

## Virginia's Anti-LGBTQ+ Bills, a Riptide of Hateful Legislation

*When you are accustomed to privilege, equality feels like oppression. (It's not.)*  
~Franklin Leonard

### Summary

On June 6, 2023, the Human Rights Campaign, the largest LGBTQ+ advocacy group in the U.S., declared a national emergency for members of the LGBTQ+ community, following an “unprecedented and dangerous spike in anti-LGBTQ+ legislative assaults sweeping state houses this year. More than seventy-five anti-LGBTQ+ bills have been signed into law this year alone, more than doubling last year’s number, which was previously the worst on record.”<sup>1</sup> Currently, the Human Rights Campaign is tracking a record number of over 525 anti-LGBTQ+ bills across the U.S.<sup>2</sup> These anti-LGBTQ+ bills<sup>3</sup> include bans on gender-affirming medical care, changing criminal codes' definitions of neglect and abuse of transgender children (thereby raising the bar for what constitutes criminal abuse and neglect), curriculum bans such as Florida’s Don’t Say Gay law across grades K-12, book bans in school libraries, restrictions on the use of pronouns and names at school, forced outings through parental notifications, restrictions on participation in sports, and access to a bathroom that aligns with one’s gender identity. Virginia is no exception. During the 2023 session that convened January 11, 2023, twelve anti-LBGTQ+ bills were introduced in the Virginia General Assembly.<sup>4</sup>

Two of the Virginia anti-LGBTQ+ bills were passed in the Republican-controlled House of Delegates. These two bills were then voted down in committee in the Democrat-controlled State Senate.<sup>5</sup> The anti-LGBTQ+ bills introduced in Virginia fall into three categories: healthcare, forced outing bills, and athlete bans. The attack on LGBTQ+ rights has been coordinated and sustained by extreme far-right, theocratic national organizations. These organizations provide fundraising services and campaign donations to extreme candidates, supply model legislation, file lawsuits and amicus briefs, and recruit and train like-minded lawyers. In Virginia’s state government, there is currently an extremely narrow margin holding the attack on LGBTQ+ rights at bay. Republicans control the House of Delegates with 52 Republicans to the 48 seats held by Democrats and the Governorship. The Democrat control State Senate with only a 2 seat majority is all that remains in Virginia to protect LGBTQ+ rights. This makes the 2023 election in Virginia critically important.

### Part I Overview – LGBTQ+ People and Their Families are Under Unprecedented Attack

There are approximately 1.6 million people ages 13 and older who identify as transgender in the U.S., including an estimated 6,200 (1.18%) youths ages 13-18 and 31,400 (0.47%) adults ages 18 and older in Virginia.<sup>6</sup> As of this writing (2023 year-to-date), there are a record 525 bills filed that target the LGBTQ+ community. Of those bills, over 220 specifically target transgender and gender-diverse people, also a record number. Fifty bills have been signed into law, setting yet another record.<sup>7</sup> For a breakdown of the types of bills signed into law, see **Box 1** with data from the Williams Institute at the UCLA School of Law.<sup>8</sup>

Most egregious are the Erasure Laws passed in Montana,<sup>9</sup> Tennessee,<sup>10</sup> Kansas,<sup>11</sup> and North Dakota.<sup>12</sup> These laws overtly seek to eliminate transgender and gender-diverse people from all aspects of society. They require women to be defined by the existence of eggs/ovum capacity at birth and men by the presence of a male reproductive system at birth. These aptly named laws codify the erasure of transgender and gender-diverse people.<sup>13</sup>

Nebraska's governor signed a bill banning access to gender-affirming medical care for anyone age 19 or younger. Just for good measure and to ensure passage into law, a 12-week abortion ban was tacked on at the last minute.<sup>14</sup>

**Box 1**

**2023 Anti-LGBTQ+ Laws**

- 4** states enacted ERASURE laws: Montana, Tennessee, Kansas, and North Dakota.
- 19** states have some kind of ban on gender-affirming healthcare for minors this year.
- 22** states have passed laws restricting how transgender children can participate in sports.
- 10** states have restricted restroom access for transgender students, and Florida has additionally outlawed transgender people from using restrooms that match their gender identity in publicly owned spaces, which includes airports, convention centers, and governmental buildings.
- 13** states have criminalized the provision of gender affirming care by healthcare providers.
- 6** states have bills that classify parents who facilitate their minor children's access to gender-affirming care as having committed child abuse.
- 2** state bans have been enacted to restrict drag shows.
- 4** additional states have passed laws that will likely have a chilling effect on drag performance as well as PRIDE events.
- 11** states allow or mandate school personnel to either misgender transgender students, to "out" them to their parents—even if that puts the student in danger at home—or be bound by "Don't Say LGBTQ+" laws that restrict their ability to even acknowledge the existence of LGBTQ+ people.

Other bills have banned gender-affirming medical care for anyone age 26 or younger. Gender-affirming medical care bans for ages 26 and below have been introduced in South Carolina, Oklahoma, and Texas.<sup>15</sup>

In addition to the Republican effort to limit the rights of LGBTQ+ people within their own states, Republican members of the U.S. House of Representatives passed H.R. 734, The Protection of Women and Girls in Sports Act, along party lines. This bill bans transgender girls and women athletes from playing on a sports team that aligns with their gender identity.<sup>16</sup> U.S. House Republicans also introduced H.R. 115, the Women's Bill of Rights Act in 2023,<sup>17</sup> which seeks to erase trans recognition by the federal government, defining sex as an "immutable" definition of man or woman, girl or boy.<sup>18</sup>

On June 6, 2023, the rapid increase in legislation targeting LGBTQ+ people prompted the Human Rights Campaign (HRC) to declare a state of emergency for the first time in its 40 year history.<sup>19</sup> In addition, the HRC has released a guide for LGBTQ+ people and their families, to enable them to make informed decisions regarding their safety in their home state, the states they visit or travel through, as well as consideration of which states to avoid when applying for college or employment. Do families make the difficult decision to relocate to a safer state? Can they afford to move and change jobs? Which states are too dangerous for attending college? How can parents care for their transgender and gender-diverse children in states which have banned age-appropriate gender-affirming medical care, permit forced outings, permit misgendering in the classroom, ban access to public

rest rooms, and ban participation on sports teams? How can transgender and gender-diverse adults reside in states that have not only banned public funds for the coverage of gender-affirming medical care, but also no longer require health insurance plans to provide coverage? Both types of changes in health insurance coverage constitute *de facto* bans to access healthcare.<sup>20</sup>

According to recent survey data from Data for Progress, likely voters across all political parties view the flood of Republican anti-LGBTQ+ legislation as excessive, characterizing it as "political theater." Recent polling indicates that 64% of all likely voters, including 72% of Democrats, 65% of Independents, and 55% of Republicans think that there is "too much legislation" aimed at "limiting the rights of transgender and gay people in America."<sup>21</sup>

The Republican sponsored anti-LGBTQ+ bills in Virginia during the 2023 session have specifically targeted adolescent and adult transgender and gender-diverse people. Transgender and gender-diverse individuals have a gender identity that is different from their sex assigned at birth. They may seek a variety of ways to affirm their gender identity. Gender affirmation may express itself socially (expressing their gender publicly), legally (by correcting gender markers and names on official identification documents), psychologically (by addressing distress from social stigma such as anxiety and depression), and medically (by pursuing medical interventions such as puberty blocks, hormones, and surgery).

Transgender and gender-diverse people suffer from greater rates of depression, anxiety, and suicide. In addition, they report experiencing discrimination and physical harm or threats due to their sexual orientation or gender identity.<sup>22</sup>

The Trevor Project's report on homelessness and housing instability finds 28% of LGBTQ+ youth have experienced housing instability. Of those reporting housing instability, 54% had experienced homelessness, 47% had been kicked out of their homes, 56% had run away or been abandoned. Youth having suffered housing instability or homelessness have increased risk of suicidal thoughts and suicide attempts when compared LGBTQ+ youth with secure housing.<sup>23</sup>

The onslaught of anti-LGBTQ+ laws being sponsored and signed into law has also created increased levels of stress. For a detailed breakdown of the Trevor Project's 2022 National of LGBTQ+ Youth's Mental Health see **Box 2**.<sup>24</sup>

"We must recognize that LGBTQ+ young people face stressors simply for being who they are that their peers never have to worry about," as stated by Amit Paley, Director of the Trevor Project.<sup>25</sup>

In addition to significantly greater mental health challenges, transgender and gender-diverse people are not on par economically with that of their cisgender peers. Transgender and gender-diverse people suffer greater rates of poverty (22% vs. 16%)<sup>26</sup> and food insecurity (20% vs 10.5% receiving SNAP benefits). Also, 27% report not having sufficient funds to buy food at some point during the past year compared to 17% of cisgender people. Moreover, fully 1 in 4 have faced workplace discrimination.<sup>27</sup>

Virginia legislators have proposed anti-LGBTQ+ bills that go beyond access to healthcare. They have echoes of Virginia's recent history of segregation. Jim Crow era segregation laws in Virginia were comprehensive—encompassing restrictions of schools, hospitals, housing, workplace, voting, and public spaces, including access to bathrooms.<sup>28</sup>

Segregation laws resulted in further marginalizing of Black people, creating deep poverty, decreased access to healthcare, poorer

#### Box 2

#### The Trevor Project's National 2022 Survey on LGBTQ+ Youth's Mental Health

45% of LGBTQ+ youth have seriously considered suicide.

18% of LGBTQ+ youth ages 13-17 have attempted suicide.

**Attempted suicide rates** are lower for LGBTQ+ youth who feel supported in school.

**Attempted suicide rates** are lower for LGBTQ+ youth who feel supported in their community.

**Fewer than 1 in 3** transgender and gender-diverse youth found their homes to be gender affirming.

73% of LGBTQ+ youth and more than 75% of transgender and gender-diverse people suffer from symptoms of anxiety.

58% of LGBTQ+ youth and 2/3 of transgender and gender-diverse people suffer from symptoms of depression.

60% of LGBTQ+ youth who wanted mental health care were not able to access it.

36% of LGBTQ+ were physically threatened or harmed due to orientation or gender identity.

#### Anti-Transgender Legislation

93% of transgender and gender-diverse youth have worried about access to gender-affirming healthcare due to state laws.

91% of transgender and gender-diverse youth have worried about access to a bathroom due to state or local laws.

education, and shorter lifespans compared with white Virginians.<sup>29</sup> Virginia’s Republican legislators are actively seeking the same fate for the state’s LGBTQ+ population.

And so, Virginia has a choice: return to its shameful dehumanizing past or create a future in which all people feel welcome and safe to authentically participate in every aspect of society.

## What is Fueling this Onslaught of Anti-LGBTQ+ Legislation?

### Fearmongering to Rally the Base

The rise in anti-LGBTQ+ bills across the U.S. is not a result of constituent demand. There is no “problem to be solved.” Constituents are not calling up their state legislators and asking for bills to be drafted to discriminate against LGBTQ+ people. What is happening is a coordinated, national, and extremely well-funded effort by far-right groups. After the Supreme Court marriage equality decision (*Obergefell v. Hodges*, 576 U.S. 644) was issued in 2015, conservative groups<sup>30</sup> sought a new social “wedge” issue that would serve to galvanize the base, increase fundraising, and bolster voter turnout. They found it. The resulting new anti-LGBTQ+ effort has set the agenda in legislatures and school board meetings across the U.S. Following the Dobb’s ruling in June 2022, which overturned *Roe v. Wade* and took away another deeply galvanizing force—abortion—among Republicans, the surge of anti-LGBTQ+ bills has dramatically increased.

### Hate Groups Seek to Remove All LGBTQ+ Protections from State and Federal Law

Far-right Republican hate groups seek to strike all LGBTQ+ protections including marriage equality from state and federal statutes. Their goal is the systematic erasure of LGBTQ+ individuals, and the criminalization of transgender children’s parents and physicians. These groups include the Alliance Defending Freedom, Family Research Council, Focus on the Family, the American College of Pediatricians. The Alliance Defending Freedom (ADF),<sup>31</sup> Family Research Council,<sup>32</sup> and American College of Pediatricians<sup>33</sup> have each been designated hate groups against the LGBTQ+ community by the Southern Poverty Law Center.

Leading the tide is the ADF, a far-right Christian Legal Advocacy Group, which has trained over 4700 lawyers. In 2021, ADF reported over \$78 million in revenue, which has afforded them the opportunity to make a significant impact. Their Fellows include Justice Amy Coney Barrett, former Vice President Pence, US Attorney Generals William Barr and Jeff Sessions, and Sen. Josh Hawley. Their focus is to aggressively advance Christian practices in classrooms and government, remove all LGBTQ+ protections in the US, including marriage equality, and to outlaw abortion. The ADF drafted model legislation and served as consultant to Mississippi’s Attorney General in the Dobbs case resulting in the overturning of *Roe v. Wade*. An ADF filed the lawsuit in Armadillo, Texas which resulted in the ruling against the FDA approval of Mifepristone. The ADF has been responsible for drafting anti-LGBTQ+ model legislation that has been used in several state legislatures including Virginia’s.<sup>34</sup>

## Arguments Used by Far-Right Republicans to Enact Anti-LGBTQ+ Legislation

### Protect the Children Rhetoric—Echoes of Florida’s Save Our Children Campaign by Anita Bryant

Republicans publicly tout that the rationale for anti-LGBTQ+ laws are to “protect the children.” This rhetoric is used to justify curriculum and book bans, restrictions on trans girl and women athletes, use of pronouns, forced outings, and gender-affirming medical care bans. There is a direct, straight-line extension from Anita Bryant’s Florida based Save our Children from the 1970s that successfully sought to have gay teachers fired from their jobs and evicted from their homes to today’s hate-based legislation.<sup>35</sup>

The “protect our children” argument effort to push forward anti-LGBTQ+ legislation, fund far right politicians, and ban books and curriculum is capturing media focus currently. It is not the Republican end game, however. The Republican effort to rally parents to push forward an anti-LGBTQ+ agenda under the guise of protecting children is, in fact, a ruse designed to extend these restrictions beyond children, to LGBTQ+ adults. Many states have passed or introduced laws to ban gender-affirming medical care for individuals aged 26 and younger.<sup>36</sup> States have banned public funds (Medicaid) for the use of gender-affirming medical care, and do not require health insurance plans to provide coverage for LGBTQ+ adults. State legislators have banned transgender women from playing college sports. So no, these laws are not about “protecting the children;” they are squarely aimed at erasing all members of the LGBTQ+ community.<sup>37</sup>

## Freedom of Religion

The far-right Christian fundamental worldview is based on a deeply ingrained theocracy that believes that humans are divinely created as males and females. This belief serves a reproductive purpose and strictly determines gendered social roles. Christian fundamentalists believe that acknowledging someone’s gender identity which does not align with their sex assigned at birth would be either untruthful and/or unfaithful. They believe that the mere existence of transgender or gender-diverse people contradicts and encroaches on their religious freedom. They won’t accept a person’s stated gender identity, and they will not accept the possibility that there are any gender-diverse people. They actively draft, fund, and support laws, as well as file lawsuits, that seek to impose their religious beliefs on others.

## Junk Science and Propaganda

Far right hate groups rely on anti-LGBTQ+ junk science and propaganda to establish a “scientific basis” for their policies. A recent data breach of an American College of Pediatricians’ (ACP) unsecure Google drive uncovered communications and thousands of files, including many communications and “junk science” research studies and white papers. The ACP is a splinter group of the American Academy of Pediatrics, formed in 2002 because they were in opposition to adoption by LGBTQ+ couples. The ACP also links homosexuality to pedophilia and endorses conversion therapy. They supply “expert” witness testimony to state legislators to testify in support of anti-LGBTQ+ legislation. They also cite unsupported junk science, evidenced, for example, by their sending out literature to schools describing absurd studies that include “rapid onset gender dysphoria,” a hypothetical disorder. They also push schools “to adopt junk science which paints transgender youth as carriers of a pathological disorder, one that is capable of spontaneously causing others to adopt similar thoughts and behaviors.”<sup>38</sup>

## Part II Healthcare – Republicans Block Access to Gender-Affirming Medical Care

### What Does Gender-Affirming Medical Care Treat?

The target of gender-affirming medical care is not the patient’s gender identity. Instead, gender-affirming medical care is aimed at treating the significant clinical distress that may accompany a lack of alignment between one’s gender identity and one’s sex assigned at birth. This is known as gender dysphoria and gender incongruence. The symptoms of gender dysphoria and gender incongruence are the result of a home, school, or community environment that includes stigmatization, discrimination, victimization, and which also fails to support and welcome transgender and gender-diverse people. The diagnostic categories in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR, 2020) are gender dysphoria in the and gender incongruence in the International Classification of Diseases (ICD-11, 2022). These are both diagnosed by licensed professionals with specific clinical expertise. The symptoms include significant distress in one’s

gender incongruence that result in patients suffering clinical depression and anxiety, increased rates of suicide, self-harm,<sup>39</sup> and eating disorders.<sup>40</sup>

## What is Gender-Affirming Medical Care?

Two terms are critical to understanding gender-affirming medical care and how it relates to protections under the Patient Protection and Affordable Care Act (known as the Affordable Care Act or ACA, 2010), state level health related legal protections, state level definitions of criminal child abuse, and state level anti-LGBTQ+ legislation.

**Standards of Care** (accepted standards of medical practice) means “standards that are based on credible scientific evidence published in peer-reviewed medical literature, recognized by the relevant medical community, designated Medical Specialty Societies and/or legitimate Medical Colleges’ recommendations, and the views of physicians and or healthcare providers practicing in clinical areas.”<sup>41</sup> In the U.S., several medical societies and associations have agreed on the appropriate standards of care for the treatment of gender dysphoria and gender incongruence, including the American Medical Association,<sup>42</sup> World Professional Organization for Transgender Health,<sup>43</sup> Endocrine Society,<sup>44</sup> and the American Academy of Pediatrics.<sup>45</sup>

**Medical necessity** is a term common to health care coverage and insurance policies. The American Medical Association defines medical necessity as “Health care services or products that a prudent physician would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is: (a) in accordance with generally accepted **standards of medical practice**; (b) clinically appropriate, in terms of type, frequency, extent, site and duration; and (c) not primarily for the economic benefit of the health plans and purchasers or for the convenience of the patient, physician, or other health care provider.”<sup>46</sup>

## Types of Treatments

There is significant variability in the reported number of transgender adults or adolescents who pursue medical treatments. To reiterate, medical treatments are not intended to treat a gender identity that does not align with one’s sex assigned at birth but are intended to treat gender dysphoria/gender incongruence.

**Puberty blockers** pause the development of secondary sex characteristics. This treatment can reduce the gender dysphoria/gender incongruence that often increases with the onset of puberty. The treatment also provides the patient with time to wait until later in adolescence or adulthood to consider whether hormone therapy is indicated. Puberty blockers are gonadotrophin releasing hormone (GnRH) agonists, such as Lupron, and are prescribed to delay the onset of puberty. The FDA approved Lupron for the treatment of precocious puberty in 1995.<sup>47</sup> The effects of GnRH are reversible. When patients discontinue treatment with GnRH, puberty occurs.<sup>48</sup>

**Gender-affirming hormone therapy (GAHT)** is used to increase secondary sex characteristics that align with a person’s gender identity and to decrease gender dysphoria/gender incongruence. This treatment is generally used by older adolescents and adults. The use of GAHT has been found to reduce symptoms of depression, anxiety, and suicidal thoughts. It is also found to improve one’s quality of life and self-esteem.<sup>49</sup>

GAHT includes important considerations prior to starting the medication. The therapy may have a long-term effect on one’s fertility. It is not certain that one will be unable to conceive because of GAHT, but it is an important consideration prior to starting the medication. This is especially the case because of the research on fertility of both male and female transgender patients taking GAHT is limited. Studies are finding that

fertility at times is preserved.<sup>50</sup> The benefits for the treatment of gender dysphoria/gender incongruence and potential risks related to fertility should be considered in consultation with one's physician. There are options to preserve fertility in advance of GAHT although such options are not covered by all health insurance plans.

**Surgery** is rarely performed on patients under the age of 18 years old. The majority of adult transgender people do not pursue surgical interventions because of lack of interest, or barriers to health care insurance coverage. Surgery includes a wide range of procedures based on whether the individual is transitioning male to female or female to male. For a more detailed description of surgery options for some transgender adults, see the [University of Virginia's UVA Health](#) website. According to the 2015 Transgender Survey (2022 survey data will be published later in 2023), approximately only 1 in 4 transgender people have had *any* surgical intervention. For transgender women, 41% report having hair removal/electrolysis. All other surgeries are performed on fewer than 10% of transgender women. For transgender men, the most common surgery is breast reduction 36%, hysterectomy 14%; fewer than 2% have any other surgery.<sup>51</sup>

## What Happens When Patients Do Not Have Access to Gender-Affirming Care?

Patients suffering from gender dysphoria/gender incongruence experience higher rates of clinical depression and anxiety and are prone to suicidal thoughts.<sup>52</sup>

Gender-affirming medical care is often lifesaving. The suicide rate for those experiencing gender dysphoria/gender incongruence is higher than that of the cisgender population. There is significant risk of suicide for those transgender people who cannot access gender-affirming medical care. In addition, the risk for those de-transitioning (often as a result of a lack of health insurance coverage) is significantly higher, namely 12% vs. 6.7% for those not de-transitioning. This makes access and insurance coverage for gender-affirming medical care vital to the life and well-being of those suffering from gender dysphoria/gender incongruence.<sup>53</sup>

Virginia's Republican legislators have much to explain regarding their efforts to ban gender-affirming medical care. Why are Virginia's Republican legislators legislating that licensed healthcare practitioners are to set aside the *Standard of Care* when treating adolescents and adults diagnosed with gender dysphoria/gender incongruence? Stating they are influenced by national hate groups producing model legislation based on junk science and propaganda is an entirely unacceptable response. Virginia's Republican legislators are solely responsible for the bills they sponsor and vote to approve.

## What LGBTQ+ Protections Currently are in Effect in Virginia?

**HB 1429, Chief Patron Del. Danica Roem.** Bans healthcare discrimination including health care insurance on the basis of sex. Signed in 2020.<sup>54</sup>

The Department of Medical Assistance Services (DMAS, which is Virginia's Medicaid) in December 2021 issued a statement affirming Medicaid coverage of gender dysphoria/gender incongruence.<sup>55</sup>

The U.S. Department of Veterans' Affairs covers gender-affirming care.<sup>56</sup>

On May 10, 2021, the Secretary of Health and Human Services, Xavier Becerra, issued a letter regarding **Section 1557** in the ACA Act (Obamacare). The guidance in the letter stated that "This Notification is to inform the public that, consistent with the Supreme Court's decision in *Bostock* and Title IX, beginning May 10, 2021, the Department of Health and Human Services (HHS) will interpret and enforce section 1557 of the Affordable Care Act prohibition on discrimination on the basis of sex to include: Discrimination on the basis of sexual orientation; and discrimination on the basis of gender identity. This interpretation will guide the

Office for Civil Rights (OCR) in processing complaints and conducting investigations, but does not itself determine the outcome in any particular case or set of facts.”<sup>57</sup> To read Secretary Becerra’s entire letter [click here](#).

## Republican Sponsored Bans on Gender-Affirming Healthcare Bills in the 2023 Virginia Legislative Session

**SB 960, Chief Patron Mark J. Peake.** Prohibits gender-affirming medical care for minors and prohibits using public funds (DMAS-Medicaid) for gender-affirming care. The bill establishes a civil penalty for violation of the Act by a clinic, health care system or medical personnel. Passed by indefinitely in the Senate Education and Health Committee along party lines on February 2, 2023.<sup>58</sup>

The Youth Health Protection Act was not written by Virginia Republican legislators. It is model legislation that was filed in several states and was drafted by the anti-LGBTQ+ organization Do No Harm. Based in Virginia, Do No Harm, is a far-right, extremist group of physicians that started as an anti-diversity, anti-affirmative action, anti-critical race theory in medicine and have now moved into anti-LGBTQ+ work.<sup>59</sup>

When describing this model legislation for an AP article, Dr. Meredith McNamara, an assistant professor of pediatrics at the Yale School of Medicine stated, “Every single line of this contains some sort of falsehood,” and “My overall takeaway from this is that there are a lot of recycled false claims about gender dysphoria, standards of care, safety, evidence and medical authority which seems like it’s right out of the disinformation playbook.”<sup>60</sup>

The Tennessee version of the bill was passed earlier in 2023. On April 26, U.S. Dept. of Justice (DOJ) filed suit, asserting that the law violates the 14<sup>th</sup> Amendment’s Equal Protection Clause and asked for an immediate order preventing the law from going into effect on July 1, 2023. Earlier on March 31, 2023, Assistant Attorney General, Kristen Clark sent a letter to every state attorney general stating that the DOJ is committed to ensuring transgender people are treated with dignity and fairness under Federal law. The letter identifies which areas of law are violated when gender-affirming medical care is banned including: the Equal Protection Clause, Title IX, Section 1557 of the ACA, the Omnibus Crime and Control Safe Streets Act of 1986, and Section 504 of the Rehabilitation Act of 1973.<sup>61</sup> To read Assistant Attorney General Clark’s entire letter [click here](#). On April 29, the DOJ intervened in a lawsuit challenging a law in Alabama that imposes a felony ban on gender-affirming medical care.<sup>62</sup>

**SB 791 SAFE Act, Chief Patron Amanda P. Chase.** Prohibits gender-affirming medical care for minors, prohibits use of public funds (DMAS-Medicaid) for gender-affirming medical care, bans health insurance plans in VA from providing gender-affirming medical care to minors, and does not require VA health plans to provide gender-affirming care to adults. It was passed by indefinitely in the Senate Education and Health Committee along party lines (02/02/2023).<sup>63</sup>

The **SAFE Act** was not written by Virginia’s Republican legislators. It is model legislation drafted by the Family Research Council,<sup>64</sup> which the Southern Poverty Law Center designates as a hate group.<sup>65</sup>

The Arkansas legislature passed the SAFE Act in 2021.<sup>66</sup> A challenge was filed in Federal court resulting in the first legal challenge to the gender-affirming medical care bans. On June 20, 2023, Federal Judge James S. Moody III struck down the SAFE Act. Moody’s 80-page ruling concluded that, “The Court finds that the State has failed to prove that its interests in the safety of Arkansas adolescents from gender transitioning procedures or the medical community’s ethical decline are compelling, genuine, or even rational.”<sup>67</sup>

Two other federal rulings were issued in that same week. U.S. District Judge James Patrick Hanlon of the Southern District of Indiana issued a preliminary injunction blocking an Indiana law that bans physicians and



other practitioners from knowingly providing gender-affirming medical care to a minor (June 16, 2023). U.S. District Judge Robert Hinkle of the Northern District of Florida struck down Florida’s ban on Medicaid coverage for gender-affirming medical care (June 21, 2023). Judge Hinkle previously (June 6, 2023) blocked a different Florida law that banned gender-affirming medical care for minors, but in that case, the injunction only applied to three minors whose parents had sued.<sup>68</sup>

The **SAFE Act** violates the same federal laws described above under **SB 960**.

**SB 1203, Chief Patron Bryce Reeves.** Prohibits gender-affirming medical care for minors, prohibits the use of public funds (DMAS – Medicaid) for gender-affirming care, bans health insurance plans in Virginia from providing gender-affirming medical care to minors, and does not require Virginia health plans to provide gender-affirming care to adults. Incorporated 02/02/2023 into **SB791** see above.<sup>69</sup>

Virginia’s Republicans acknowledge that banning gender-affirming medical care constitutes criminal neglect and abuse of children under current Virginia Criminal Code.

See [Virginia Criminal Code § 18.2-371.1](#). Abuse and neglect of children; penalty; abandoned infant:

- A. Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or willful omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child is guilty of a Class 4 felony.<sup>70</sup>

Republican legislation that bans gender-affirming medical care for minors creates a contradiction with Virginia’s Criminal Code § 18.2-371.1. Republicans understood that their legislation mandated criminal neglect and abuse of transgender children. To address this contradiction, Republicans introduced **HB 2432** during the 2023 session to amend Virginia’s Criminal Code § 18.2-371.1.

This bill literally raises the bar regarding what constitutes (to assert) do you need “to assert”? criminal neglect and abuse of transgender and gender-diverse children, to the exclusion of *all* other children in Virginia. do you need “to the exclusion of *all* other children in Virginia? The goal is to eliminate gender-affirming medical care and to do so, they needed to increase what transgender and gender-diverse children must tolerate before the behavior could legally be characterized as neglect and abuse – further marginalizing an already marginalized group. The bill, **HB 2432 (LaRock)**, is described in the next section.

### Part III Anti-LGBTQ+ Legislation in Educational Settings

A growing number of anti-LGBTQ+ laws and bills in the U.S. have involved educational settings. This area of legislation serves the far-right agenda to limit LGBTQ+ protections, while at the same time pushing forward the so-called “Parental Rights” agenda such as that espoused by Moms for Liberty to erase the presence of the LGBTQ+ students as well as to ban books and restrict curriculum. A major key to the far-right playbook is to mobilize parents because it serves the purposes of increasing fundraising, electing extreme far-right politicians and school-board members, and enhances support for anti-LGBTQ+ legislation. These include parental notification bills in which a school is required to disclose a student’s gender orientation or gender identity based on a disclosure to school staff, use of pronouns, using a different name at school, participation in girls’ athletics, bathroom bills, and curriculum and book bans.

**What are the issues involved?** Anti-LGBTQ+ laws within educational settings intersect several areas of law. Students, parents, and educators each hold specific rights. Some of the questions raised when considering the legal basis of a law in this arena are the following: Do parents have the right to direct the upbringing of their children – yes. Do parents have a right to dictate to a school district their specific student’s education – no.

Do parents have a right to review their minor child’s educational record under FERPA what’s FERPA? – yes. Do minor students have a right to privacy related to their personal information such as gender identity and sexual orientation – yes. Does Title IX allow discrimination on the basis of sex and gender identity – no. Do educators and coaches have qualified immunity against federal civil rights litigation – sometimes. The raft of anti-LGBTQ+ legislation in Virginia shifts rights away from students and towards parents while ignoring whether doing so violates a student’s right to privacy.

## Protections Currently in Place in Virginia

**Virginia Values Act (2020) extended protections in the Human Rights Act in Virginia** to include gender identity protections in the workplace, housing, retail businesses, and public accommodations, including educational settings. The law applies to both public schools and private schools that accept applications from the general public. An example of such a school covered by this Act would include a Catholic school that does not require an applicant be a Catholic to apply or attend.<sup>71</sup>

## Gov. Youngkin’s Model Policies

In 2020, during the Democratic trifecta government—with Democratic control of both legislative chambers and the executive branch while Gov. Northam was in office—Democrats passed SB 161<sup>72</sup> and HB 145.<sup>73</sup> This legislation required Model Policies regarding the treatment of transgender youth in school to be drafted. The legislation was intended to serve as a protective measure for transgender and gender-diverse students. Northam’s Department of Education drafted a set of inclusive and welcoming legal Model Policies in 2021. When Youngkin took office, he directed his Department of Education to draft a new set of Model Policies. Youngkin’s new policies not only fail to protect transgender students by exposing them to potential harm, but they violate both federal and Virginia laws.

## Forced Outing: Parental Notification Bills

Many of the anti-LGBTQ+ bills proposed across the U.S. during the 2023 legislative session, including two bills in Virginia, involve forced outing of transgender students. One of Virginia’s bills (HB 1707) requires schools to notify parents “as a direct result of communications from a student, that such student is self-identifying as a gender that is different than his biological sex to contact, as soon as practicable and in accordance with Board guidelines, at least one of such student’s parents to ask whether such parent is aware of the student’s mental state and whether the parent wishes to obtain or has already obtained counseling for such student.”<sup>74</sup>

Forced outing laws violate children’s federally protected right to privacy regarding personal information including gender identity and sexual orientation. See **Box 3** for right to privacy of children, adults, and parents under the Due Process Clause of the 14th Amendment to the U.S.

### Box 3

#### The Right to Privacy ~ 14th Amendment to the U.S. Constitution

- Due Process Clause or “no person can be denied life, liberty or property without due process of law” (fair procedures).
- Right to privacy is implied by the Due Process Clause, meaning the state cannot exert undue control over citizens private lives.
- Children and adults have a right not to disclose intimate facts including gender identity and sexual orientation without their consent.
- Enrolling in public school does not waive the right to privacy of intimate information.
- Parents have a right to raise their children, including deciding to homeschool or to enroll children in public school as they see fit.
- Parents do not have the right to dictate policies including gender identity policies to schools or school boards.
- Parents do not have the right to direct schools to disregard students’ preferred names or pronouns

<https://www.aclu.org/news/lgbtq-rights/trans-students-should-be-treated-with-dignity-not-outed-by-their-schools>

Constitution.<sup>75</sup> Virginia's Republican legislators and Gov. Youngkin understand that the legislation and the Model Policies drafted by the Virginia Dept of Education requiring parental notification of a child's gender identity violates U.S. Constitutional protections.

There is some repetition in the next four paragraphs; I think this could be re-written to eliminate some verbiage.

Forced outing bills formally codify Republican legislators' callous disregard for student safety. Virginia's Republican legislators fully understand that minors are vulnerable and are entirely dependent on their parents for care and shelter. This vulnerability places them at significant risk because the care they rely on from their parents may end if outed.

The forced outing bills can place transgender students in physically dangerous situations<sup>76</sup>. Not all transgender children are safe in their homes. Transgender youth face a significant risk of rejection by their parents when they disclose their gender identity. Transgender youth are much more likely to be abused than cisgender by an immediate family member because of their gender identity.<sup>77</sup>

Family rejection and violence have contributed to many LGBTQ+ people losing their access to shelter, resulting in homelessness. It is estimated that 20-40% of the homeless youth of the 1.6 million homeless youth are LGBTQ+.<sup>78</sup>

In addition to forced outing through parental notification, Gov. Youngkin's Model Policies require the use of birth record name and pronouns based on sex assigned at birth in the classroom.

"Personnel shall refer to each student using only the pronouns appropriate to the sex appearing in the student's official record - that is, male pronouns for a student whose legal sex is male, and female pronouns for a student whose legal sex is female."<sup>79</sup>

Using the chosen name of a transgender student in the classroom is associated with lower rates of depression, suicidal thoughts, and suicidal behavior.<sup>80</sup> In contrast, misgendering, the use of the wrong pronoun, or requirements to use a pronoun based on a student's legal sex, operates as a disclosure of a student's transgender identity to other students without consent.<sup>81</sup> This is yet another violation of the student's right to privacy. Misgendering can result in stigmatization and psychological distress of transgender people.<sup>82</sup> In addition, misgendering can place a transgender student at risk for bullying and harassment from other students.

Two bills in the 2023 Virginia legislature included forced outing.

**HB 1707, Chief Patron Tara A. Durant.** Requires school counselors or other school staff to forcibly out a trans student to their parents regardless of the safety of their home. Incorporated into **HB 2432**.<sup>83</sup>

**HB 2432, Chief Patron Dave LaRock.** In addition to forced outing to parents from **HB 1707**, this bill narrows the definition of abuse and neglect, as applied to trans children. It passed along party lines in the House, and was sent to the State Senate. There is passed by indefinitely along party lines in the Senate Committee Education.<sup>84</sup>

As noted above, this bill is exceptional in that it amends the very definition of neglect and abuse in the criminal code, but only for a narrowly defined group of Virginia's children. Del. Danica Roem speaking immediately before the vote on HB 2432 said<sup>85</sup>

"When I got here in 2018, I thought we were done with all these anti-trans bills," and

“We are dealing with dire consequences on a bill as reckless as this: forcibly outing kids regardless of the safety of their home, regardless of what's going to happen to them when they get home,” Roem told lawmakers. “You didn’t even talk to the one person in this body who actually knows what it's like to be scared to death as a 13–14-year-old kid, of anyone finding out that you're actually trans, you have no idea what you're doing. You have no idea the harm they're causing.”

**HB 1434, Chief Patron Jason Ballard.** Requires a court order for name change in school records; laid in education subcommittee along party lines (01/25/2023).<sup>86</sup>

Lastly, **HB 1434** is a bill that limits a transgender student from using their chosen name in school. Given that Virginia requires a parent to file a petition in court for a name change, this bill *indirectly* (but wholly predictably) results in parental notification of the transgender status of the student.

## Athlete Bans

Youth athletic programs offer a valuable experience for children. Participation in sports provides children and adolescents with many benefits. Such programs improve physical and mental health, teach teamwork, and provide lessons in life skills. Importantly, participation in sports helps establish lifelong fitness and greater health.<sup>87</sup>

Banning transgender girls from playing on sports teams that align with their gender identity is another example of legislation intended to solve a non-existent problem. There is not an epidemic of transgender girls dominating all-girl sports teams. The overwhelming majority of girl athletes—and winners--are cisgender. Forcing transgender girls to play on cisgender boys’ teams simply marginalizes an already vulnerable group of kids. The Republican/Conservative “scientific” argument for banning transgender girls from playing on sports teams is based on testosterone levels. This “theory” is junk science for a few reasons. First, some transgender girls are taking puberty blockers which lowers their testosterone. Second, cisgender girls with polycystic ovary syndrome have elevated levels of testosterone but are permitted to play.<sup>88</sup> Third, studies looking at performance provide more accurate comparisons of transgender vs cisgender girls’ athletic differences. Although currently limited in number, the performance those studies do not support the myth that transgender girls have athletic superiority.<sup>89</sup>

Previously, the N.C.A.A required transgender women to be on testosterone suppressing drugs for 12 months prior to competing on women’s sports teams. The N.C.A.A. now a sport-by-sport policy based on the national governing body of the specific sport.<sup>90</sup> The International Olympic Committee (IOC), which previously required testosterone testing of transgender women prior to competition on women’s teams, has set aside its testosterone testing requirement. The IOC has also moved to sport-by-sport rules established by national and international governing bodies of each sport. The non-discrimination section of the IOC’s new framework states:

“Eligibility criteria should be established and implemented fairly and in a manner that does not systematically exclude athletes from competition based upon their gender identity, physical appearance and/or sex variations.”<sup>91</sup>

Despite U.S. House Republican efforts (by passing H.R. 734 in 2023)<sup>92</sup> to ban transgender athletes from participation in sports across the U.S. by barring transgender women and girls from participating on sports teams that align with their gender identity, such bans are not legal under Title IX of the education bill signed in 1972.<sup>93</sup> This illegality applies to K-12 transgender students, as well as college and university students. In 2022, the Biden Administration proposed a rule change to Title IX that prevents an outright ban of

transgender women and girls from participating on women and girls' sports teams. The rules do include some limits that provide schools with a framework as athletes age and the level of play increases. The public comment period for the proposed new rule ended in May 2023. Currently, over 240,000 public comments are being reviewed. The proposed rule-change will be finalized in October 2023.<sup>94</sup>

Court battles across the U.S. regarding state bans of transgender women and girl athletes competing on women's and girls' teams continue but higher courts have blocked such bans.<sup>95</sup> In December of 2022, the Second Circuit Court of Appeals found a Connecticut state athletic policy inclusive of transgender girls took nothing away from the participation of cisgender girls.<sup>96</sup> Recently, the U.S. Supreme Court refused to enforce the transgender athlete ban in West Virginia.<sup>97</sup>

In addition, it is not legal to discriminate on the basis of sex in Virginia under the **Virginia Values Act** that extends the anti-discrimination of Virginia's **Human Rights Act** to apply to the educational settings discussed above.

**SB 1186, Chief Patron Bryce E. Reeves.** Classifies all sports teams as male, female, or co-ed. The bill bars anyone assigned male to participate on a team classified as women or girls. Passed by indefinitely along party lines in February 2023.<sup>98</sup>

Sen. Reeves did not write this legislation. SB 1186 is the same model legislation the Alliance for Defending Freedom (designated a LGBTQ+ hate group by the Southern Poverty Law Center, described above) drafted earlier for Idaho's HB 500. Currently, an injunction barring enforcement of that ban is in place while the *Hecox v. Little* case is litigated in Idaho.<sup>99</sup>

#### **HB 1387, Chief Patron Karen Greenhalgh and Co-Chief Patron John McGuire**

Similar to SB 1186 but adds that public schools cannot play sports against private schools if the private school does not comply with the provisions of the bill. It was passed in the House in February 2023 with a completely partisan vote of 51 Yeas- 47 Nays). It was passed by indefinitely in the Senate along party lines also in February of 2023.<sup>100</sup>

**SB 962, Chief Patron Mark E. Peake.** Prohibits any athlete assigned male at birth from playing on a sports team designated "females" or "girls" or "women," and requires public and private schools that compete against public schools to designate their sports teams by gender or as co-ed. SB 962 establishes a civil cause of action for any student or school that suffers harm as a result of a violation of the provisions of the bill. Passed by indefinitely in Education and Health along party lines, in February of 2023.<sup>101</sup>

This bill also includes the model legislation drafted by LGBTQ+ hate group Alliance Defending Freedom.

**HB 2170, Chief Patron Wren Williams.** Requires parental notification and written consent for a student to play on a sports team. Laying on the table in Education along party lines (01/27/2023).<sup>102</sup>

**HB 1399, Chief Patron Marie E. March.** Classifies all sports teams as male, female, or co-ed. The bill bars anyone assigned male from participating on a team classified as women or girls. Prohibits any athlete assigned male at birth from playing on a sports team designated "females" or "girls" or "women," and requires public and private schools (that compete against public schools) to designate their sports teams by gender or co-ed. Establishes a civil cause of action for any student or school that suffers harm as a result of a violation of the provisions of the bill. Girls and women wrestling teams must be comprised entirely of athletes whose biological sex is female at birth. Left in Education (02/07/2023).<sup>103</sup>

This bill also includes the model legislation drafted by LGBTQ+ hate group Alliance Defending Freedom.

## Conclusion

The actions of Republicans in Virginia and across the U.S. have been unconscionable. They have placed our most vulnerable and marginalized members of society at serious risk for physical danger and life-threatening psychological harm. Republican legislators have embraced the far-right extremist hate group's propaganda and junk science solely for the purpose of increasing campaign donations and votes. This is who they are. Republicans will take Virginia backwards to a shameful dehumanizing past. Virginians have the opportunity in 2023 to advance the Commonwealth forward to create a future in which **all** people feel welcome and safe to authentically participate in every aspect of society.

## Author's Note

When I began this project in March 2023, over 300 anti-LGBTQ+ bills had been introduced throughout the country. As I finish this writing today, over 525 anti-LGBTQ+ bills have been introduced in state houses across the U.S. The numbers have increased each day during the editing process.

## End Notes

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<sup>2</sup> <https://www.hrc.org/>

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<sup>4</sup> <https://www.aclu.org/legislative-attacks-on-lgbtq-rights?state=VA>

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<sup>6</sup> <https://williamsinstitute.law.ucla.edu/subpopulations/transgender-people/>

<sup>7</sup> <https://www.hrc.org/press-releases/weekly-roundup-of-anti-lgbtq-legislation-advancing-in-states-across-the-country-5>

<sup>8</sup> <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Youth-Health-Bans-Mar-2023.pdf>

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