of a certain width — which would have been impossible for some clinics to adopt, leading to closure.

The court has upheld waiting periods and similar pre-abortion requirements. Trans advocates also see a parallel there, an assumption that people seeking treatment, whether terminating a pregnancy or taking hormones, haven’t thought it through or aren’t capable of understanding the ramifications.

Stopping a teen from getting hormonal treatment, Kraschel said, is like a multi-year waiting period. And once someone has gone through puberty and has developed physical traits, such as breasts or a typically male-contoured chest, gender-affirming treatment can be even more complicated.

“What health problems are they trying to solve?” asked Alphonso David, a civil rights lawyer who is president of the Human Rights Campaign. “They are
looking to devalue and demonize trans people. They are shifting strategies from the bathroom issues to sports and medical issues.”

The trans community, as well as medical specialty societies that have developed treatment guidelines for gender-affirming care, counter that there’s ample research showing that medications, including drugs that can delay puberty, are safe, appropriate, and often necessary.

Young people struggling between their gender identity and their sex at birth are at high risk for depression and suicide. One study found that 40 percent of transgender adults reported a suicide attempt, usually before age 25.

Neither side denies that some youths do end up deciding that they aren’t trans or nonbinary after all — although there’s no agreement on how often that happens. Heritage’s Kao said 20 states don’t “protect the right to receive counseling to help them accept their bodies,” meaning accepting their sex assigned at birth. An American Civil Liberties Union spokesperson said that’s an overstatement; state bans don’t block counselors from identity exploration and development.

The Arkansas statute, if allowed to go into effect, would be sweeping. However, Tennessee’s law, which bans hormonal treatment of pre-pubescent children, may not actually impact clinical care since kids don’t get treated until they do reach puberty — although some trans advocates say the measure may still deter care.

Not all conservatives agree with the restrictive approach. Arkansas Gov. Asa Hutchinson, a Republican, vetoed his state’s bill, although the legislature overrode it. “It creates new standards of legislative interference with physicians and parents as they deal with some of the most complex and sensitive matters concerning our youths,” Hutchinson wrote in a Washington Post op-ed.
concerning our youths,” Hutchinson wrote in a Washington Post op-ed.

Arkansas Gov. Asa Hutchinson testifies before a Senate Judiciary Committee hearing on Federal sentencing for crack and powder cocaine, on Capitol Hill June 22, 2021. | Manuel Balce Ceneta/AP Photo

The Endocrine Society has established practice standards and says the drugs — which have other medical uses unrelated to trans kids — are safe and reversible, typically used for a year or two. “It’s a very conservative thing to do from a medical perspective,” Safer said. “I keep coming back to the word conservative — ironic.”

Older teens, who have undergone treatment and counseling, may start on cross-sex hormones, which do create sex-linked physical traits. But they don’t get surgery as minors. Safer has patients “in their 20s who are still figuring it out, and we don’t do anything irreversible until things are clear and stable.”

A related set of legal battles is playing out in North Dakota and Texas, part of a multi-year fight against a portion of the Affordable Care Act called Section 1557
that bans discrimination in medical care, including based on sex. The suits involve doctors and health systems that don’t want to perform gender-affirming care because they believe it’s harmful, said Luke Goodrich, vice president and senior counsel of the Becket Fund for Religious Liberty, which is representing the groups bringing the cases. So far, rulings have generally favored Becket’s arguments but appeals are ongoing.

Doctors are unlikely to be forced to perform certain complex reconstructive surgeries involved with gender transition to avoid a discrimination case — those operations require special training for surgeons who seek it out. But more common procedures like mastectomy or hysterectomy are part of these legal disputes. A doctor who removes a uterus for a cancer patient but not for a trans patient can face discrimination suits, and could be cut off from payments from government programs like Medicare and Medicaid, said Goodrich, adding that it’s about both conscience and medical judgment.

“A doctor who does a mastectomy with breast cancer might have concerns about removing perfectly healthy breasts from young girl with gender dysphoria,” he said. “It’s bad medicine.” He said this doesn’t mean doctors shun trans patients for other care ranging from “cancer to the common cold.” (Some trans individuals do report that is not their experience, but Goodrich says the legal fight is focused on gender-affirming care.)

Guttmacher’s Nash says these opt-outs for practitioners are another echo of the fights against abortion rights. “That sounds very much in the vein of what we’ve seen in nearly 50 years of abortion refusal,” she said. “I see the parallel very strongly that this is promoting misinformation around the services that are being provided by people who want to provide them, are trained to provide them, and see them as ensuring that people have the full range of medical care that they need.”

HHS’s Levine said the challenges are not only cultural but also medical and legal. The country has gone through rapid social changes about gay men and lesbians; there’s a lot less knowledge, familiarity and acceptance of trans people.

“One of my goals, by being very out and very visible, is to educate people and have people, you know, become more familiar with transgender individuals,” she said, adding it’s part of her role in public health and public service.
Legislation restricting gender-affirming care for transgender youth: Politics eclipse healthcare

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In the past two years, in 25 US states, bills have been introduced to restrict access to gender-affirming medical care for minors. Some have already become law. We show how these bills, while purporting to “protect” trans youth, are really an assault on their ability, along with their parents’ and physicians’, to make healthcare choices and to receive medically necessary care. We discuss the evidence-based guidelines for the care of these patients, the positions taken by major medical societies against these bills, and the landscape of legal challenges that are being brought against these enacted laws.

Legislators in 25 US states have introduced bills to restrict access to gender-affirming medical care for minors in the past two years (Table 1). To date, these bills have become law in Alabama, Arkansas, and Arizona. On their face, these efforts claim to “protect” trans (we use the terms “trans” and “transgender” interchangeably) youth. However, as we discuss in this commentary, far from helping trans youth, these laws prevent them from receiving medically necessary care that learned professional societies have established. For this reason, relevant professional organizations including The American Medical Association, The American Academy of Pediatrics, The American Psychiatric Association, and The American Academy of Child & Adolescent Psychiatry have explicitly voiced opposition to these laws. These proposed bills and laws share common flaws—they are based on false claims about standards of care and health outcomes for people with gender dysphoria, and they are based on inaccurate, biased, and misleading representations of the evidence base.

The mechanisms by which these laws and proposed legislation seek to limit access to care vary. Some states would criminalize the acts of medical professionals or parents for providing care. For example, Alabama’s law, passed in April of this year, makes providing pubertal suppression or gender-affirming hormones to minors a Class C felony, punishable with up to ten years in prison. Some states would require a medical licensing board to discipline and possibly revoke the license of professionals who provide gender-affirming care to minors. Some states have also considered other modes of restriction, including imposing reporting requirements on educators or limiting public funding.

Thankfully, most of these bills have not passed, and some are no longer under consideration. However, given the growing number of states in which this type of legislation was introduced this year and the number of states that reintroduced legislation in 2022 that failed to pass in 2021, state legislators show no signs of relenting. In addition, if the legislative process fails, some states may take action through their executive branch. The Texas legislature did not pass proposed legislation that would have stripped Texas healthcare providers of their medical license for providing gender-affirming care to minors and made such care child abuse. In response, Governor Greg Abbott issued an Executive Directive, affirming a non-binding opinion of the state attorney general that gender-affirming care constitutes child abuse and ordering its Department of Family and Protective Services to investigate parents who provide their children such care. As discussed below, enforcement of the Alabama and Arkansas laws is currently blocked by federal courts while legal challenges proceed, and Governor Abbott’s order is enjoined by Texas state courts.

Standards of care in treating transgender youth

There is nothing inherently unhealthy or abnormal about being trans. However, some trans individuals suffer from a condition termed gender dysphoria, the criteria for which are set out in the American Psychiatric Association’s Diagnostic and Statistical Manual for Mental Disorders (DSM) and include “a marked incongruence between one’s experienced/expressed gender and assigned gender, of at least six months’ duration, that is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.”

A series of evidence-based clinical guidelines set out the treatment for gender dysphoria, in particular the Endocrine Society Clinical Practice Guideline for Endocrine Treatment of gender-dysorphic/gender-incongruent persons and the World Professional Association for Transgender Health Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People. These guidelines set out the criteria for who is
<table>
<thead>
<tr>
<th>State</th>
<th>Bill and Brief Summary of Some Major Provisions</th>
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<tbody>
<tr>
<td>Alabama</td>
<td>HB1/SB10 (2021)/HB266/SB184 (enacted 2022): Criminalizes the provision of some gender-affirming medical or surgical care to transgender adolescents and requires school personnel to reveal the gender identity of transgender youth to their parents.</td>
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<tr>
<td>Arizona</td>
<td>SB1511 (2021): Adds some gender-affirming medical and surgical care to the state’s definition of child abuse and criminalizes physician activity of this sort. SB1138 (enacted 2022): Prohibits the provision of gender-affirming surgical care to transgender minors.</td>
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<td>Arkansas</td>
<td>HB1570/ SB347 (enacted 2021): Prohibits the provision of some gender-affirming medical or surgical care to transgender adolescents and prohibits the use of public funds for gender-affirming care. Recently became law when the state legislature overrode the Governor’s veto.</td>
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<td>Florida</td>
<td>HB935 (2021)/HB211 (2022): Criminalizes the provision of some gender-affirming medical and surgical care to transgender adolescents.</td>
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<tr>
<td>Georgia</td>
<td>HB401 (2021): Criminalizes the provision of gender-affirming medical and surgical care to transgender adolescents. Creates civil claim against medical professionals who provide gender-affirming care to transgender minors.</td>
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<td>Idaho</td>
<td>HB675 (2022): Criminalizes the provision of gender-affirming medical care to transgender adolescents. Adds gender-affirming medical care to the definition of genital mutilation of a child.</td>
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<td>Indiana</td>
<td>SB224 (2021): Prohibits the provision of gender-affirming surgical and medical care to transgender minors.</td>
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<td>Iowa</td>
<td>HF193 (2021): Subjects health professionals to civil liability and disciplinary sanction for the provision of some gender-affirming medical and surgical care to transgender adolescents.</td>
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<td>Kansas</td>
<td>HB2210 (2021): Criminalizes the provision of some gender-affirming medical or surgical care to transgender adolescents.</td>
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<tr>
<td>Kentucky</td>
<td>HB253/SB84 (2022): Subjects health professionals to civil liability and disciplinary sanction for the provision of some gender-affirming medical and surgical care to transgender adolescents. Prohibits the use of public funds for gender-affirming care to minors.</td>
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<td>Louisiana</td>
<td>HB575 (2021)/HB570 (2022): Criminalizes the provision of some gender-affirming medical or surgical care to transgender adolescents. Prohibits school personnel to withhold from parents or legal guardians “information related to a minor’s gender or sex that is inconsistent with the minor’s sex.” Creates civil liability for providers and parents in violation. Prohibits the use of public funds for gender-affirming care to minors.</td>
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<tr>
<td>Mississippi</td>
<td>HB1147 (2022)/SB2728 (2022): Prohibits provision of or referral for gender-affirming surgical and medical care to transgender minors. Prohibits the use of public funds for any gender-affirming medical care to transgender minors.</td>
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<td>Missouri</td>
<td>HB33 (2021): Subjects medical professionals who provide some gender-affirming medical or surgical care to transgender adolescents to possibility of healthcare license revocation. Establishes that parents or guardians who obtain some gender-affirming medical or surgical care for transgender adolescents shall be reported to the state’s child welfare division. HB2549 (2022): Subjects medical professionals who provide some gender-affirming medical or surgical care to transgender adolescents to possibility of healthcare license revocation. Disallows public funds to any organization or individual who provides gender-affirming care to transgender minors. Creates civil claim against medical professionals who provide gender-affirming care to transgender minors.</td>
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<tr>
<td>Montana</td>
<td>HB 427 (2021): Prohibits the provision of gender-affirming surgical and medical care to transgender minors.</td>
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<td>New Hampshire</td>
<td>HB68 (2021): Criminalizes the provision of gender-affirming healthcare to transgender minors.</td>
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<tr>
<td>North Carolina</td>
<td>SB514 (2021): Subjects medical professionals who provide some gender-affirming medical or surgical care to transgender adolescents to having their healthcare license revoked and authorizes civil liability. Prohibits use of public funds for gender-affirming care. Requires government employees to reveal the gender identity of transgender youth to their parents in writing. Prohibits the use of public funds for gender-affirming medical or surgical care.</td>
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<td>Ohio</td>
<td>HB 454 (2021): Prohibits the provision of gender-affirming surgical and medical care to transgender minors. Subjects providers to possibility of healthcare license revocation and civil liability. Prohibits the use of public funds for gender-affirming care to transgender minors.</td>
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dysphoria, GnRHas have been used in life. In addition to their use for gender dysphoria, while also often creating the psychological distress for those with gender and can cause substantial lifelong psychological distress, both for the patient and their family. Reversibility (i.e., the temporary pausing of endogenous puberty from gonadotropin-releasing hormone agonists [GnRHas]), endogenous puberty itself is irreversible and can cause substantial lifelong psychological distress for those with gender dysphoria, while also often creating the need for more-invasive surgeries later in life. In addition to their use for gender dysphoria, GnRHas have been used in the treatment of central precocious puberty dating back to the 1970s, providing longitudinal safety data for their use in the pediatric population. Research from the precocious puberty literature has shown that, despite assertions by some legislators, these medications do not appear to cause infertility. However, there is some concern that going directly from pubertal suppression to gender-affirming hormones like estrogen or testosterone may impair fertility. For that reason, existing guidelines recommend fertility counseling prior to adolescent patients pursuing such care, so that they may consider fertility-preservation options.

Under existing guidelines, gender-affirming genital surgery is not considered for minors, but gender-affirming chest surgery may be considered for trans masculine adolescents on a case-by-case basis, weighing the substantial risks of surgery against the potential mental and physical health benefits for each individual patient. Current guidelines highlight the importance of both informed consent from a minor’s parents and informed assent from the minors themselves prior to the initiation of any gender-affirming medical or surgical care. Alabama’s law provides an example of the flawed reasoning behind these laws. It erroneously claims, among other things, that standard treatment for a transgender adolescent would include genital surgery, when, in fact, the current consensus in the field is to wait until the patient reaches the age of majority before pursuing such surgical procedures.

**Documented benefits of gender-affirming care**

A substantial body of literature exists documenting the benefits of gender-affirming care. A gender-affirming approach is provided in a comprehensive manner, ensuring that the patient’s gender identity is acknowledged and respected. This approach includes medical, psychological, and social interventions that aim to support the patient in aligning their gender identity with their physical appearance and social role. These interventions may be provided in phases, depending on the patient’s needs and preferences, and they are designed to facilitate a gradual and empowering process of gender-affirmation.

**Table 1. Continued**

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<tr>
<th>State</th>
<th>Bill and brief summary of some major provisions</th>
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<tr>
<td>Oklahoma</td>
<td>SB583 (2021)/HB3240 (2022): Subjects medical professionals who provide some gender-affirming medical or surgical care to transgender adolescents to have their healthcare license revoked. SB676 (2021): Criminalizes the provision of some gender-affirming medical or surgical care to transgender adolescents. Establishes criminal penalties for parents who obtain some gender-affirming medical or surgical care for their children. HB3240 (2022): Creates civil liability for providers and parents in violation. Prohibits the use of public funds for gender-affirming care to minors.</td>
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<td>South Carolina</td>
<td>HB4047 (2021): Criminalizes the provision of some gender-affirming medical or surgical care to transgender adolescents. Requires school personnel to reveal the gender identity of transgender youth to their parents.</td>
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<tr>
<td>South Dakota</td>
<td>HB1057 (2020): Criminalizes the provision of gender-affirming medical or surgical care to transgender adolescents.</td>
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<tr>
<td>Tennessee</td>
<td>SB657 (2021): Criminalizes the provision of gender-affirming medical or surgical care to a transgender adolescent unless both parents or guardians of the adolescent provide a signed written statement from two physicians and an additional board-certified child and adolescent psychiatrist recommending such interventions. HB2835/SB2696 (2022): Subjects medical professionals who provide some gender-affirming medical or surgical care to transgender adolescents to have their healthcare license revoked. Creates civil penalty for medical professionals. Prohibits use of public funds by any entity or person providing gender-affirming care to a minor.</td>
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<tr>
<td>Texas</td>
<td>HB68 (2021): Adds some gender-affirming medical and surgical care to the state’s definition of child abuse. HB1339 (2021): Prohibits the provision of some gender-affirming medical or surgical care to transgender adolescents Prohibits malpractice insurance providers from providing coverage for damages related to gender-affirming medical or surgical care for transgender adolescents. Governor’s Executive Directive (2022): Orders investigations into parents and medical facilities providing healthcare to transgender adolescents. Based on non-binding interpretation from attorney general that classified gender-affirming care as child abuse.</td>
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<tr>
<td>Utah</td>
<td>HB127 (2022): Subjects medical professionals who provide some gender-affirming medical or surgical care to transgender adolescents to have their healthcare license revoked.</td>
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<tr>
<td>West Virginia</td>
<td>HB2171 (2021): Criminalizes the provision of some gender-affirming medical or surgical care to transgender adolescents.</td>
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<tr>
<td>Wisconsin</td>
<td>SB915 (2022): Prohibits the provision of gender-affirming surgical and medical care to transgender minors. Creates civil liability for providers in violation. Prohibits the use of public funds for gender-affirming care to minors.</td>
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Table adapted from and expanded from the one published in ref. Table up to date as of July 1, 2022.
medical interventions, where indicated, for adolescents with gender dysphoria. Over a dozen studies have collectively linked such care to improvements in depression, anxiety, and suicidality. Nonetheless, legislators have ignored or omitted any mention of the benefits of gender-affirming care in their legislative findings and have overstated the number of adolescents whose gender dysphoria dissipates without gender-affirming care.

It is problematic for the state to interfere itself and prevent the provision of care that is evidence-based, meets clinical guidelines, and takes place in circumstances where parents, adolescents, and healthcare providers are all aligned and supportive of what they view as the best medical treatment for a given adolescent. Legislators appear to have singled out trans adolescent care while allowing professionals, parents, and adolescents to together decide the best course of action for other treatments posing potential risks. For example, states have not sought to prohibit, let alone criminalize, the performance of pediatric breast reduction to address excess breast tissue, back pain, or social anxiety. Indeed, it is telling that a state like Arkansas that bans gender-affirming care expressly allows surgical inventions for minors with intersex conditions, even though such procedures have irreversible, long-term consequences. Arkansas permits these procedures with infants that are too young to consent, yet it prohibits gender-affirming care when competent adolescents agree with their parents and healthcare providers that such standard of care treatment is in the patient’s best interest. Many of these laws prohibit the use of GnRHas for gender dysphoria while still allowing use of these medications for central precocious puberty. All this is even more startling against the backdrop of the practice of medicine outside care for trans patients—many standard-of-care treatments carry some risk to the patient, but the net risk-to-benefit ratio combined with the patient’s consent justifies going forward. A rule that requires an intervention to be absolutely free of risk would rule out much of current medical practice, yet that is what legislators are selectively applying to gender-affirming care.

Healthcare providers are fiduciaries for their patients. They are trained, guided by practice guidelines, and use their discretion and medical judgment in partnership with their patient (and in the case of a minor, the patient’s parents as well) to provide care that is in their patient’s best interests. These statutes would transform their fiduciary duty into a criminal act. In many states, criminal prosecutions begin with “The People v.,” reflecting the idea that criminalization is a way a community communicates its moral opprobrium. The criminalization of medical care, with its attendant chilling effect, should be avoided in all but the clearest cases of misconduct. Far from misconduct, the care these providers seek to give assenting adolescents and their consenting parents is evidence-based and guided by established guidelines of the profession. As has always been true in areas like medical malpractice, in determining what is the standard of care, courts and legislatures should look to the medical profession as reflected by the leading medical bodies to determine the best medical practices for patients. Once again, gender-affirming care is being singled out in a way one would not countenance for other areas of medicine.

In addition to their flawed reasoning, suspect justifications, and problematic intrusion into the practice of medicine, laws restricting transgender minors’ access to gender-affirming care also raise legal issues. They may violate the US Constitution, state constitutions, the Affordable Care Act, or the Americans with Disabilities Act.

Transgender minors, their parents, and their healthcare providers have brought several legal challenges against restrictions to accessing gender-affirming care for transgender youth. Preliminary rulings in Alabama and Arkansas indicate that these laws face significant legal headwinds because of the ways they infringe on the rights of transgender minors, their parents, and their providers as protected by the US Constitution’s 14th Amendment Equal Protection and Due Process Clauses.

First, these laws violate the rights of transgender minors under the 14th Amendment’s Equal Protection Clause because they constitute sex-based classifications that discriminate against transgender people without an “exceedingly persuasive” justification. In the Alabama case, a federal court rejected Alabama’s argument that its criminal ban was constitutional because it protected children against “experimental” treatments, finding that Alabama “produce[d] no credible evidence to show that transitioning medications are ‘experimental,’” and that “at least twenty-two major medical associations in the United States endorse these medications as well-established, evidence-based methods for treating gender dysphoria in minors.” And in the Arkansas case, a federal court held that Arkansas’ stated rationale of protecting children was pretextual because its law allowed the same types of treatments for cisgender minors that it banned for transgender minors. The Alabama case also similarly found that “medical providers have used transitioning medications for decades to treat medical conditions other than gender dysphoria, such as central precocious puberty... [and] hormone therapies for patients whose natural hormone levels are below normal.”

Second, these laws interfere with the fundamental rights of parents to direct the care, custody, and control of their children under the 14th Amendment’s Due Process Clause. Courts have recognized that this right includes “the fundamental right to seek medical care for their children and, in conjunction with their adolescent child’s consent and their doctor’s recommendation, make a judgment that medical care is necessary,” which includes “transitioning medications subject to medically accepted standards.”

Third, these laws likely violate the Equal Protection rights of physicians who provide gender-affirming care to transgender patients by treating them worse than physicians who provide other types of medically accepted care. In the Arkansas case, the court expressed grave concern that Arkansas’ law “interfer[es] with the patient-physician relationship, unnecessarily regulat[es] the evidence-based practice of medicine and subject[s] physicians who deliver safe, legal, and medically necessary care to civil liability and loss of licensing.” By barring “healthcare providers in [Arkansas from] consider[ing] the recognized standard of care for adolescent gender dysphoria,... the State has ensured that its healthcare providers...
do not have the ability to abide by their ethical standards, which may include medically necessary transition-related care for improving the physical and mental health of their transgender patients." 13

Finally, as is the case in Texas, if legislatures decline to pass restrictions and a state’s executive branch responds by issuing declarations or orders to restrict or criminalize care, such executive action may be vulnerable to legal challenges under states’ administrative procedures acts. In Texas, a state court issued a temporary restraining order prohibiting the Department of Family and Protective Services from following Governor Abbott’s directive to investigate parents of transgender youth accessing gender-affirming care. The court issued the order, concluding that the plaintiffs stated a valid cause of action that Governor Abbott violated Texas’s Administrative Procedures Act. 14 Other challenges may also be possible, including claims under state constitutions and federal enforcement of the Affordable Care Act’s anti-discrimination provision or the Americans with Disabilities Act.

In short, lower courts are likely to continue to rule that “[p]arents, pediatricians, and psychologists—not the State or a Court—are best qualified to determine whether transitioning medications are in a child’s best interest on a case-by-case basis.” 12 Although not binding in the United States and not involving parental consent, the United Kingdom’s Court of Appeal took a significant position in Bell v. Tavistock, overturning a lower court ruling that severely curtailed the administration of puberty-suppressing medications to transgender minors and was based on the proposition that minors are highly unlikely to have the ability to consent to such treatments. 15 The Court of Appeal ruled that doctors, rather than a blanket legislative or judicial rule, should determine on a case-by-case basis whether minors are able to consent to any specific treatment. 15

It is less clear whether courts will be prepared to strike down bans on gender-affirming surgeries for transgender minors—in the Alabama case, the court declined to enjoin a provision of the Alabama law that “bars sex-altering surgeries on minors” without legal analysis. 12

Conclusion

Cynics will see the more than 25 bills seeking to interfere with the gender-affirming care for trans youth as just one more tried-and-true attempt to use the lives and freedoms of sexual and gender minority Americans for political advantage as election season looms. We have argued that these bills ignore the evidence-based clinical guidelines that set out the treatment for gender dysphoria and the evidence base documenting the benefits of gender-affirming medical interventions, where indicated, for adolescents with documented gender dysphoria. We also highlight how it is ethically problematic for the state to interpose itself into the individual medical decisions of adolescents, their parents, and health-care providers by preventing the provision of evidence-based care that meets clinical guidelines. These laws may disproportionally affect some of the most marginalized within the trans community, those without the resources or support to move or travel out of state for care. As we discuss, some of these laws have already faced legal challenges on a myriad of theories. Those fighting for trans youth to have the freedom to choose gender-affirming care have succeeded in some of the court challenges thus far. It is not yet clear how these challenges will culminate given a conservative Supreme Court that has increasingly deferred to states and expressed skepticism of constitutional rights to make very personal medical choices, as we have recently seen with abortion.

While this commentary has focused on the US where these legislative attacks have intensified over the last two years, we are also seeing attacks on the rights of trans youth across the globe. As a small and insular minority, we are sad to see trans youth become targets for political gain.

ACKNOWLEDGMENTS

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REFERENCES


In Texas, an unrelenting assault on trans rights is taking a mental toll

February 25, 2022 · 3:30 PM ET

RINA TORCHINSKY

Texas resident Amber Briggle kisses her son. She says the onslaught of anti-trans legislation in the state is emotionally traumatizing.

Amber Briggle

For Amber Briggle, raising her 14-year-old trans son in Texas means packing lunches, coordinating rides to extracurriculars and planning sleepovers. Usually, it's just like
raising any other kid in America — except for when it’s a legislative year.

Legislative sessions in the state, which can last up to 140 days every two years, can be exhausting, she told NPR.

"It's emotionally traumatizing," Briggle said. "I've been seeing a therapist for years so I don’t cry in front of my kids over things that they shouldn't have to worry about."

Anti-trans rhetoric in Texas has grown louder in the past few weeks. Attorney General Ken Paxton — who broke bread with Briggle's family years back — issued an opinion that likened gender-affirming surgery — a procedure that gives transgender people a body that aligns with their gender identity — to child abuse.

Days later, Gov. Greg Abbott doubled down with a letter calling on professionals, including teachers and doctors, to report parents who give their children gender-affirming care. The letter added that there would be similar reporting requirements for the general public, and consequences for those who don't report.

**The letter and the opinion don't hold legal ground, ACLU says**

But Adri Pérez, a policy and advocacy strategist at the ACLU of Texas, emphasized that neither the letter nor the opinion are legally binding. No one has a legal duty to report someone receiving gender-affirming care, they added.

"They have no legal effect, and they cannot curtail anyone's constitutional rights," Pérez told NPR. "The attorney general and the governor can share their opinions, but it is just their partisan opinion that have been created to target transgender kids and their families."

But the message is clear, said Emmett Schelling, the executive director of the Transgender Education Network of Texas.
"The state leadership has said, 'We would rather see dead children ... instead of happy, loved, supported, thriving trans kids that are alive and well,' " Schelling told NPR.

Texas, among other states, has seen lawmakers propose dozens of anti-LGBTQ bills. More than 40 proposed bills in Texas targeted trans and nonbinary youth in 2021.

As states pushed to criminalize gender-affirming care, the American Medical Association sent a letter to governors in April urging them to oppose state laws that would ban gender transition-related care. The American Academy of Pediatrics released a statement Thursday expressing its ongoing support for gender-affirming care for transgender youth.

**The bills take a toll on the mental health of trans kids**

In October, the Texas legislature passed a bill barring transgender girls from playing on girls sports teams and transgender boys from playing on boys sports team. The law went into effect in January, making Texas the 10th state to enact similar legislation.

And as conversations mounted, the Trevor Project — an organization dedicated to suicide prevention for LGBTQ youth — received more than 10,800 total crisis calls, texts and chats from LGBTQ youth in Texas looking for support between Jan. 1 and Aug. 30, 2021. More than a third of those crisis contacts came from transgender or nonbinary youth.

For Pérez, gender-affirming care was life saving. Gender dysphoria, the distress someone might experience if their gender doesn’t match their sex, can lead to helplessness. And helplessness leads to depression and suicidal thoughts, they said.

"It is a helpless and hopeless feeling that you may not be able to access the care that you need to live as you truly are," Pérez said.

*If you or someone you know may be considering suicide, contact the National Suicide Prevention Lifeline at 1-800-273-8255 (En Español: 1-888-628-9454; Deaf and Hard of Hearing: 1-800-799-4889) or the Crisis Text Line by texting HOME to 741741.*

Between 2020 and 2021, the Trevor Project saw a 150% increase in crisis contacts from LGBTQ youth in Texas seeking support. While the volume of contacts can’t be
attributed to one factor, an analysis found that transgender and nonbinary youth "are feeling stressed, using self-harm, and considering suicide due to anti-LGBTQ laws being debated in their state," the organization said.

Amber Briggle's son holds up a sign that reads "My parents are not child abusers."

Amber Briggle noted that 2020 marked the onset of the pandemic in the U.S — it shut down schools, eliminated birthday parties and limited visits to grandparents, among other things.
"And yet these anti transgender bills the Texas legislature was so hell-bent on passing was more detrimental to these kids' health than a global pandemic," she said.

**Staying put and pushing for the Equality Act**

As Abbott's latest letter comes on top of anti-trans legislation, some Texas families with trans kids are looking to leave the state. But not everyone has the means to move, and relocating wouldn't make the attacks stop, she said. And staying in the state — and showing that trans-inclusive families exist — is how she fights back.

Now Briggle's eyes are on the federal Equality Act, which would expand Civil Rights Act protections to cover discrimination based on sex, sexual orientation and gender identity. It's a way for allies in blue states to help red states, she said. She urges transgender allies across the country to call their senators to get it passed.

"It's imperative that people stand up and fight against this," Briggle said. "My kid matters, too."

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**NATIONAL**

'It's Hurtful': Trans Youth Speaks Out As Alabama Debates Banning Medical Treatment

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More Stories From NPR
AMA to states: Stop interfering in health care of transgender children

APR 26, 2021

CHICAGO — The American Medical Association (AMA) today urged governors to oppose state legislation that would prohibit medically necessary gender transition-related care for minor patients, calling such efforts “a dangerous intrusion into the practice of medicine.” In a letter to the National Governors Association (NGA), the AMA cited evidence that trans and non-binary gender identities are normal variations of human identity and expression, and that forgoing gender-affirming care can have tragic health consequences, both mental and physical.

“Decisions about medical care belong within the sanctity of the patient-physician relationship,” the AMA wrote in its letter. “As with all medical interventions, physicians are guided by their ethical duty to act in the best interest of their patients and must tailor recommendations about specific interventions and the timing of those interventions to each patient’s unique circumstances. Such decisions must be sensitive to the child’s clinical situation, nurture the child’s short and long-term development, and balance the need to preserve the child’s opportunity to make important life choices autonomously in the future. We believe it is inappropriate and harmful for any state to legislatively dictate that certain transition-related services are never appropriate and limit the range of options physicians and families may consider when making decisions for pediatric patients.”

Empirical evidence has demonstrated that trans and non-binary gender identities are normal variations of human identity and expression. For gender diverse individuals, standards of care and accepted medically necessary services that affirm gender or treat gender dysphoria may include mental health counseling, non-medical social transition, gender-affirming hormone therapy, and/or gender-affirming surgeries. Clinical guidelines established by professional medical organizations for the care of minors promote these supportive interventions based on the current evidence and that enable young people to explore and live the gender that they choose. 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.

Arkansas’ recently enacted SAFE Act and similar bills pending in several other states would insert the government into clinical decision-making and force physicians to disregard clinical guidelines. Decisions about medical care belong within the sanctity of the patient-physician relationship. As with all medical interventions, physicians are guided by their ethical duty to act in the best interest of their patients and must tailor recommendations about specific interventions and the timing of those interventions to each patient’s unique circumstances. Such decisions must be sensitive to the child’s clinical situation, nurture the child’s short and long-term development, and balance the need to preserve the child’s opportunity to make important life choices autonomously in the future. We believe it is inappropriate and harmful for any state to legislatively dictate that certain transition-related services are never appropriate and limit the range of options physicians and families may consider when making decisions for pediatric patients.

In addition, evidence has demonstrated that forgoing gender-affirming care can have tragic consequences. Transgender individuals are up to three times more likely than the general population to report or be diagnosed with mental health disorders, with as many as 41.5 percent reporting at least one diagnosis of a mental health or substance use disorder. The increased prevalence of these mental health conditions is widely thought to be a consequence of minority stress, the chronic stress from coping with societal stigma, and discrimination because of one’s gender identity and expression. Because of this stress, transgender minors also face a significantly heightened risk of suicide.

Transgender children, like all children, have the best chance to thrive when they are supported and can obtain the health care they need. Studies suggest that improved body satisfaction and self-esteem following the receipt of gender-affirming care is protective against poorer mental health and supports healthy relationships with parents and peers. Studies also demonstrate dramatic reductions in suicide attempts, as well as decreased rates of depression and anxiety. Other studies show that a majority of patients report improved mental health and function after receipt of gender-affirming care. Medically supervised care can also reduce rates of harmful self-prescribed hormones, use of construction-grade silicone injections, and other interventions that have potential to cause adverse events.

It is imperative that transgender minors be given the opportunity to explore their gender identity under the safe and supportive care of a physician. Arkansas’s law and others like it would forestall that opportunity. This is a dangerous intrusion into the practice of medicine and we strongly urge the NGA and its member governors to oppose these troubling bills.
We thank you for the opportunity to express our views on this important issue.

Sincerely,

James L. Madara, MD
CEO and EVP, American Medical Association


AAP, Texas Pediatric Society Oppose Actions in Texas Threatening Health of Transgender Youth

Medical organizations speak out against Texas efforts to criminalize gender-affirming care

Austin, TX and Washington, DC – The American Academy of Pediatrics (AAP) and the Texas Pediatric Society (TPS), the Texas chapter of the AAP, strongly oppose the actions taken this week in Texas that directly threaten the health and well-being of transgender youth.

On Feb. 22, Texas Governor Greg Abbott directed the Texas Department of Family and Protective Services and other state agencies to investigate certain gender-affirming services as child abuse, following a legal opinion that was issued by the Texas attorney general earlier this week.

The AAP has long supported gender-affirming care for transgender youth, which includes the use of puberty-suppressing treatments when appropriate, as outlined in its own policy statement, urging that youth who identify as transgender have access to comprehensive, gender-affirming, and developmentally appropriate health care that is provided in a safe and inclusive clinical space in close consultation with parents.

"Pediatricians are trusted by parents to provide the care their children need to be healthy and thrive. What is happening in Texas directly undermines the care pediatricians provide their patients," said AAP President Moira Szilagyi, MD, PhD, FAAP. "This harmful directive leaves families seeking gender-
Pediatricians could be investigated for child abuse by simply providing evidence-based, medically necessary services. Gender affirming care is not abuse. Politics has no place in the exam room. All children deserve access to the care they need."

The Academy has repeatedly spoken out against bills that discriminate against transgender youth and their right to receive medical care, and advocated against restrictions to their rights in other states. The TPS has long-advocated against prohibitions on gender-affirming care in Texas.

For young people who identify as transgender, studies show that gender-affirming care can reduce emotional distress, improve their sense of well-being and reduce the risk of suicide.

“Evidence-based medical care for transgender and gender diverse children is a complex issue that pediatricians are uniquely qualified to provide. This directive undermines the physician-patient-family relationship and will cause undue harm to children in Texas. TPS opposes the criminalization of evidence-based, gender-affirming care for transgender youth and adolescents. We urge the prioritization of the health and well-being of all youth, including transgender youth,” said TPS President Charleta Guillory, MD, MPH, FAAP.

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The American Academy of Pediatrics is an organization of 67,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents and young adults. For more information, visit www.aap.org and follow us on Twitter @AmerAcadPeds.

The Texas Pediatric Society (TPS), the Texas Chapter of the American Academy of Pediatrics, is the premier state professional nonprofit organization of over 4,700 Texas pediatricians and medical students. TPS believes that the most important resource of the State of Texas is its children and pledges its efforts to promote their health and welfare. For more information, visit www.txpeds.org.
Trans kids and supporters say new Texas law will keep them out of school sports

School districts have said they will abide by the law, but it’s still unclear how they will determine whether a student’s birth certificate was issued near the time of birth.

By Allyson Waller | Jan. 18, 2022 | Updated: 2 PM Central

Protesters participate in a rally against anti-trans legislation at the southern steps of the state Capitol. © Evan L'Roy/The Texas Tribune

For LGBTQ mental health support, call the Trevor Project’s 24/7 toll-free support line at 866-488-7386. You can also reach a trained crisis counselor through the National Suicide Prevention Lifeline by calling 800-273-8255 or texting 741741.
Julia wouldn’t describe herself as the “biggest sports person” in the world. She’s not into basketball or football. She played soccer when she was little, but it didn’t stick as she got older.

What she’s really into are sports like cross country and track, which she feels are smaller in scale and more intimate. She trained with her dad, who used to run track in high school, and soon discovered she had a knack for it.

“He taught me the form and how to run, and I just fell in love with running hurdles because I was good at it, but also, it just gave me a feeling that you don’t really feel in a lot of other situations,” she said. It feels like putting life on pause for 20 seconds or so, she added, and “you only focus on what you’re doing and how to do it right.”

It’s this feeling Julia chases when she practices — but as a transgender athlete, she hasn’t been able to pursue it in competition. Because of statewide rules, she’s essentially barred from competing against other girls.

"The government and Greg Abbott think that I’m good because of how I was born, but really, I’m good because I know how to do the form, and I’m good because I practice my ass off," said Julia, a transgender girl who attends high school in Central Texas and has requested to use a pseudonym and remain anonymous to protect her privacy. “Honestly, with the leadership that we have right now and who all is in charge and making the rules, I don’t think that I’m going to be able to run.”

Last year, the Texas Legislature passed House Bill 25, which requires that student athletes play on sports teams that correspond to the sex listed on their birth certificate, and the certificate athletes present must have been issued near the time of birth. The law went into effect Tuesday, making Texas the 10th state in the U.S. to enact similar legislation.

Supporters of the law argue it is necessary to protect women’s sports from what they deem unfair competition. State Rep. Valoree Swanson, R-Spring, said one of
her main reasons for authoring the bill was to “protect girls’ safety.” She did not respond to requests for comment for this story, but in a news conference Tuesday, she hinted at introducing future legislation that would expand sports team restrictions to the college level.

“We have got to come back and protect our college girls in the next session,” she said.

HB 25 targets transgender youth, a rather small slice of the state’s population. Data shows less than half of LGBTQ youth participate in sports, and it’s predicted the number of transgender youth is even smaller.

Nevertheless, legislation targeting trans people has been a prominent part of the Texas GOP’s agenda in recent years. Lt. Gov. Dan Patrick said Tuesday that he was “especially proud” of the law.

“In Texas, we refuse to deny any woman or girl athlete the right to compete on a level playing field, and to be the best in their sport,” Patrick wrote on Twitter.

LGBTQ advocates say there’s been little evidence in the state of Texas to support the argument that transgender girls would displace cisgender girls on sports teams.

The transgender sports bill was part of a litany of anti-trans legislation introduced last year during Texas’ four legislative sessions that pushed some LGBTQ families to question their residency in the state and has led to detrimental mental health effects on LGBTQ youth, said Ricardo Martinez, executive director of Equality Texas, a statewide advocacy organization for LGBTQ Texans.

“Lawmakers have willingly ignored the overwhelming harm that this bill and bills like it has already caused in favor of exploiting our differences and the lack of familiarity that some people may have about transgender people,” Martinez said. “This we know stokes fear, and it divides us.”
Advocates for transgender youth say they are bracing for the impact of the law’s implementation and the heightened scrutiny of transgender youth and their bodies. School districts have said they will abide by the law, but it’s still unclear how that will look in practice and how schools will determine whether a student’s birth certificate was issued near the time of birth.

Julia, 16, said she's been able to practice with the girls team at her school during track season, but she doesn’t compete in meets. For her, the law means she has to face a “harsh truth” — competing in a sport she loves is something she just won’t be able to do.

“I wish I had that sort of idea in my head that this practice would all lead to something,” she said. “Now after actually realizing that this law is being put into place ... all the practice that I’m going to be doing is going to lead up to nothing because I don’t have anywhere to show it off or anywhere to compete.”

**Staying in compliance**

Although some Republican lawmakers have said the new law codifies existing rules from the University Interscholastic League, the athletic governing body for public schools in Texas, the law goes further than previous UIL rules. UIL used to allow students to submit legally modified birth certificates, which students may have changed to align with their gender identity.

UIL introduced a rule in 2016 establishing that an athlete’s gender would be officially determined by their birth certificate. Under the new law, a modified birth certificate would only be accepted if it was changed to correct a clerical error.
Julia, who’s in the process of getting her gender marker changed on her birth certificate, said she had been optimistic that a new birth certificate would allow her to compete with other girls.

Jamey Harrison, deputy director of UIL, said school districts will be responsible for ensuring they are in compliance with the law, but it’s not completely clear whether they will be able to determine if a birth certificate is original.

“It’s new ground, so some of it will be learning as we go,” Harrison said in an interview with The Texas Tribune. “But UIL does not have an investigative arm outside of its member school committees. We don’t have a bunch of black Suburbans and earpieces and guys going around checking birth certificates, that’s not the way it works. At the end of the day, the schools are going to have to do the best they can to make sure they’re in compliance with the law.”

Harrison said if districts don’t comply with the law, they will be subject to certain sanctions and will have to forfeit competition at a minimum.

The Tribune contacted some of the state’s largest school districts in major metro and surrounding areas to ask them about their plans to comply with the law. Several school districts did not respond to requests for comment, and a handful declined to be interviewed.
Deanne Hullender, a spokesperson with the Hurst-Euless-Bedford Independent School District, said it “will definitely be following all UIL guidelines and policies provided within this new legislation.” Meghan Cone, a spokesperson for Frisco ISD, said operations in her district are not expected to change because the bill “primarily codifies existing UIL regulation.”

Enforcement of laws similar to HB 25 have been halted in states like Idaho and West Virginia as litigation battles over the statutes play out in court. A lawsuit in Tennessee is also challenging that state’s version of the law.

Shelly Skeen, a senior attorney with Lambda Legal, a national legal organization in support of civil rights for LGBTQ individuals, said the Texas law “certainly brings up questions about equal protection and civil rights.”

“If you’re going to treat one set of students differently than another, then you’re looking, at least in this case, [at] a violation of equal protection, but it’s also sex discrimination,” Skeen said.

According to the U.S. Department of Education, current interpretation of Title IX — a federal civil rights law that prohibits discrimination based on the basis of sex in education — also encompasses gender identity and sexual orientation protections.

Andrea Segovia, senior policy and field strategist with the Transgender Education Network of Texas, said her organization is focusing on supporting transgender students as the law takes effect by making sure they are connected to mental health resources and helping educators find the best ways to be allies to LGBTQ youth.

“Unfortunately, we are at a point where it’s like a little bit of wait and see,” Segovia said about the law’s enforcement. “Because we know that UIL affects all public schools, but just like any other law in this state, it really depends on how they enforce it.”
Small group, big impact

Transgender people represent a small fraction of the state's population, and the population of transgender youth ages 13 to 17 is estimated to be about 13,800, or about 0.7% of teens within that age range, according to the University of California, Los Angeles' Williams Institute. However, Texas is one of the states with the most transgender youths aside from California, Florida and New York.

Harrison said UIL doesn't keep data on the number of K-12 transgender athletes that participate in school sports.

According to the Trevor Project, a national suicide prevention and crisis intervention organization for LGBTQ youth, about 1 in 3 LGBTQ youths report participating in sports. Transgender youth are less likely to compete compared with their lesbian, gay and bisexual peers, said Casey Pick, Trevor Project’s senior fellow for advocacy and government affairs.

“Many of these youth tell us that they didn’t participate in sports because of fear of harassment discrimination, so that is a reality,” Pick said. “But some of the youth who do participate tell us that it is their one source of relaxation, their place to find camaraderie and teamwork, that they have a lot of fun and sometimes it’s the place they feel best about their bodies and who they are.”
Another worry among opponents of the Texas law is the effect it could have on cisgender women who don’t subscribe to traditional interpretations of what a young girl or woman should look like.

Lis Riley, whose child is a cisgender girl who plays basketball in Austin ISD, said her daughter used to present herself as masculine before but has started to lean back into a feminine identity so she’s not targeted while participating in sports.

“‘I need to kind of look like a girl so people don’t look at me weird when I’m trying out for the girls basketball team,’ essentially is kind of what she’s telling me, which is kind of sad to feel like that’s the world of high school sports in a public school,” Riley said.

Meanwhile, student athletes like Julia are left with virtually no choices if they want to compete.

During the offseason, Julia said she’s been practicing by running around her neighborhood and sometimes going to her school’s track. Her coaches have applauded her talent, she said, but she’s made it clear to them that the only team she feels comfortable being a part of and competing with is the girls track team.

“I don’t see it as a ‘me’ problem. I see it as other people’s problem,” she said of the Texas law. “I kind of accepted that I’m not gonna be able to [compete]. I kind of just deal with it. I mean, it sucks, but that’s kind of the harsh reality.”

Disclosure: Equality Texas has been a financial supporter of The Texas Tribune, a nonprofit, nonpartisan news organization that is funded in part by donations from members, foundations and corporate sponsors. Financial supporters play no role in the Tribune’s journalism. Find a complete list of them here.
Washington (CNN) — A federal appeals court said Tuesday that the Americans with Disabilities Act covers individuals with "gender dysphoria," handing a win to trans people in a case concerning a former inmate who alleged discrimination at a Virginia prison.

In a majority opinion issued by a three-judge panel with the US Court of Appeals for the Fourth Circuit, the court wrote, "In light of the ‘basic promise of equality ... that animates the ADA,’ we see no legitimate reason why Congress would intend to exclude from the ADA’s protections transgender people who suffer from gender dysphoria."

Gender dysphoria describes an uncomfortable conflict between a person’s assigned gender and the gender with which the person identifies, according to the American Psychiatric Association.

“We have little trouble concluding that a law excluding from ADA protection both ‘gender identity disorders’ and gender dysphoria would discriminate against transgender people as a class, implicating the Equal Protection Clause of the Fourteenth Amendment,” the ruling read, referring to a constitutional clause that has been used in
The treatment of trans inmates has long been a focus of advocates for trans rights, with stories of abuse fueling calls for reforms and more targeted anti-discrimination laws. Activists hailed Tuesday’s ruling, saying it will be a helpful precedent for future litigation.

The case at hand concerned Kesha Williams, a trans woman with gender dysphoria who was held for six months at a Virginia prison.

“Though prison deputies initially assigned her to women’s housing, they quickly moved her to men’s housing when they learned that she was transgender,” according to the ruling, which said that while held in the men’s facility, Williams “experienced delays in medical treatment for her gender dysphoria, harassment by other inmates, and persistent and intentional misgendering and harassment by prison deputies.”

Williams sued several individuals connected to the prison, claiming that the way she was treated was a violation of the ADA and other laws.

A district court initially dismissed Williams’ case on the basis of the ADA’s explicit exclusion of “gender identity disorders not resulting from physical impairments” from protection under the law. Williams appealed, arguing that because the language of the exclusion is dated and undefined, it was up to the court to determine whether gender dysphoria is protected under the ADA.

The appeals court, citing an updated medical understanding, reversed the lower court’s dismissal.

“In sum, we hold that Williams has plausibly alleged that gender dysphoria does not fall within the ADA’s exclusion for ‘gender identity disorders not resulting from physical impairments,’” the ruling said.

CNN reached out to attorneys for several of the defendants named in the case for comment.

Though the matter still needs to go back to a lower court to settle additional questions central to the case, Joshua Erlich, an attorney for Williams, told CNN that Tuesday’s ruling “is a really meaningful win for trans people more broadly because this opinion applies not just (to) people who are incarcerated, but for workplace accommodations, for public accommodations.”

“The ruling in this case is consistent with the ruling in Bostock several years ago ... that extended employment protections under Title VII to trans employees,” he said, referring to a 2020 Supreme Court ruling that said federal civil rights law protects LGBTQ workers.

He continued: “I think that this ruling in a lot of ways was mandated by the language in Bostock. To the extent that Bostock has created a positive trajectory for trans rights, this is a continuation of that.”

A number of advocacy groups signed onto a friend-of-the-court brief for the case co-authored by the LGBTQ legal rights group GLAD and the National Center for Lesbian Rights (NCLR). In a statement following the ruling, NCLR’s legal director Shannon Minter said that the “decision sets a powerful precedent that will be important for other courts considering this critical issue.”
And Jennifer Levi, the director of GLAD’s Transgender Rights Project, said in the same statement that it “would turn disability law upside down to exclude someone from its protection because of having a stigmatized medical condition.”

“This opinion goes a long way toward removing social and cultural barriers that keep people with treatable, but misunderstood, medical conditions from being able to thrive,” Levi said.

CNN’s Kristen Rogers contributed to this report.
AN ACT

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Equality Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Discrimination can occur on the basis of the

sex, sexual orientation, gender identity, pregnancy,
childbirth, or a related medical condition of an individual, as well as because of sex-based stereotypes. Each of these factors alone can serve as the basis for discrimination, and each is a form of sex discrimination.

(2) A single instance of discrimination may have more than one basis. For example, discrimination against a married same-sex couple could be based on the sex stereotype that marriage should only be between heterosexual couples, the sexual orientation of the two individuals in the couple, or both. In addition, some persons are subjected to discrimination based on a combination or the intersection of multiple protected characteristics. Discrimination against a pregnant lesbian could be based on her sex, her sexual orientation, her pregnancy, or on the basis of multiple factors.

(3) Lesbian, gay, bisexual, transgender, and queer (referred to as “LGBTQ”) people commonly experience discrimination in securing access to public accommodations—including restaurants, senior centers, stores, places of or establishments that provide entertainment, health care facilities, shelters, government offices, youth service providers including adoption and foster care providers, and transpor-
tation. Forms of discrimination include the exclusion and denial of entry, unequal or unfair treatment, harassment, and violence. This discrimination prevents the full participation of LGBTQ people in society and disrupts the free flow of commerce.

(4) Women also have faced discrimination in many establishments such as stores and restaurants, and places or establishments that provide other goods or services, such as entertainment or transportation, including sexual harassment, differential pricing for substantially similar products and services, and denial of services because they are pregnant or breastfeeding.

(5) Many employers already and continue to take proactive steps, beyond those required by some States and localities, to ensure they are fostering positive and respectful cultures for all employees. Many places of public accommodation also recognize the economic imperative to offer goods and services to as many consumers as possible.

(6) Regular and ongoing discrimination against LGBTQ people, as well as women, in accessing public accommodations contributes to negative social and economic outcomes, and in the case of public ac-
commodations operated by State and local governments, abridges individuals’ constitutional rights.

(7) The discredited practice known as “conversion therapy” is a form of discrimination that harms LGBTQ people by undermining individuals’ sense of self worth, increasing suicide ideation and substance abuse, exacerbating family conflict, and contributing to second-class status.

(8) Both LGBTQ people and women face widespread discrimination in employment and various services, including by entities that receive Federal financial assistance. Such discrimination—

(A) is particularly troubling and inappropriate for programs and services funded wholly or in part by the Federal Government;

(B) undermines national progress toward equal treatment regardless of sex, sexual orientation, or gender identity; and

(C) is inconsistent with the constitutional principle of equal protection under the Fourteenth Amendment to the Constitution of the United States.

(9) Federal courts have widely recognized that, in enacting the Civil Rights Act of 1964, Congress validly invoked its powers under the Fourteenth
Amendment to provide a full range of remedies in response to persistent, widespread, and pervasive discrimination by both private and government actors.

(10) Discrimination by State and local governments on the basis of sexual orientation or gender identity in employment, housing, and public accommodations, and in programs and activities receiving Federal financial assistance, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. In many circumstances, such discrimination also violates other constitutional rights such as those of liberty and privacy under the due process clause of the Fourteenth Amendment.

(11) Individuals who are LGBTQ, or are perceived to be LGBTQ, have been subjected to a history and pattern of persistent, widespread, and pervasive discrimination on the bases of sexual orientation and gender identity by both private sector and Federal, State, and local government actors, including in employment, housing, and public accommodations, and in programs and activities receiving Federal financial assistance. This discrimination inflicts a range of tangible and intangible harms, sometimes
even including serious physical injury or death. An
explicit and comprehensive national solution is need-
ed to address this discrimination, including the full
range of remedies available under the Civil Rights
Act of 1964.

(12) Discrimination based on sexual orientation
includes discrimination based on an individual’s ac-
tual or perceived romantic, emotional, physical, or
sexual attraction to other persons, or lack thereof,
on the basis of gender. LGBTQ people, including
gender nonbinary people, also commonly experience
discrimination because of sex-based stereotypes.
Many people are subjected to discrimination because
of others’ perceptions or beliefs regarding their sex-
ual orientation. Even if these perceptions are incor-
rect, the identity imputed by others forms the basis
of discrimination.

(13) Numerous provisions of Federal law ex-
pressly prohibit discrimination on the basis of sex,
and Federal courts and agencies have correctly in-
terpreted these prohibitions on sex discrimination to
include discrimination based on sexual orientation,
gender identity, and sex stereotypes. In particular,
the Supreme Court of the United States correctly
held in Bostock v. Clayton County, 140 S. Ct. 1731
(2020) that the prohibition on employment discrimi-
nation because of sex under title VII of the Civil
Rights Act of 1964 inherently includes discrimina-
tion because of sexual orientation or transgender
status.

(14) This Act makes explicit that existing Fed-
eral statutes prohibiting sex discrimination in em-
ployment (including in access to benefits),
healthcare, housing, education, credit, and jury serv-
vice also prohibit sexual orientation and gender iden-
tity discrimination.

(15) LGBTQ people often face discrimination
when seeking to rent or purchase housing, as well as
in every other aspect of obtaining and maintaining
housing. LGBTQ people in same-sex relationships
are often discriminated against when two names as-
associated with one gender appear on a housing appli-
cation, and transgender people often encounter dis-
 crimination when credit checks or inquiries reveal a
former name.

(16) National surveys, including a study com-
missioned by the Department of Housing and Urban
Development, show that housing discrimination
against LGBTQ people is very prevalent. For in-
stance, when same-sex couples inquire about housing
that is available for rent, they are less likely to re-
ceive positive responses from landlords. A national
matched-pair testing investigation found that nearly
one-half of same-sex couples had encountered ad-
verse, differential treatment when seeking elder
housing. According to other studies, transgender
people have half the homeownership rate of non-
transgender people and about 1 in 5 transgender
people experience homelessness. Another survey
found that 82 percent of gender nonbinary people
experiencing homelessness lacked access to shelter.

(17) As a result of the absence of explicit prohi-
bitions against discrimination on the basis of sexual
orientation and gender identity, credit applicants
who are LGBTQ, or are perceived to be LGBTQ,
have unequal opportunities to establish credit.
LGBTQ people can experience being denied a mort-
gage, credit card, student loan, or many other types
of credit simply because of their sexual orientation
or gender identity.

(18) Numerous studies demonstrate that
LGBTQ people, especially transgender people and
women, are economically disadvantaged and at a
higher risk for poverty compared with other groups
of people. For example, the poverty rate for older
women in same-sex couples is twice that of older differ-
ferent-sex couples.

(19) The right to an impartial jury of one’s peers and the reciprocal right to jury service are fundamental to the free and democratic system of justice in the United States and are based in the Bill of Rights. There is, however, an unfortunate and long-documented history in the United States of attorneys discriminating against LGBTQ individuals, or those perceived to be LGBTQ, in jury selec-
tion. Failure to bar peremptory challenges based on the actual or perceived sexual orientation or gender identity of an individual not only erodes a funda-
mental right, duty, and obligation of being a citizen of the United States, but also unfairly creates a sec-
ond class of citizenship for LGBTQ victims, wit-
tesses, plaintiffs, and defendants.

(20) Numerous studies document the shortage of qualified and available homes for the approxi-
mately 424,000 youth in the child welfare system and the negative outcomes for the many youth who live in group care as opposed to a loving home or who age out of care without a permanent family placement. Although same-sex couples are 7 times more likely to foster or adopt than their different-
sex counterparts, many child-placing agencies refuse to serve same-sex couples and LGBTQ individuals. This has resulted in a reduction of the pool of qualified and available homes for youth in the child welfare system who need placement on a temporary or permanent basis. It also sends a negative message about LGBTQ people to children and youth in the child welfare system about who is, and who is not, considered fit to be a parent. While the priority should be on providing the supports necessary to keep children with their families, when removal is required, barring discrimination in foster care and adoption will increase the number of homes available to foster children waiting for foster and adoptive families.

(21) LGBTQ youth are overrepresented in the foster care system by at least a factor of two and report twice the rate of poor treatment while in care compared to their non-LGBTQ counterparts. LGBTQ youth in foster care have a higher average number of placements, higher likelihood of living in a group home, and higher rates of hospitalization for emotional reasons and of juvenile justice involvement than their non-LGBTQ peers because of the high level of bias and discrimination that they face and
the difficulty of finding affirming foster placements. Further, due to their physical distance from friends and family, traumatic experiences, and potentially unstable living situations, all youth involved with child welfare services are at risk for being targeted by traffickers seeking to exploit children. Barring discrimination in child welfare services will ensure improved treatment and outcomes for LGBTQ foster children.

(22) Courts consistently have found that the government has a compelling interest in preventing and remedying discrimination. For example, the Supreme Court of the United States found there to be a compelling government interest in eliminating sex discrimination in Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 549 (1987). Because discrimination based on sexual orientation or gender identity inherently is a form of sex discrimination, as held in Bostock v. Clayton County, 140 S. Ct. 1731 (2020), this Act furthers the compelling government interest in providing redress for the serious harms to mental and physical health, financial security and wellbeing, civic participation, freedom of movement and opportunity, personal dignity, and physical safety that re-
result from discrimination. Consistent with the role
nondiscrimination laws play in protecting lives and
livelihoods, alleviating suffering, and improving indi-
vidual and public health, the Supreme Court of the
United States has long recognized, under the deci-
sion in Heart of Atlanta Motel, Inc. v. United
States, 379 U.S. 241 (1964), that these laws also
benefit society as a whole by ending the “disruptive
effect” discrimination has on travel and commerce,
and by creating a level field for all participants in
a given sector.

(23) As with all prohibitions on invidious dis-
crimination, this Act furthers the government’s com-
pelling interest in the least restrictive way because
only by forbidding discrimination is it possible to
avert or redress the harms described in this sub-
section.

(b) PURPOSE.—It is the purpose of this Act to ex-
pand as well as clarify, confirm and create greater consist-
ency in the protections and remedies against discrimina-
tion on the basis of all covered characteristics and to pro-
vide guidance and notice to individuals, organizations, cor-
porations, and agencies regarding their obligations under
the law.
SEC. 3. PUBLIC ACCOMMODATIONS.

(a) Prohibition on Discrimination or Segregation in Public Accommodations.—Section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

(1) in subsection (a), by inserting “sex (including sexual orientation and gender identity),” before “or national origin”; and

(2) in subsection (b)—

(A) in paragraph (3), by striking “stadium” and all that follows and inserting “stadium or other place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, public gathering, or public display;”;

(B) by redesignating paragraph (4) as paragraph (6); and

(C) by inserting after paragraph (3) the following:

“(4) any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establishment that provides health care, accounting, or legal services;
“(5) any train service, bus service, car service, taxi service, airline service, station, depot, or other place of or establishment that provides transportation service; and”.

(b) **Prohibition on Discrimination or Segregation Under Law.**—Section 202 of such Act (42 U.S.C. 2000a–1) is amended by inserting “sex (including sexual orientation and gender identity),” before “or national origin”.

(c) **Rule of Construction.**—Title II of such Act (42 U.S.C. 2000a et seq.) is amended by adding at the end the following:

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SEC. 208. RULE OF CONSTRUCTION.

“A reference in this title to an establishment—

“(1) shall be construed to include an individual whose operations affect commerce and who is a provider of a good, service, or program; and

“(2) shall not be construed to be limited to a physical facility or place.”.
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**SEC. 4. DESEGREGATION OF PUBLIC FACILITIES.**

Section 301(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000b(a)) is amended by inserting “sex (including sexual orientation and gender identity),” before “or national origin”.
SEC. 5. DESEGREGATION OF PUBLIC EDUCATION.

(a) DEFINITIONS.—Section 401(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000c(b)) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin”.

(b) CIVIL ACTIONS BY THE ATTORNEY GENERAL.—Section 407 of such Act (42 U.S.C. 2000c–6) is amended, in subsection (a)(2), by inserting “(including sexual orientation and gender identity),” before “or national origin”.

(c) CLASSIFICATION AND ASSIGNMENT.—Section 410 of such Act (42 U.S.C. 2000c–9) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin”.

SEC. 6. FEDERAL FUNDING.

Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended by inserting “sex (including sexual orientation and gender identity),” before “or national origin,”.

SEC. 7. EMPLOYMENT.

(a) RULES OF CONSTRUCTION.—Title VII of the Civil Rights Act of 1964 is amended by inserting after section 701 (42 U.S.C. 2000e) the following:

“SEC. 701A. RULES OF CONSTRUCTION.

“Section 1106 shall apply to this title except that for purposes of that application, a reference in that section
to an ‘unlawful practice’ shall be considered to be a refer-
ence to an ‘unlawful employment practice’.”.

(b) UNLAWFUL EMPLOYMENT PRACTICES.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended—

(1) in the section header, by striking “SEX,”
and inserting “SEX (INCLUDING SEXUAL ORIENTA-
TION AND GENDER IDENTITY),”;

(2) except in subsection (e), by striking “sex,”
each place it appears and inserting “sex (including
sexual orientation and gender identity),”;

(3) in subsection (e)(1), by striking “enter-
prise,” and inserting “enterprise, if, in a situation in
which sex is a bona fide occupational qualification,
individuals are recognized as qualified in accordance
with their gender identity,”; and

(4) in subsection (h), by striking “sex” the sec-
ond place it appears and inserting “sex (including
sexual orientation and gender identity),”.

(c) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—
Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C.
2000e–3(b)) is amended—

(1) by striking “sex,” the first place it appears
and inserting “sex (including sexual orientation and
gender identity),”; and
(2) by striking “employment.” and inserting “employment, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.”.

(d) CLAIMS.—Section 706(g)(2)(A) of the Civil Rights Act of 1964 (2000e–5(g)(2)(A)) is amended by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”.

(e) EMPLOYMENT BY FEDERAL GOVERNMENT.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(1) in subsection (a), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”; and

(2) in subsection (c), by striking “sex” and inserting “sex (including sexual orientation and gender identity),”.


(1) in section 301(b), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”;
(2) in section 302(a)(1), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”; and

(3) by adding at the end the following:

“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this title except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex (including sexual orientation and gender identity), or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability’.”.

(g) CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—The Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) is amended—

(1) in section 201(a)(1) (2 U.S.C. 1311(a)(1)) by inserting “(including sexual orientation and gender identity),” before “or national origin,”; and

(2) by adding at the end of title II (42 U.S.C. 1311 et seq.) the following:

“SEC. 209. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to section 201 (and remedial provisions of this Act related to section 201) except
that for purposes of that application, a reference in that
section 1106 to ‘race, color, religion, sex (including sexual
orientation and gender identity), or national origin’ shall
be considered to be a reference to ‘race, color, religion,
sex (including sexual orientation and gender identity), na-
tional origin, age, or disability’.”.

(h) CIVIL SERVICE REFORM ACT OF 1978.—Chapter
23 of title 5, United States Code, is amended—

(1) in section 2301(b)(2), by striking “sex,”
and inserting “sex (including sexual orientation and
gender identity),”; 

(2) in section 2302—

(A) in subsection (b)(1)(A), by inserting
“(including sexual orientation and gender iden-
tity),” before “or national origin,”; and

(B) in subsection (d)(1), by inserting “(in-
cluding sexual orientation and gender iden-
tity),” before “or national origin;”; and

(3) by adding at the end the following:

“SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil
Rights Act of 1964 shall apply to this chapter (and reme-
dial provisions of this title related to this chapter) except
that for purposes of that application, a reference in that
section 1106 to ‘race, color, religion, sex (including sexual
orientation and gender identity), or national origin’ shall be considered to be a reference to ‘race, color, religion, sex (including sexual orientation and gender identity), national origin, age, a handicapping condition, marital status, or political affiliation’.”

SEC. 8. INTERVENTION.
Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h–2) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin,”.

SEC. 9. MISCELLANEOUS.
Title XI of the Civil Rights Act of 1964 is amended—

(1) by redesignating sections 1101 through 1104 (42 U.S.C. 2000h et seq.) and sections 1105 and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections 1102 through 1105 and sections 1108 and 1109, respectively;

(2) by inserting after the title heading the following:

“SEC. 1101. DEFINITIONS AND RULES.
“(a) DEFINITIONS.—In titles II, III, IV, VI, VII, and IX (referred to individually in sections 1106 and 1107 as a ‘covered title’):

“(1) RACE; COLOR; RELIGION; SEX; SEXUAL ORIENTATION; GENDER IDENTITY; NATIONAL ORI-
GIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), or ‘national origin’, used with respect to an individual, includes—

“(A) the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(B) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of the individual.

“(2) GENDER IDENTITY.—The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.

“(3) INCLUDING.—The term ‘including’ means including, but not limited to, consistent with the term’s standard meaning in Federal law.

“(4) SEX.—The term ‘sex’ includes—

“(A) a sex stereotype;
“(B) pregnancy, childbirth, or a related medical condition;

“(C) sexual orientation or gender identity;

and

“(D) sex characteristics, including intersex traits.

“(5) SEXUAL ORIENTATION.—The term ‘sexual orientation’ means homosexuality, heterosexuality, or bisexuality.

“(b) RULES.—In a covered title referred to in subsection (a)—

“(1) (with respect to sex) pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions; and

“(2) (with respect to gender identity) an individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual’s gender identity.”; and

(3) by inserting after section 1105 the following:
“SEC. 1106. RULES OF CONSTRUCTION.

“(a) SEX.—Nothing in section 1101 or the provisions of a covered title incorporating a term defined or a rule specified in that section shall be construed—

“(1) to limit the protection against an unlawful practice on the basis of pregnancy, childbirth, or a related medical condition provided by section 701(k); or

“(2) to limit the protection against an unlawful practice on the basis of sex available under any provision of Federal law other than that covered title, prohibiting a practice on the basis of sex.

“(b) CLAIMS AND REMEDIES NOT PRECLUDED.—Nothing in section 1101 or a covered title shall be construed to limit the claims or remedies available to any individual for an unlawful practice on the basis of race, color, religion, sex (including sexual orientation and gender identity), or national origin including claims brought pursuant to section 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or any other law, including a Federal law amended by the Equality Act, regulation, or policy.

“(c) NO NEGATIVE INFERENCE.—Nothing in section 1101 or a covered title shall be construed to support any inference that any Federal law prohibiting a practice on the basis of sex does not prohibit discrimination on the basis of pregnancy, childbirth, or a related medical condi-
tion, sexual orientation, gender identity, or a sex stereotype.

**SEC. 1107. CLAIMS.**

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“The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.”
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**SEC. 10. HOUSING.**

(a) **FAIR HOUSING ACT.—** The Fair Housing Act (42 U.S.C. 3601 et seq.) is amended—

(1) in section 802 (42 U.S.C. 3602), by adding at the end the following:

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“(p) ‘Gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(q) ‘Race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘handicap’, ‘familial status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and
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“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of the individual.”;

(2) in section 804, by inserting “(including sexual orientation and gender identity),” after “sex,” each place that term appears;

(3) in section 805, by inserting “(including sexual orientation and gender identity),” after “sex,” each place that term appears;

(4) in section 806, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(5) in section 808(e)(6), by inserting “(including sexual orientation and gender identity),” after “sex,”; and

(6) by adding at the end the following:

“SEC. 821. RULES OF CONSTRUCTION.

“Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1101(b) or 1106 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.”

“Sec. 822. Claims.

“Section 1107 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1107 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.”

(b) Prevention of Intimidation in Fair Housing Cases.—Section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended by inserting “(including sexual orientation (as such term is defined in section 802 of this Act) and gender identity (as such term is defined in section 802 of this Act)),” after “sex,” each place that term appears.

Sec. 11. Equal Credit Opportunity.

(a) Prohibited Discrimination.—Section 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691(a)(1)) is amended by inserting “(including sexual orientation and gender identity),” after “sex”.

(b) Definitions.—Section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended—

(1) by redesignating subsections (f) and (g) as subsections (h) and (i), respectively;

(2) by inserting after subsection (e) the following:
“(f) The terms ‘gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(g) The term ‘race’, ‘color’, ‘religion’, ‘national origin’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘marital status’, or ‘age’, used with respect to an individual, includes—

“(1) the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of the individual.”; and

(3) by adding at the end the following:

“(j) Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application—

“(1) a reference in those sections to a ‘covered title’ shall be considered a reference to ‘this title’; and
“(2) paragraph (1) of such section 1101(b) shall apply with respect to all aspects of a credit transaction.”.

(e) Relation to State Laws.—Section 705(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691d(a)) is amended by inserting “(including sexual orientation and gender identity),” after “sex”.

(d) Civil Liability.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following:

“...(l) Section 1107 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application, a reference in that section to a ‘covered title’ shall be considered a reference to ‘this title’.”.

SEC. 12. JURIES.

(a) In General.—Chapter 121 of title 28, United States Code, is amended—

(1) in section 1862, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(2) in section 1867(e), in the second sentence, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(3) in section 1869—
(A) in subsection (j), by striking “and” at the end;

(B) in subsection (k), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(l) ‘gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given such terms under section 1101(a) of the Civil Rights Act of 1964; and

“(m) ‘race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘economic status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, respectively, of the individual.”; and

(4) by adding at the end the following:
"§ 1879. Rules of construction and claims

"Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter, except that for purposes of that application, a reference in those sections to a 'covered title' shall be considered a reference to 'this chapter'."

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 121 of title 28, United States Code, is amended by adding at the end the following:

"1879. Rules of construction and claims."

Passed the House of Representatives February 25, 2021.

Attest: CHERYL L. JOHNSON,

\textit{Clerk.}
AN ACT

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

Passed and presented to the President March 2, 2021.

If the President signs this act, it shall be called the "Equality Act."
Freedom and equality are fundamental American values. But today, millions of Americans lack basic non-discrimination protections just because of who they are or whom they love. President Biden believes that every American must be able to live freely, openly, and safely. That’s why he continues to call on the Senate to swiftly pass the Equality Act, legislation which will provide long overdue federal civil rights protections to LGBTQ+ Americans and their families, while strengthening some key civil rights laws for people of color, women, people with disabilities, and people of faith.

**Despite the progress our Nation has made towards full equality, LGBTQ+ Americans still lack full non-discrimination protections in 29 states.** In the absence of a Federal non-discrimination law, more than half of all U.S. states lack laws on the book prohibiting discrimination against LGBTQ+ individuals and families. The lack of federal non-discrimination protections for LGBTQ+ people means that millions of Americans can be denied housing, education, credit and more just because of who they are or whom they love. In states across the country, LGBTQ+ Americans can get married on Sunday, and denied a rental lease on Monday.

**The Equality Act will provide long overdue civil rights protections on the basis of sexual orientation and gender identity – ensuring LGBTQ+ Americans are finally afforded equal protection under law.** The Equality Act amends the Civil Rights Act of 1964 to provide explicit non-discrimination protections on the basis of sex, sexual orientation, and gender identity. The bill builds on the Supreme Court’s ruling in *Bostock v. Clayton County* by making explicit that non-discrimination protections for LGBTQ+ people in employment settings apply to other areas of life.

**The Equality Act will help protect LGBTQ+ Americans who continue to report facing discrimination.** Studies show that majority of LGBTQ+ Americans say they have personally experienced discrimination because of their sexual orientation or gender identity. Transgender Americans, especially transgender women of color, continue to face rampant discrimination in housing, employment, and in public. These types of
discrimination cause LGBTQ+ Americans to face higher rates of poverty, violence, and unemployment than other Americans.

**Discrimination isn't just wrong. It also is detrimental to the physical health and safety of LGBTQ+ Americans, especially transgender women of color.** LGBTQ+ Americans still face discrimination when seeking medical care or visiting a doctor. In surveys, nearly 29% of transgender people in the United States say they’ve been refused medical care because of their identity, which can lead to avoidance of medical care. That is why the Department of Health and Human Services announced that it is taking steps to address and prevent discrimination against LGBTQ+ Americans in healthcare settings, but Federal legislation is needed to codify these protections. Discrimination also leads to violence. Transgender women of color face epidemic levels of violence. Too often, this violence stems from institutional discrimination in healthcare settings, housing, and employment.

**Anti-LGBTQ+ discrimination also contributes to mental health inequities faced by LGBTQ+ youth.** 75 percent of LGBTQ+ youth say they’ve experienced discrimination because of their sexual orientation or gender identity. Discrimination and bullying are detrimental to the mental health of any young person, and more than half of all transgender and non-binary youth say they have seriously considered commitment suicide in the past year. To address bullying and discrimination at school, the Department of Education has announced that it is taking steps to expand protections for LGBTQ+ students in our Nation’s schools, but Federal legislation is needed to codify these protections.

**The Equality Act will also expand public accommodations protections for people of color, women, and people of faith.** The Equality Act would also strengthen civil rights protections for other protected groups, including people of color, women, people with disabilities, and people of faith by expanding where non-discrimination protections apply to public accommodations.

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