

# REMARKS ON “TRANSCENDENCE: LEGAL EFFORTS TO PROTECT AND ADVANCE LGBTQIA+ YOUTH RIGHTS”

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This Symposium comes at an agonizing time for trans youth in our country. In 2021, one state passed a law categorically banning gender affirming medical care for transgender youth; four years later, half the states have such a ban.<sup>1</sup> Right now, the Supreme Court is considering the level of constitutional scrutiny that such bans must be tested under.<sup>2</sup> Since 2023, state legislatures have proposed over 1500 anti-LGBTQIA+ bills, almost 150 of which have become law.<sup>3</sup> Half the states ban trans youth from participating in school sports,<sup>4</sup> and about 15 states have some kind of restroom restriction.<sup>5</sup> At the end of his second term, President Biden signed the National Defense Authorization Act with a rider banning TRICARE insurance coverage for medical care for transgender youth, the first anti-LGBTQIA+ federal law enacted since President Clinton signed the Defense of Marriage Act in 1996.<sup>6</sup>

All of that was before President Trump’s latest inauguration. Today, the second Trump Administration is relentlessly attacking trans people and endangering our access to medical care and accurate identity documents, our ability to work for the federal government and serve in the military, our youth’s ability to be

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1. *Equality Maps: Bans on Best Practice Medical Care for Transgender Youth*, MOVEMENT ADVANCEMENT PROJECT, <https://perma.cc/QVM8-B86S>.

2. See *United States v. Skrametti*, 144 S. Ct. 2679 (2024) (granting cert).

3. See, e.g., *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2025*, AMERICAN CIVIL LIBERTIES UNION, <https://perma.cc/NNT6-KFP3>.

4. *Equality Maps: Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVANCEMENT PROJECT, <https://perma.cc/8CG6-75UA>.

5. *Equality Maps: Bans on Transgender People’s Use of Public Bathrooms & Facilities According to Their Gender Identity*, MOVEMENT ADVANCEMENT PROJECT, <https://perma.cc/K54B-KCLR>.

6. See Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, H.R. 5009, 118th Cong. § 708 (2024); see also Abigail Hauslohner, *Senate Passes Pentagon Policy Bill that Set off Transgender-Care Debate*, WASHINGTON POST (18 December 2024), <https://perma.cc/2FTB-3HXT>; Sam Lau, *President Biden Signs Defense Bill Blocking Health Care For Trans Military Children, First Anti-LGBTQ+ Federal Law Enacted Since ‘Defense of Marriage Act,’* HUMAN RIGHTS CAMPAIGN (Dec. 24, 2024), <https://perma.cc/D6UP-9RX7>.

themselves at school, and the safety of trans people who are incarcerated.<sup>7</sup> This is a coordinated, comprehensive assault on trans people, the material conditions of our existence, and our ability to participate in civic life. It's no wonder that trans people wake up every day and wonder how we are supposed to live in a country where the federal government is determined to erase us.

Though this is a dangerous time for trans people, it is not uniquely so.<sup>8</sup> All this has happened before, and it will all happen again. But while trans adults may be able to situate themselves within a longer history of adversity and resistance, I worry for our youth. Having missed the so-called "Transgender Tipping Point"<sup>9</sup> and the Supreme Court decision on marriage equality,<sup>10</sup> most young people's entry to queer and trans life has been marked by a rapid decline in acceptance.

Connecting trans youth to community and our shared history of struggle and joy is part of ensuring their survival to trans adulthood. Without access to other trans people, we cannot learn about the material resources and social conditions that allow us to thrive and support each other in a hostile world. Without access to the language of transness, we can't communicate who we are to each other or ourselves.

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7. See, e.g., Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025) ("Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government") (defining "gender ideology" in part as "permitting the false claim that males can identify as and thus become women and vice versa"); Exec. Order No. 14148, 90 Fed. Reg. 8237 (Jan. 20, 2025) ("Initial Rescissions of Harmful Executive Orders and Actions") (rescinding several Biden administration orders that recognized rights of transgender people in schools, the workplace, housing, health care, and other settings, consistent with the Supreme Court's decision in *Bostock v. Clayton County*); Exec. Order No. 14183, 90 Fed. Reg. 8757 (Jan. 27, 2025) ("Prioritizing Military Excellence and Readiness") (banning transgender people from serving in the U.S. military and stating that being transgender "conflicts with a soldier's commitment to an honorable, truthful, and disciplined lifestyle, even in one's personal life."); Exec. Order 14185, 90 Fed. Reg. 8763 (Jan. 27, 2025) ("Restoring America's Fighting Force") (prohibiting schools operated by the Department of Defense from teaching "gender ideology"); Exec. Order 14187, 90 Fed. Reg. 8771 (Jan. 28, 2025) ("Protecting Children from Chemical and Surgical Mutilation") (ordering the federal government to withhold all federal funding from any institution that provides gender affirming care to people under the age of 19); Exec. Order No. 14190, 90 Fed. Reg. 8853 (Jan. 29, 2025) ("Ending Radical Indoctrination in K-12 Schooling") (banning K-12 schools in the U.S. from recognizing youth's identities by using names or pronouns that align with their gender, threatening teachers who do not comply with criminal prosecution under laws banning sexual exploitation of minors and practicing medicine without a license); Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025) ("Keeping Men Out of Women's Sports") (rescinding federal funding from educational programs that permit trans women to compete in women's sports).

8. As many have noted in this moment of American repression and violence against trans people, one of the Nazis' earliest targets for "un-German" ideas (and book burning) was Magnus Hirschfeld and his Institute for Sexual Science, notable for advancements in the study of gender and sexuality, including gender affirming surgeries. See, e.g., Trudy Ring, *Yes, J.K. Rowling, the Nazis Persecuted Trans People, Burned Books*, THE ADVOCATE (Mar. 15, 2024), [perma.cc/M96W-EF8V](https://perma.cc/M96W-EF8V); Irene Katz Connelly, *It Was a Pioneering Trans Library—Until the Nazis Burned It*, THE FORWARD (June 7, 2023), [perma.cc/MBN4-Y97F](https://perma.cc/MBN4-Y97F); Brandy Schillace, *The Forgotten History of the World's First Trans Clinic*, SCI. AM. (May 10, 2021), [perma.cc/P9A6-4423](https://perma.cc/P9A6-4423); Lucy Diavolo, *LGBTQ Institute in Germany Was Burned Down by Nazis*, TEEN VOGUE, (Sept. 20, 2017), [perma.cc/ZTZ3-YHED](https://perma.cc/ZTZ3-YHED).

9. Katy Steinmetz, *The Transgender Tipping Point*, TIME MAG., (May 29, 2014), [perma.cc/8L4B-8G46](https://perma.cc/8L4B-8G46).

10. *Obergefell v. Hodges*, 576 U.S. 644 (2015).

I know this struggle intimately. I have known since I was three years old that I was a boy and always meant to be a boy, but it wasn't until I was in high school and finally met a trans masculine person in their early twenties that I realized I could do something about that yearning certainty. Prior to that experience, I had no concept that my identity had an avatar in the real world, let alone that there were medical and legal tools that could bring that person to life.

Trans youth, like all queer youth, have no guarantee of being born into supportive or knowledgeable families. What we learn about ourselves, we often learn in isolation, or from cisgender people describing us through a distant anthropological lens. It doesn't have to be this way. What made the start of the twenty-first century so promising for trans youth was the shift in visibility. There had long been trans newsletters, conferences,<sup>11</sup> and zines,<sup>12</sup> but the democratization of internet access made those materials more widely available and delivered trans community to those who could not physically gather with people like them.<sup>13</sup> Visibility translated offline as well: pride parades in cities, suburbs, and rural areas and GSAs in schools provided young queer people with more opportunities to see people like themselves in real life, allowing them to envision future possibilities.

These cultural shifts were reflected in the law. There were legal advances in marriage equality and protections for queer families. There were new avenues to obtaining affirming identity documents at the state and federal level.<sup>14</sup> Nondiscrimination laws covering gender and sex were interpreted to protect gay and trans people<sup>15</sup> or explicitly written to do so.<sup>16</sup> Insurance coverage expanded access to gender affirming medical care.<sup>17</sup>

With increased access to information, community, legal protections, and medical care, came narrative shifts: the anthropological remove that had once dominated trans stories started to fall out of favor, making way for trans voices. Trans people began to be recognized as legitimate narrators of our own stories and reliable sources of expertise about what it meant to be trans and what we needed to thrive.

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11. For a discussion of FTM International, *see generally* JAMISON GREEN, *BECOMING A VISIBLE MAN* (1st ed. 2004).

12. *ORIGINAL PLUMBING: THE BEST TEN YEARS OF TRANS MALE CULTURE* (Amos Mac & Rocco Kayiatos eds., 2019).

13. The first book I remember ordering online was Loren Cameron's *Body Alchemy*. As a teenager, it expanded my time horizon: I could see in the portraits a future where I too was a trans adult with a beard and a bald spot. Now I see that man in the mirror every day, but the book remains a prized possession. *See* LOREN CAMERON, *BODY ALCHEMY: TRANSSEXUAL PORTRAITS* (1996).

14. *Equality Maps: Identity Document Laws and Policies*, MOVEMENT ADVANCEMENT PROJECT, [perma.cc/9A2K-HTBD](https://perma.cc/9A2K-HTBD).

15. *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644 (2020) (holding Title VII prohibits discrimination based on sexual orientation and gender identity).

16. *Equality Maps: Public Accommodations Nondiscrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, [perma.cc/9WUW-JERX5](https://perma.cc/9WUW-JERX5).

17. *Equality Maps: Healthcare Laws and Policies*, MOVEMENT ADVANCEMENT PROJECT, <https://perma.cc/L7LG-RDUK>.

But progress is not linear. Trans life, right on the cusp of mainstream acceptability, was repositioned as a wedge issue. An extensive conservative campaign emerged to ban books, prohibit the teaching of queer studies and history, restrict pride parades and drag shows, and threaten teachers who are trans or who affirm their trans students.<sup>18</sup>

These attempts to efface trans people's art, culture, and history were, completely predictably, a short prelude to erasing actual trans people rhetorically,<sup>19</sup> legally,<sup>20</sup> and materially.<sup>21</sup> Under the guise of protecting women and children, this authoritarian project seeks to make it harder for young trans people to find themselves and their communities, and to make trans people's lives so small that they disappear entirely.

As a trans person, it is easy to look at the backslide and feel defeated. But there is no law, no policy that can wholly eliminate us: trans people will always seek mirrors for our experiences, in art, in nature, and in community. Though undeniably painful, and too frequently fatal, this fascist project cannot endure because every day, more of us will succeed in finding ourselves and each other.<sup>22</sup>

To weather this storm, we'll need our rage and our sadness. We'll need our community. And we'll need a legal strategy. While the law is an imperfect and incomplete set of tools for liberation, the courts still have the capacity to mitigate harm.<sup>23</sup> Regardless of the outcome, we will write another chapter in our shared history: who we understood ourselves to be, what we expected from our government, and then how we demanded the law change when it purported to be too

18. I have focused on trans youth and attacks on trans people because that is the fight we're having right now. But the authoritarian impulse to define and enforce the boundaries of sex and gender will reach everyone, not just LGBTQIA+ people. Defining trans, nonbinary, and intersex people out of existence is a project of proscribing what kind of life people can and should lead based on the state's determination of whether they are a man or a woman. Once the state has that power, it's a quick trip to defining the "right" kind of men and women to exclude queer people of all stripes, and to relegating cis, straight women—not just the "wrong" kind of women—into diminished political, legal, economic, and social capacity.

19. See Kelsey Ables, *GOP lawmakers misgenders Democratic Rep. McBride, derailing House hearing*, WASHINGTON POST (Mar. 12, 2024), <https://perma.cc/L4LA-T3E8>. If you're trans, you already know what happens. If you're not, it's worth watching the video.

20. See *PFLAG, Inc. v. Trump*, No. CV 25-337-BAH, 2025 WL 685124, at \*23 (D. Md. Mar. 4, 2025) ("The Court cannot fathom discrimination more direct than the plain pronouncement of a policy resting on the premise that the group to which the policy is directed does not exist.").

21. See, e.g., Sam Levin, *Trans people in US federal prison face brutal crackdown under Trump Order*, THE GUARDIAN (Jan. 30, 2025), <https://perma.cc/8M4T-ZBNB>.

22. Even in what we think of as more repressed times, trans people found themselves. See generally, Christine Jorgensen, *A PERSONAL AUTOBIOGRAPHY* (1967); see also Lou Sullivan, Ellis Martin, Zach Ozma, *WE BOTH LAUGHED IN PLEASURE: THE SELECTED DIARIES OF LOU SULLIVAN, 1961-1991* (2019).

23. Even if you believe the legal system is unjust or illegitimate. See, e.g., Daniel Faberman, *Resistance Lawyering*, 107 CALIF. L. REV. 1877 (2019). For what's been done before, see Kate Redburn, *Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963-86*, 40 LAW & HIST. REV. 679 (2022). For what's been happening lately, see Katie Eyer, *Transgender Constitutional Law*, 171 U. PA. L. REV. 1405, 1406 (2023) and Katie Eyer, *Anti-Transgender Constitutional Law*, 77 VAND. L. REV. 1113 (2024).

narrow for our existence. In that story, we will be both subject and author, both plaintiffs and lawyers.

Our refusal to be silent in the face of persecution is not a single moment, but an echo of the past and future. Our work is a timeless rejection of authoritarianism and a stubborn insistence on the resilience and expansiveness of trans and queer life. We will use the law to protect and advance our rights, but it’s our individual and community resistance that will transcend the moment.