

ANTI-TRANSGENDER LEGISLATION IN ARIZONA,  
ALABAMA, AND ARKANSAS: ARBITRARY MORAL  
DISCRIMINATION MASQUERADING AS CHILD PROTECTION

ABSTRACT

The twenty-first century saw rapid positive changes in the perception of the LGBTQIA+ community. However, an onslaught of anti-transgender legislation seeking to criminalize various aspects of transgender existence continues to sweep across the United States. This Comment analyzes laws in Arizona, Alabama, and Arkansas that target transgender children. The Comment posits that these laws are not effective as to their stated purposes of child protection. It also argues that the laws are facially discriminatory because they inexplicably consider transgender regret but ignore cisgender regret and disallow transgender affirmation but allow cisgender affirmation. The Comment goes on to argue that the laws' stated purposes of child protection are a pretext for discrimination and that the laws are nothing more than thinly veiled bigotry. Finally, the Comment briefly identifies methods of preserving current protections for transgender people and recommends a deliberate effort be made to expand the social definition of gender affirmation as a means of combating anti-transgender sentiment and providing additional legal protections.

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## INTRODUCTION

As perceptions of LGBTQIA+ people become increasingly positive,<sup>1</sup> more support for the community has helped bring about legal recognition and other protections for LGBTQIA+ people.<sup>2</sup> However, vocal and powerful opposition to those changes, particularly among right wing and Evangelical Christian individuals, has increased.<sup>3</sup> Transgender (trans)<sup>4</sup> people are currently a primary target of this opposition, as a staggering number of attempted bills and successful state laws attack numerous aspects of their existence.<sup>5</sup> Many of these laws, including those in Arizona, Alabama, and Arkansas, target transgender children by disallowing gender affirming behaviors for transgender children—behaviors that align with their preferred gender identity rather than their assigned sex—while continuing to allow gender affirming behaviors for cisgender<sup>6</sup> children.<sup>7</sup> This Comment posits that the laws are facially discriminatory because they explicitly disallow transgender affirmation, and inexplicably consider trans regret but ignore cis regret. The Comment goes on to argue that the laws’ stated purposes

1. See *LGBTQ+ Rights*, GALLUP, <https://news.gallup.com/poll/1651/gay-lesbian-rights.aspx> (last visited Nov. 7, 2023) (reporting a forty-four-point increase in support for gay marriage since 1996).

2. See *Obergefell v. Hodges*, 576 U.S. 644, 681 (2015) (protecting gay marriage); Respect for Marriage Act, Pub. L. No. 117-228 (codified as amended in scattered sections of 1 U.S.C. and 28 U.S.C.) (protecting gay marriage); *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1753 (2020) (protecting gay people from employment discrimination).

3. See Anne Branigin & N. Kirkpatrick, *Anti-trans Laws are on the Rise. Here’s a Look at Where—and What Kind*, THE WASH. POST (Oct. 14, 2022, 8:00 AM), <https://www.washingtonpost.com/lifestyle/2022/10/14/anti-trans-bills/>; *Legislation Affecting LGBTQ Rights Across the Country*, ACLU, <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country> (last updated Dec. 2, 2022); Kate Sosin, *Why is the GOP Escalating Attacks on Trans Rights? Experts Say the Goal is to Make Sure Evangelicals Vote*, PBS (May 20, 2022, 3:37 PM), <https://www.pbs.org/newshour/politics/why-is-the-gop-escalating-attacks-on-trans-rights-experts-say-the-goal-is-to-make-sure-evangelicals-vote>.

4. This Comment uses the terms “transgender” and “trans” interchangeably, and the terms “cisgender” and “cis” interchangeably.

5. See Branigin & Kirkpatrick, *supra* note 3; *Legislation Affecting LGBTQ Rights Across the Country*, *supra* note 3.

6. *LGBTQ+ Glossary*, IT GETS BETTER PROJECT, [https://itgetsbetter.org/glossary/?gclid=CjwKCAiA76-dBhByEiwAA0\\_s9YlbWlRDNKu3TPC6-ViA0XeFHzHsl-U7Lle55YV075Nqibs2jF0mNB0CmywQAvD\\_BwE](https://itgetsbetter.org/glossary/?gclid=CjwKCAiA76-dBhByEiwAA0_s9YlbWlRDNKu3TPC6-ViA0XeFHzHsl-U7Lle55YV075Nqibs2jF0mNB0CmywQAvD_BwE) (last visited Dec. 27, 2022) (defining cisgender as “[a] person whose gender identity matches the gender they were assigned at birth”).

7. ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. §§ 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022), *invalidated by* *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at \*8 (E.D. Ark. June 20, 2023); ALA. CODE § 26-26-4 (2022). In June 2023, the United States District Court for the Eastern District of Arkansas struck down as unconstitutional, and permanently enjoined, Arkansas’ law in *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at \*38 (E.D. Ark. June 20, 2023).

of child protection are a pretext for discrimination and that the laws are nothing more than thinly veiled bigotry. Finally, this Comment recommends a deliberate effort be made to expand the social definition of gender affirmation through already existing educational efforts as a means of combatting anti-trans sentiment and providing additional legal protections. Part I broadly discusses gender affirmation and introduces various anti-trans laws targeting it, including those in Alabama, Arkansas, and Arizona; Part II identifies and dismantles the flaws inherent to these laws; and Part III provides a general survey of trans-protective legal avenues and offers recommendations to combat anti-trans efforts.

## I. BACKGROUND

### A. Gender Affirmation

Gender affirmation is a broad term describing various actions and behaviors whereby individuals seek personal and social affirmation of their unique gender identity.<sup>8</sup> While affirming a person's gender is not a trans-exclusive endeavor, it is almost entirely associated with the trans community.<sup>9</sup> In the trans community, gender affirmation often entails affirming an identity other than that traditionally associated with a person's assigned sex at birth.<sup>10</sup> Opponents of transgender affirmation by minors frequently frame this affirmation as a race to surgical and other medical intervention.<sup>11</sup> However, this criticism is flawed, because transgender affirmation looks different for every person.<sup>12</sup> It encompasses a broad range of actions, from simple behavioral changes to relatively rare medical intervention.<sup>13</sup> Three broad categories of gender affirmation include: 1) non-medical social affirmation; 2) legal affirmation; and 3) medical affirmation.<sup>14</sup> Non-medical social affirmation comprises a broad range of actions that allow persons to affirm their gender identity socially without medical

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8. See *Gender*, WORLD HEALTH ORG., [https://www.who.int/europe/health-topics/gender#tab=tab\\_1](https://www.who.int/europe/health-topics/gender#tab=tab_1) (last visited Nov. 8, 2023); Patrick Boyle, *What is Gender-Affirming Care? Your Questions Answered*, ASS'N OF AM. MED. COLLS. (Apr. 12, 2022) <https://www.aamc.org/news-insights/what-gender-affirming-care-your-questions-answered>; Aids Council of New South Wales, *What is Gender Affirmation*, TRANS HUB, <https://www.transhub.org.au/101/gender-affirmation> (last visited Nov. 8, 2023); Jae M. Sevelius, *Gender Affirmation: A Framework for Conceptualizing Risk Behavior Among Transgender Women of Color*, 68 SEX ROLES 675, 675–76 (2013); RILEY EDWARDS, GENDER AFFIRMATION AT RMIT: A GUIDE TO SUPPORTING GENDER AFFIRMATION 3 (2019).

9. See *Gender*, *supra* note 8; Boyle, *supra* note 8; Sevelius, *supra* note 8, at 675–76; Aids Council of New South Wales, *supra* note 8.

10. *LGBTQ+ Glossary*, *supra* note 6 (defining assigned sex at birth as the assignment of sex (male or female) at birth, “usually based on the appearance of [the child’s] external anatomy,” which is distinct from gender); see *Gender*, *supra* note 8; Boyle, *supra* note 8; Sevelius, *supra* note 8, at 675–76; Aids Council of New South Wales, *supra* note 8; EDWARDS, *supra* note 8, at 3.

11. See Ike Evans, *Gender Affirmation Can be Life and Death*, HOGG FOUND. FOR MENTAL HEALTH BLOG (Sept. 30, 2021), <https://hogg.utexas.edu/podcast-gender-affirmation>; Aids Council of New South Wales, *supra* note 8; EDWARDS, *supra* note 8, at 3.

12. Aids Council of New South Wales, *supra* note 8; see Sevelius, *supra* note 8, at 675–76.

13. See Aids Council of New South Wales, *supra* note 8; Ian T. Nolan, Christopher J. Kuhner, & Geolani W. Dy, *Demographic and Temporal Trends in Transgender Identities and Gender Confirming Surgery*, 8 TRANSLATIONAL ANDROLOGY AND UROLOGY 184, 187–88 (2019); AM. SOC’Y OF PLASTIC SURGEONS, PLASTIC SURGERY STATISTICS REPORT 26 (2020).

14. Aids Council of New South Wales, *supra* note 8; see Sevelius, *supra* note 8, at 675–76.

intervention.<sup>15</sup> Such actions might include using different names and pronouns, coming out,<sup>16</sup> voice augmentation, hairstyle choices, decoration choices, or wearing particular clothing, makeup, and accessories.<sup>17</sup> Legal affirmation refers to how individuals are characterized and treated by legal and legislative systems.<sup>18</sup> Legal affirmation may include altering an individual's designated name or gender on personal identification or documentation and how governmental systems like the criminal justice or immigration system characterize individuals.<sup>19</sup> Medical affirmation (usually under a doctor's supervision) encompasses treatments ranging from hormone interventions to various surgical procedures like plastic surgery or the comparatively-rare genital surgery.<sup>20</sup>

The importance of gender affirmation cannot be understated, particularly for developing children.<sup>21</sup> Non-medical social affirmation allows children to feel a sense of belonging and present themselves in a way that allows them to be treated the way they want to be treated.<sup>22</sup> Both are fundamental aspects of healthy child development.<sup>23</sup> Further, belonging is a basic human need that directly impacts both physical and mental wellbeing.<sup>24</sup> Sense of belonging affects how people feel supported, valued, heard, and appreciated,<sup>25</sup> and helps regulate depression, anxiety, suicide, stress management abilities, resiliency in hardship, and other coping mechanisms that contribute to long-term physical and mental wellbeing.<sup>26</sup> In our highly-gendered world<sup>27</sup> this sense of belonging is closely tied to how a child affirms their gender identity.<sup>28</sup> This is particularly true for trans children.<sup>29</sup>

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15. Aids Council of New South Wales, *supra* note 8; see Sevelius, *supra* note 8, at 675–76.

16. *LGBTQ+ Glossary*, *supra* note 6 (defining coming out as “[t]he process through which a person accepts their sexual orientation and/or gender identity as part of their overall identity,” often involving “sharing that identity with others”).

17. Aids Council of New South Wales, *supra* note 8; see Sevelius, *supra* note 8, at 675–76.

18. Aids Council of New South Wales, *supra* note 8.

19. *Id.*

20. *Id.*

21. See Sevelius, *supra* note 8, at 685; Evans, *supra* note 11.

22. Sevelius, *supra* note 8, at 675–76.

23. Evans, *supra* note 11; Angela Theisen, *Is Having a Sense of Belonging Important?*, MAYO CLINIC HEALTH SYS. (Dec. 8, 2021), <https://www.mayoclinichealthsystem.org/hometown-health/speaking-of-health/is-having-a-sense-of-belonging-important>.

24. Theisen, *supra* note 23; Dorit Haim-Litevsky, Reut Komemi, & Lena Lipskaya-Velikovsky, *Sense of Belonging, Meaningful Daily Life Participation, and Well-Being: Integrated Investigation*, INT'L J. OF ENV'T RSCH AND PUB. HEALTH, 2023, at 1–2.

25. Haim-Litevsky, Komemi, & Lipskaya-Velikovsky *supra* note 24.

26. Theisen, *supra* note 23.

27. *Exploring Gender and Gender Identity*, COUNCIL OF EUR., <https://www.coe.int/en/web/gender-matters/exploring-gender-and-gender-identity> (last visited Nov. 10, 2023).

28. See Jason Rafferty, *Gender Identity Development in Children*, HEALTHYCHILDREN.ORG, <https://www.healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-In-Children.aspx>? (last updated May 11, 2022).

29. See Ashley Austin, Shelley L. Craig, Sandra D'Souza, & Lauren B. McInroy, *Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors*, 37 J. OF INTERPERSONAL VIOLENCE N2696, N2701 (2020).

Transgender affirmation is often distinct from cisgender affirmation because trans people face a different set of obstacles and risks that result in less overall gender affirmation or less efficacy of their chosen affirmation.<sup>30</sup> Problems faced by trans people regularly stem from general societal stigma, rejection, outright discrimination and objectification, or sexual and other violence.<sup>31</sup> These problems place trans people at a higher risk for depression, anxiety, suicide, and substance abuse, among other issues.<sup>32</sup> These risks are only exacerbated by the lack of belonging that accompanies an individuals' inability to affirm their gender.<sup>33</sup> Something as simple as allowing a trans child to use their chosen name dramatically reduces their heightened risk<sup>34</sup> of suicide and depression.<sup>35</sup> Therefore, the sense of belonging and human efficacy gained from transgender affirmation is extremely important to help alleviate these issues.<sup>36</sup>

### B. Transgender-Targeted Legislation

Despite the vital importance of gender-affirming care to trans children, and despite the fact that most Americans support extending rights and protections for trans people,<sup>37</sup> the United States has seen a significant rise in anti-trans legislation.<sup>38</sup> The American Civil Liberties Union (ACLU) reports that legislation targeting trans rights has increased from nineteen bills proposed in state legislatures in 2018, to 155 bills in 2022.<sup>39</sup> Other reports indicate over 300 bills targeting the LGBTQIA+ community in 2022 alone.<sup>40</sup> As of July 2023, 561 anti-trans bills have been introduced in state legislatures.<sup>41</sup> Beyond legislative enactments targeting trans people, numerous states have sought to impose other restrictions through

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30. See Sevelius, *supra* note 8, at 675–76.

31. *Id.*

32. *Key Transgender Health Concerns*, VANDERBILT UNIV. MED. CTR. (2012), <https://www.vumc.org/lgbtq/key-transgender-health-concerns>.

33. See Sevelius, *supra* note 8, at 675–76; *Five Things to Know About Gender-Affirming Health Care*, ACLU (July 15, 2021), <https://www.aclu.org/news/lgbtq-rights/five-things-to-know-about-gender-affirming-health-care>.

34. Marla E. Eisenberg & Michael D. Resnick, *Suicidality Among Gay, Lesbian and Bisexual Youth: The Role of Protective Factors*, 39 J. OF ADOLESCENT HEALTH 662, 662 (2006).

35. Evans, *supra* note 11.

36. See *Five Things to Know About Gender-Affirming Health Care*, *supra* note 33.

37. Kim Parker, Juliana Menasce Horowitz, & Anna Brown, *Americans' Complex Views on Gender Identity and Transgender Issues*, PEW RSCH. CTR. (June 28, 2022), <https://www.pewresearch.org/social-trends/2022/06/28/americans-complex-views-on-gender-identity-and-transgender-issues/> (Some reports indicate only 10% of people oppose or strongly oppose trans protections.); Daniel Greenberg, Maxine Najle, Natalie Jackson, Oyindamola Bola, & Robert P. Jones, *America's Growing Support for Transgender Rights*, PUB. RELIGION RSCH. INST. (June 11, 2019), <https://www.prii.org/research/americas-growing-support-for-transgender-rights/>.

38. Branigin & Kirkpatrick, *supra* note 3.

39. *Id.*

40. *1A Remaking America: Why the GOP Has Rallied Behind Anti-Trans Legislation*, NPR (June 2, 2022, 3:44 PM), <https://www.npr.org/2022/06/02/1102738161/1a-remaking-america-why-the-gop-has-rallied-behind-anti-trans-legislation>.

41. *2023 Anti-Trans Bills Tracker*, TRANS LEGIS. TRACKER, <https://translegislation.com> (last visited Nov. 10, 2023).

executive agency decisions<sup>42</sup> and medical board restrictions.<sup>43</sup> The overwhelming majority of actions have been introduced in Southeastern and Midwestern States, while others can be found in isolated, conservative states like Arizona and Wyoming.<sup>44</sup>

These bills cover topics including restrooms, athletics, school curriculums, and health care restrictions.<sup>45</sup> The bills often serve as political maneuvers in fearmongering religiously-tied political campaigns.<sup>46</sup> By spreading misinformation and stoking fear in their constituents—who are often Evangelical Christians—political proponents of anti-trans sentiment help rally support and votes for their wider political agendas and campaigns.<sup>47</sup> While 90% of these proposed bills fail, those that succeed wreak havoc on various aspects of a trans person’s life. And when a bill fails, that failure does not end the onslaught of anti-trans legislation; anti-trans proponents often merely move on to other bills or forms of discrimination.<sup>48</sup>

Between 2021 and 2022, sixty-two bills in twenty-five states were proposed to restrict healthcare for trans youth.<sup>49</sup> Nearly all of the bills died or were carried over to the 2023 legislative session.<sup>50</sup> However, Arizona, Alabama, and Arkansas successfully passed proposed anti-trans bills into law.<sup>51</sup> Arizona’s law is referred to by its procedural name, Senate Bill (SB) 1138.<sup>52</sup> Alabama’s law is called the Alabama Vulnerable Child Compassion and Protection Act (V-CAP).<sup>53</sup> Arkansas’s law is called the Arkansas Save Adolescents from Experimentation (SAFE) Act.<sup>54</sup> As of July 2023, Arkansas and Alabama’s laws passed, but were blocked by court order, while Arizona’s entered into effect in March 2023.<sup>55</sup> The following Subsections compare the similarities, and at times identicalities, between the three passed laws as well as some of those that failed. The

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42. See *Re: Whether Certain Medical Procedures Performed on Children Constitute Child Abuse (RQ-0426-KP)*, Tex. Att’y Gen. Op. No. KP-0401 (Feb. 18, 2022) (categorizing transgender affirmation as child abuse).

43. See FLA. ADMIN. CODE ANN. r. 64B8-9.019 (2022) (changing practice standards to forbid particular hormone treatments and surgical procedures for treating gender dysphoria).

44. See Branigin & Kirkpatrick, *supra* note 3.

45. See *e.g.*, *Legislation Affecting LGBTQ Rights Across the Country*, *supra* note 3; Sosin, *supra* note 3.

46. See Branigin & Kirkpatrick, *supra* note 3.

47. Sosin, *supra* note 3.

48. See *2023 Anti-Trans Bills Tracker*, *supra* note 41; Branigin & Kirkpatrick, *supra* note 3.

49. *Legislation Affecting LGBTQ Rights Across the Country*, *supra* note 3; *Legislation Affecting LGBTQ Rights Across the Country 2021*, ACLU, <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country-2021> (last updated Dec. 17, 2021).

50. *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures*, ACLU, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights?redirect=legislation-affecting-lgbtq-rights-a-cross-country> (last updated Nov. 3, 2023).

51. Branigin & Kirkpatrick, *supra* note 3; ARIZ. REV. STAT. ANN. § 32-3230 (2022); ARK. CODE ANN. § 20-9-1502 (2022); ALA. CODE § 26-26-4 (2022).

52. S.B. 1138, 55th Leg., 2d Reg. Sess. (Ariz. 2022).

53. 2022 Ala. Laws 2022-289 § 1.

54. ARK. CODE ANN. § 20-9-1500 (2022).

55. See Branigin & Kirkpatrick, *supra* note 3; *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at \*38 (E.D. Ark. June 20, 2023).

categories of comparison include the laws' stated justifications, activities prohibited, and sanctions for violation.

### 1. Stated Purposes of the Laws

Each law identifies child protection or general public health as its purported purpose.<sup>56</sup> As justification for this purpose, the laws declare risks associated with the unknown nature of hormonal and surgical procedures and a dangerous lack of study on the subject.<sup>57</sup> In varying levels of detail, the laws describe a myriad of harms that allegedly result from hormonal treatment and surgical intervention.<sup>58</sup> These include hormonal side effects like diseases leading to stroke, heart attack, cancers, blood clots, tumors, and liver dysfunction; and surgical side effects like infection, sterilization, and other difficulties requiring medical intervention.<sup>59</sup> Alabama's law even implies the treatments lead to higher substance abuse, depression, psychiatric hospitalization, and death rates.<sup>60</sup>

### 2. Prohibitions Under the Laws

Arizona, Alabama, and Arkansas's laws forbid two broad categories of actions: hormonal and surgical procedures involving minors.<sup>61</sup> Generally, the prohibited hormonal procedures include puberty blocking medications to prevent "normal" puberty, and the administration of supraphysiologic<sup>62</sup> doses of cross-sex hormones.<sup>63</sup> "Puberty-blocking medications" refers to the administration of hormones to those assigned male sex at birth that prevent secretion of testosterone, and the administration of hormones to those assigned female sex at birth that prevent secretion of estrogen and progesterone.<sup>64</sup> "Supraphysiologic doses of cross-sex hormones" refers to the administration of hormones like testosterone and other androgens to those assigned female sex at birth<sup>65</sup> and estrogen to those assigned male sex at birth.<sup>66</sup>

Broadly categorized, the prohibited surgical procedures are genital and non-genital surgeries.<sup>67</sup> Genital procedures include various forms of

56. S. 184 § 1, 2022 Leg., Reg. Sess. (Ala. 2022); H.R. 1570 § 2(1), 93d Gen. Assemb., Reg. Sess. (Ark. 2021); S. 1138 § 3(1), 55th Leg., 2d Reg. Sess. (Ariz. 2022).

57. See 2022 Ala. Laws 2022-289 § 2(11)–(14); H.R. 1570 § 2(5), (6)(B), (7) 93d Gen. Assemb., Reg. Sess. (Ark. 2021); S. 1138 § 3(6), (8), (11), 55th Leg., 2d Reg. Sess. (Ariz. 2022).

58. S. 1138 § 3(8), (10) 55th Leg., 2d Reg. Sess. (Ariz. 2022); 2022 Ala. Laws 2022-289 § 2(11)–(14); H.R. 1570 § 2(8) 93d Gen. Assemb., Reg. Sess. (Ark. 2021).

59. S. 1138 § 3(8), (10) 55th Leg., 2d Reg. Sess. (Ariz. 2022); 2022 Ala. Laws 2022-289 § 2(11)–(14).

60. 2022 Ala. Laws 2022-289 § 2(14).

61. ARK. CODE ANN. §§ 20-9-1501–02 (2022); ALA. CODE § 26-26-4 (2022); ARIZ. REV. STAT. ANN. § 32-3230(A) (2022).

62. *Supraphysiologic*, MERRIAM-WEBSTER MED. DICTIONARY 889 (Pease, 1st ed. 2007) (defining *supraphysiologic* as "greater than normally present in the body").

63. ALA. CODE § 26-26-4 (2022); ARK. CODE ANN. § 20-9-1501(2), (11), (6)(A)(ii).

64. ARK. CODE ANN. § 20-9-1501(11).

65. See ALA. CODE § 26-26-4(a)(2) (2022).

66. See *id.* at § 4(a)(3).

67. See ARK. CODE ANN. § 20-9-1501 (2022) (defining types of gender surgeries).

removal, reconstruction, or addition of real or simulated genital parts.<sup>68</sup> Non-genital procedures generally encompass a broader range of options including surgeries involving breasts.<sup>69</sup> For example, Arkansas' SAFE Act and Arizona's SB 1138 prohibit mammoplasty for those assigned male sex at birth and subcutaneous mastectomy for those assigned female sex at birth.<sup>70</sup> Other non-genital surgeries prohibited for those assigned male sex at birth may include "facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal augmentation, [and] hair reconstruction."<sup>71</sup> Others prohibited for those assigned female sex at birth may include voice surgery, liposuction, lipofilling, and pectoral implants.<sup>72</sup> Some laws contain seemingly open ended prohibitions against any aesthetic procedure potentially perceived as contrary to what is traditionally "acceptable" for persons assigned a particular sex at birth.<sup>73</sup> For instance, Arkansas's SAFE Act references the removal or alteration of body parts "typical for the individual's biological sex."<sup>74</sup> It also lists many banned procedures including an undefined and unrestricted catch-all prohibiting "various aesthetic procedures."<sup>75</sup> Similarly, numerous laws, including Alabama's V-CAP, prohibit "[r]emoving any healthy or non-diseased body part or tissue."<sup>76</sup>

The laws do not contain blanket bans on the applicable hormonal and surgical procedures for all minors.<sup>77</sup> Instead, they limit their application to transgender affirmation and transition.<sup>78</sup> Both Arizona and Arkansas' laws use precisely the same language, restricting the provisions to procedures "performed for the *purpose* of assisting an individual with a gender transition."<sup>79</sup> Similarly, Alabama's law restricts its provisions to procedures "performed for the *purpose* of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor's [assigned] sex" at birth.<sup>80</sup> Many failed bills employed nearly identical language that restricted

68. See ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. § 20-9-1501(7) (2022); ALA. CODE § 26-26-4(a)(5) (2022).

69. ARIZ. REV. STAT. ANN. § 32-3230(C)(4)(c) (2022); ARK. CODE ANN. § 20-9-1501(9)(A) (2022); 2022 Ala. Laws Act No. 2022-289 § 2(8) (S.B. 184).

70. ARIZ. REV. STAT. ANN. § 32-3230(C)(4)(c) (2022); ARK. CODE ANN. § 20-9-1501(9)(A) (2022); *Mammoplasty*, MERRIAM-WEBSTER MED. DICTIONARY 515 (Pease, 1st ed. 2007) (defining mammoplasty as "plastic surgery of the breast"); *Mastectomy*, MERRIAM-WEBSTER MED. DICTIONARY 520 (Pease, 1st ed. 2007) (defining mastectomy as "surgical removal of all or part of the breast . . .").

71. ARK. CODE ANN. § 20-9-1501(9)(A) (2022).

72. *Id.* at § 20-9-1501(9)(B).

73. *Id.* at § 20-9-1501(6)(A)(i) (2022); ALA. CODE § 26-26-4(a)(6) (2022).

74. ARK. CODE ANN. § 20-9-1501(6)(A)(i) (2022).

75. *Id.* at § 20-9-1501(9)(A)-(B).

76. ALA. CODE § 26-26-4(a)(6) (2022).

77. ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. § 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022); ALA. CODE § 26-26-4(a) (2022).

78. ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. § 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022); ALA. CODE § 26-26-4(a) (2022).

79. ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022) (emphasis added); ARK. CODE ANN. § 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022) (emphasis added).

80. ALA. CODE § 26-26-4(a) (2022) (emphasis added).



procedures when their purpose was affirmation inconsistent with the minor's assigned sex at birth.<sup>81</sup>

### 3. Sanctions Under the Laws

Most of the medical restriction laws prohibit conduct by medical professionals<sup>82</sup> and at times conduct of schoolteachers, counselors, or administrators.<sup>83</sup> The resulting punishments include professional misconduct subject to licensing sanctions,<sup>84</sup> criminal sanctions up to felony level,<sup>85</sup> and personal liability for violators.<sup>86</sup>

## II. ANTI-TRANS LAWS ARE INEFFECTIVE AS TO THEIR STATED PURPOSE OF CHILD PROTECTION

The stated purpose of most trans-targeting laws is child health and safety.<sup>87</sup> However, the application of these laws only to trans children<sup>88</sup> exposes how far from the truth this supposed purpose is. The laws are a pretext, an attempt to persecute trans people under the guise of child safety.<sup>89</sup> They cosign cisgender affirmation but restrain transgender affirmation, all while implicitly acknowledging the importance of gender affirmation more broadly.<sup>90</sup> They outline risks associated with gender affirming medical care, but ignore them for cis people.<sup>91</sup> They discuss trans regret associated with gender affirming medical care, but ignore cis regret.<sup>92</sup> Overall, their limited application to transgender affirmation and transition makes clear that child safety is not of concern.<sup>93</sup>

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81. S. 1045 § 2(A), 55th Leg., 2d Reg. Sess. (Ariz. 2022); H.R. 211 § 1(3), 2022 Leg., Reg. Sess. (Fla. 2022).

82. ARK. CODE ANN. § 20-9-1502 (2022); ALA. CODE § 26-26-4(a) (2022); ARIZ. REV. STAT. ANN. § 32-3230(A) (2022).

83. ALA. CODE § 26-26-5 (2022).

84. ARK. CODE ANN. § 20-9-1504 (2022).

85. ALA. CODE § 26-26-4(c) (2022).

86. ARK. CODE ANN. § 20-9-1504(b)–(c)(1) (2022) (Arkansas' SAFE Act seemingly provides nearly universal standing to enforce violations); *id.* at § 20-9-1504(b) (“A person may assert an actual or threatened violation of this subchapter . . .”).

87. S. 184 § 1, 2022 Leg., Reg. Sess. (Ala. 2022); H.R. 1570 § 2(1), 93rd Gen. Assemb., Reg. Sess. (Ark. 2021); S. 1138 § 3(1), 55th Leg., 2d Reg. Sess. (Ariz. 2022).

88. ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. § 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022); ALA. CODE § 26-26-4(a) (2022); S. 1045 § 2(A), 55th Leg., 2d Reg. Sess. (Ariz. 2022); H.R. 211 § 1(3), 2022 Leg., Reg. Sess. (Fla. 2022).

89. *See infra* Section III.

90. *See infra* Section II.C.

91. *See* ALA. CODE § 26-26-2(11)–(14) (2022); H.R. 1570 § 2(5), (6)(B), (7), (8), 93rd Gen. Assemb., Reg. Sess. (Ark. 2021); S. 1138 § 3(6), (8), (11), 55th Leg., 2d Reg. Sess. (Ariz. 2022).

92. *See* ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ALA. CODE § 26-26-2(11)–(14) (2022); Jonathan J. Cooper, *Arizona Lawmakers Vote to Restrict Trans Athletes, Surgeries*, ASSOCIATED PRESS (Mar. 24, 2022, 2:24 PM), <https://apnews.com/article/arizona-gender-reassignment-surgery-ban-4f1b1a593d722edc5e856b5a4cfe9160>; HRC Staff, *HRC: Florida's Decision to Refuse Life-Saving Care for Trans Youth Only Intensifies a Public Health Crisis and Will Cause Real Harm to Countless Youth and Their Families*, HUM. RTS. CAMPAIGN (Nov. 4, 2022), <https://www.hrc.org/press-releases/hrc-floridas-decision-to-refuse-life-saving-care-for-trans-youth-only-intensifies-a-public-health-crisis-and-will-cause-real-harm-to-countless-youth-and-their-families>.

93. *See infra* Section III.

The following Section proves this point. It demonstrates the broader nature of gender affirmation beyond transgender affirmation and dismantles the purported purposes of these laws. It proceeds with analysis of (a) surgical and hormonal procedures, (b) regret and irreversibility, and (c) cisgender affirmation. Despite overwhelming agreement in the medical community of the efficacy of the transgender affirmative activities banned by these laws,<sup>94</sup> the following Sections eschew many arguments to the merits of this evidence. In the face of such evidence, proponents of the laws have shown an unwavering commitment to the laws and the misguided beliefs underpinning them.<sup>95</sup> Instead, the following Sections show that the laws are ineffective to their stated purpose of child protection. The affirmative activities and supposed risks of affirmation extend beyond the trans community and at times take place much more frequently in the cis-child population.

*A. Surgical and Hormonal Procedures and their Associated Risks Occur for Cis and Trans Children Alike*

The recent wave of anti-trans medical laws prohibit various hormonal procedures and genital or non-genital surgeries, broadly claiming numerous harms to children from a laundry list of procedures.<sup>96</sup> However, the laws only apply to children undergoing such procedures for the purposes of transgender affirmation and transition.<sup>97</sup> By restricting their application in this way, the laws incomprehensibly tie solving child-inflicted harm to the child's purpose behind getting the procedures in the first place.<sup>98</sup> Additionally, by restricting their application to trans children, the laws implicitly acknowledge the procedures' employment beyond the trans community.<sup>99</sup> Taking the statutes at face value, that the procedures do cause the harms listed, they offer no explanation why the provisions do not apply

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94. *AMA: Leading Medical Organizations Fight For Transgender Americans*, AM. MED. ASSOC. (July 10, 2019), <https://www.ama-assn.org/press-center/press-releases/ama-leading-medical-organizations-fight-transgender-americans>; *Doctors Agree: Gender-Affirming Care is Life-Saving Care*, ACLU (Apr. 1, 2021), <https://www.aclu.org/news/lgbtq-rights/doctors-agree-gender-affirming-care-is-life-saving-care>; *What Does the Scholarly Research Say About the Effect of Gender Transition on Transgender Well-Being?*, CORNELL UNIV., <https://whatwewknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-well-being-of-transgender-people/> (last visited Nov. 11, 2023).

95. See *What Does the Scholarly Research Say About the Effect of Gender Transition on Transgender Well-Being?*, *supra* note 94; see *infra* Section II.C; see also *infra* Section III.

96. See S. 1138 § 3(8), (10), 55th Leg., 2d Reg. Sess. (Ariz. 2022); ALA. CODE § 26-26-2(11)–(14) (2022); H.R. 1570 § 2(8), 93rd Gen. Assemb., Reg. Sess. (Ark. 2021).

97. ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. § 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022); ALA. CODE § 26-26-4(a) (2022); S. 1045 § 2(A), 55th Leg., 2d Reg. Sess. (Ariz. 2022); H.R. 211 § 1(3), 2022 Leg., Reg. Sess. (Fla. 2022).

98. ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. § 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022); ALA. CODE § 26-26-4(a) (2022); S. 1045 § 2(A), 55th Leg., 2d Reg. Sess. (Ariz. 2022); H.R. 211 § 1(3), 2022 Leg., Reg. Sess. (Fla. 2022).

99. See ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. § 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022); ALA. CODE § 26-26-4(a) (2022).

to cis children who receive many of the same procedures and subject themselves to the same supposed risks.<sup>100</sup>

### 1. Surgical Procedures

The 2020 American Society of Plastic Surgeons Statistics Report reveals cis children undertake many of the procedures otherwise banned for trans children.<sup>101</sup> In 2020, 229,000 cosmetic procedures were performed on teenagers—2% of all cosmetic procedures in the United States.<sup>102</sup> Of those procedures, 88,000 were elective surgical procedures.<sup>103</sup> This number is inclusive of procedures specifically mentioned in Arizona and Arkansas’ acts, including 2,346 liposuctions, 5,550 facial augmentations, 2,823 cis-male breast reductions, and 6,082 female breast procedures (for example, breast lifts, augmentations, or reductions).<sup>104</sup> Of the 229,000 total cosmetic procedures, 141,000 were minimally-invasive procedures like laser hair removal, chemical peels, Botox, and fat dissolving processes.<sup>105</sup> If done for transgender affirmation or transition purposes, these procedures would assuredly fall under legal provisions like Arkansas’ “various aesthetic procedures” catch-all,<sup>106</sup> or Alabama’s “removing any healthy or non-diseased body part or tissue” provision.<sup>107</sup>

Meanwhile, the number of cosmetic procedures performed for trans children is staggeringly less than for cis children.<sup>108</sup> The report separately accounts major categories of procedures undertaken for the purpose of transgender affirmation.<sup>109</sup> The total number of surgical procedures for trans people, of *any age*, in the United States in 2020 was 16,353.<sup>110</sup> This includes 12,583 breast or chest procedures, 1,439 facial procedures, and 2,331 genital procedures.<sup>111</sup> The report does not indicate age distribution for trans procedures.<sup>112</sup> However, if the 2% distribution for cis-child procedures extends to the trans community, only 327 of these procedures were performed on trans children.<sup>113</sup> Further, while the laws prohibit various genital surgeries, the rarity of such procedures cannot be understated.<sup>114</sup> From 2019 to 2021, only fifty-six genital surgeries were performed on

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100. See ARIZ. REV. STAT. ANN. § 32-3230 (2022); ARK. CODE ANN. § 20-9-1501 (2022); ALA. CODE § 26-26-4(a) (2022). See also S. 1045, 55th Leg., 2d Reg. Sess. (Ariz. 2022).

101. See AM. SOC’Y OF PLASTIC SURGEONS, *supra* note 13, at 1, 15.

102. *Id.* at 6.

103. *Id.*

104. *Id.* at 15.

105. *Id.* at 6, 8.

106. ARK. CODE ANN. § 20-9-1501(9)(A)–(B) (2022).

107. ALA. CODE § 26-26-4(a)(6) (2022).

108. AM. SOC’Y OF PLASTIC SURGEONS, *supra* note 13, at 15, 26.

109. See *id.* at 26.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.* at 15, 26.

114. Robin Respaut & Chad Terhune, *Putting Numbers on the Rise in Children Seeking Gender Care*, REUTERS (Oct. 6, 2022, 11:00 AM), <https://www.reuters.com/investigates/special-report/usa-transyouth-data/>.

children age thirteen to seventeen.<sup>115</sup> This amounts to around eighteen per year, or an incidence of approximately 0.36 operations per U.S. state, a near non-occurrence.<sup>116</sup>

Considering these statistics, if the laws are meant to protect children from the harms of surgical procedures, they include language severely restricting this purpose.<sup>117</sup> Limiting the provisions to procedures done for the purposes of transgender affirmation disallows around 327 surgeries while still allowing around 88,000 others on cis children.<sup>118</sup> These laws would remove 0.3% of the supposed problem.<sup>119</sup> Even assuming a 2% distribution of 16,000 trans procedures does not hold true, and 100% of the trans procedures performed in 2020 were on trans children, cis-child procedures still outnumber trans-child procedures five to one.<sup>120</sup> Limiting applicability this way is as if a legislature restricted every person born on January first from celebrating birthdays for the claimed purpose of putting an end to birthday parties. If an end to birthday parties is the legislature's goal, it will have picked an extremely inefficient means of achieving it. And this means would certainly raise questions as to the legislature's true feelings towards January-first babies.

## 2. Hormonal Procedures

Hormonal procedures commonly prohibited by the laws include puberty-blocking medication to prevent "normal" puberty, and the administration of cross-sex hormones.<sup>121</sup> But again, the provisions only apply to people undergoing these procedures for the purposes of transgender affirmation or transition.<sup>122</sup> This allows cis children to receive the same treatments to help align their bodies with their and their parents' idea of their gender.<sup>123</sup> For example, under these laws, testosterone may not be prescribed to a trans boy because of its potential negative effects on fertility.<sup>124</sup> However, testosterone may be given to cis boys<sup>125</sup> to treat hypogonadism, despite indications that the treatments may have the same detrimental impacts on fertility.<sup>126</sup>

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115. *Id.*

116. *See id.*

117. ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. § 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022); ALA. CODE § 26-2-4(a) (2022).

118. *See* AM. SOC'Y OF PLASTIC SURGEONS, *supra* note 13, at 15, 26.

119. *See id.*

120. *See id.*

121. ALA. CODE § 26-26-4(a)(2-3) (2022); ARK. CODE ANN. § 20-9-1501(2), (6)(A)(ii), (11) (2022).

122. ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. § 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022); ALA. CODE § 26-26-4(a) (2022); S. 1045 § 2(A), 55th Leg., 2d Reg. Sess. (Ariz. 2022); H.R. 211 § 1(3), 2022 Leg., Reg. Sess. (Fla. 2022).

123. *Five Things to Know About Gender-Affirming Health Care*, *supra* note 33.

124. Statement of Int. of the U.S. at 19, *Brandt v. Rutledge*, 551 F. Supp. 3d 882 (E.D. Ark. Aug. 2, 2021) (No. 4:21CV00450 JM); *see* ARK. CODE ANN. § 20-9-1501(2)(A) (2022).

125. *See* ARK. CODE ANN. § 20-9-1502(a) (2022).

126. *See* Jordan Cohen, Daniel E. Nassau, Premal Patel, & Ranjith Ramasamy, *Low Testosterone in Adolescents & Young Adults*, 10 FRONTIERS IN ENDOCRINOLOGY 1, 1-4 (2020).

Another example implicates children who experience precocious puberty and polycystic ovarian syndrome, conditions regularly treated by puberty-blocking treatments.<sup>127</sup> Despite being completely reversible<sup>128</sup> and safely used on children for decades,<sup>129</sup> the laws seek to deny these treatments to trans children due to their supposed harm.<sup>130</sup> The function of puberty blockers for precocious puberty in cis children is to delay early-onset puberty.<sup>131</sup> The function for trans children is the same.<sup>132</sup> However, according to the brief in support of Arkansas’s SAFE Act, for trans children, its precipitating purpose derives from the physiological stress of a puberty that does not match gender identity, rather than the physical conditions of early puberty as for cis children.<sup>133</sup> The brief attempts to differentiate between these precipitating purposes, arguing that puberty-blocking treatment is acceptable for cis children because the issues being treated for those with precocious puberty manifest physically, not physiologically.<sup>134</sup> But this argument presupposes that treatment for precocious puberty addresses and targets purely physical factors.<sup>135</sup> A stated goal of treatment for precocious puberty in cis children is “to alleviate the associated psychosocial stress” of the condition.<sup>136</sup> Thus, the brief ignores that puberty blockers are used for both cis and trans children to treat physiological symptoms brought on by an undesired puberty.<sup>137</sup>

The brief’s argument does not adequately explain why this puberty-blocking treatment is more harmful for trans children than cis children and, consequently, only banned for trans children.<sup>138</sup> The underlying issue, whether solely physiological or physical, does not change the potential harmful physical effects of the treatment itself.<sup>139</sup> Therefore, the proponents’ own argument fails to address that the stated purpose of reducing supposed harm to children is not achieved by the law’s

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127. *Five Things to Know About Gender-Affirming Health Care*, *supra* note 33.

128. James Esseks, *We’re Suing Arkansas Over its Ban on Health Care for Trans Youth*, ACLU (May 25, 2021), <https://www.aclu.org/news/lgbtq-rights/were-suing-arkansas-over-its-ban-on-health-care-for-trans-youth>; see Mayo Clinic Staff, *Puberty Blockers for Transgender and Gender-Diverse Youth*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/in-depth/pubertal-blockers/art-20459075> (last visited Nov. 11, 2023) [hereinafter *Puberty Blockers*]; Mayo Clinic Staff, *Precocious Puberty*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/precocious-puberty/symptoms-causes/syc-20351811> (last visited Nov. 11, 2023) [hereinafter *Precocious Puberty*].

129. Esseks, *supra* note 128; *Five Things to Know About Gender-Affirming Health Care*, *supra* note 33; see *Puberty Blockers*, *supra* note 128; *Precocious Puberty*, *supra* note 128.

130. ALA. CODE § 26-26-4(a)(1)–(2)(2022); ARK. CODE ANN. § 20-9-1501(2), (6)(A)(ii), (11)(2022).

131. *Puberty Blockers*, *supra* note 128.

132. *Precocious Puberty*, *supra* note 128.

133. Brief in Support of Motion to Dismiss at 14, *Brandt v. Rutledge*, 551 F.Supp.3d 882 (E.D. Ark. June 16, 2021) (No. 4:21CV00450 JM).

134. *Id.*

135. *See id.*

136. Archana S. Kota & Sehar Ejaz, *Precocious Puberty*, NAT’L. LIBR. OF MED., <https://www.ncbi.nlm.nih.gov/books/NBK544313/> (last updated July 4, 2023).

137. *Id.*

138. *See* Brief in Support of Motion to Dismiss, *Brandt*, 551 F.Supp.3d (No. 4:21CV00450 JM).

139. *See Puberty Blockers*, *supra* note 128; *Precocious Puberty*, *supra* note 128.

restrictions.<sup>140</sup> By only banning treatment for trans children, the brief ostensibly implies causing harm is acceptable if the purpose of the supposedly harmful treatment was brought on solely by physical conditions as opposed to physiological ones.<sup>141</sup> This distinction is arbitrary and will result in inherently discriminatory treatment under the law.

To add to the confusion, Arkansas' law is dismissive of physiological conditions when they are the impetus for trans use of puberty blockers, but also explicitly indicates trans children experiencing gender dysphoria should be encouraged to seek mental health services.<sup>142</sup> The legislature simultaneously encourages physiologically helpful treatments but only supports puberty blockers where the impetus for such use is brought on in part by particular physical phenomenon.<sup>143</sup> These and other irreconcilable explanations for provisions governing hormonal procedures indicate the legislators' lack of concern for their stated purpose of child protection.

*B. Risks of Regret and Irreversibility Occur for Cis and Trans Children Alike and Also Result from Countless Other Legal Actions*

The anti-trans medical laws ban a myriad of procedures, in part because the legislatures claim or imply a prevalence of regret and irreversibility partially stemming from the risks associated with various procedures.<sup>144</sup> Even disregarding arguments to the merits of high trans-regret claims, the laws' exclusive application to trans people still leave them irreconcilable with their stated purpose of child protection.<sup>145</sup> The laws consider trans regret and irreversibility but ignore cis regret and irreversibility.<sup>146</sup> As previously discussed, many of these procedures occur at significantly higher rates for cis children and carry many of the same risks the legislatures purport to prevent.<sup>147</sup> To justify this disparate treatment, Alabama's V-CAP decries that parents of trans children are "unable to comprehend" the risks and "life implications" of these procedures and therefore, the procedures should be banned.<sup>148</sup> But the law offers no explanation for why parents of cis children can make such decisions for their children who receive the same surgical and hormonal treatments<sup>149</sup> carrying the same risks.<sup>150</sup> The law implies that either the legislature does not want to protect cis children from regret and reversibility, cis child-procedure recipients do not experience regret and irreversibility, or parents of cis

140. See Brief in Support of Motion to Dismiss, *Brandt*, 551 F.Supp.3d (No. 4:21CV00450 JM).

141. See *id.* at 6–7.

142. H.R. 1570 § 2(4), 93rd Gen. Assemb., Reg. Sess. (Ark. 2021).

143. See *id.*

144. Cooper, *supra* note 92, at 11; HRC Staff, *supra* note 92, at 11; see ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ALA. CODE § 26-26-2 (2022).

145. See ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. §§ 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2022); ALA. CODE § 26-26-2 (2022).

146. See ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ALA. CODE §§ 26-26-2(13)–(15) (2023); Cooper, *supra* note 92; HRC Staff, *supra* note 92.

147. See discussion *supra* Section II.C.

148. ALA. CODE §§ 26-26-2(15)–(16) (2023).

149. AM. SOC'Y OF PLASTIC SURGEONS, *supra* note 13, at 6.

150. See *Five Things to Know About Gender-Affirming Health Care*, *supra* note 33.

children can comprehend these risks and account for them when making a decision.<sup>151</sup> Yet, statistics show cis children and their parents also experience regret and attempt to reverse surgical procedures.<sup>152</sup> In summary, the laws partially justify their bans for trans children on principles of regret, irreversibility, and a parent and child's inability to consider the two, but they allow cis parents to make this determination.<sup>153</sup> Any concerns for regret and irreversibility seemingly disappear or simply become acceptable when a child is cis.<sup>154</sup> Legislatures recognize that parents, children, and their doctors consider regret when making decisions as a team. Yet, legislatures only allow this privilege for cis children.<sup>155</sup>

Regret is a common concern among the medical bills and laws targeting transgender children.<sup>156</sup> But, considering that innumerable permissible actions carry regret, it is questionable why trans regret is of such a concern to legislatures. Despite involving various levels of risk that could result in regret, countless medically necessary and non-medically necessary procedures are performed on children with the informed consent of parents and children.<sup>157</sup> Even outside the medical context, legislatures often seem content to allow children to engage in activities carrying extreme levels of potential harm and regret.<sup>158</sup> For example, child marriage, a human rights violation in the international community,<sup>159</sup> is allowed in forty-one U.S. states with a parental or judicial waiver.<sup>160</sup> Twenty states have no minimum age for granting that waiver.<sup>161</sup> Nearly 700,000 divorces took place in the United States in 2021,<sup>162</sup> indicating an extremely high regret potential for an arrangement carrying significant consequences for a person's legal,<sup>163</sup> financial, and general wellbeing.<sup>164</sup> However, these

151. See generally, ALA. CODE § 26-26-2 (2023).

152. AM. SOC'Y OF PLASTIC SURGEONS, *supra* note 13, at 15 (reporting sixty-four breast implant removals for teenagers in 2020).

153. See ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2023); 2022 Ala. Laws Act No. 2022-289 §§ 2(11)–(14) (S.B. 184); Cooper, *supra* note 92; HRC Staff, *supra* note 92.

154. See ARIZ. REV. STAT. ANN. § 32-3230(B)(1)–(4) (2023); 2022 Ala. Laws Act No. 2022-289 §§ 2(11)–(14) (S.B. 184); Cooper, *supra* note 92; HRC Staff, *supra* note 92.

155. See e.g., ARIZ. REV. STAT. ANN. § 32-3230 (C)(4) (2023); see also 2022 Ala. Laws Act No. 2022-289 §§ 2(11)–(14) (S.B. 184); Cooper, *supra* note 92; HRC Staff, *supra* note 92.

156. Cooper, *supra* note 92; HRC Staff, *supra* note 92; see ARIZ. REV. STAT. ANN. § 32-3230 (C)(4) (2023); see also 2022 Ala. Laws Act No. 2022-289 §§ 2(11)–(14) (S.B. 184).

157. See *Risks of Surgery*, PEDIATRIC SURGEONS OF PHX., <https://surgery4children.com/for-parents/risks-of-surgery-2/> (last visited Nov. 11, 2023); Sarah Livelio, *Common Surgical Conditions in Children*, MYACARE (Aug. 17, 2022), <https://myacare.com/blog/common-surgical-conditions-in-children>; AM. SOC'Y OF PLASTIC SURGEONS, *supra* note 13, at 15.

158. See *Child Marriage in the United States*, EQUALITY NOW, [https://www.equalitynow.org/learn\\_more\\_child\\_marriage\\_us/](https://www.equalitynow.org/learn_more_child_marriage_us/) (last updated July 12, 2023).

159. Off. of the High Comm'r for Hum. Rts., *Child and Forced Marriage, Including in Humanitarian Settings*, UNITED NATIONS, <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings> (last visited Nov. 11, 2023).

160. *Child Marriage in the United States*, *supra* note 158.

161. *Id.*

162. Nat'l Center for Health Stat., *Marriage and Divorce*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/nchs/fastats/marriage-divorce.htm> (last updated Apr. 24, 2023).

163. Rudy Gerhold, *Marriage is More Than a Piece of Paper*, KENT P'SHIP (Aug. 5, 2021, 1:00 AM), <https://www.kentpartnership.org/marriage-legal-consequences/>.

164. David A. Sbarra, *Divorce and Health: Current Trends and Future Directions*, 77 PSYCHOSOMATIC MED. 227, 227–31(2015).

legislatures seemingly lack concern for matrimonial regret accompanying the human rights violation of child marriage, or countless other areas of potential regret.<sup>165</sup> Instead, it is the illusion of significant levels of trans regret supposedly guiding—or rather misguiding—their prejudiced actions.<sup>166</sup>

Further, the laws primarily cite physical harm, particularly sterility, as the regrettable effect to be avoided.<sup>167</sup> Some leading causes of infertility include: obesity; exposure to toxic chemicals, including pesticides; medication use, including those to prevent common bacterial infections; and alcohol use.<sup>168</sup> Even caffeine can contribute to infertility!<sup>169</sup> Yet, state legislatures consistently sidestep the opportunity to pass regulations or otherwise fail to protect young consumers from obesity-contributing foods, toxic chemical exposure,<sup>170</sup> and substance use.<sup>171</sup> Under the supervision of their parents, and surely after weighing the risks and benefits as parents are apt to do, children in many states may even legally drink alcohol.<sup>172</sup> Instead of addressing the leading causes of sterility, the legislatures curiously choose to combat sterility by targeting an extreme minority behavior within an extreme minority group.<sup>173</sup> This indicates sterility is hardly a priority.<sup>174</sup>

Even assuming fertility is a legislative priority, it is not necessarily a priority for all constituents.<sup>175</sup> The legislature's focus on preserving

165. *Child Marriage in the United States*, *supra* note 158.

166. Cooper, *supra* note 92; HRC Staff, *supra* note 92; *see* ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ALA. CODE §§ 26-26-2(11)–(14) (2022).

167. *See* S. 1138 § 3(8), (10), 55th Leg., 2d Reg. Sess. (Ariz. 2022); ALA. CODE §§ 26-26-2(11)–(15) (2022).

168. Mayo Clinic Staff, *Infertility*, MAYO CLINIC, (Sept. 1, 2021), <https://www.mayoclinic.org/diseases-conditions/infertility/symptoms-causes/syc-20354317> [hereinafter *Infertility*].

169. *See id.*

170. *See, e.g.*, Sarah Doll, *2022 Analysis of State Legislation on PFAS and Other Toxic Chemicals*, SAFER STATES (Feb. 3, 2022), <https://www.saferstates.com/news/new-analysis-2022/> (revealing that not all states regulate or are considering regulations to protect people from toxic chemicals linked to infertility); *see also About Proposition 65*, CAL. OFF. OF ENV'T HEALTH HAZARD ASSESSMENT, <https://oehha.ca.gov/proposition-65/about-proposition-65> (last visited Nov. 11, 2023) (reporting California's heightened protections against known harmful chemicals most other states fail to protect against).

171. *See* AM. NONSMOKERS' RIGHTS FOUND., MUNICIPALITIES PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS 1–2 (2022), <https://no-smoke.org/wp-content/uploads/pdf/flavored-tobacco-product-sales.pdf> (reporting many states allow child-enticing flavored tobacco products while others ban them to protect children).

172. *Alcohol Laws by State*, FED. TRADE COMM'N CONSUMER ADVICE (Sept. 2013), <https://consumer.ftc.gov/articles/0388-alcohol-laws-state>.

173. *See* Helen Santoro, *Misinformation Obscures Standards Guiding Gender-Affirming Care for Trans Youth*, KFF HEALTH NEWS (June 20, 2023), <https://kffhealthnews.org/news/article/misinformation-standards-gender-care-trans-transgender-youth/>; ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2023); ARK. CODE ANN. §§ 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2021); ALA. CODE § 26-26-4(a) (2022).

174. *See* Santoro, *supra* note 173; ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2023); ARK. CODE ANN. §§ 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2021); ALA. CODE § 26-26-4(a) (2022).

175. *See* Anna Brown, *Growing Share of Childless Adults in U.S. Don't Expect to Ever Have Children*, PEW RSCH. CTR. (Nov. 19, 2021), <https://www.pewresearch.org/fact-tank/2021/11/19/growing-share-of-childless-adults-in-u-s-dont-expect-to-ever-have-children/> (reporting 44% of people in the U.S. are not likely, or not at all likely, to have children).



fertility implies that the ability to reproduce equals some sort of haven from regret.<sup>176</sup> This idea flies in the face of people's autonomy to determine for themselves whether they will have, or are capable of having, their own biological children. Not only does this implied expectation inaccurately assume everyone may want biological children,<sup>177</sup> but also that having children may not itself cause regret.<sup>178</sup> Further, it should not be ignored that over one million families live completely normal and fulfilled lives with adopted children, demonstrating that fertility does not bar families from raising children.<sup>179</sup>

Putting aside their inaccurate characterizations of trans regret, the legislatures' explanations of regret and reversibility still do not make sense.<sup>180</sup> They cite regret, but they simultaneously allow countless activities also carrying the risk of regret.<sup>181</sup> They send severely mixed messages about the regrettable effects supposedly sought to be prevented.<sup>182</sup> And they cite the inability for parents of trans children to make decisions, but offer no explanation why parents of cis children can make such decisions.<sup>183</sup> The following Section further explores how the legislatures acknowledge and protect cisgender affirmation while stripping it from trans people.

*C. The Laws Acknowledge the Importance of Gender Affirmation by Allowing Cisgender Affirmation, Yet They Prohibit Transgender Affirmation Nonetheless*

Before examining the purpose behind these laws, consider what they do allow and why. By limiting the laws' application to purposes involving transgender affirmation and transition, they allow the same and similar procedures for cis people affirming their assigned sex at birth,<sup>184</sup> despite

176. See S. 1138 § 3(8), (10), 55th Leg., 2d Reg. Sess. (Ariz. 2022); 2022 Ala. Laws Act No. 2022-289 §§ 2(11), (13)–(15) (S.B. 184).

177. See Brown, *supra* note 175.

178. See Konrad Piotrowski, *How Many Parents Regret Having Children and How it is Linked to Their Personality and Health: Two Studies with National Samples in Poland*, 16 PLOS ONE 1, 4 (2021) (reporting surveys in the U.S. and Germany indicate 7–8% of people regret having children); James L. McQuivey, *To Have Kids or Not: Which Decision Do Americans Regret More?*, INST. FOR FAM. STUD. (June 10, 2021), <https://ifstudies.org/blog/to-have-kids-or-not-which-decision-do-americans-regret-more> (reporting 14% of people with children wish they had fewer children).

179. *US Adoption Statistics*, ADOPTION NETWORK, <https://adoptionnetwork.com/adoption-myths-facts/domestic-us-statistics/> (last visited Nov. 12, 2023); Lisa Burden, *Adoption Statistics and Legal Trends*, FINDLAW (July 14, 2023), <https://www.findlaw.com/family/adoption/adoption-statistics-and-legal-trends.html>.

180. See, e.g., ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); 2022 Ala. Laws Act No. 2022-289 §§ 2(11)–(14) (S.B. 184); Cooper, *supra* note 92; HRC Staff, *supra* note 92.

181. See, e.g., *Child Marriage in the United States*, *supra* note 158; Jennifer L. Pomeranz, Leslie Zellers, Patricia A. Sullivan, Michael Bare, & Mark Pertschuk, *State Preemption: Threat to Democracy, Essential Regulation, and Public Health*, 109 AM. J. PUB. HEALTH 251, 251–52 (2019); Doll, *supra* note 170.

182. See *Child Marriage in the United States*, *supra* note 158; Pomeranz, Zellers, Sullivan, Bare, & Pertschuk, *supra* note 181, at 251–52.

183. 2022 Ala. Laws Act No. 2022-289 §§ 2(15)–(16) (S.B. 184).

184. See ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); 2022 Ala. Laws Act No. 2022-289 §§ 4(a)–(b) (S.B. 184); H.R. 211 § 1(3), 2022 Leg., Reg. Sess. (Fla. 2022).

no indication of a meaningful difference in supposed risks and regrets for cis children.<sup>185</sup> If these supposed risks exist, but the legislatures only prohibit trans activity, it reasons that at some level the legislatures understand the importance of affirmation in the face of risk.<sup>186</sup> Conscious or not, legislatures cosign this idea by allowing such procedures for cis people.<sup>187</sup> And their innate understanding of affirmation's importance is fathomable because legislatures are comprised of people who interact with an extremely gendered world.<sup>188</sup>

Essentially everything humans do today has a gendered connotation, whether that be who a person spends time with, the activities they participate in, or how they talk.<sup>189</sup> Thanks to the ultrasound, the experience of human gender identity begins even before birth, as countless parents adopt gender-specific colors, behaviors, and expectations once they learn the assigned sex of their child-to-be.<sup>190</sup> And such experiences continue throughout life, as society accepts certain behaviors for a particular gender and rejects others.<sup>191</sup> Much of the resulting gendered activities and behaviors ensue from at least a partial desire to affirm overall identity, including gender identity.<sup>192</sup> These behaviors help to affirm a person's own gender identity within themselves as well as other's perceptions of their gender.<sup>193</sup> It follows that because of the legislators' own experiences with, and understanding of the importance of gender affirmation, their laws continue to allow it for the vast majority of people.

Considering our highly gendered world of infinite gender affirmative actions, the hundreds of thousands of cis-child procedures explored above are ostensibly undertaken for affirmative reasons, including gender affirmation. Unlike for trans people, the social validity of a cis person's gender does not rest as heavily on the ability to affirm their gender.<sup>194</sup> Thus, these

185. See generally H.R. 1570, 93d Gen. Assemb., Reg. Sess. (Ark. 2021); S. 1138, 55th Leg., 2d Reg. Sess. (Ariz. 2022); 2022 Ala. Laws Act No. 2022-289 §§ 4(a)–(b).

186. See ALA. CODE § 26-26-4 (2022); H.R. 1570 §§ 2(5), (6)(B), (7), (8), 93d Gen. Assemb., Reg. Sess. (Ark. 2021); S. 1138 §§ 3(6), (8), (11), 55th Leg., 2d Reg. Sess. (Ariz. 2022).

187. See 2022 Ala. Laws Act No. 2022-289 §§ 4(a)–(b); H.R. 1570 §§ 2(5), (6)(B), (7), (8), 93d Gen. Assemb., Reg. Sess. (Ark. 2021); S. 1138 §§ 3(6), (8), (11), 55th Leg., 2d Reg. Sess. (Ariz. 2022).

188. *Exploring Gender and Gender Identity*, *supra* note 27.

189. See *id.*; Jennifer Paris, Antoinette Ricardo, Dawn Rymond, & Alexa Johnson, *Child Growth and Development*, LIBRETEXTS, 15.4.1–3 (2019), [https://socialsci.libretexts.org/Bookshelves/Early\\_Childhood\\_Education/Book%3A\\_Child\\_Growth\\_and\\_Development\\_\(Paris\\_Ricardo\\_Rymond\\_and\\_Johnson\)](https://socialsci.libretexts.org/Bookshelves/Early_Childhood_Education/Book%3A_Child_Growth_and_Development_(Paris_Ricardo_Rymond_and_Johnson)).

190. See Amanda Monte, *How American Parents Became Obsessed with Gender*, VOX (July 11, 2021, 8:00 AM), <https://www.vox.com/first-person/22569143/parents-gender-ultrasound-sonogram>; Paris, Ricardo, Rymond, & Johnson, *supra* note 189, at 15.4.1–3.

191. *Gender Roles Can Create Lifelong Cycle of Inequality*, SAVE THE CHILDREN, <https://www.savethechildren.org/us/charity-stories/how-gender-norms-impact-boys-and-girls> (last visited Dec. 23, 2022); see Paris, Ricardo, Rymond, & Johnson, *supra* note 189, at 15.4.1–2.

192. See Paris, Ricardo, Rymond, & Johnson, *supra* note 189, at 15.4.1–3; *Exploring Gender and Gender Identity*, *supra* note 27.

193. See Paris, Ricardo, Rymond, & Johnson, *supra* note 189, at 15.4.1–3; *Exploring Gender and Gender Identity*, *supra* note 27; *Gender Roles Can Create Lifelong Cycle of Inequality*, *supra* note 191.

194. See Aids Council of New South Wales, *supra* note 8.

cis activities are not usually interpreted as a form of gender affirmation.<sup>195</sup> But they are precisely that.<sup>196</sup> Because of their deep-seated nature in our gendered social structure, it can be difficult to identify these cis activities as affirmative behaviors.<sup>197</sup> Yet, even a brief glance at both the sources providing the procedures and general media on the subject clearly demonstrates this idea. For example, consider breast augmentation and hair removal tied to notions of femininity and affirmation. The Mayo Clinic and various plastic surgery centers acknowledge breast augmentation can help women feel confident and enhanced in a femininity they may perceive as lacking.<sup>198</sup> Further, since smooth-shaven skin became a “societal expectation for women by the 1950s,”<sup>199</sup> due to a demand for heightened femininity,<sup>200</sup> shaving armpits, legs, and other body parts has been tied to being fashionable and secure as a woman.<sup>201</sup> Also consider notions of male affirmation tied to body size, clothing, and hair. One of many websites dedicated to masculinity overtly claims being big and strong as a man equates to a perception of masculinity.<sup>202</sup> It also acknowledges the importance of clothing choice as an affirmative method when it states an otherwise big and strong man will not be considered masculine in a skirt.<sup>203</sup> Hair transplant clinics acknowledge the importance of hair and masculinity.<sup>204</sup> One even calls hair the “embodiment of masculinity and virility.”<sup>205</sup> And when hair is lost due to baldness, maleness and confidence is supposedly lost with it.<sup>206</sup> Scientific studies even support the masculine perception of hair, as they show women consider those with facial hair more masculine.<sup>207</sup>

As these examples show, humans innately understand the importance of affirmation.<sup>208</sup> The indoctrination to particular forms begins even before

195. *See id.*

196. *See id.*

197. *See id.*

198. Mayo Clinic Staff, *Breast Augmentation*, MAYO CLINIC, <https://www.mayoclinic.org/tests-procedures/breast-augmentation/about/pac-20393178> (last visited Nov. 12, 2023) [hereinafter *Breast Augmentation*]; Nana Mizuguchi, *The Top Eight Reasons Women Get Breast Augmentation*, MIZUGUCHI PLASTIC SURGERY (Oct. 14, 2019), <https://nanamd.com/blog/the-top-eight-reasons-women-get-breast-augmentation>.

199. Victoria A. Fraser, *Why Do Women Shave Their Legs?*, MEDIUM (Apr. 27, 2021), <https://bettermarketing.pub/why-do-women-shave-their-legs-b55b5a3c38d1>.

200. Maya Singer, *To Shave, or Not to Shave? How a New Generation of Women Are Embracing Body Hair*, VOGUE (Dec. 10, 2018), <https://www.vogue.com/article/body-hair-new-generation-not-shaving>.

201. Fraser, *supra* note 199; Singer, *supra* note 200; Phil Edwards, *How the Beauty Industry Convinced Women to Shave Their Legs*, VOX (May 22, 2015, 10:00 AM), <https://www.vox.com/2015/5/22/8640457/leg-shaving-history>.

202. BetterDaily, *9 Things That Make a Man Masculine [Most Important Things]*, THE MASCULINE MALE (Aug. 6, 2023), <https://themasculinemale.com/what-makes-a-man-masculine/>.

203. *Id.*

204. *See, e.g.,* *Why is Hair Important to Men?*, MEDIHAIR HAIR TRANSPLANT CLINICS (Jan. 10, 2019), <https://www.medihairtransplant.com.au/news/why-hair-important-to-men/>.

205. *Id.*

206. *Id.*

207. Barnaby J. Dixson & Robert C. Brooks, *The Role of Facial Hair in Women’s Perceptions of Men’s Attractiveness, Health, Masculinity and Parenting Abilities*, 34 *EVOLUTION OF HUM. BEHAV.* 236, 239 (2013).

208. *See Exploring Gender and Gender Identity*, *supra* note 27; Paris, Ricardo, Rymond, & Johnson, *supra* note 189, at 15.4.1–3.

birth.<sup>209</sup> But not everyone fits into the predominant dual system of gender and affirmation.<sup>210</sup> Even within the dual system, individual men and women affirm in their own ways.<sup>211</sup> Some women enlarge their breasts while others reduce them.<sup>212</sup> Some men seek to remedy baldness while others do not.<sup>213</sup> The thousands of elective procedures discussed above are such affirmative activities, and because they are performed on cis bodies, the legislatures are their cosigners. Despite acknowledging the importance of affirmation in this way, the legislatures choose to deny it for trans people who do not conform to traditional notions of affirmation.<sup>214</sup> The following Section explores more explicitly the apparent purposes behind such denial.

### III. THE TRUE PURPOSE OF THE LAWS IS NOT CHILD PROTECTION, BUT TRANSGENDER DISCRIMINATION

The purported purpose of these laws is to protect children and public health.<sup>215</sup> But, these supposed protections only extend to trans children, despite the prevalence of similar procedures for cis children.<sup>216</sup> This limitation makes the laws an extremely ineffective means to achieve their supposed ends, bringing into question the true motives behind the laws.<sup>217</sup> For those so often on the receiving end of hateful laws disguised as otherwise, their true purpose is instantly unmistakable. The extremely targeted nature of these laws makes clear they are anything but a good faith effort to protect children.<sup>218</sup> Rather, as the previous sections have demonstrated, they are a direct attack on trans existence.

Not only do the laws fail to accomplish their stated purpose of child protection, but the laws themselves also directly endanger children. Access to gender-affirming care reduces trans-suicide,<sup>219</sup> but the laws seek to remove access to gender-affirming care. Additionally, studies reveal that the very existence of anti-trans bills and laws harm trans-people.<sup>220</sup> The

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209. See Montei, *supra* note 190; Paris, Ricardo, Rymond, & Johnson, *supra* note 189, at 15.4.2.

210. See Aids Council of New South Wales, *supra* note 8.

211. See *Gender Roles Can Create Lifelong Cycle of Inequality*, *supra* note 191.

212. See AM. SOC'Y OF PLASTIC SURGEONS, *supra* note 13, at 7.

213. See *id.*

214. See generally ARIZ. REV. STAT. ANN. § 32-3230(C)(4) (2022); ARK. CODE ANN. §§ 20-9-1501(4), (6)(A)(ii), (7), (9), (11) (2021); ALA. CODE § 26-26-4 (2022); see also S. 1045, 55th Leg., 2d Reg. Sess. (Ariz. 2022).

215. See S. 184 § 1, 2022 Leg., Reg. Sess. (Ala. 2022); H.R. 1570 § 2(1), 93rd Gen. Assemb., Reg. Sess. (Ark. 2021).

216. See *supra* Section II.C.

217. See *supra* Section II.A.

218. See *supra* Section II.A.

219. See JODY L. HERMAN & KATHRYN K. O'NEILL, SUICIDE RISK AND PREVENTION FOR TRANSGENDER PEOPLE: SUMMARY OF RESEARCH FINDINGS, at 2 (2021), <https://williamsinstitute.law.ucla.edu/publications/trans-suicide-risk-prevent-summary/>; Jack L. Turban, Dana King, Jeremi M. Carswell, & Alex S. Keuroghlian, *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, PEDIATRICS, Feb. 2020, at 1, 5; *What Does the Scholarly Research Say About the Effect of Gender Transition on Transgender Well-Being?*, *supra* note 94.

220. George B. Cunningham, Nicholas M. Watanabe, & Erin Buzuvis, *Anti-Transgender Rights Legislation and Internet Searches Pertaining to Depression and Suicide*, PLOS ONE, DEC. 2022, at 1, 11–12.

passage of anti-trans bills evokes a stress response in trans people and leads to increased suicidality.<sup>221</sup> Conversely, the defeat of anti-trans bills leads to less suicidality.<sup>222</sup> Therefore, even *considering* a bill, let alone passing it into law masquerading as child protection, works directly against its supposed purpose.

The flurry of anti-trans sentiment shrouding the laws' existence further illuminates legislators' true motives. Upon signing V-CAP, Alabama's Governor stated, "We're going to go by how God made us: if the Good Lord made you a boy, you're a boy, and if he made you a girl, you're a girl. It's simple."<sup>223</sup> Interestingly, there is a close overlap between where these medical bills arise and where most cisgender medical procedures occur. The overwhelming majority of bills have been introduced in Southeastern and Midwestern States.<sup>224</sup> Fifty-nine percent of the cis plastic surgery procedures explored above occur in Southeastern and Midwestern States.<sup>225</sup> If prohibiting transgender affirmation is as "simple" as the Governor claims, it seems equally simple to prohibit breast enlargement, hair treatment, or any other body modification enjoyed by cis people that departs from "how God made us." Rather than expressing a genuine effort to protect children, the Governor's sentiment demonstrates an arbitrary moral determination based on intolerance in the name of religion. It is *religious affirmation* through discrimination.

Similarly, statements by multiple sponsors of Arkansas's SAFE Act reveal their transphobic motives.<sup>226</sup> In public, sponsors have compared trans people to children wanting to become cows, openly denigrated children seeking gender affirming care, and intentionally refused to call trans people by their preferred pronouns and names.<sup>227</sup> If an adult sponsor of a bill meant to protect children simultaneously denigrates and targets children, their child-protective motives appear exceedingly dubious.

Even ignoring the laws' overall irreconcilability with their stated goals, and the sponsors' sentiments as context, some laws facially show their disdain for any manner of transgender affirmation. For example, beyond surgery and hormones, Alabama's V-CAP suggests that even dressing and presenting in an affirming way that is uncharacteristic for a particular assigned sex at birth is unacceptable because it may be part of the broader transition process.<sup>228</sup> The law states the course of trans treatment "commonly begins with encouraging and assisting the child to socially transition to dressing and presenting as the opposite sex."<sup>229</sup> It then claims

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221. *Id.* at 10–11.

222. *Id.* at 11.

223. Branigin & Kirkpatrick, *supra* note 3.

224. See 2023 *Anti-Trans Bills Tracker*, *supra* note 41.

225. See AM. SOC'Y OF PLASTIC SURGEONS, *supra* note 13, at 22.

226. Statement of Int. of the U.S. at 19, *Brandt v. Rutledge*, 551 F. Supp. 3d 882 (E.D. Ark. Aug. 2, 2021) (No. 4:21CV00450 JM).

227. *Id.*

228. 2022 Ala. Laws Act No. 2022-289 § 2(7) (S.B. 184).

229. *Id.*

puberty blockers and cross-sex hormones inevitably follow.<sup>230</sup> The notion that any affirmation leads to full blown medical intervention implants unjustified fears of a slippery slope accompanying basic transgender affirmation. It indicates any affirmation should be met with suspicion and contempt.

By limiting the laws' application to purposes of affirmation that do not align with assigned sex at birth, any claims of child protection ring hollow. It is abundantly evident that personal moral disapproval moves legislators' hands.<sup>231</sup> Perhaps it is laughable to search for reason and logic in the laws' text, as logic and reason do not extend to discrimination and bigotry. Legislators' goals are clear and palpable: to maintain rigid notions of gender and affirmation, and to deny trans existence.

#### IV. RECOMMENDATIONS

To ensure trans lives are protected, these transphobic laws and the misinformation underpinning them must be combatted. Therefore, the following Section provides a general survey of basic legal avenues already employed to protect trans rights that should continue to be developed and utilized. It then recommends an addition to the pro-trans movement's educational approach to bring about legal protections and combat anti-trans legislation.

##### *A. Brief Survey of Trans-Protective Legal Avenues*

While some legal methods for fighting discrimination offer more explicit and potent protections, various legal strategies should continue to be employed to protect trans rights. From courtroom fights against individual laws to explicit statutory protections, every manner of resistance should be pursued.

The Equal Protection Clause of the Fourteenth Amendment prevents states from passing laws denying any person within their jurisdiction equal protection under the law.<sup>232</sup> The Clause has been invoked innumerable times to prevent discriminatory laws, including those targeting LGBTQIA+ people.<sup>233</sup> Equal protection arguments were made to fight against Arkansas's SAFE Act in the United States Court of Appeals for the Eighth Circuit case, *Brandt v. Rutledge*,<sup>234</sup> and will undoubtedly be employed against other anti-trans laws.<sup>235</sup> Equal Protection arguments like those in *Brandt* follow much of the statutory analysis above, focusing primarily on how the laws inexplicably target trans people for differential

230. *Id.*

231. *See supra* Section III.

232. U.S. CONST. amend. XIV, § 1.

233. *See e.g.*, *Obergefell v. Hodges*, 576 U.S. 644, 672–74 (2015) (protecting gay marriage); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (protecting interracial marriage); *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954) (protecting education equality).

234. 47 F.4th 661, 669–72 (2022).

235. *See e.g.*, *L.W. v. Skrmetti*, 73 F.4th 408, 412–13, 419 (6th Cir. 2023).

treatment.<sup>236</sup> They go on to argue that because the laws single out a class based on transgender status and sex, heightened scrutiny applies during legal challenges.<sup>237</sup> Thus, states must prove their laws serve an important governmental interest and do so in a way that is substantially related to that governmental interest, an unlikely feat given the laws' irreconcilability with their stated purpose.<sup>238</sup>

While constitutional protections determined by judicial rulings can offer effective safeguards for basic rights, they should not be relied on alone. The constitutional right to abortion was considered protected by the longstanding Supreme Court precedent set forth in *Roe v. Wade*.<sup>239</sup> However, the Supreme Court overturned it nonetheless in *Dobbs v. Jackson Women's Health*.<sup>240</sup> The Supreme Court's willingness to ignore precedent,<sup>241</sup> and Justice Thomas's explicit intentions articulated in his *Dobbs* concurrence,<sup>242</sup> indicate other rights once thought safe under Supreme Court precedent are in jeopardy. In response to the *Dobbs* opinion and its troubling implications for other constitutional rights, Congress passed the Respect for Marriage Act, thereby codifying marriage equality into federal statutory law and assuring federal recognition of LGBTQIA+ marriages.<sup>243</sup>

Because the current Supreme Court cannot be trusted to maintain current protections and because of the piecemeal nature of common law, statutory laws like the Respect for Marriage Act—and statutes that offer even more security—should be pursued to offer broader trans protections. Many states have proposed or passed these types of statutory protections in

236. See e.g., *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at \*1–2 (E.D. Ark. June 20, 2023).

237. *Id.* at \*31; *supra* Section II.

238. See e.g., *Brandt*, 2023 WL 4073727, at \*31–32; *supra* Section II.A; *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 607 (4th Cir. 2020) (heightened scrutiny applies to an anti-trans bathroom policy because the “policy rests on sex-based classifications *and* because transgender people constitute at least a quasi-suspect class.”).

Note that the supreme court has consistently failed to articulate a clear level of scrutiny that applies to sexual orientation and transgender Equal Protection claims. See e.g., *U.S. v. Windsor*, 570 U.S. 744 (2013); *Romer v. Evans*, 517 U.S. 620 (1996).

239. 410 U.S. 113, 166 (1973), *overruled by* *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

240. *Dobbs*, 142 S. Ct. at 2284.

241. See *id.*

242. See *id.* at 2301 (Thomas, J., concurring) (“[W]e should reconsider all of this Court’s substantive due process precedents, including . . . *Obergefell*.”).

243. Respect for Marriage Act, Pub. L. No. 117-228 (2022) (codified as amended in scattered sections of 1 U.S.C. and 28 U.S.C.); Kaitlyn Radde, *What does the Respect for Marriage Act Do? The Answer Will Vary by State*, NPR (Dec. 8, 2022, 12:27 PM), <https://www.npr.org/2022/12/08/1140808263/what-does-the-respect-for-marriage-act-do-the-answer-will-vary-by-state#:~:text=%22I%20want%20to%20be%20really,has%20argued%20landmark%20civil%20rights>. While the Respect for Marriage Act offers some federal protections, it does not—and Congress cannot—create a fundamental constitutional right. Therefore, despite the broad protections it offers, it is still limited in reach. See Kyle C. Velte, *2022 Quietly Set the Stage for a Massive Rollback of LGBTQ Rights*, TRUTHOUT (Dec. 27, 2022), <https://truthout.org/articles/2022-quietly-set-the-stage-for-a-massive-rollback-of-lgbtq-rights/> (noting the limitations of the Respect for Marriage Act. Should *Obergefell* be overturned, “the question of same-sex marriage would return to the states.”).

numerous forms.<sup>244</sup> For example, laws in over twenty states and in Washington, D.C. prohibit various forms of discrimination based on sexual orientation and gender identity.<sup>245</sup> Several other states interpret their current laws as providing such protections.<sup>246</sup> Numerous states have refuge laws whereby those who cannot legally receive trans-affirming care in their home states are protected when seeking it in a refuge state.<sup>247</sup> Others plan to propose such laws.<sup>248</sup> Other common types of statutes include those prohibiting insurance carriers from refusing coverage for certain procedures<sup>249</sup> and those allowing updated gender markers on identification.<sup>250</sup> States should continue to propose and pass increased protections to combat the onslaught of anti-trans schemes in their individual states.

Though increased legal protections for trans people under state laws is a step in the right direction, a state-by-state approach to the provision of basic rights is ultimately limited, as it does not ensure equal rights for all trans people in the United States. Taking away the right to trans existence in one state impacts every other, just as taking away the right to marry freely in one state impacted every other before its universal protection. Thus, federal statutory laws are also necessary to create a federal floor of protection that preempts contrary state practices. These protections could mirror the state statutes articulated above. They should specifically extend protections to trans and other LGBTQIA+ people to ensure clarity in application. Proposed federal laws like the Equality Act do just that. The Equality Act seeks to amend existing civil rights laws to assure equal protection for LGBTQIA+ people in housing, employment, and numerous other realms.<sup>251</sup> But, as suggested by the United States Department of Justice in its Amicus Brief to the Arkansas court,<sup>252</sup> any such laws should also broadly strengthen protections against infiltration of niche religious morals into legal institutions.

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244. See *Snapshot: LGBTQ Equality by State*, MOVEMENT ADVANCEMENT PROJECT, <https://www.lgbtmap.org/equality-maps> (last visited Nov. 12, 2023); *Legislation Affecting LGBTQ Rights Across the Country*, *supra* note 3.

245. *Nondiscrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, [https://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](https://www.lgbtmap.org/equality-maps/non_discrimination_laws) (last visited Nov. 12, 2023).

246. *Id.*

247. Branigin & Kirkpatrick, *supra* note 3; see S. 107, 2022 Leg., Reg. Sess. (Cal. 2022); H.R. 5506, 2022 Gen. Assemb., Feb. Sess. (Conn. 2022).

248. *LGBTQ Lawmakers in 16 States to Introduce Trans Refuge Laws; Will Shield Trans Kids from Penalties When Seeking Gender-Affirming Care*, VICTORY INST. (May 3, 2022), <https://victoryinstitute.org/news/lgbtq-lawmakers-in-16-states-to-introduce-trans-refuge-state-laws-will-shield-trans-kids-from-penalties-when-seeking-gender-affirming-care/>.

249. See Press Release, U.S. Dep't of Health and Hum. Servs., Biden-Harris Administration Greenlights Coverage of LGBTQ+ Care as an Essential Health Benefit in Colorado (Oct. 12, 2021) (available at <https://public3.pagefreeser.com/browse/HHS.gov/30-12-2021T15:27/https://www.hhs.gov/about/news/2021/10/12/biden-harris-administration-greenlights-coverage-of-lgbtqplus-care-as-an-essential-health-benefit-in-colorado.html>).

250. VT. STAT. ANN. tit. 18, § 5112(a)(c) (2022).

251. 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/>.

252. See Statement of Int. of the U.S. at 19, *Brandt v. Rutledge*, 551 F. Supp. 3d 882 (E.D. Ark. Aug. 2, 2021) (No. 4:21CV00450 JM).



The *coup de grâce* of anti-trans state legislation would be a constitutional amendment specifically protecting trans people. While the extreme difficulty of passing such an amendment is undeniable<sup>253</sup> it should still be continuously sought after. Proposed amendments like the Equal Rights Amendment offer adequate templates and starting places. However, explicit protections for gender identity and transgender existence should be included. Explicit language would help prevent the gradual weakening of protections that may otherwise accompany a general declaration of equal rights.

Judicial battles on Fourteenth Amendment grounds, as seen in Arkansas, are necessary to fight against anti-trans legislation. However, greater protections could be accomplished by implementing explicit trans-protecting laws. From state laws, to federal laws, to constitutional amendments, trans activists should continuously employ every method to codify trans rights. Trans rights must be released from reliance on piecemeal judicial protections and ever-changing administrations.

### *B. Policy Recommendations*

Heavily perpetuated misinformation about trans people causes much of the misconceptions and animosity moving legislators' hands.<sup>254</sup> General education about the subjects of discrimination is an important tool to combat ignorance and its resulting discrimination.<sup>255</sup> This Section briefly discusses general educational efforts that should continue to target legislatures and the public. It then suggests an addition to the educational roster.

Despite legislatures' and others' seeming inability to accept facts in the face of their decision to target trans people,<sup>256</sup> continuous efforts should still be made to educate them about the realities of trans existence. Any successful approach to preventing anti-trans legislation must illuminate incentives for legislators not to act, whether those incentives are pressure from constituents or the discovery of personal moral disapproval of trans-targeting laws. To effectuate such ends, trans activists should continuously interact with legislators and their constituencies, and otherwise combat misinformation disseminated by hate groups in places like

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253. See Harry S. Truman Libr. and Museum, *The Amendment Process*, NAT'L ARCHIVES, <https://www.trumanlibrary.gov/education/three-branches/amendment-process> (last visited Nov. 12, 2023) (To pass a constitutional amendment, "A proposed amendment must be passed by two-thirds of both houses of Congress, then ratified by the legislatures of three-fourths of the states," a difficult feat considering America's diverse interests and populations).

254. See *supra* Section II.D; *Myths and Facts: Battling Disinformation About Transgender Rights*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/myths-and-facts-battling-disinformation-about-transgender-rights> (last visited Nov. 12, 2023).

255. See Azza Karam, *Education as the Pathway Towards Gender Equality*, UNITED NATIONS CHRONICLE, <https://www.un.org/en/chronicle/article/education-pathway-towards-gender-equality> (last visited Nov. 12, 2023); 2ND CONF. OF THE COUNCIL OF EUR. NAT'L FOCAL POINTS ON GENDER EQUAL., *COMBATING GENDER STEREOTYPES IN AND THROUGH EDUCATION* 3, 5 (2015); *Quality Education Can Help Prevent Racism and Xenophobia - UN Expert*, UNITED NATIONS (June 14, 2013), <https://news.un.org/en/story/2013/06/442302>.

256. See generally *supra* Section II; *Myths and Facts: Battling Disinformation About Transgender Rights*, *supra* note 254.

legislative buildings. Areas for education should include the common misconceptions and lies often cited when legislating against trans people. For example, activists should communicate the low rates of trans regret and its relative medical insignificance,<sup>257</sup> as well as the rarity of medical affirmation and the benefits of social affirmation.<sup>258</sup>

Further, the points articulated in this Comment should also be conveyed to legislators and their constituencies, making clear that regardless of the facts legislatures ignore when passing legislation, the articulated goals behind their decisions are not accomplished by the legislation.<sup>259</sup> As this Comment shows, tens to hundreds of thousands of procedures continue unabated for cis children while legislatures continuously pass up countless opportunities to provide care for, or protect, children.<sup>260</sup> While legislative ineffectiveness and disapproval are staples of American politics,<sup>261</sup> this type of information in an educated public's hands will help further delegitimize the legislatures and their individual members who participate in baseless legislation. This delegitimization can help lead to changes in legislative decisions and makeup.

Trans activists already deploy many of these educational approaches.<sup>262</sup> These efforts should continue in full force. But, in the face of increasing legal barriers to trans-education,<sup>263</sup> any outreach that manages to overcome these barriers must be as effective as possible. To this end, in addition to existing efforts, the following Section proposes that an often-overlooked strand in the trans-educational bundle be incorporated into all educational outreach. Trans activists should seek to expand the social definition of gender affirmation beyond its largely trans-exclusive sphere as a means of educating people about trans existence and affirmative behaviors of their own.

Words and their societal interpretations or definitions matter because they contribute to the classification and legitimization of people and behaviors.<sup>264</sup> Thus, changes in social definitions are important because they can accompany or precede the changes in legal protections and rights

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257. *What Does the Scholarly Research Say About the Effect of Gender Transition on Transgender Well-Being?*, *supra* note 94.

258. *See id.*

259. *See supra* Section II.

260. *See supra* Section II.A; *supra* Section II.C.

261. *See, e.g., Congress and the Public*, GALLUP, <https://news.gallup.com/poll/1600/congress-public.aspx> (last visited Nov. 13, 2023); *Texas Legislature Approval (August 2021)*, THE TEX. POLS. PROJECT AT THE UNIV. OF TEX. AT AUSTIN, <https://texaspolitics.utexas.edu/set/texas-legislature-approval-august-2021> (last visited Nov. 13, 2023); Kenneth Silber, *New York's Nightmare Legislature*, CITY J. (Spring 1995), <https://www.city-journal.org/article/new-yorks-nightmare-legislature>; SARAH BINDER, *POLARIZED WE GOVERN?*, 1–2 (Christine Jacobs & Beth Stone eds., 2014).

262. *See generally* PROMO, <https://promoonline.org> (last visited Nov. 13, 2023) (an organization that dedicates its time, mission, and resources to LGBTQIA+ equality by creating avenues for education and partnering with parallel movements).

263. *See, e.g., Anthony Izaguirre & Brendan Farrington, Florida Expands 'Don't Say Gay'; House Oks Anti-LGBTQ Bills*, AP NEWS (Apr. 19, 2023), <https://apnews.com/article/desantis-florida-dont-say-gay-ban-684ed25a303f83208a89c556543183cb>.

264. *See* WILLIAM LITTLE, *INTRODUCTION TO SOCIOLOGY* 381–82 (1st ed. 2014).

stemming from social classifications.<sup>265</sup> For example, the word “person” or “people” in the U.S. Constitution and other founding documents was historically interpreted as applying primarily, if not exclusively, to white male landowners.<sup>266</sup> It was in part an expansion of the social definition of “person” and “people” that brought about more legal rights under the constitution for enslaved people, women, and countless others.<sup>267</sup> The social and legal understanding of marriage in the United States is another example. Historically, the term “marriage” applied to the union between a man and woman, and many laws reflected this.<sup>268</sup> But, eventually, a broader social acceptance of same-sex couples<sup>269</sup> and an expansion of the social definition of marriage led to various legal protections for gay marriage.<sup>270</sup>

Definitions surely do not change everything, but they present an opportunity to expand society’s understanding of a particular subject, and in the process, change it and its surrounding landscape.<sup>271</sup> Whether such historical changes in social definition were true changes of the heart or forced acknowledgement of the reality of the times, the results are alike: more social recognition and avenues for inclusivity and positive change.<sup>272</sup> This same kind of definitional expansion should be deliberately pursued surrounding the idea of gender affirmation.

Gender affirmation is not exclusive to trans people.<sup>273</sup> The laws dissected above even acknowledge cisgender affirmation based on their narrow language and application.<sup>274</sup> And gender impacts nearly every aspect of human life and informs a myriad of wants and behaviors.<sup>275</sup> Yet, the phrase “gender affirmation” is extremely limited in its use. An internet search of “gender affirmation” results in almost exclusively transgender related sources and definitions.<sup>276</sup> Even the 2020 American Society of

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265. *See id.*

266. *See Note, The Meaning(s) of “The People” in the Constitution*, 126 HARV. L. REV. 1078, 1088, 1090–91 (2013); Morris D. Forkosch, *Who are the “People” in the Preamble to the Constitution*, 19 CASE W. RES. L. REV. 644, 658–62, 685 (1968).

267. Note, *supra* note 266, at 1088–89.

268. *See Obergefell v. Hodges*, 576 U.S. 644, 652–57 (2015); Respect for Marriage Act, Pub. L. No. 117-228 (codified as amended in scattered sections of 1 U.S.C. and 28 U.S.C.); LITTLE, *supra* note 264, at 440.

269. *See* Justin McCarthy, *Record-High 70% in U.S. Support Same-Sex Marriage*, GALLUP (June 8, 2021), <https://news.gallup.com/poll/350486/record-high-support-same-sex-marriage.aspx>.

270. *Obergefell*, 576 U.S. at 681; *see also* Respect for Marriage Act, Pub. L. No. 117-228 (codified as amended in scattered sections of 1 U.S.C. and 28 U.S.C.).

271. *See* LITTLE, *supra* note 264, 381.

272. *See Note, supra* note 266, at 1088–89; *Obergefell*, 576 U.S. at 681; Respect for Marriage Act, Pub. L. No. 117-228 (codified as amended in scattered sections of 1 U.S.C. and 28 U.S.C.).

273. Aids Council of New South Wales, *supra* note 8; Sevelius, *supra* note 8, at 675–76.

274. *See supra* Section II.C.

275. *See id.*

276. For example, at the time of writing this Comment, the first five sources that appear when searching “gender affirmation” on Google make no mention of cisgender affirmation. Internet Search For “Gender Affirmation,” GOOGLE, <http://google.com> (a screenshot of the Google results is on file with the Author). *See* Boyle, *supra* note 8; Aids Council of New South Wales, *supra* note 8; *Gender Affirmation Nonsurgical Services*, JOHN HOPKINS MED., <https://www.hopkinsmedicine.org/health/wellness-and-prevention/gender-affirmation-nonsurgical-services> (last visited Nov.

Plastic Surgeons Statistics Report makes no mention of affirmation except when reporting on trans procedures,<sup>277</sup> implicitly confining any affirmative purposes to trans procedure. This limited definition is often reinforced even by the trans and activist community. An examination of trans related media and resources reveal little in-depth acknowledgement of gender affirmation's broad reach nor a comprehensive strategy of broadening this definition.<sup>278</sup> This is not to say trans resources lack awareness of, or fail to discuss, the subject.<sup>279</sup> But it is often a sidenote rather than an area for strategic policymaking.<sup>280</sup>

And perhaps this lack of attention by the trans community is understandable. Trans people experience a particularly unique relationship with gender identity and affirmation, around which a community has formed.<sup>281</sup> It is understandable that this community would be wary of bringing cis people within the largely exclusive language surrounding the safety of their community and identities. Rather than expanding terms of those with power to include those without, as was done with "person," "people," and "marriage," this strategy would see a principally trans-associated term expanded to include those in power. Expanding affirmation in this way could be seen as a loss of a unique community identifier as opposed to being included in the majority's protected status. However, the end game is the same: not to deny the individuality of transgender affirmation and the community, but to expand their protections and support their unique identities.

To effectuate this definitional change, the trans and activist community must themselves recognize cis behavior for its affirmative nature. Then, concerted efforts must be made to bring others into the fold. These efforts could take innumerable forms, including simply discussing cisgender affirmation with others within the context of transgender affirmation; changing the language employed by the trans activist community under the banner of "gender affirmation" to include more precise terms like "transgender affirmation" and "cisgender affirmation"; direct lobbying and education of legislators and other policymakers about what affirmation truly is and its extension beyond the trans community; and advocating for institutional understanding and language change for those in medical, educational, political, and other powerful institutions shaping spoken and written language around affirmation.

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13, 2023); *Gender-Affirming Care and Young People*, OASH OFF. POPULATION AFF., <https://opa.hhs.gov/sites/default/files/2023-08/gender-affirming-care-young-people.pdf> (last visited Nov. 13, 2023); Lindsey Dawson, Jennifer Kates, & Marybeth Musumeci, *Youth Access to Gender Affirming Care: The Federal and State Policy Landscape*, KFF (June 1, 2022), <https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/>.

277. See AM. SOC'Y OF PLASTIC SURGEONS, *supra* note 13, at 7–8, 26.

278. See e.g., Aids Council of New South Wales, *supra* note 8; Boyle, *supra* note 8.

279. See e.g., Aids Council of New South Wales, *supra* note 8; Boyle, *supra* note 8.

280. See e.g., Aids Council of New South Wales, *supra* note 8; Boyle, *supra* note 8.

281. See Sevelius, *supra* note 8, at 675–76.

An expanded social definition of gender affirmation could help broaden acceptance of transgender affirmation by making people understand its importance in their own lives. Without a personal understanding of, or connection to the issues at stake, it is more difficult to understand or care about what is being taken away.<sup>282</sup> Parents better understand the value of a bedroom door with a lock than a childless couple. By illuminating cisgender peoples' own gender-affirmative activities and their importance, cis people can become more sympathetic to the importance of transgender affirmation. This sympathy would help stir opposition to discriminatory legislation. By portraying trans people and their behaviors as less of an "other," cis people could be more apt to support trans legal protections.<sup>283</sup>

Expanding cis understanding of gender affirmative actions could also help garner support by illuminating the facial absurdity and lack of logic in anti-trans legislation.<sup>284</sup> Shaping the public perception of these laws as an arbitrary prohibition on affirmative activities for trans people, while allowing them for cis people, could drive home the laws' irrationality and delegitimize the legislatures' overall efforts.<sup>285</sup> It simply sounds ridiculous and problematic to punish trans people for receiving hair transplants while allowing them for cis people.

Not only could expanding these definitions help people better understand their own affirmative behaviors, but it could also help people see that protecting transgender affirmation will protect their own affirmation.<sup>286</sup> Because the laws amount to an arbitrary moral determination of what is acceptable and unacceptable for a body, there is little standing in the way of legislatures legislating beyond transgender affirmation bans. For example, the arbitrary nature of "how God made us" justifications could lead to banning any sort of body modification. If a legislature suddenly considers hair transplants and breast augmentation procedures outside "God's image," those procedures could swiftly become illegal. And, because of the fluid nature of what is considered affirmative and desirable within a gender,<sup>287</sup> what might otherwise be next year's trend of dyed purple hair and finger tattoos could instead be criminalized. By

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282. Myoungsoon You & Youngkee Ju, *The Outrage Effect of Personal Stake, Familiarity, Effects on Children, and Fairness on Climate Change Risk Perception Moderated by Political Orientation*, 17 INT'L J. OF ENV'T RSCH. AND PUB. HEALTH 1, 1, 4, 10–11 (2020); Britta Renner, Martina Gamp, Ralf Schmäzlle, & Harald T. Schupp, *Health Risk Perception*, in INT'L ENCYCLOPEDIA OF THE SOC. & BEHAV. SCIS. 702, 702 (James D. Wright ed., 2nd ed. 2015).

283. See generally Julia Kolodko, *Us vs. Them: Why Our Society and the World Are Becoming Increasingly Divided*, (PRO)SOCIAL, <https://www.juliakolodko.com/us-vs-them> (last visited Nov. 13, 2023) (noting that humans naturally see the world as a collection of social groups and tend to discriminate against members of groups outside their own).

284. See *Get the Facts on Gender-Affirming Care*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/get-the-facts-on-gender-affirming-care> (last visited Nov. 13, 2023); Sevelius, *supra* note 8, at 676; *Quality Education Can Help Prevent Racism and Xenophobia*, *supra* note 255.

285. See *supra* Section II; *Get the Facts on Gender-Affirming Care*, *supra* note 284.

286. See e.g., AM. SOC'Y OF PLASTIC SURGEONS, *supra* note 13, at 7–8, 26; Sevelius, *supra* note 8, at 676; Aids Council of New South Wales, *supra* note 8; Boyle, *supra* note 8.

287. *Gender Roles Can Create Lifelong Cycle of Inequality*, *supra* note 191.

communicating to cis people how thin the line is between bans on transgender affirmation and bans on their own forms of affirmation, cis people could see the personal value in protecting transgender affirmation now to save their own later.

The law and its application reflects how we define the world around us.<sup>288</sup> By changing the social definition of gender affirmation in the eyes of powerful institutions, legislators, and everyday people, the fact that anti-trans laws are nothing more than overt discrimination, and the danger they pose, will become clearer. This understanding will contribute more roadblocks to discriminatory legislation as well as encourage explicit protections for transgender affirmation and existence.

#### CONCLUSION

Comprehensive protection for trans people will not occur over night.<sup>289</sup> However, if the rapid adoption of safeguards for other LGBTQIA+ groups are any indication,<sup>290</sup> more protections will ultimately be extended to meet the expanding social acceptance of trans people brought about by activists' tireless work.<sup>291</sup> To prevent the proliferation of anti-trans legislation, activists should continue combatting discriminatory laws in the judicial system and seek other explicit legal protections through state and federal statutes. To accelerate the provision of such protections, activists must continue to combat arbitrary moral positions with education about trans existence. The effectiveness of such educational endeavors should be bolstered by deliberate efforts to change the social definition of gender affirmation, thereby further illuminating the impacts of these arbitrary, intolerant laws. The targeted maltreatment inflicted upon trans people in states like Arizona, Alabama, and Arkansas is felt by the entire trans community. Not until the United States guarantees nationwide protections for trans individuals can the community begin to escape their state-sanctioned subordination and discrimination. To borrow the LGBTQIA+ expression, "[I]t gets better."<sup>292</sup>

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288. See LITTLE, *supra* note 264, at 287 (describing laws as "formal norms").

289. See generally SIDNEY G. TARROW, POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS 195–99 (3d ed. Cambridge Univ. Press. 2011) (explaining the cyclical and extended nature of movements and social change).

290. *LGBTQ+ Rights*, *supra* note 1.

291. See Parker, Horowitz, & Brown, *supra* note 37; Greenberg, Najle, Jackson, Bola, & Jones, *supra* note 37; *LGBTQ+ Rights*, *supra* note 1.

292. See generally IT GETS BETTER, <https://itgetsbetter.org> (last visited Nov. 13, 2023) (championing a movement to provide global education and community for transgender youth).