

POLICY ESSAY

STRENGTHENING THE FABRIC OF AMERICAN CIVIL RIGHTS: THE EQUALITY ACT

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I. INTRODUCTION

As a kid growing up in the '70s, my first exposure to politics was seeing the Watergate Hearings unfold on television. I watched in awe of Congresswoman Barbara Jordan as she gave her famous speech from the dais of the House Judiciary Committee, declaring that her “faith in the Constitution of the United States is whole; it is complete; it is total.”¹ Though the Constitution did not include her when it was written—as a woman and as a Black person—it had come to include her through the process of amendment and she stood before the nation to solemnly defend it. Her presence on public television inspired my own journey into public service and made me believe it was possible for me to be in Congress someday.

What I didn't know then—and what Congresswoman Jordan had to hide from public scrutiny—was that she spent twenty years in a loving relationship with a woman. Her groundbreaking service to the Texas State Legislature and the U.S. Congress was during a time when being an out lesbian could have undermined her professional accomplishments and possibly ended her career. Later, the National Archives would recognize her as the first lesbian, gay, bisexual, transgender, and queer (LGBTQ+) woman in Congress.² Now that I am a Member of Congress myself—the first *openly* gay person of color elected to Congress—I carry with me that same faith in the Constitution: that it is whole, complete, and total and that the rights enumerated in it are worth fighting for.

We have come a long way in our attitudes towards the LGBTQ+ community since the 1970s. Today, nearly nine out of ten Americans know someone who is gay or lesbian, and a smaller but growing number say they know someone who is transgender. LGBTQ+ representation in the media has hit an all-time high in the past few years,³ and the number of openly LGBTQ+ public figures in professional sports, public office, entertainment, and other fields

¹ *Debate on Articles of Impeachment: Hearings Pursuant to H. Res. 803 Before the H. Comm. on the Judiciary*, 93d Cong. 111, (1974) (statement of Rep. Barbara Jordan).

² See Jessie Kratz, *LGBTQ+ History Month: Barbara Jordan*, NAT'L ARCHIVES (June 10, 2021), <https://prologue.blogs.archives.gov/tag/barbara-jordan/> [<https://perma.cc/R39D-YKGD>].

³ See, e.g., Raina Deerwater, *GLAAD'S 2021–2022 Where We Are on TV Report: LGBTQ Representation Reaches New Record Highs*, GLAAD (Feb. 16, 2022), <https://glaad.org/glaads-2021-2022-where-we-are-tv-report-lgbtq-representation-reaches-new-record-highs/> [<https://perma.cc/3KMM-Y226>].

continues to grow.⁴ However, the LGBTQ+ community still faces extraordinary inequality. In 2024, more than one in three LGBTQ+ Americans experienced discrimination based on their identity.⁵ In recent years, conservative backlash against the LGBTQ+ community has exploded on a national scale and has targeted the transgender community in particular. Last year, 2024, was the worst legislative year on record for LGBTQ+ Americans, with the introduction of more than 530 bills at state and federal levels attacking their rights in schools, healthcare settings, and more—only to have that record surpassed by the introduction of nearly 600 anti-LGBTQ+ bills in the first six months of 2025.⁶ Under the second term of President Donald Trump, the country is facing the most openly anti-LGBTQ+ presidential administration in recent history.

The second Trump administration's explicit targeting of transgender Americans has been disastrous for LGBTQ+ rights. On his first day in office, President Trump rescinded dozens of executive orders that the Biden administration implemented, several of which had specific application to LGBTQ+ Americans.⁷ The Trump administration also issued a barrage of executive orders which openly attack the LGBTQ+ community, including EO 14168, which defines sex in the eyes of the federal government as an individual's biological classification as either male or female at birth.⁸ This order has already had widespread and devastating consequences: agencies have moved forward with implementation, ignoring their legal and constitutional obligations to

⁴ See Julie Moreau, *Number of LGBTQ elected officials in U.S. doubled since 2017*, NBC NEWS (Aug. 19, 2022), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/number-lgbtq-elected-officials-us-doubled-2017-rcna43946> [https://perma.cc/XA8U-GR44]; Isabel Yip, *At least 144 LGBTQ athletes to compete in Paris Olympics*, NBC NEWS (July 19, 2024), <https://www.nbcnews.com/nbc-out/nbc-out-proud/lgbtq-athletes-paris-olympics-rcna162518> [https://perma.cc/WAW5-ELPC].

⁵ Haley Norris & Caleb Smith, *The LGBTQI+ Community Reported High Rates of Discrimination in 2024*, CTR. FOR AM. PROGRESS (Mar. 12, 2025), <https://www.americanprogress.org/article/the-lgbtqi-community-reported-high-rates-of-discrimination-in-2024/> [https://perma.cc/39V8-DUM7].

⁶ See *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024*, ACLU (Dec. 6, 2024), <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024> [https://perma.cc/8VN9-6NS4]; *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2025*, ACLU (Aug. 8, 2025), <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2025> [https://perma.cc/C8CQ-8WXG].

⁷ The Biden administration executive orders that were rescinded include: Exec. Order No. 13,988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, 86 Fed. Reg. 7023 (Jan. 20, 2021); Exec. Order No. 13,985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 Fed. Reg. 7009 (Jan. 20, 2021); Exec. Order No. 14,004, *Enabling All Qualified Americans to Serve Their Country in Uniform*, 86 Fed. Reg. 7431 (Jan. 25, 2021); Exec. Order No. 14,020, *Establishment of the White House Gender Policy Council*, 86 Fed. Reg. 13797 (Mar. 8, 2021); Exec. Order No. 14,021, *Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*, 86 Fed. Reg. 13803 (Mar. 8, 2021); Exec. Order No. 14,075, *Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals*, 87 Fed. Reg. 37981 (June 15, 2022); Exec. Order No. 14,091, *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 88 Fed. Reg. 10,285 (Feb. 16, 2023).

⁸ See Exec. Order No. 14,168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615 (Jan. 20, 2025).

enforce civil rights laws in the workplace, and LGBTQ+ people are being denied access to essential functions of the federal government.⁹

Transgender Americans in particular are forced into dangerous positions when living their everyday lives. The Trump administration has issued executive orders to ban transgender girls and women from participating in women's sports, end government initiatives or programs aimed at diversity, equity, and inclusion ("DEI"), ban transgender people from serving in the military, and end access to medically necessary care for transgender young people.¹⁰ The Administration has also ordered the cessation of any federal funding for grants, programs, or contracts that involve "transgenderism," "gender ideology," or broadly-defined DEI issues of any sort.¹¹

At the time of the writing of this essay, the legality of most of those executive orders is still being tested in the courts. However, without explicit, consistent, and comprehensive protections for sexual orientation and gender identity codified at the federal level, the outcomes of these cases hang on the courts' interpretation of existing laws' protections for LGBTQ+ people. Even though a new federal law would not guarantee that every anti-LGBTQ+ action taken by the Trump administration or the states would be illegal, the patchwork of legal protections that currently exists means that LGBTQ+ Americans' fundamental rights are vulnerable to judicial misinterpretation, changing political tides, and weak enforcement.

For that reason, advocates and lawmakers have fought for a generation to codify federal civil rights protections. The Equality Act is the culmination of those efforts.¹² This bill provides consistent, explicit, and comprehensive protections for LGBTQ+ Americans by amending the Civil Rights Act of 1964 and related civil rights statutes. It explicitly prohibits discrimination on the basis of sexual orientation and gender identity in seven key areas of American life: employment, housing, public accommodations, federally funded programs, education, credit, and jury selection.¹³ It is the most comprehensive approach in Congress to securing full integration and equality of opportunity for LGBTQ+

⁹ This includes the issuance of correct identity documents, the ability to use bathrooms or other single-sex facilities in properties that are owned, leased, or controlled by federal agencies, access to federal funds, grants, and contracts that have any involvement with LGBTQ+ issues, protections for LGBTQ+ people in housing and transgender women in shelters, protections for and placement of transgender individuals who are incarcerated. See Brandon Wolf, *Background on Trump Day One Executive Orders Impacting The LGBTQ+ Community*, HUMAN RIGHTS CAMPAIGN (Jan. 22, 2025), <https://www.hrc.org/press-releases/background-on-trump-day-one-executive-orders-impacting-the-lgbtq-community> [https://perma.cc/HPT2-SV6V].

¹⁰ See Exec. Order No. 14,201, *Keeping Men Out of Women's Sports*, 90 Fed. Reg. 9279 (Feb. 11, 2025); Exec. Order No. 14,151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, 90 Fed. Reg. 8339 (Jan. 29, 2025); Exec. Order No. 14,183, *Prioritizing Military Excellence and Readiness*, 90 Fed. Reg. 8757 (Feb. 3, 2025); Exec. Order No. 14,187, *Protecting Children from Chemical and Surgical Mutilation*, 90 Fed. Reg. 8771 (Jan. 28, 2025).

¹¹ See Memorandum from Matthew J. Veath, Acting Dir., Off. of Mgmt. & Budget, on Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs, M-25-13 (Jan. 27, 2025).

¹² H.R. 15, 119th Cong. (2025).

¹³ See *id.* §§ 3–10.

Americans. While it would not guarantee that every action taken against the LGBTQ+ community by the states or the Trump administration in recent years would be illegal, it would provide an avenue by which LGBTQ+ Americans could demand that their civil rights be recognized, protected, and enforced.

The Equality Act represents decades of advocacy, thousands of stories, and a long-overdue strengthening of the civil rights fabric of this country. At a time of deep political divisions, the bill has unusually broad public support: Gallup polling has reported that 70% of Americans support the Equality Act.¹⁴ It has the endorsement of more than 500 businesses¹⁵ and 650 organizations,¹⁶ and has twice passed the House of Representatives on a bipartisan basis. This essay will explore the impacts of discrimination on LGBTQ+ Americans and broader American society, describe the current legal landscape for LGBTQ+ rights, and offer a section-by-section exploration of the text itself.

I have known the sting of discrimination in my own life: I am the child and grandchild of Japanese Americans who were denied their due process rights and held in incarceration camps during World War II. I came of age as a young gay man as the Briggs Initiative—a California ballot proposition that would have banned gay and lesbian people from teaching in public schools—gained national attention, and I went on to teach in a public school for more than two decades. When I ran my second campaign for Congress in 1994, my opponent targeted me with homophobic attack ads, and I subsequently lost the race. I know how painful it is to face open prejudice simply because of who you are.

In a country which prides itself on freedom and equal opportunity, no American should be denied the freedom to live, love, work, go to school, and participate as equal citizens in their society because of who they are or who they love. It is long past time for Congress to guarantee that no person should be denied those freedoms and pass the Equality Act into law.

II. WHY EQUALITY MATTERS

The quality of life of any individual is determined by a number of interconnected factors.¹⁷ Access to education, quality healthcare, well-paying work, safe and stable housing, opportunities to build credit, and the ability to participate fully in one's community are all core components of a healthy life and all affect one another.¹⁸

¹⁴ Frank Newport, *American Public Opinion and the Equality Act*, GALLUP (Mar. 21, 2021), <https://news.gallup.com/opinion/polling-matters/340349/american-public-opinion-equality-act.aspx> [<https://perma.cc/4U8S-4DAJ>].

¹⁵ *Business Coalition for the Equality Act*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/business-coalition-for-equality> [<https://perma.cc/R8MX-P896>] (last visited Aug. 31, 2025).

¹⁶ *655 Organizations Endorsing the Equality Act*, HUM. RTS. CAMPAIGN (Jun. 22, 2023), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/resources/Orgs-Endorsing-Equality-Act-4-16-21-1.pdf> [<https://perma.cc/65TJ-ZJKA>].

¹⁷ See generally R.A. Hahn, B.I. Truman & D.R. Williams, *Civil Rights as Determinants of Public Health and Racial and Ethnic Health Equity: Health Care, Education, Employment, and Housing in the United States*, SSM POP. HEALTH, Apr. 2018, at 17.

¹⁸ See generally M.V. LEE BADGETT, *THE ECONOMIC CASE FOR LGBT EQUALITY: WHY FAIR AND EQUAL TREATMENT BENEFITS US ALL* (2020).

As of 2024, more than one in three LGBTQ+ adults had experienced discrimination in some form in the previous year.¹⁹ In most major measurable sectors, including employment, healthcare, housing, financial wellbeing, and interactions with the justice system, LGBTQ+ Americans still face broad disparities between them and their non-LGBTQ+ counterparts.²⁰

These long-term patterns have impacts in both the daily lives of LGBTQ+ individuals and on larger, systemic levels. Restrictive laws affect not only where and how LGBTQ+ people engage with the economy, but also how competitive states, businesses, and colleges and universities are on the national stage. The patchwork of protections that LGBTQ+ Americans have today, as well as the targeted anti-LGBTQ+ legislation and policy sweeping through state and federal government, means that entire regional economies are negatively impacted by systemic discrimination against LGBTQ+ people.

This essay was initially drafted during the final year of the Biden administration and prior to the 2024 election. In that draft, this section centered on the long-term social and economic effects of lacking explicit, consistent civil rights protections for sexual orientation and gender identity. Those impacts are no longer distant or theoretical. While those long-term implications are still important to underscore, the Trump administration's policies actively targeting LGBTQ+ people—and particularly transgender people—are taking immediate advantage of lingering gaps in civil rights law.

The Trump administration's policies have resulted in prisoners being transferred to facilities that do not align with their gender identity, putting them at high risk of sexual assault, violence, harassment, medical neglect, and other forms of mistreatment.²¹ LGBTQ+ Americans have been issued passports with the wrong gender marker, putting them at much higher risk at international checkpoints.²² Young people have been denied medically necessary care;²³ servicemembers have been ordered out of military service based solely on their gender identity;²⁴ and federal funding to grants and contracts related to

¹⁹ See Norris & Smith, *supra* note 5.

²⁰ See *id.*

²¹ Kaley Johnson & Sam Levin, *Trans Women Transferred to Men's Prisons Despite Rulings Against Trump's Order*, THE GUARDIAN (Mar. 7, 2025), <https://www.theguardian.com/us-news/2025/mar/07/transgender-women-prison-trump> [<https://perma.cc/59WD-9JTM>].

²² See Jaclyn Diaz, *Trump's Passport Policy Leaves Trans, Intersex Americans in the Lurch*, NPR (Feb. 21, 2025), <https://www.npr.org/2025/02/21/nx-s1-5300880/trump-passport-policy-trans-gender-intersex-nonbinary> [<https://perma.cc/MKE8-LC3F>].

²³ See Selena Simmons-Duffin, *Trump's Ban on Gender-Affirming Care for Young People Puts Hospitals in a Bind*, NPR (Feb. 10, 2025), <https://www.npr.org/sections/shots-health-news/2025/02/10/nx-s1-5292390/trump-transgender-gender-affirming-care-hospital> [<https://perma.cc/CC5F-QM93>].

²⁴ See Memorandum from Darin S. Selnick, Performing Duties of Under Sec'y of Def. for Pers. & Readiness, attach. at 1 (Feb. 26, 2025), https://www.defense.gov/Portals/1/Spotlight/2025/Guidance_For_Federal_Policies/Prioritizing_Military_Excelsence_and_Readiness_P&R_Guidance.pdf [<https://perma.cc/V8P9-66SN>].

LGBTQ+ issues has been cut.²⁵ The long-term impacts of these policy changes have yet to be quantified, but the health, safety, and wellbeing of LGBTQ+ Americans are immediately impacted. The Trevor Project, the leading suicide prevention and crisis intervention organization for LGBTQ+ youth, reported a 700% increase in calls to their crisis line following the election of Donald Trump in November of 2024 and continues to experience sustained increases in call volume.²⁶

No one law can cure prejudice. Even if the Equality Act were to be signed into law, it would not guarantee that every action taken against the LGBTQ+ community by the states or the Trump administration in recent years would be illegal. But legal equality can move towards social equality in the long term. When people have access to the resources they need, they become more involved in their communities and have a first line of defense against political scapegoating and attack. As civic participation increases, so does societal cohesion.²⁷

In short, equality is healthy for our society and our democracy. When minority groups are protected, society as a whole is happier, more productive, and more democratic—and policy can play a significant role in breaking down the barriers Americans need to achieve access.

A. The Impact of Discrimination: Outcomes for LGBTQ+ Americans

For much of American history, government-enforced legal and social marginalization of LGBTQ+ people was the law of the land, and entrenched attitudes of homosexuality and transgender identity as “immoral and unacceptable” guided policy and law relating to the community.²⁸ Although the American public has made major strides towards broader acceptance in recent decades, social prejudice and systemic exclusion continue to bar LGBTQ+ Americans from access to the core institutions needed to live a healthy, secure life.

In nearly every measurable sector of wellbeing, including employment, housing, healthcare, and education, outcomes for LGBTQ+ Americans lag behind their non-LGBTQ+ counterparts.²⁹ In their most recent report from 2024, the Center for American Progress (CAP) and NORC, a nonpartisan research group based out of the University of Chicago, found that close to one in four LGBTQ+ adults reported experiencing harassment or discrimination in the workplace based on their sexual orientation or gender identity in the previous

²⁵ See Mary Kekatos, *NIH terminating active research grants related to LGBTQ+, DEI studies*, ABC NEWS (Mar. 7, 2025), <https://abcnews.go.com/Health/nih-terminating-active-research-grants-related-lgbtq-dei/story?id=119553232> [<https://perma.cc/88BH-9BJM>].

²⁶ *The Trevor Project Reported a 33% Increase in Crisis Line Volume on Inauguration Day*, THE TREVOR PROJECT (Jan. 21, 2025), <https://www.thetrevorproject.org/blog/the-trevor-project-reported-a-33-increase-in-crisis-line-volume-on-inauguration-day/> [<https://perma.cc/4JAX-METJ>].

²⁷ See R.A. Hahn et al., *supra* note 17, at 18.

²⁸ Richard Weinmeyer, *The Decriminalization of Sodomy in the United States*, 16 AM. MED. ASS'N J. ETHICS 916, 919 (2014).

²⁹ See Norris & Smith, *supra* note 5.

year.³⁰ Nearly one in ten LGBTQ+ adults and one in four transgender adults experienced some kind of housing discrimination or harassment in the past twelve months.³¹ More than one in five LGBTQ+ adults and more than one in three transgender adults reported postponing or avoiding medical care because of discrimination or disrespect from a health care provider.³² Approximately one in four of transgender adults reported a negative experience or mistreatment based on their gender identity from a mental health professional in the past year.³³ For nonwhite LGBTQ+ individuals and LGBTQ+ individuals with disabilities, incidences of discrimination were even higher.³⁴ Discrimination in educational settings is also pervasive: statistics from the National School Climate Survey conducted by the educational nonprofit GLSEN have found that nearly 60% of LGBTQ+ students have experienced discriminatory policies or practices at school.³⁵ As the Trump administration, Congress, state legislatures, local governments, and school boards continue to push forth and implement policies that sanction the exclusion of LGBTQ+ Americans, their ability to fully and equally access central institutions needed to live a healthy life will continue to deteriorate.

Such widespread marginalization has a significant impact on the physical, financial, and mental wellbeing of LGBTQ+ Americans. Members of the LGBTQ+ community are 2.5 times more likely to experience anxiety, depression, or substance misuse and abuse on average compared to the general population.³⁶ LGBTQ+ people have higher rates of chronic medical conditions and disabilities than non-LGBTQ+ people.³⁷ They are also less likely to have a regular health care provider, less likely to have health insurance, and more likely to report unfair treatment by healthcare providers.³⁸ From a financial standpoint, LGBTQ+ Americans regularly report lower annual incomes than their non-LGBTQ+ counterparts.³⁹ Consistent with findings from previous reporting years, the CAP/NORC data highlights that “employment discrimination and workforce exclusion narrow pathways to economic security for LGBTQI+ communities, contributing to elevated rates of poverty, unemployment, use of

³⁰ See *id.*

³¹ See *id.*

³² See *id.*

³³ See *id.*

³⁴ See *id.*

³⁵ See GLSEN, THE 2021 NATIONAL SCHOOL CLIMATE SURVEY EXECUTIVE SUMMARY 8 (2022), https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Executive_Summary-EN.pdf [<https://perma.cc/CWA4-MTZZ>].

³⁶ See *Diversity & Health Equity Education: Lesbian, Gay, Bisexual, Transgender and Queer/Questioning*, AM. PSYCHIATRIC ASS’N, <https://www.psychiatry.org/psychiatrists/diversity/education/lgbtq-patients> [<https://perma.cc/C78D-3PGX>] (last visited June 14, 2025).

³⁷ See Lindsey Dawson, Michelle Long & Brittnei Frederiksen, *LGBT People’s Health and Access to Care*, KAISER FAMILY FOUND. (June 30, 2023), <https://www.kff.org/report-section/lgbt-peoples-health-status-and-access-to-care-issue-brief/> [<https://perma.cc/S7V5-Z3QL>].

³⁸ See *LGBTQ+ Health Disparities*, CIGNA HEALTHCARE, <https://www.cigna.com/knowledge-center/lgbt-disparities> [<https://perma.cc/576E-GKN3>] (last visited May 15, 2025).

³⁹ See Norris & Smith, *supra* note 5.

public benefits, and housing instability.”⁴⁰ When it comes to educational experiences, GLSEN found that nearly seven out of ten LGBTQ+ students felt unsafe at school because of their sexual orientation and/or gender identity.⁴¹ LGBTQ+ students also reported elevated levels of absenteeism and disciplinary action and were less likely to perform well academically or report that they planned to pursue any post-secondary education.⁴²

While the statistics paint a picture of the community’s experience and wellbeing, behind the numbers is the human cost of discrimination. LGBTQ+ people are postponing check-ups and going to the doctor because they fear they will be mistreated.⁴³ Many LGBTQ+ children are unable to realize their full potential at school because the harassment is intolerable, and the environment is unsafe.⁴⁴ While LGBTQ+ young people make up 40% of the unaccompanied homeless youth population, largely due to familial rejection, it is still legal to deny them a spot in a homeless shelter because of their identity.⁴⁵

Even when LGBTQ+ people don’t encounter discrimination directly, the threat of it has a significant effect on their lives.⁴⁶ Deputy Director of the American Civil Liberties Union’s LGBT & HIV Project Rose Saxe writes that discrimination is not just about access to services, resources, or institutions; rather, discrimination

is about the harm that being turned away causes. It’s about how shame and fear prevent [LGBTQ+ people] from fully feeling safe and participating in public life. It’s about the pain of our children seeing us, and them, rejected, or the pain of our parents watching, unable to protect us. And it doesn’t matter if it’s just one store. Because once we are refused, every time we approach the door of a store, we wonder how we will be treated and are more likely to hide who we are. That comes at a steep cost.⁴⁷

⁴⁰ Caroline Medina & Lindsay Mahowald, *Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022*, CTR. FOR AM. PROGRESS (Jan. 12, 2023), <https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/> [<https://perma.cc/Y3GQ-DYRP>].

⁴¹ GLSEN, *supra* note 35, at 5.

⁴² *See id.* at 9.

⁴³ *See LGBTQ+ Health Disparities*, *supra* note 38.

⁴⁴ *See* GLSEN, *supra* note 35, at 5–7.

⁴⁵ *See New Report on Youth Homelessness Affirms That LGBTQ Youth Disproportionately Experience Homelessness*, HUM. RTS. CAMPAIGN (Nov. 15, 2018), <https://www.hrc.org/news/new-report-on-youth-homeless-affirms-that-lgbtq-youth-disproportionately-ex> [<https://perma.cc/87LK-NHK9>]; Claire Thornton, ‘Rejected Solely Because of Your Identity’: Homeless LGBTQ Youths Face Unique Challenges, USA TODAY (June 2, 2023), <https://www.usatoday.com/story/news/nation/2023/06/02/lgbtq-homeless-youths-family-rejection/11535821002/> [<https://perma.cc/K74L-Q3HG>].

⁴⁶ *See, e.g.,* Sejal Singh & Laura E. Durso, *Widespread Discrimination Continues to Shape LGBT People’s Lives in both Subtle and Significant Ways*, CTR. FOR AM. PROGRESS (May 2, 2017), <https://www.americanprogress.org/article/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/> [<https://perma.cc/R2ZN-WMG4>].

⁴⁷ Rose Saxe, *It’s Always Been About Discrimination for LGBT People*, ACLU (Dec. 1, 2017), <https://www.aclu.org/news/lgbtq-rights/its-always-been-about-discrimination-lgbt-people> [<https://perma.cc/K7WN-ZF5U>].

Fear of discrimination shapes people's lives both in subtle and substantial ways.⁴⁸ Ultimately, the impacts of discrimination and its resultant health, economic, and educational outcomes has a ripple effect on the communities and economies in which LGBTQ+ Americans live. As the next section will explore, the systemic exclusion of LGBTQ+ Americans from necessary resources has lasting implications for the broader United States.

B. The Economics of Discrimination

Imagine the tangible losses to the world's economies and cultures if LGBT people are excluded from creative work. We might miss out on the inventions of the next Alan Turing, the father of the modern computer. We might lose the musical delights of the next Aaron Copland or Elton John, the literature of the next James Baldwin or Virginia Woolf, or the entrepreneurial imagination of Martine Rothblatt. But the point isn't fame—it's that every LGBT person contributes something, whether they are teachers, cashiers, nurses, custodians, in the beauty industry, unpaid caregivers, and truck drivers or whether they are in the underground or informal economy. Their individual human losses from being unfairly targeted turn into our collective social losses as we miss out on the full benefit of their skills, experience, and creativity.⁴⁹

When one group is marginalized to the extent that they are unable to freely participate in fundamental institutions, it limits the society and economy of the whole. As economist M.V. Lee Badgett describes in the above passage, we are missing out on talent, brainpower, and countless other contributions from LGBTQ+ people and communities because of our failure to adequately protect their rights.

It is important to underscore that equality for LGBTQ+ people is a human rights issue first and foremost. All people should have the freedom to live, work, go to school, and participate in their communities without facing harassment, prejudice, and discrimination. That proposition is a fundamental tenet of the American civil rights framework. Nonetheless, the impacts of discrimination—and the benefits of inclusion—are important to quantify. Particularly for policymakers, statistics on the cost of discrimination to the U.S. economy can make an ethical case into a practical one. Where human rights arguments fail to resonate, economic realities at times prevail.

1. Health Outcomes and Pressure on the Social Safety Net

Discrimination is expensive. As discussed in the previous section, discrimination in the employment, workforce, housing, and healthcare sectors

⁴⁸ See Singh & Durso, *supra* note 46.

⁴⁹ BADGETT, *supra* note 18, at 25.

means that LGBTQ+ Americans are more likely to rely on public assistance.⁵⁰ One study estimated that employment and housing discrimination against transgender people in Georgia—a state which offers no nondiscrimination protections on the basis of sexual orientation or gender identity in most areas—has a seven-figure cost to state Medicaid expenditures as well as hundreds of thousands of dollars in additional homeless shelter expenditures each year.⁵¹ Conversely, early adopters of marriage equality and nondiscrimination laws, like Massachusetts, Illinois, and Oregon, saw healthcare costs drop as health outcomes for LGBTQ+ people improved.⁵²

2. *Brain Drain*

Aside from the costs to the social safety net, discrimination also means that economies—local, state, and national—miss out on talent and brainpower. In the United States, recent waves of anti-LGBTQ+ legislation have acted as an accelerant in moving LGBTQ+ people and their families out of certain regions of the country, particularly out of southern and southeastern states.⁵³ According to the 2024 CAP survey, nearly one out of every three LGBTQ+ respondents moved away from where they were living for fear of discrimination.⁵⁴ 2024 polling done by Out Leadership showed that nearly a quarter of all LGBTQ+ workers have moved to a more inclusive area because of anti-LGBTQ+ laws.⁵⁵

The impact of this exodus is manifold, as this section lays out, but the movement of highly skilled professionals can have serious consequences. For example, one of Louisiana's only pediatric cardiologists left the state in 2023 because the legislative climate no longer made him feel it was safe to live there with his family as an openly gay man.⁵⁶ Louisiana, along with neighboring states, is designated as a "Health Professional Shortage Area," meaning that the number of providers does not meet residents' need, but as laws in those states become more restrictive, particularly towards LGBTQ+ people, their families,

⁵⁰ See, e.g., CHRISTY MALLORY, BRAD SEARS, ERIC R. WRIGHT & KERITH CONRON, *THE IMPACT OF STIGMA AND DISCRIMINATION AGAINST LGBT PEOPLE IN GEORGIA* 1–2 (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-LGBT-Discrimination-GA-Jan-2017.pdf> [https://perma.cc/4MPK-WLNX].

⁵¹ See *id.* at 39–40.

⁵² See BADGETT, *supra* note 18, at 82.

⁵³ See, e.g., Amelia Abraham, *'It's Been a Total Witch-Hunt. It Takes its Toll': the LGBTQ+ Families Fleeing Red States*, THE GUARDIAN (June 6, 2023), <https://www.theguardian.com/world/2023/jun/06/lgbtq-rights-trans-gay-texas-florida-north-carolina> [https://perma.cc/5NQT-H57W].

⁵⁴ See Norris & Smith, *supra* note 5.

⁵⁵ See 2022 STATE LGBTQ+ BUSINESS CLIMATE INDEX 5 (2022), https://outleadership.com/wp-content/uploads/2022/09/2022_StateClimateIndex_Digital_Final.pdf [https://perma.cc/7P9D-BZZ2].

⁵⁶ See Drew Hawkins, *LGBTQ Doctors Are Leaving the Gulf South Due to Discrimination: 'We Weren't Welcome Anymore'*, WWNO (Nov. 23, 2023), <https://www.wwno.org/public-health/2023-11-16/lgbtq-doctors-are-leaving-the-gulf-south-due-to-discrimination-we-werent-welcome-anymore> [https://perma.cc/U58U-3CGS].

and their access to necessary medical care, there is an increase in medical professionals leaving the area.⁵⁷

3. *Business Impact*

High rates of internal emigration out of particular regions of the country also inhibit businesses from fostering a diverse workforce and growing their economic output. In her testimony before the House Judiciary Committee on a hearing on the Equality Act, former IBM Corporation Vice President Tia Silas spoke to the need for IBM to attract, retain, and develop top talent from diverse backgrounds. She outlined how IBM, as a nationwide employer, is restricted in its ability to attract diverse talent when LGBTQ+ employees and their families cannot live in certain areas of the country.⁵⁸ She noted that regional anti-LGBTQ+ laws factor into the company's decision-making process about where to place their businesses if it means that certain sectors of their workforce and their families cannot safely live there.⁵⁹ On an individual level, the stress of persistent discrimination consumes a significant amount of emotional and intellectual energy, which ultimately impacts the health, creativity, and productivity of LGBTQ+ employees.⁶⁰ Badgett observes that on a systemic level, "[w]hen LGBT people can't get the training they're capable of, are harassed in their workplaces, or aren't hired into jobs that fully use their skills . . . the output of the whole economy is diminished as a result."⁶¹

IBM is not the only major business that recognizes the importance of equal protection laws. More than 500 major companies make up the Business Coalition for the Equality Act, a group of leading U.S. employers that support federal legislation to provide basic federal protections to LGBTQ+ Americans.⁶² These include companies across industry sectors and collectively represent \$7.8 trillion in revenue and sixteen million employees across the country. Airlines, banks, manufacturers, grocery stores, hotels, insurance companies, healthcare providers, online retailers, pharmaceutical companies, transit providers, and many more industries agree that basic protections for their employees are good for their bottom line.⁶³

4. *State and Regional Impact*

States that do not offer equal protection laws are missing out on the monetary benefits of inclusion. Economists at Wells Fargo released a report in June 2023 showing that a greater inclusion of LGBTQ+ employees had a positive correlation with growth rates of the gross domestic state product

⁵⁷ See *id.*

⁵⁸ See *H.R. 5 – The Equality Act: Hearing Before the H. Comm on the Judiciary*, 116th Cong. 60 (2019) (testimony of Tia Silas, Vice President & Global Chief Diversity & Inclusion Officer, IBM Corp.).

⁵⁹ See *id.* at 67.

⁶⁰ See *id.* at 65.

⁶¹ BADGETT, *supra* note 18, at 103.

⁶² See *Business Coalition for the Equality Act*, *supra* note 15.

⁶³ See *id.*

(GSP).⁶⁴ Badgett's research on LGBTQ+ people's relationship to the global economy supports this correlation: when controlling for other major factors, there is a positive relationship between LGBTQ+ inclusion and economic output across countries.⁶⁵ Explicit and consistent nondiscrimination protections have the potential to address socioeconomic and legal disparities. The following section discusses historic impacts of codified civil rights and the positive implications they have for individuals, communities, and entire economies.

C. *The Remedy: Equal Protections and the Effects of Enforcement*

Across the board, economists, advocates, public health experts, researchers, and policymakers agree: the first step to addressing the equity gap for LGBTQ+ Americans is to establish consistent, explicit, comprehensive nondiscrimination protections at the federal level. The outcomes for other minority groups who have fought for and won federal-level protections demonstrate the enormous positive growth that equal protection laws produce. In the decades following legislation that required and enforced equal access to core institutions, the American population became better educated, higher earning, and more equitable.

In 1999, the Department of Education published a brief on the overall impact of the Civil Rights Act of 1964 and other civil rights laws on education.⁶⁶ It showed huge positive growth for racial minorities and women, including increased high school graduation rates for racial minorities, significant improvement in scholastic performance, a major decrease in the performance gap between white and nonwhite students, a massive increase in college enrollment among minority students;⁶⁷ a huge increase in bachelor's and doctoral degrees earned by women; and a significant increase in female faculty at colleges and universities. When measuring the impact of the Americans with Disabilities Act for disabled individuals, the outcomes are similar.⁶⁸

In short, once the law required that students were given equal access to educational opportunity, American society itself became better educated. Students had the freedom to excel academically, improving economic outcomes for themselves, their families, their communities, and the economy.

Furthermore, a 2018 study examining how civil rights protections and their implementation affect the health of racial and ethnic minorities tracked outcomes in four areas—health care, education, employment, and housing—and found significant positive outcomes when civil rights laws were enforced.⁶⁹ The study posits that legally codified civil rights and proper enforcement improves

⁶⁴ Jay H. Bryson & Nicole Cervi, *The 'Secret Sauce': The LGBTQ+ Community & State Economic Growth Rates*, WELLS FARGO (June 1, 2023), <https://wellsfargo.bluematrix.com/links2/html/09715269-77b0-4c34-a1fc-9181b8ae131e> [<https://perma.cc/P5UH-6EEZ>].

⁶⁵ See generally BADGETT, *supra* note 18.

⁶⁶ See *Impact of the Civil Rights Laws*, OFF. FOR CIV. RIGHTS, U.S. DEP'T OF EDUC. (Jan. 1999), <https://www2.ed.gov/about/offices/list/ocr/impact.html> [<https://perma.cc/45PT-ZYUP>].

⁶⁷ See *id.*

⁶⁸ See *id.*

⁶⁹ See R.A. Hahn et al., *supra* note 17, at 23.

access to societal resources, such as healthy and safe environments, housing, education, employment, financial institutions, transportation, health care, and defense.⁷⁰ It also allows for greater civic participation, access to social capital, and a greater sense of autonomy, self-respect, and control.⁷¹ Where this access increases, there is a noted reduction in traditional prejudices, an increase in community cohesion, a reduction in morbidity, improvement in intergenerational well-being, and greater health equity.

Though the data is more limited, there is research supporting the positive impact of existing protections for LGBTQ+ Americans: in states and localities that prohibit discrimination on the basis of sexual orientation and gender identity, negative health outcomes decrease and gross state product increases.⁷²

Finally, inclusive policies have the power to change minds. As Badgett argues, enacting policies that protect LGBTQ+ people from discrimination sends a message that LGBTQ+ people are “equally worthy, since treating non-LGBTQI people more favorably than LGBTQI people is not acceptable.”⁷³ Using studies conducted both within the United States and internationally on marriage equality, she observed that “people who lived in countries or states that enacted marriage equality (or other legal recognition for same-sex couples) became more accepting of lesbians and gay men than people in the states or countries without legal recognition.”⁷⁴

Indeed, within the United States same-sex marriage has undergone that exact trajectory. When Gallup first began polling on public opinion on same-sex marriage in 1996, 68% of Americans responded that same-sex marriages should not be recognized as valid under the law.⁷⁵ In the nearly three decades since then, sodomy laws were struck down as unconstitutional;⁷⁶ legal recourse for discrimination against LGBTQ+ people began to be available in some states; state legislatures legalized same-sex marriages;⁷⁷ and the Supreme Court ruled that the Constitution guarantees the right to same-sex marriage.⁷⁸ In 2022, the Respect for Marriage Act officially repealed the Defense of Marriage Act and federally recognized same-sex marriages for the first time.⁷⁹ Almost thirty years

⁷⁰ See *id.* at 18.

⁷¹ See *id.* (Fig. 1).

⁷² Cf., e.g., Lindsay Mahowald, *LGBTQI+ Nondiscrimination Laws Improve Economic, Physical, and Mental Well-Being*, CTR. FOR AM. PROGRESS (Mar. 24, 2022), <https://www.americanprogress.org/article/lgbtqi-nondiscrimination-laws-improve-economic-physical-and-mental-well-being/> [<https://perma.cc/6A88-S8BN>]; see generally BADGETT, *supra* note 18.

⁷³ BADGETT, *supra* note 18, at 143.

⁷⁴ *Id.* at 144.

⁷⁵ *LGBTQ+ Rights*, GALLUP, <https://news.gallup.com/poll/1651/gay-lesbian-rights.aspx> [<https://perma.cc/R2D8-3PWR>] (last visited June 14, 2025).

⁷⁶ See *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

⁷⁷ John F. Kowal, *The Improbable Victory of Marriage Equality*, BRENNAN CTR. FOR JUSTICE (Sept. 29, 2015), <https://www.brennancenter.org/our-work/analysis-opinion/improbable-victory-marriage-equality> [<https://perma.cc/F2CC-2R7S>].

⁷⁸ See *Obergefell v. Hodges*, 576 U.S. 644, 675–76 (2015).

⁷⁹ See generally Respect for Marriage Act, Pub. L. No. 117-228, 136 Stat. 2305 (2022).

after the original Gallup poll, public opinion flipped: today, 69% of Americans say that same-sex marriages *should* be recognized as legally valid.⁸⁰

In reflecting on that battle, litigator Mary Bonauto observed that those who had been vehemently opposed and outspoken to same-sex marriages before their recognition “lost steam” once gay marriages started to happen.⁸¹ “I think the temperature came down dramatically once people could see for themselves that the sky did not fall and the milk didn’t curdle,” said Bonauto. “I have come to feel that everyone is persuadable — with enough time.”⁸² In other words, laws can create the structure from which a society takes its cues.

If we seek to build a healthier, better educated, and more equitable society, comprehensive civil rights protections must be the foundation of our progress. A patchwork of legal protections is not enough—it is long past time to ensure that all Americans are guaranteed basic freedoms, regardless of where they live. It is possible to make the country stronger, freer, and fairer. It only takes the legislative solution and collective willpower to do it.

III. THE STATUS OF LGBTQ+ CIVIL RIGHTS IN THE UNITED STATES AND THE PATH TO FEDERAL PROTECTIONS

This section covers the primary avenues used to pursue LGBTQ+ protections in absence of explicit federal codification: the judicial system, state law, and actions taken by the executive branch. While each approach has made important advances, the result is an inconsistent landscape of rights for LGBTQ+ Americans that varies by geography and is vulnerable to legal challenge and changing political tide.

To that end, advocates and policymakers have tried for decades to establish consistent, comprehensive, and explicit federal protections for LGBTQ+ Americans. The second half of this section describes the road to federal protections for the LGBTQ+ community, which spans more than fifty years and twenty five Congresses, culminating in the Equality Act that we have today.

A. *The Current Landscape of Anti-Discrimination Law Related to Sexual Orientation and Gender Identity in the United States*

Part III.A first discusses judicial decisions related to discrimination based on sexual orientation and gender identity. It then explores state laws and administrative actions, respectively.

1. *Judicial Precedent*

The courts have been one of the primary avenues through which LGBTQ+ advocates have fought for civil rights to be properly recognized and

⁸⁰ See GALLUP, *supra* note 75.

⁸¹ See Tovia Smith, *Lawyer Reflects On Nation’s First Gay Marriages: ‘The Cage Had Been Lifted’*, NPR (May 15, 2014), <https://www.npr.org/2014/05/15/312674228/a-decade-of-same-sex-marriage-began-in-massachusetts> [<https://perma.cc/2CML-CD63>].

⁸² *Id.*

protected under the Constitution and existing laws. Over the years, landmark decisions in the fight for LGBTQ+ rights have resulted in major advances, including declaring anti-sodomy laws unconstitutional,⁸³ asserting the right to marriage equality,⁸⁴ and ruling that employees cannot be discriminated against based on their sexual orientation or gender identity.⁸⁵ This section focuses on this final decision, *Bostock v. Clayton County, Georgia*, as it is the most applicable to broader nondiscrimination protections on the basis of sexual orientation and gender identity.

a. Bostock v. Clayton County, Georgia

Bostock is one of the most significant victories for federal-level LGBTQ+ civil rights in American history. The result of decades of litigation, this decision has become the cornerstone of modern civil rights protections on the basis of sexual orientation and gender identity.

In the spring of 2019, the U.S. Supreme Court granted certiorari in three cases to resolve a circuit court split over whether discrimination on the basis of sexual orientation and gender identity were illegal under Title VII of the Civil Rights Act of 1964.⁸⁶ Two of the cases, *Bostock* and *Altitude Exp., Inc. v. Zarda*, teed up whether discrimination based on sexual orientation was prohibited under Title VII, while *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC* presented the question of whether discrimination on the basis of gender identity was prohibited under Title VII.⁸⁷ These cases were consolidated in *Bostock*.

In a 6-3 decision, the Court decided in the plaintiffs' favor, holding that Title VII's prohibition on sex discrimination includes discrimination in employment on the basis of sexual orientation and gender identity. In the majority opinion, Justice Neil Gorsuch wrote:

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.⁸⁸

Bostock represented a major victory for the LGBTQ+ community more than half a century in the making.⁸⁹ For the first time, the highest court in the

⁸³ See *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

⁸⁴ See *United States v. Windsor*, 570 U.S. 744, 745–47 (2013); *Obergefell v. Hodges*, 576 U.S. 644, 675–76 (2015).

⁸⁵ See *Bostock v. Clayton County*, 590 U.S. 644, 683 (2020).

⁸⁶ See *Altitude Exp., Inc. v. Zarda*, 587 U.S. 160 (2019); *Bostock*, 590 U.S. at 644; *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*, 587 U.S. 116 (2019).

⁸⁷ See *Bostock*, 590 U.S. at 644.

⁸⁸ *Id.* at 649–52.

⁸⁹ See Jon W. Davidson, *How the Impact of Bostock v. Clayton County on LGBTQ Rights Continues to Expand*, ACLU (June 15, 2022), <https://www.aclu.org/news/civil->

land had affirmed that workers in all fifty states have legal protections against discrimination based on their sexual orientation and gender identity and could pursue recourse through the Equal Employment Opportunity Commission if they experienced discrimination. The Court's interpretation of sex discrimination affirmed a critical civil rights framework for understanding sex discrimination as inclusive of sexual orientation and gender identity discrimination.

The Court's logic that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex"⁹⁰ has been cited in hundreds of cases,⁹¹ with numerous courts following the Supreme Court's reasoning. In subsequent years, several states have also implemented some protections based on *Bostock*.⁹²

However, one favorable Supreme Court decision is no substitute for explicit, comprehensive protections codified in statute as *Bostock* could be challenged. In 2022, that risk became clear.

In *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade*, Justice Clarence Thomas's concurring opinion explicitly noted that the landmark LGBTQ+ victories *Lawrence v. Texas* and *Obergefell v. Hodges* were worth reconsidering.⁹³ Justice Thomas maintained that

'[S]ubstantive due process' is an oxymoron that 'lack[s] any basis in the Constitution'... 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,' we have a duty to 'correct the error' established in those precedents.⁹⁴

While *Bostock*'s reasoning can and should be applied to domains beyond employment law, any action taken by a presidential administration is subject to rollback by succeeding administrations and the courts. While judicial precedent provides a framework for the interpretation of civil rights, its inconsistency is insufficient to constitute reliable protections in the way that comprehensive, explicit federal statutory laws would.

2. State Law

The *Bostock* ruling changed the landscape of state law. Prior to the 2020 decision, only twenty three states had explicit nondiscrimination protections for LGBTQ+ employees. Following the ruling, many states began to interpret their

liberties/how-the-impact-of-bostock-v-clayton-county-on-lgbtq-rights-continues-to-expand [https://perma.cc/JX23-JZRX].

⁹⁰ *Bostock*, 590 U.S. at 660.

⁹¹ See Davidson, *supra* note 89.

⁹² *State Sex Discrimination Laws Covering SOGI Discrimination*, ACLU (May 18, 2022), <https://www.aclu.org/documents/state-sex-discrimination-laws-covering-sogi-discrimination> [https://perma.cc/NFX4-8MRY].

⁹³ See Quint Forney & Josh Gerstein, *Thomas Questions Constitutional Basis of Many Rights*, POLITICO (June 24, 2022), <https://www.politico.com/news/2022/06/24/thomas-constitutional-rights-00042256> [https://perma.cc/Y7MB-SDBU].

⁹⁴ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 331–32 (2022) (Thomas, J., concurring).

existing laws on sex discrimination as inclusive of sexual orientation and gender identity—though still less than half of U.S. states have those protections currently, and an even smaller number of states have explicit protections against.⁹⁵

Today, the Human Rights Campaign’s 2024 State Equality Index reports that thirty three states and the District of Columbia prohibit sexual orientation-based discrimination in employment, while thirty two prohibit discrimination in housing, twenty nine in public accommodations, twenty four in education, twenty one in credit opportunities, and seventeen in jury selection. With respect to prohibitions on discrimination on the basis of gender identity, thirty three states prohibit discrimination in employment, thirty one in housing, twenty eight in public accommodations, twenty three in education, twenty one in credit opportunities, and twelve in jury selection.⁹⁶

In practice, this means that a LGBTQ+ person’s rights could change depending on the zip code they are in. A gay person could be denied service at a restaurant in North Carolina but then cross the northern state border and have the full and equal right to public accommodation in Virginia.⁹⁷ That same principle could apply to a person’s ability to live in a nursing home, participate in certain federally funded programs, and many other basic facets of everyday life.

3. *Administrative Action*

Rollbacks of antidiscrimination protection are occurring right now in various state legislatures and at the federal level. The Trump administration has been explicit in its desire to ignore existing nondiscrimination protections for LGBTQ+ people as much as possible, issuing multiple executive orders stopping enforcement.⁹⁸

Between 2021 and 2024, the Biden administration issued rules aimed at clarifying existing sexual orientation and gender identity protections. Relying on *Bostock*, the Biden administration issued the “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,”⁹⁹ which directed all federal agencies to review existing policies, regulations, and guidelines that prohibit sex discrimination and, consistent with *Bostock*, interpret them to provide protections from sexual orientation and gender identity discrimination. The Biden administration issued two other rules

⁹⁵ Movement Advancement Project, *The Impact of Bostock on State Nondiscrimination Protections*, MEDIUM (Mar. 19, 2021), <https://lgbtmap.medium.com/the-impact-of-bostock-on-state-nondiscrimination-protections-9811026a81cc> [<https://perma.cc/6T7L-T9H8>].

⁹⁶ Sarah Warbelow, Cathryn Oakley, Courtney Avant, & Brittany Pham, *2023 State Equality Index*, HUM. RTS. CAMPAIGN FOUND. (2024), <https://reports.hrc.org/2023-state-equality-index> [<https://perma.cc/R7QQ-84BK>].

⁹⁷ See *North Carolina State Scorecard*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/state-scorecards/north-carolina> [<https://perma.cc/JX8H-ZWVL>] (last visited June 14, 2025); *Virginia State Scorecard*, HUM. RIGHTS CAMPAIGN, <https://www.hrc.org/resources/state-scorecards/virginia> [<https://perma.cc/5SZY-YM8M>] (last visited June 14, 2025).

⁹⁸ See *supra* note 7 and accompanying text.

⁹⁹ Exec. Order No. 13,988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, 86 Fed. Reg. 7023 (Jan. 25, 2021).

based on the *Bostock* framework, aimed at educational and health equity, respectively.

These rollbacks are also occurring at the state level. In early 2025, Iowa became the first state to remove gender identity from its state civil rights protections after nearly two decades on the books.¹⁰⁰ In 2025 alone, nearly 600 anti-LGBTQ+ bills have been introduced in legislatures across the country.¹⁰¹ Altogether, LGBTQ+ Americans' freedom and access to legal recourse against discrimination depends far too much on election cycles and the political climate.

B. The Road to Federal Protections

It has always been clear to advocates of LGBTQ+ rights that the long-term solution is explicit nondiscrimination protections at the federal level. For more than fifty years, proponents have sought federal statutory protections for LGBTQ+ Americans, and the resulting bills have evolved to comport with changing legal landscapes by broadening inclusivity.

1. The 1974 Equality Act

The first federal nondiscrimination bill for the LGBTQI+ community was introduced in 1974 by U.S. Representative Bella Abzug. Named the Equality Act, this early version aimed to amend the then-decade-old Civil Rights Act of 1964 to provide protections on the basis of sexual orientation, sex, and marital status.¹⁰²

While it gained support throughout the years and was renamed the Civil Rights Amendments,¹⁰³ it never underwent committee action or consideration on the House or Senate floors.

2. Employment Non-Discrimination Act

The Employment Non-Discrimination Act (ENDA) was introduced in 1994 by U.S. Senator Edward "Ted" Kennedy and became the prevailing focus of LGBTQ+ advocates and lawmakers for a decade. Unlike the Equality Act, which amended existing law, ENDA created a standalone statute prohibiting employment discrimination based on sexual orientation.¹⁰⁴ This bill was intentionally narrowly-tailored, as it applied only to employment law and, like Rep. Abzug's bill, it only covered discrimination on the basis of sexual orientation.

In 2007, U.S. Representative Barney Frank introduced a new version of ENDA that included protections for gender identity. However, with the new inclusion, the bill did not have the votes to pass. Rep. Frank decided to split

¹⁰⁰ Jo Yurcaba, *Iowa Governor Signs Bill Removing Gender Identity From State Civil Rights Protections*, NBC NEWS (Feb. 28, 2025), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/iowa-governor-bill-removes-gender-identity-civil-rights-kim-reynolds-rcna194301> [<https://perma.cc/73RM-VJ88>].

¹⁰¹ *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2025*, ACLU (2025), <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2025> [<https://perma.cc/ZB2K-EGL8>].

¹⁰² See generally H.R. 14752, 93d Cong. (1974).

¹⁰³ See H.R. Rep. No. 110-406, pt. 1, at 2–10 (2007).

¹⁰⁴ See generally S. 2238, 103d Cong. (1994).

ENDA in two, creating one version that included protections for gender identity and one that did not.¹⁰⁵ The version of ENDA that covered only sexual orientation passed the House in 2007, but it divided the LGBTQ+ community, and a number of organizations withdrew their support.¹⁰⁶ New versions that included gender identity were introduced in the 111th, 112th, and 113th Congresses.¹⁰⁷

Various legal developments, coupled with the LGBTQ+ rights movement's return to favoring more comprehensive protections, eventually led to a pivot away from ENDA. The bill was not reintroduced after the 113th Congress.

3. *Equality Act*

The new Equality Act has existed in several iterations over the years since its introduction in the 114th Congress in 2015, first under the leadership of Representative David Cicilline and Senator Jeff Merkley.¹⁰⁸ Returning to the strategy of the original 1974 Equality Act, the new bill amended existing civil rights laws to provide explicit and comprehensive nondiscrimination protections on the basis of sexual orientation and gender identity. Over the years, its language has changed to incorporate new case law and become more explicitly inclusive in its protections.

The 2015 Equality Act provided protections in seven principal areas of American life: employment, housing, public accommodations, federally funded programs, education, credit, and jury selection. The bill amended the Civil Rights Act of 1964 and other related bills—including but not limited to the Fair Housing Act, the Equal Credit Opportunity Act, and the Jury Selection and Service Act—by adding “sexual orientation and gender identity” after sex in the list of protected categories.¹⁰⁹ In two areas for which nondiscrimination protections for sex do not exist, Titles II and VI, the 2015 Equality Act added “sex, sexual orientation, and gender identity.”¹¹⁰ The bill also defined sex to include a sex stereotype, pregnancy, childbirth, or other related medical conditions, incorporating other case law.

The Equality Act underwent introduction in the 114th and 115th Congresses without any hearings, markups, or votes.

In the 116th Congress, the bill was reintroduced with two changes. The first amendment clarified that discrimination on the basis of sexual orientation and gender identity is a form of sex discrimination.¹¹¹ The second change added “sex characteristics, including intersex traits” to the definition of sex, which was

¹⁰⁵ See H.R. 3685, 110th Cong. (2007); H.R. 3686, 110th Cong. (2007).

¹⁰⁶ Cf. Chris Johnson, *10 Years Later, Firestorm Over Gay-Only ENDA Vote Still Informs Movement*, WASH. BLADE (Nov. 6, 2017), <https://www.washingtonblade.com/2017/11/06/10-years-later-firestorm-over-gay-only-enda-vote-still-remembered/> [https://perma.cc/A5YU-QNT6].

¹⁰⁷ See H.R. 3017, 111th Cong. (2009); H.R. 1397, 112th Cong. (2011); H.R. 1755, 113th Cong. (2013).

¹⁰⁸ See H.R. 3185, 114th Cong. (2015); S. 1858, 114th Cong. (2015).

¹⁰⁹ See H.R. 3185, §§ 5, 7–8.

¹¹⁰ See *id.* §§ 3–4, 6.

¹¹¹ See H.R. 5, 116th Cong. §§ 3–12 (2019); S. 788, 116th Cong. §§ 3–12 (2019).

the first time that a federal bill provided explicit protections for the intersex community.¹¹²

The House of Representatives passed the Equality Act for the first time in 2019 during the 116th Congress. During the subsequent 117th Congress, the Equality Act passed again on a bipartisan vote with the cosponsorship of the entire House Democratic Caucus in 2021.

It was my great honor to take House-side leadership of the Equality Act in the 118th Congress and, alongside Senators Jeff Merkley, Tammy Baldwin, and Cory Booker, lead the fifth introduction of the Equality Act with the cosponsorship of all 219 House Democrats and fifty Senate Democrats.¹¹³

In April 2025, Senators Merkley, Baldwin, and Booker and I led the sixth introduction of the Equality Act in the 119th Congress.¹¹⁴

The Equality Act that exists today is a culmination of a generation's worth of work, negotiation, discussion, advocacy, and bipartisan collaboration. The legislative path has been long: since the 1974 Equality Act was introduced, the LGBTQ+ community has fought for and won the right to marriage equality, saw the introduction and the repeal of Don't Ask, Don't Tell, and witnessed the Respect for Marriage Act signed into law, officially repealing the Defense of Marriage Act.¹¹⁵ We have made significant strides in those decades, and it is long past time for Congress to catch up to the demand for explicit, comprehensive federal protections.

IV. THE EQUALITY ACT

The modern Equality Act is the most comprehensive approach to full integration and equal opportunity for the LGBTQ+ community in the United States. It not only secures access to the core institutions of American life for LGBTQ+ Americans, but also clarifies and strengthens rights for other groups covered under the Civil Rights Act of 1964.

Specifically, the bill amends the Civil Rights Act and related civil rights statutes to clarify explicit protections for sexual orientation and gender identity in seven key areas of American life: employment, housing, public accommodations, federally funded programs, education, credit, and jury selection.¹¹⁶ The bill's protections are consistent with hundreds of existing state and local statutes, as well as past federal agency practice and case law.¹¹⁷

¹¹² H.R. 5, 116th Cong. § 9 (2019); S. 788, 116th Cong. § 9 (2019); see *Intersex People*, OFF. UNITED NATIONS HIGH COMM'R HUM. RTS., <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people> [<https://perma.cc/MS7V-NVT2>] ("Intersex people are born with sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns, and/or chromosomal patterns) that do not fit typical binary notions of male or female bodies.").

¹¹³ H.R. 15, 118th Cong. (2023); S. 5, 118th Cong. (2023). This number includes non-voting Delegates, as well as Democrats that later joined the 118th Congress after winning a special election and subsequently became cosponsors of the Equality Act.

¹¹⁴ H.R. 15, 119th Cong. (2025); S. 1503, 119th Cong. (2025).

¹¹⁵ See, e.g., Kowal, *supra* note 77; Respect for Marriage Act, Pub. L. No. 117-228, § 3, 136 Stat. 2305, 2305 (2022).

¹¹⁶ See *id.*

¹¹⁷ See H.R. REP. NO. 116-56, pt. 1, at 8, 10, 20 n.77 (2019).

A. Section by Section: Amending Civil Rights Law

This section discusses the specific amendments the Equality Act makes in each of the seven sections—employment, housing, public accommodations, federally funded programs, education, credit, and jury selection—as well as how it clarifies protections for all groups covered by civil rights law.

1. Employment

Despite the protections that *Bostock* offers to LGBTQ+ Americans in the workplace, LGBTQ+ workers continue to experience persistent harassment, discrimination, and wage disparity. Nearly half of all LGBTQ+ workers have experienced unfair treatment in the workplace because of their sexual orientation or gender identity.¹¹⁸ Transgender individuals in particular experience disproportionately high levels of discrimination in the workplace, including being fired, not hired, harassed, discriminated against, and other kinds of unfair treatment at more than twice the rate of lesbian, gay, or bisexual employees.¹¹⁹

Carter Brown testified before the House Judiciary Committee about how his life changed after he had been outed as a transgender man at work.¹²⁰ According to the House Judiciary Committee’s report,

[p]rior to being outed, he earned three promotions in two years. Nevertheless, after a coworker outed him, he was the target of gossip and harassment and was eventually fired. As a result, he was forced to cash out his 401K and defer auto loans and mortgage payments to stay financially afloat. He also lost his health insurance.¹²¹

The Equality Act would codify the protections offered by *Bostock* through amendments to Title VII of the Civil Rights Act, the Government Employee Rights Act (employment law covering appointees and certain other governmental officials), the Congressional Accountability Act (covering Congress), and the Civil Service Reform Act (covering the federal civil service) to replace references to “sex” with references to “sex (including sexual orientation and gender identity).”¹²²

2. Housing

Despite protections in some states, many LGBTQ+ Americans face discrimination in housing based on their sexual orientation and gender identity. There is no federal law explicitly protecting LGBTQ+ individuals from housing discrimination.

¹¹⁸ See BRAD SEARS, CHRISTY MALLORY, ANDREW R. FLORES, & KERITH J. CONRON, WORKPLACE DISCRIMINATION AND HARASSMENT AGAINST LGBT STATE EMPLOYEES 1, 5 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf> [<https://perma.cc/68GR-RUP2>].

¹¹⁹ See *id.* at 2.

¹²⁰ See H.R. 5 – *The Equality Act: Hearing Before the H. Comm on the Judiciary*, 116th Cong. 36–40 (2019) (testimony of Carter Brown, Founder and Exec. Dir., Black Transmen, Inc.).

¹²¹ H.R. REP. NO. 116-56, pt. 1, at 18.

¹²² See generally H.R. 15, 119th Cong. (2025); S. 1503, 119th Cong. (2025).

A study from the U.S. Department of Housing and Urban Development found that discrimination remains persistent against both same-sex couples and transgender individuals in the rental housing market based on their identities.¹²³ Legal discrimination impacts people of all ages: in 2019, a Missouri nursing home rejected the application of a lesbian couple that had been married for more than forty years because they were in a same-sex relationship.¹²⁴

The Equality Act would amend the Fair Housing Act (FHA) to expressly include “sexual orientation and gender identity” in the list of protected characteristics. Specifically, this amendment to the FHA would prohibit differential treatment on the basis of sexual orientation and gender identity in renting, selling, pricing, eviction, service provision, shelter access, homeowners’ insurance, mortgage lending, and other activities, along with harassment, coercion, and retaliation in the housing context.¹²⁵

3. *Public Accommodations and Public Facilities*

More than one in four LGBTQ+ Americans has experienced discrimination in a public space because of their gender identity or sexual orientation.¹²⁶ Among transgender Americans, that number is even higher—nearly half of transgender individuals report mistreatment while using a public space such as a store, restaurant, or hotel.¹²⁷

In a 2019 hearing before the House Judiciary Committee, Jami Contreras described a pediatrician’s denial of medical services for her six-month-old daughter because of Contreras’ and her wife’s status as a same-sex couple.¹²⁸

The Equality Act adds “sex (including sexual orientation and gender identity)” to the list of characteristics protected from discrimination in access to and use of public accommodations and facilities.¹²⁹ The bill also adds “sex (including sexual orientation and gender identity)” to the protected characteristics that the Attorney General may initiate a civil action to protect.¹³⁰ Under the Equality Act, businesses open to the public would face accountability

¹²³ See DIANE K. LEVY, DOUG WISSOKER, CLAUDIA L. ARANDA, BRENT HOWELL, ROB PITINGOLO, SARALE SEWELL & ROB SANTOS, A PAIRED-TESTING PILOT STUDY OF HOUSING DISCRIMINATION AGAINST SAME-SEX COUPLES AND TRANSGENDER INDIVIDUALS, at xiii–xiv (2017), <https://www.urban.org/research/publication/paired-testing-pilot-study-housing-discrimination-against-same-sex-couples-and-transgender-individuals> [<https://perma.cc/XAJ2-XZZ5>].

¹²⁴ See Tim Fitzsimons, *Judge Rules Against Lesbians Rejected From Retirement Home*, NBC NEWS (Jan. 18, 2019), <https://www.nbcnews.com/feature/nbc-out/judge-rules-against-elderly-lesbians-rejected-retirement-home-n960211> [<https://perma.cc/SY3U-782P>].

¹²⁵ See Thee Santos, Caroline Medina & Sharita Gruberg, *What You Need To Know About the Equality Act*, CTR. FOR AM. PROGRESS (Mar. 15, 2021), <https://www.americanprogress.org/article/need-know-equality-act/> [<https://perma.cc/WWP5-9J7S>].

¹²⁶ See Norris & Smith, *supra* note 5.

¹²⁷ See *id.*

¹²⁸ See H.R. 5 – *The Equality Act: Hearing Before the H. Comm on the Judiciary*, 116th Cong. 55–59 (2019) (testimony of Jami Contreras).

¹²⁹ See H.R. 5, 116th Cong. §§ 3–4 (2019).

¹³⁰ See *id.*

if they mistreat, discriminate against, or refuse service to LGBTQ+ individuals or on the basis of sex.

These protections extend beyond the LGBTQ+ community. With the addition of “sex” to civil rights law governing public accommodations and federally funded programs, the text clarifies protections for women where they were not previously explicitly articulated in statute.

Additionally, this section updates the range of public accommodations covered under civil rights law. The current version of the statute only includes not just hotels, inns, motels, or similar lodging; restaurants; and entertainment spaces such as movie theaters and sports arenas. The modern version covers 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 that provides health care, accounting, or legal services; and any train service, bus service, car service, taxi service, airline service, station, depot, or other establishment that provides transportation service.

This update ensures that all classes covered by the Civil Rights Act, including racial and religious minorities, will see expanded rights of access under the Equality Act.

4. Federally Funded Programs

Federally funded programs cover a wide range of programs, including homeless shelters, prisons, community health centers, adoption agencies, and schools. Discrimination in these systems and programs arises in a variety of forms. In prisons, for example, incarcerated LGBTQ+ persons report higher rates of solitary confinement, unsafe housing assignments, and denial of necessary medication and healthcare treatments.¹³¹

The Equality Act’s amendment to Title VI of the Civil Rights Act would include “sex (including sexual orientation and gender identity)” as protected characteristics, prohibiting mistreatment and refusal from these programs.¹³²

Like with public accommodations and facilities, the Equality Act extends explicit federal nondiscrimination protections to women through its inclusion of “sex” as a protected characteristic, which is not currently included in Title VI.

The Equality Act does not amend Title IX of the Education Amendments of 1972 or other authorizing statutes for specific federally funded programs. The committee report from the 116th Congress explains that “it is the Committee’s intention not to alter in any way Title IX or the scope or availability of its exemptions as they currently stand. Rather, Title IX and the revised Title VI should be read as being complementary provisions that provide overlapping protection against sex discrimination.”¹³³ Therefore, sex-segregated programs in schools could be maintained.

¹³¹ See Gráinne Donohue, Edward McCann & Michael Brown, *Views and Experiences of LGBTQ+ People in Prison Regarding their Psychosocial Needs: A Systematic Review of the Qualitative Research Evidence*, 18 INT’L J. ENV’T. RES. & PUB. HEALTH 9335, at 9–14 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8430972/> [https://perma.cc/NF6G-JNFE].

¹³² See H.R. 5, 116th Cong. § 6 (2019).

¹³³ H.R. REP. NO. 116-56, pt. 1, at 15 n.44.

5. Education

LGBTQ+ youth are in crisis. According to 2021 data from the GLSEN National School Climate Survey, 81.8% of LGBTQ+ students reported feeling unsafe in school because of their actual or perceived characteristics.¹³⁴ Nearly one-third of LGBTQ+ students missed at least one day of school in the previous month because they felt unsafe.¹³⁵ As transgender youth face mounting public discussion over their rights to use public bathrooms, participate in school activities, or simply exist in their gender identity at school, the mental health impacts have been severe: more than half of transgender young people have seriously considered suicide, and nearly one in five transgender youth have attempted to take their own lives.¹³⁶

The Equality Act adds “(including sexual orientation and gender identity)” in the definition of desegregation, as well as to the list of categories which the Attorney General may take action to protect, thereby making explicit that discrimination and mistreatment on the basis of sexual orientation or gender identity is prohibited in educational settings.¹³⁷

6. Credit

Discrimination in access to credit has adverse impacts on some of the most important and foundational investments of a lifetime, including mortgage, small business, student, credit card, and car loans. Access to credit is fundamental to economic stability and financial security for all Americans. A 2019 study revealed that same-sex borrowers were 73% more likely to be denied mortgage opportunities despite being “less risky overall.”¹³⁸

The Equality Act adds “(including sexual orientation and gender identity)” after “sex” in the list of protected characteristics, which would protect borrowers and credit holders, including prospective borrowers and credit holders, on the basis of sexual orientation and gender identity.¹³⁹

7. Jury Selection

LGBTQ+ people are disproportionately criminalized and targeted by law enforcement harassment and abuse.¹⁴⁰ A 2022 report found that LGBTQ+ people were more than twice as likely to be arrested and more than three times more

¹³⁴ See GLSEN, *supra* note 35, at 6.

¹³⁵ See *id.*

¹³⁶ 2023 U.S. National Survey on the Mental Health of LGBTQ Young People, THE TREVOR PROJECT, <https://www.thetrevorproject.org/survey-2023/> [https://perma.cc/5SE8-RXFF] (last visited June 14, 2025).

¹³⁷ See H.R. 5, 116th Cong. § 5 (2019).

¹³⁸ Tim Fitzsimons, *Same-Sex Borrowers 73 Percent More Likely to be Denied Mortgage, Study Finds*, NBC NEWS (Apr. 18, 2019), <https://www.nbcnews.com/feature/nbc-out/same-sex-borrowers-73-percent-more-likely-be-denied-mortgage-n996016> [https://perma.cc/CR8S-MTD7].

¹³⁹ See H.R. 5, 116th Cong. § 11 (2019).

¹⁴⁰ See *Criminal Justice*, MOVEMENT ADVANCEMENT PROJECT, <https://www.lgbtmap.org/policy-and-issue-analysis/criminal-justice> [https://perma.cc/9VBQ-64A4].

likely to be incarcerated than the general population.¹⁴¹ Without explicit prohibitions on discrimination in the jury selection process, the chances that LGBTQ+ defendants will be given a fair trial by a representative jury are lower.¹⁴² As the Center for American Progress’ analysis noted, “[a]lthough sex discrimination is prohibited in jury selection nationwide, in the [38] states that currently lack explicit [sexual orientation and gender identity] jury protections, attorneys may attempt to deprive LGBTQ people of their constitutional right to a jury of their peers.”¹⁴³ There remain no explicit federal prohibitions on nondiscrimination in jury selection based on sexual orientation or gender identity.

The Equality Act amends Chapter 121 of Title 28 of the United States Code to include sexual orientation and gender identity in the list of characteristics covered by nondiscrimination requirements for federal courts.¹⁴⁴ It also applies the Equality Act’s definitions and rules to the provisions governing jury service and selection, adding a section to Title 28 that applies the pregnancy and gender identity-related rules of construction and Religious Freedom Restoration Act-related provisions (see Section B. below) outlined in the bill to existing statute.¹⁴⁵

B. Greater Civil Rights Protections for All

The Equality Act also clarifies protections for other groups covered by federal civil rights laws.

1. Sex Discrimination

The Equality Act defines “sex” as inclusive of not just sexual orientation and gender identity, but also sex stereotypes, pregnancy, childbirth, or a related medical condition, and sex characteristics, including intersex traits. This means that the Act includes protections and legal recourse for individuals who are discriminated against because they do not conform with perceptions of stereotypes about their sex or because they are pregnant or could become pregnant. As mentioned previously, the Equality Act is also the first bill to provide explicit federal protections for intersex Americans.¹⁴⁶

¹⁴¹ See JANE HERETH, OVERREPRESENTATION OF PEOPLE WHO IDENTIFY AS LGBTQ+ IN THE CRIMINAL LEGAL SYSTEM 3 (2022), <https://safetyandjusticechallenge.org/wp-content/uploads/2022/05/LQBTQOverrepresentationReport-1.pdf> [https://perma.cc/D5NJ-MCYG].

¹⁴² See Dan Avery, *Jurors Can Be Rejected for Being Gay. The Equality Act Could Change That*, NBC NEWS (Feb. 25, 2021), <https://www.nbcnews.com/feature/nbc-out/jurors-can-be-rejected-being-gay-equality-act-could-change-n1258761> [https://perma.cc/RGG6-YWTG].

¹⁴³ Santos et al., *supra* note 125. Note that we have updated the number in the original quote to reflect the number of states that prohibit discrimination based on sexual orientation or gender identity at the time that this essay was written. See THE HUMAN RIGHTS CAMPAIGN FOUNDATION (2024), <https://reports.hrc.org/2023-state-equality-index> [https://perma.cc/8U63-3W5G].

¹⁴⁴ See H.R. 5, 116th Cong. § 12 (2019).

¹⁴⁵ See *id.*

¹⁴⁶ See *id.* § 9.

2. *Public Accommodations and Federally Funded Programs*

In several of these areas, the Equality Act clarifies protections for groups covered by civil rights law beyond the LGBTQ+ community. With the addition of sex to civil rights law governing public accommodations and federally funded programs, the text clarifies protections for women where they were not previously explicitly articulated in statute. The bill also expands on the current list of public accommodations covered by the Civil Rights Act, updating the list to resemble that of the Americans with Disabilities Act.¹⁴⁷ In doing so, the bill clarifies protections for all groups covered by civil rights law governing public accommodations—including racial and religious minorities.

3. *Discrimination Based on Perceptions or By Association*

The Equality Act also clarifies protections for all covered groups from broader types of discrimination, specifically discrimination based on perception and discrimination based on association. Regarding the former, the bill clarifies that discrimination against someone based on the perception or belief that they identify with a certain protected characteristic is prohibited, even if that belief is wrong. The bill also clarifies that discrimination against an individual because of their association with someone of a protected characteristic is prohibited.

4. *Religious Liberty*

The Equality Act expands protections against discrimination on the basis of religion. For example, the Act would make it illegal for a retailer to refuse service to a customer because of their religion.¹⁴⁸ It does not undermine existing religious exemptions: in the amended bills that include a religious exemption, like the Fair Housing Act and Title VII, it retains those provisions and maintains the rights of religious organizations to exercise those exemptions.¹⁴⁹

V. CONCLUSION

The late Congresswoman Jordan's legacy as a civil rights advocate and voice of conscience in a time of constitutional crisis has made her among the great legends of congressional history. She fought for checks and balances in the government, expanded voting rights, women's equality, and immigration reform. She overcame significant barriers to serve her country and was respected by her colleagues, beloved by the people she served, and recognized for her accomplishments with the Presidential Medal of Freedom. Yet her life could have been upended by the gender of the person she loved. I think often of the emotional toll the secrecy must have taken and the emotional burden the threat of outing would have been.

¹⁴⁷ See *The Equality Act: LGBTQ Rights Are Human Rights: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. 18 (2021) (testimony of Alphonso David, President, Hum. Rts. Campaign).

¹⁴⁸ See H.R. 5, 116th Cong. § 3 (2019).

¹⁴⁹ Cf. *id.* §§ 7, 10.

I look back at myself as a young man when the Briggs Initiative appeared on my home state's ballot. What would my career have looked like if I had allowed the fear that campaign against gay and lesbian teachers instilled to stifle my aspirations to teach? How many young LGBTQ+ teachers did we lose out on because they were intimidated, and how many do we miss out on today as new laws restrict their ability to work openly in the classroom? Would the United States not be a better place if every LGBTQ+ person was able to participate in our rich and varied society free of discrimination?

When we allow discrimination to run unchecked, we limit our own potential. But the solution is in our hands. With the Equality Act, we can improve outcomes and create a different future for LGBTQ+ Americans. We can close persistent gaps in equity, lessen disparities, and provide for full personhood under the law. We can establish the federal legal grounds to quickly respond when attacks on the LGBTQ+ are launched. By securing basic civil rights protections, we ensure that *every* American has the freedom to live openly and reach for every opportunity before them, regardless of who they are or who they love.

More than 500 businesses, 650 organizations, 255 Members of Congress, and 70% of Americans agree: the time for the Equality Act is now. Congress must deliver on this critical piece of legislation—for LGBTQ+ Americans and for all of us.