

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Stacie Ray, *et al.*,

Plaintiffs,

v.

Lance Himes, Director,  
Ohio Department Health, *et al.*,

Defendants.

Case No. 2:18-cv-272

Judge Michael H. Watson

Magistrate Judge Jolson

**OPINION AND ORDER**

Stacie Ray (“Ray”), Basil Argento (“Argento”), Jane Doe (“Doe”), and Ashley Breda (“Breda,” collectively “Plaintiffs”) sue Lance Himes (“Himes”), in his capacity as Director of the Ohio Department of Health (“ODH”), Karen Sorrell (“Sorrell”), in her capacity as Chief of the Ohio Office of Vital Statistics, and Judith Nagy (“Nagy”), in her capacity as State Registrar of the Ohio Office of Vital Statistics (collectively “Defendants”). ECF No. 1. Defendants move to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 18. For the following reasons, the Court **DENIES** Defendants’ motion.

**I. FACTS**

This action is brought by four transgender individuals who wish to change the sex on their<sup>1</sup> Ohio birth certificates to reflect their gender identity. Compl. ¶¶

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<sup>1</sup> This Opinion uses the pronouns “they” and “them” to be consistent with those used in the Complaint.

11–14, ECF No. 1. Plaintiffs Ray, Doe, and Breda all identify as women, but their birth certificates designate their sex as male. *Id.* ¶ 1. Plaintiff Argento identifies as a man, but his birth certificate indicates his sex as female. *Id.*

ODH, through its Office of Vital Statistics, is responsible for issuing and correcting birth certificates in Ohio. *Id.* ¶¶ 16–17, 41. Himes supervises the activities of ODH and enforces Ohio’s vital statistics laws. *Id.* ¶ 15. Sorrell and Nagy are the Chief and State Registrar of the Office of Vital Statistics, respectively. *Id.* ¶¶ 16–17. Sorrell oversees enforcement of Ohio’s vital statistics laws, while Nagy has authority over the issuance and alteration of Ohio’s birth certificates. *Id.*

According to the Complaint, each Plaintiff has unsuccessfully requested to have the sex—which Plaintiffs refer to as the “gender marker”—corrected on their Ohio birth certificate. *Id.* ¶¶ 41, 56, 75. Moreover, Plaintiffs allege that, except for a short time when Defendants exercised their authority to correct birth certificates for transgender people pursuant to a court order, Defendants have categorically refused to change the sex on any transgender person’s birth certificate to match their gender identity. *Id.* ¶¶ 41, 43. Plaintiffs refer to this failure to act under the law as Ohio’s “Birth Certificate Policy.”<sup>2</sup> *Id.* ¶ 41.

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<sup>2</sup> According to Plaintiffs, this alleged policy has only been reduced to writing in letters sent by Defendants rejecting requests by transgender persons to correct their birth certificate. *Id.* ¶ 42.

As it stands today, Ohio and Tennessee<sup>3</sup> are the only states that do not permit a transgender person to change the sex on their birth certificate. *Id.* ¶ 45. By contrast, the Ohio Bureau of Motor Vehicles (“Ohio BMV”) allows transgender people to change the sex on their driver’s license and state identification card to reflect an individual’s gender identity. *Id.* ¶ 47. Federal agencies, including the U.S. Department of State and the Social Security Administration, also allow changes to an individual’s sex in their respective records. *Id.* ¶ 46. Each Plaintiff here has changed their name and sex on their Ohio driver’s license or state identification card and in their social security records, as well as taken steps to bring their body and gender expression into conformity with their gender identity. *Id.* ¶¶ 50, 61, 80, 92.

Gender identity refers to “a person’s fundamental, internal sense of their gender.” *Id.* ¶ 18. For transgender people, gender identity does not match the sex assigned to them at birth based on their external genitalia. *Id.* ¶¶ 19–20. Rather, according to Plaintiffs, there are other “sex-related characteristics” such as chromosomes, hormone levels, and internal reproductive organs that are not

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<sup>3</sup> At the time this case was filed, Kansas was also included among those states that do not allow changes to birth certificates based on gender identity. However, on June 21, 2019, Kansas became the forty-eighth state to allow transgender individuals to obtain birth certificates that reflect an individual’s “true sex” consistent with their gender identity. Notice, 1, ECF No. 40; Consent Judgment, 3–4, *Foster v. Andersen*, No. 18-cv-2552 (D. Kan. June 21, 2019).

in alignment with one another, causing gender identity to be the “critical determinant of sex.” *Id.* ¶¶ 20-21.

Plaintiffs allege that “[l]iving in a manner consistent with one’s gender identity is critical to the health and well-being of transgender people.” *Id.* ¶ 23. “The discordance between one’s gender identity and birth-assigned sex can be associated with clinically significant distress, which is known as gender dysphoria.” *Id.* ¶ 26. Thus, the process by which transgender people come to live in a manner consistent with their gender identity versus their birth-assigned sex is known as “transition.” *Id.* ¶ 23.

The transition process is specific to each transgender individual but may include “social transition, gender confirmation medical treatment, and/or gender confirmation surgical treatment.” *Id.* ¶ 24. Social transition includes changing one’s name, changing identity documents to reflect gender identity, and/or changing one’s outward appearance, including hairstyle and clothing. *Id.* ¶ 25. Plaintiffs allege that while some transgender people undergo medical or surgical treatment, social transition is also part of the necessary medical treatment for many transgender people with gender dysphoria. *Id.* ¶ 27. Ultimately, the goal of social transition is to “bring the person’s physical appearance and social presentation into better alignment with their gender.” *Id.* ¶ 29.

There is no question that “[a] birth certificate is an essential government-issued document that each person uses to establish their identity throughout their

lifetime.” *Id.* ¶ 32. According to the Complaint, accurate birth certificates are essential to gaining “[a]ccess to employment, education, housing, health care, banking, travel, and government services.” *Id.* ¶ 2. Plaintiffs claim that lack of access to an accurate birth certificate “subjects them to discrimination, privacy invasions, harassment, humiliation, stigma, harm to their health, and even violence.” *Id.* ¶ 3. Plaintiffs also allege that depriving transgender people from obtaining birth certificates that match their gender identity denies them access to birth certificates they can comfortably use to participate in public life and interferes with medical treatment for gender dysphoria by preventing a transgender person’s ability to live in an outward manner consistent with their gender identity. *Id.* ¶¶ 3, 30.

Plaintiffs contend that in any scenario where they are required to present their current birth certificate, they are forced to disclose their transgender status to other people whether they want to or not. *Id.* ¶ 36. The Complaint provides several specific instances where this is alleged to have occurred to Plaintiffs. According to Ray, when she presented her birth certificate during the orientation process for a new job, she was outed as transgender by the human resources person in front of ten coworkers upon realizing Ray’s birth certificate did not match the gender on her other documents. *Id.* ¶ 54. Similarly, when she underwent a background check to obtain a hazmat endorsement for her commercial driver’s license, a receptionist loudly disclosed her status as

transgender in a public waiting area after noting the mismatch between her birth certificate and driver's license. *Id.* ¶ 55. Likewise, Doe was outed as transgender to a waiting room of "more than one hundred people" when she presented her birth certificate to the Social Security Administration to correct the "gender marker" in her social security records. *Id.* ¶ 85. Confusion regarding Breda's "gender marker" on her birth certificate and her other Ohio identification documents caused a discussion at an Arizona government agency regarding her being transgender when she attempted to get a new identification card after relocating to Phoenix. *Id.* ¶ 97. She was also outed as transgender after starting a new job when a human resources member disclosed her transgender identity to her colleagues upon inspecting her Ohio birth certificate. *Id.* ¶ 99. Argento alleges similar involuntary disclosure of his transgender status as he went through the process of using his Ohio birth certificate to obtain dual Italian citizenship and, unsuccessfully, an Italian passport. *Id.* ¶¶ 66–77. Plaintiffs describe these experiences as humiliating, stigmatizing, and despairing. *Id.* ¶¶ 55, 87, 94.

Plaintiffs also claim that such forced disclosure "seriously jeopardize[s] a person's safety and subject[s] the person to a risk of bodily harm[.]" noting a high incidence of harassment, discrimination and violence directed at transgender people. *Id.* ¶¶ 37, 52, 63, 83, 95. All Plaintiffs recount experiences where they have been treated with hostility due to their transgender status. Ray alleges that

due to being harassed and menaced in her work as a truck driver, she has ceased using truck stops and only uses highway rest stops also used by the public “because lighting, security cameras, quick accessibility to the highway, and the presence of police is better[.]” *Id.* ¶ 52. She also alleges that after her transgender status was involuntarily disclosed at a new job, her coworkers refused to speak to her, referred to her as “the freak of the company” and a female coworker threatened to “beat [her] ass” if she ever saw her in the women’s restroom. *Id.* ¶ 54. As a result, Ray left that job. *Id.* Doe recalls being verbally harassed at work. *Id.* ¶ 83. Breda alleges that she has been the target of online harassment. *Id.* ¶ 95. According to the 2015 U.S. Transgender Survey that Plaintiffs cite in their Complaint, approximately one in three transgender people “who showed an identity document with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or services, asked to leave, or assaulted.” *Id.* ¶ 38.

Plaintiffs now seek a declaration that Defendants’ Birth Certificate Policy is unconstitutional on the basis that it impermissibly interferes with their right to equal protection under the law, substantive due process, and free speech. Plaintiffs also request the Court permanently enjoin Defendants from enforcing the Policy. Defendants move to dismiss Plaintiffs’ Complaint in its entirety, maintaining that Plaintiffs have no constitutional right to change their birth certificates in the manner requested.



## II. STANDARD OF REVIEW

A claim survives a motion to dismiss pursuant to Rule 12(b)(6) if it “contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* A complaint’s “[f]actual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all of the complaint’s allegations are true.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted).

A court must also “construe the complaint in the light most favorable to the plaintiff.” *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 619 (6th Cir. 2002). In doing so, however, a plaintiff must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”); *Ass’n of Cleveland Fire Fighters v. City of Cleveland, Ohio*, 502 F.3d 545, 548 (6th Cir. 2007). “[A] naked assertion . . . gets the complaint close to stating a claim, but without some further factual enhancement it stops short of the line between possibility and plausibility . . . .” *Twombly*, 550 U.S. at 557.

### III. ANALYSIS

#### A. Ohio's "Birth Certificate Policy"

As a preliminary matter, there appears to be disagreement between the parties regarding whether Plaintiffs are making a facial challenge to Ohio Rev. Code §§ 3705.15 and 3705.22 or challenging Defendants' application of these laws.

Pursuant to Ohio Rev. Code § 3705.15,

Whoever claims to have been born in this state, and whose registration of birth . . . has not been properly and accurately recorded, may file an application for . . . correction of the birth record in the probate court of the county of the person's birth or residence or the county in which the person's mother resided at the time of the person's birth. . . . The probate judge, if satisfied that the facts are as stated, shall make an order correcting the birth record . . . . [W]henever a correction is ordered in a birth record . . . the court ordering the correction shall forthwith forward to the department of health a certified copy of the order containing such information as will enable the department to prepare a new birth record. Thereupon, the department shall record a new birth record using the correct information supplied by the court . . . .

ODH can also amend birth records without a court order. Section 3705.22 states that "[w]henever it is alleged that the facts stated in any birth . . . record filed in the department of health are not true, the director may require satisfactory evidence to be presented in the form of affidavits, amended records, or certificates to establish the alleged facts." Moreover, "[t]he director of health shall have charge of the system of vital statistics, enforce sections 3705.01 to 3705.29 of the Revised Code, and prepare and issue instructions necessary to secure the

uniform observance of such sections[]” and “adopt rules as necessary to insure that [Ohio] shall have a complete and accurate registration of vital statistics.” *Id.* § 3705.02.

Defendants characterize Plaintiffs’ claims as a facial challenge to the constitutionality of Ohio Rev. Code §§ 3705.15 and 3705.22. Mot. Dismiss 3, ECF No. 18 (“Plaintiffs do not challenge any discretionary policy or practice; rather, they attack Defendants’ adherence to Ohio’s birth-record laws, which do not allow the relief sought by Plaintiffs.”). Based on their interpretation of these statutory sections, Defendants contend they are required to deny applications made by transgender individuals for the purpose of changing the listed sex on their birth certificates to reflect their gender identity. *Id.* at 4. In support, Defendants cite an Ohio probate court’s finding that Ohio’s birth record laws only allow modification to the sex designation on a person’s birth certificate where the sex was inaccurately reported or recorded *at birth*. *In re Declaratory Relief for Ladrach*, 513 N.E.2d 828 (Ohio P.C. 1987). Further, Defendants argue that because birth certificates record sex and not gender identity, “Ohio law does not permit the birth certificate change that Plaintiffs seek.” Mot. Dismiss 6, ECF No. 18.

In the Complaint, Plaintiffs explicitly challenge Defendants’ “Birth Certificate Policy,” requesting the court “declar[e] [it] unconstitutional on its face and as applied.” Compl. ¶ A, ECF. No. 1. Plaintiffs argue that Defendants

refusal to correct the “gender identification field” on birth certificates for transgender people, “regardless of whether it is supposedly dictated by state law,” facially discriminates between transgender people and non-transgender people. Resp.1–2, ECF No. 23. Plaintiffs state “[i]t is precisely the Defendants’ choice not to alter and seal birth records that divulge record holders’ transgender identity that Plaintiffs challenge.” *Id.* at 13 n.6. They go on to argue that “the instant constitutional challenge does not require the Court to interpret Ohio’s statutes, but evaluate the constitutionality of the Policy.” *Id.* at 2 n.2.

The plain language of the Ohio Revised Code sections at issue do not explicitly contemplate a transgender individual’s ability to change the sex on their birth certificate to reflect their gender identity nor do they explicitly limit changes to sex as to only those inaccurately or improperly recorded “at birth.” *Cf.* Tenn. Code Ann. § 68-3-203(d) (“The sex of an individual shall not be changed on the original certificate of birth as a result of sex change surgery.”). Rather, according to Defendants’ motion, Ohio’s decision not to allow transgender people to change the sex on their birth certificate—which Defendants do not dispute is the practice of ODH—was adopted by Defendants based on ODH’s interpretation of sections 3705.15 and 3705.22 (supported by one probate court case) and the notion that birth certificates record an individual’s sex, not their gender identity. Assuming the allegations in the Complaint are true, particularly Plaintiffs’ assertion that “gender identity is the critical determinant of sex[,]” Compl. ¶ 21, ECF No. 1, the

Court is not convinced that Ohio law prohibits Plaintiffs' request.<sup>4</sup> See Ohio Rev. Code § 3705.02. Plaintiffs allege that ODH has allowed transgender individuals to change the sex on their birth certificate with a court order in the past. Compl. ¶ 43, ECF No. 1.

Ultimately, "the distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge. The distinction is both instructive and necessary, for it goes to the breadth of the remedy employed by the Court, *not what must be pleaded in a complaint.*" *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 331 (2010) (emphasis added). A constitutional claim under the Due Process Clause, for example, "remains a single 'claim' even where a plaintiff challenges an enactment both on its face and 'as applied' to the specific facts at issue." *Ass'n of Cmty. Orgs. for Reform Now v. Corbett*, No. 09-951, 2010 WL 3885373, at \*6 (W.D. Pa. Sep. 28, 2010) (citing *Citizens United*, 558 U.S. at 331). Thus, in reviewing the sufficiency of the Complaint, the Court need not explicitly decide at this stage whether

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<sup>4</sup> In *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1136 (D. Idaho 2018), the Idaho Department of Health and Welfare interpreted its vital statistics laws to prohibit changes to the listed sex unless there was an error in the recording at birth, resulting in a policy of automatically and categorically denying applications made by plaintiffs and all transgender individuals for the purpose of changing the listed sex to reflect their gender identity. In finding the policy unconstitutional as applied, the court noted that "under an alternative, constitutionally-sound reading of Idaho's vital statistics laws, amendments to the listed sex are not only possible, but procedures are already in place to facilitate such amendments[.]" *Id.* at 1142.

Plaintiffs' claims constitute a facial challenge, an "as applied" challenge, or something in between. For ease, and pursuant to the allegations in the Complaint, the Court will refer to Defendants' claimed "adherence to Ohio's birth-record laws," Mot. Dismiss 3, ECF No. 18, as Defendants' "Birth Certificate Policy" moving forward.

### **B. Due Process**

Pursuant to the Fourteenth Amendment of the United State Constitution, no State may "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. In addition to requiring fair procedures upon taking certain actions, the Due Process Clause also "bar[s] certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). This doctrine is known as substantive due process, and includes "heightened protection against government interference with certain fundamental rights and liberty interests," including the right to privacy. *Does v. Munoz*, 507 F.3d 961, 964 (6th Cir. 2007) (internal quotations omitted).

The Supreme Court has identified two types of interests "protected by the right to privacy that [are] rooted in the substantive due process protections of the Fourteenth Amendment." *Lambert v. Hartman*, 517 F.3d 433, 440 (6th Cir. 2008). The first is an interest in "independence in making certain kinds of important decisions." *Id.* (quoting *Whalen v. Roe*, 429 U.S. 589, 599–600 & n.26

(1977)). The second is an “interest in avoiding disclosure of personal matters.” *Id.* (quoting *Whalen*, 429 U.S. at 599, 603–04). The latter is referred to as one’s informational right to privacy and is the right challenged by Plaintiffs in this case. Compl. ¶¶ 116–17, ECF No. 1.

In analyzing an informational right-to-privacy claim, the Sixth Circuit uses a two-step process: “(1) the interest at stake must implicate either a fundamental right or one implicit in the concept of ordered liberty; and (2) the government’s interest in disseminating the information must be balanced against the individual’s interest in keeping the information private.” *Bloch v. Ribar*, 156 F.3d 673, 684 (6th Cir. 1998).

### **1. Implication of a Fundamental Right**

The Sixth Circuit has “recognized an informational-privacy interest of constitutional dimension in only two instances: (1) where the release of personal information could lead to bodily harm (*Kallstrom*), and (2) where the information released was of a sexual, personal, and humiliating nature (*Bloch*).” *Lambert*, 517 F.3d at 440.

#### **a. *Kallstrom***

In *Kallstrom v. City of Columbus*, 136 F.3d 1055 (6th Cir. 1998), personnel records of several undercover officers involved in a drug-conspiracy trial against violent gang members were released to defense counsel. *Id.* at 1059. The personnel records contained the names and addresses of the officers, their

immediate family, and personal references, among other information. *Id.* Noting the gang's "propensity for violence and intimidation," *Id.* at 1063, the Sixth Circuit held that the officers' privacy interests were violated when "the city's disclosure . . . created a risk that the officers' personal information might 'fall into the hands of persons likely to seek revenge upon the officers' and had created a 'very real threat' to the officers' and their family members' bodily integrity and possibly even their lives." *Lambert*, 517 F.3d at 441 (quoting *Kallstrom*, 136 F.3d at 1063).

Plaintiffs contend that Defendants' Birth Certificate Policy "forces them to disclose that they are transgender—every time they must produce a birth certificate" putting Plaintiffs "at risk of bodily harm." Resp. 9, ECF No. 23. Defendants argue that because the Complaint does not "identify a situation where [Plaintiffs'] birth certificate information was released to a dangerous individual likely to expose Plaintiffs to violence" the allegations fall short of what is required under *Kallstrom*. Mot. Dismiss 12, ECF No. 18.

Courts across the United States have explicitly acknowledged the general hostility and violence affecting the transgender population for at least the last decade. *See, e.g., Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017) ("There is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity."); *Powell v. Schriver*, 175 F.3d 107, 111–12 (2d Cir. 1999) ("It is similarly obvious that an individual who reveals that she is transsexual



potentially exposes herself . . . to discrimination and intolerance.” (internal quotations omitted)); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 720 (D. Md. 2018) (noting that transgender individuals suffer “very high rates of violence” due to their status; “at least 25% of transgender persons in the United States were homicide victims in 2017”); *Adams by and through Kasper v. Sch. Bd. of St. Johns Cnty., Florida*, 318 F. Supp. 3d 1293, 1299 n.15 (M.D. Fla. 2018) (pointing to several sources that support that there is a documented history of discrimination and violence against transgender individuals); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015) (“[T]ransgender people have suffered a history of persecution and discrimination.”); *Phillips v. Cane*, No. C13-596 RSM, 2013 WL 4049047, at \*6 (W.D. Wash. Aug. 9, 2013) (finding that putting a transgender lawyer’s personal information in the pleadings, including her name prior to gender reassignment, subjected her to an increased risk of physical danger and harassment); *In re E.P.L.*, 891 N.Y.S.2d 619, 621 (N.Y. Sup. Ct. 2009) (finding numerous documented instances of transgender individuals being targets of violence).

Moreover, three federal courts have recently addressed the specific threat transgender persons face due to the government’s refusal to allow modification of certain essential identity documents to match a transgender individual’s gender identity. In *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327 (D. P.R. 2018), the District of Puerto Rico was confronted with the same

constitutional challenges to Puerto Rico's birth certificate policy as Plaintiffs raise in this case. Like Ohio, Puerto Rico's policy categorically prohibited transgender persons from correcting their birth certificates to accurately reflect the person's sex based on their gender identity as opposed to their sex assigned at birth. *Id.* at 329. Finding a Due Process violation, the court held that in forcing plaintiffs to disclose their transgender status, Puerto Rico's policy "expose[d] transgender individuals to a substantial risk of stigma, discrimination, intimidation, violence, and danger." *Id.* at 333.

Likewise, when faced with constitutional challenges to a similar birth certificate policy in *F.V. v. Barron*, the District of Idaho noted:

Statistics regarding the ongoing discrimination transgender individuals face highlight why involuntary disclosure of transgender status creates these risks. For instance, nearly twenty-five percent of surveyed college students, when perceived as a transgender person, were verbally, physically, or sexually assaulted in 2015. This figure tracks the percentage of workers reporting mistreatment in the workplace due to gender identity. More than seventy-five percent of transgender workers take steps to avoid such mistreatment at work by hiding or delaying their gender transition, or by quitting their job.

Across all environments, almost fifty percent of transgender people surveyed for the 2015 report responded that they had been verbally harassed due to their gender identity. Nearly one in ten reported being physically assaulted because of their gender identity. Notably, the reported lifetime suicide attempt rate for transgender people is nearly nine times the rate of the United States population on average.

286 F. Supp. 3d 1131, 1138 (D. Idaho 2018) (internal citations omitted).<sup>5</sup>

In *Love v. Johnson*, 146 F. Supp. 3d 848 (E.D. Mich. 2015), a group of transgender individuals challenged the constitutionality of a Michigan policy that required an individual to provide a birth certificate showing their corrected sex in order to change their gender marker on a state identification card. *Id.* at 850–51. Noting the varying degrees of difficulty (or impossibility in some cases) of getting a corrected birth certificate, plaintiffs alleged that the Michigan policy indirectly required them to reveal their transgender status to anyone who saw their driver's license. *Id.* at 851–52. Finding a violation of the plaintiffs' due process right to privacy, the Eastern District of Michigan stated:

Plaintiffs relying on their own experiences and the findings of several well-documented studies, maintain that there is a great deal of animosity towards the transgender community. Similar to *Kallstrom*, the Court finds “no reason to doubt that where disclosure of this [highly intimate] information may fall into the hands of persons” harboring such negative feelings, the Policy creates a very real threat to Plaintiffs' personal security and bodily integrity.

*Id.* at 856 (quoting *Kallstrom*, 136 F.3d at 1063).

The Court recognizes that *Kallstrom*'s holding “created a narrowly tailored right, limited to circumstances where the information disclosed was particularly sensitive and the persons to whom it was disclosed were particularly dangerous *vis-à-vis the plaintiffs.*” *Barber v. Overton*, 496 F.3d 449, 456 (6th Cir. 2007).

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<sup>5</sup> The District of Idaho ultimately struck down Idaho's birth certificate policy as unconstitutional based on the State's concession that it violated the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 1134–35.

However, *Kallstrom* does not require courts to wait until plaintiffs are actually assaulted, or worse, to recognize “a very real threat to [transgender individuals’] personal security and bodily integrity” upon disclosure of their status. See *Kallstrom*, 136 F.3d at 1063. Rather, “‘hypothetical risk’ plays an important role in determining whether Plaintiffs’ privacy claim implicates a fundamental liberty interest.” *Love*, 146 F. Supp. 3d at 855. In *Kallstrom*, there was no evidence presented that the gang members used the released personal information to threaten or harm the officers. Nonetheless, the Sixth Circuit held that “where the release of private information places an individual at substantial risk of serious bodily harm, possibly even death, from a *perceived likely threat*, the ‘magnitude of the liberty deprivation . . . strips the very essence of personhood.’” *Kallstrom*, 136 F.3d at 1064 (emphasis added) (quoting *Doe v. Claiborne*, 103 F.3d 495, 506–07 (6th Cir. 1996)). Here, like in *Kallstrom*, Plaintiffs have alleged facts which, accepted as true, suggest that the forced disclosure of Plaintiffs’ transgender status upon presentation of their birth certificates place their “personal safety and bodily integrity in jeopardy.” Compl. ¶ 118, ECF No. 1.

In addition to citing statistical data to support the allegation that transgender people are disproportionately targets of violence—“nearly one in three . . . transgender people who showed an identity document with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or services, asked to leave, or assaulted” (Compl. ¶ 38, ECF No.

1)—the Complaint alleges several instances where Plaintiffs were personally subject to hostility and harassment when forced to produce a birth certificate that did not match their gender identity. See Compl. ¶ 54, ECF No. 1 (After a human resources person disclosed Ray’s transgender identity upon presentation of her birth certificate, a female coworker threatened to “beat [her] ass” if she ever saw her in the women’s restroom.); *Id.* ¶ 85 (Doe was met with “overt hostility” upon presenting her birth certificate at the Social Security office, when a staff person loudly told her she could not “just change [her] from male to female based on [her] say-so.”); *Id.* ¶ 97 (Breda was exposed to hostility when a clerk at the Arizona Department of Transportation erroneously denied her request for a state identification card with a female gender marker upon presenting her birth certificate). As a result of their transgender status, Plaintiffs also recount instances of having to use specific restrooms based on their proximity to security, verbal harassment at work, and online harassment. *Id.* ¶¶ 52, 83, 95. As the court in *Love* concluded, “[t]hese allegations cut at the very essence of personhood protected under the substantive component of the Due Process Clause.” 146 F.3d at 855 (internal quotations omitted).

**b. Bloch**

In addition to putting them at risk of bodily harm, Plaintiffs also contend that Defendants’ Birth Certificate Policy forces them to reveal “highly personal and intimate” information, i.e. their transgender status, each time they are

required to produce their birth certificates. Compl. ¶ 116, ECF No. 1; Resp. 9, ECF No. 23. Defendants argue that Plaintiffs do not have a fundamental right to “keep secret how their sex was reported and recorded at birth.” Mot. Dismiss 11, ECF No. 18.

In *Bloch v. Ribar*, 156 F.3d 673 (6th Cir. 1998), a sheriff released “highly personal and extremely humiliating details” of the rape of the plaintiff during a press conference, some of which were “so embarrassing [the plaintiff] had not even told her husband.” *Id.* at 676. The Sixth Circuit held that such disclosure violated the plaintiff’s right to privacy because “sexuality and choices about sex, in turn, are interests of an intimate nature which define significant portions of our personhood. Publically revealing information regarding these interests exposes an aspect of our lives that we regard as highly personal and private.” *Id.* at 685.

The Second Circuit has long held that the Constitution protects the right to maintain the confidentiality of one’s transsexualism.<sup>6</sup> *Powell v. Schriver*, 175 F.3d 107, 112 (1999); *see also Matson v. Bd. of Educ. of City School Dist. of New York*, 631 F.3d 57, 64–65 (2d Cir. 2011). Finding it analogous to the right to maintain privacy over certain medical conditions, the court explained its reasoning in reaching this conclusion:

Individuals who have chosen to abandon one gender in favor of another understandably might desire to conduct their affairs as if such a transition was never necessary. That interest in privacy . . . is particularly compelling. . . . [T]ranssexualism is the unusual condition

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<sup>6</sup> The Court recognizes that “transsexualism” is an outdated term.  
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that is likely to provoke both an intense desire to preserve one's medical confidentiality, as well as hostility and intolerance from others.

*Id.* at 111. Similarly, upon holding that Puerto Rico's birth certificate policy violated the plaintiffs' right to privacy in *Arroyo Gonzalez*, the court concluded that "there are few areas which more closely intimate facts of a personal nature than one's transgender status." 305 F. Supp. 3d at 333 (internal quotations omitted); see also *Doe v. City of Detroit*, No. 18CV11295, 2018 WL 3434345, at \*2 (E.D. Mich. July 17, 2018) (permitting a transgender individual to proceed by pseudonym upon finding that the individual's transgender status "certainly qualifies as information of the utmost intimacy" (internal quotations omitted)).

This Court recently held that patients had a fundamental right to keep private medical records surrounding their abortion procedures because such records included details regarding the patients' sexuality and sexual choices, which the Court concluded was information of a "sexual, personal, and humiliating nature." *Planned Parenthood Sw. Ohio Region v. Hodges*, No. 15CV568, 2019 WL 1439669, at \*5 (S.D. Ohio Mar. 31, 2019); see also *Eastwood v. Dep't. of Corr. of State. of Okl.*, 846 F.2d 627, 631 (10th Cir. 1988) (explaining that the right to privacy is "implicated when an individual is forced to disclose information regarding personal sexual matters"). As the District of Rhode Island explained, "[u]nquestionably, one's sexual practices are among the most intimate parts of one's life. When those sexual practices fall outside the

realm of 'conventional' practices which are generally accepted without controversy, ridicule, or derision, that interest is enhanced exponentially. As a transsexual, [a] plaintiff's privacy interest is both precious and fragile . . . .”  
*Doe v. Blue Cross & Blue Shield of Rhode Island*, 794 F. Supp. 72, 74 (D. R.I. 1992).

According to Plaintiffs, “[d]enying transgender people birth certificates that match their gender identity reveals private information in contexts where this information would otherwise remain undisclosed . . . regardless of whether a person’s transgender identity may otherwise be known by others . . . and regardless of a person’s desire not to disclose that personal information.” Compl. ¶ 36, ECF No. 1. Plaintiffs describe such involuntary disclosure of this “highly personal and intimate information” about their transgender status as humiliating, stigmatizing, and despairing. *Id.* ¶¶ 55, 87, 94. As opposed to “[m]aintaining secrecy over basic vital statistics” as Defendants categorize it, Mot. Dismiss 11, ECF No. 18, the Court agrees with the Second Circuit that “[t]he excruciatingly private and intimate nature of [being transgender], for persons who wish to preserve privacy in the matter, is really beyond debate.” *Powell*, 75 F.3d at 111; see also *Love*, 146 F. Supp. 3d at 855.

The Court finds that under both *Kallstrom* and *Bloch*, Plaintiffs have adequately alleged that Defendants’ Policy of refusing to change birth certificates to reflect gender identity implicates a release of personal information that is of a



“sexual, personal, and humiliating nature” and “could lead to bodily harm,” resulting in a violation of Plaintiffs’ informational right to privacy.<sup>7</sup> *Lambert*, 517 F.3d at 440; see *Arroyo Gonzalez*, 305 F. Supp. 3d at 333; *Love*, 146 F. Supp. 3d at 856.

**c. Public Record**

Defendants also argue that since a birth certificate is a public record, Plaintiffs cannot claim a privacy interest in information within that record. Mot. Dismiss 10, ECF No. 18. Plaintiffs maintain that “[l]imited availability of information to the public does not foreclose a privacy claim” because it is the disclosure of “Plaintiffs’ assigned sex at birth *in a context that reveals them to be transgender*” that violates their right to privacy. Resp. 14, ECF No. 23 (emphasis added). While the Court agrees with Defendants that birth certificates in Ohio are public record,<sup>8</sup> the Court also agrees with Plaintiffs’ framing of the privacy interest at issue.

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<sup>7</sup> The Court would also note that pursuant to a consent judgment between three transgender persons and the Kansas Statewide Transgender Education Project (plaintiffs) and officials representing the Kansas Department of Health and Environment (defendants), the District of Kansas very recently held that Kansas’ birth certificate policy, which prohibited transgender people born in Kansas from obtaining birth certificates consistent with their gender identity, violated the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment. Consent Judgment, 2–3, *Foster v. Andersen*, No. 18-cv-2552 (D. Kan. June 21, 2019).

<sup>8</sup> *State ex rel. Hammons v. Chisholm*, 792 N.E.2d 1120 (Ohio 2003).

In *Cox Broadcasting Corp. v. Cohn*, the Supreme Court held that the defendants were not liable for a violation of privacy for publishing the name of a deceased rape victim where the information was taken from a court record open to public inspection. 420 U.S. 469, 494–97(1975); see also *Munoz*, 507 F.3d at 965–66 (finding that, because plaintiffs’ convictions were public and remained public, there was no right to privacy implicated in their publication). The Court stated that “the prevailing law of invasion of privacy generally recognizes that the interests in privacy fade when the information involved already appears on the public record.” *Cohn*, 420 U.S. at 494–95.

As Defendants suggest, members of the public can request certified copies of vital records, including birth certificates, pursuant to Ohio Rev. Code § 3705.23(A)(1). Mot. Dismiss 10, ECF No. 18. In this scenario, disclosure of a Plaintiff’s birth certificate to a third party may only constitute a *de minimis* invasion of privacy when the gender identities of the Plaintiffs are otherwise unknown. See *U.S. Dep’t. of State v. Ray*, 502 U.S. 164, 176 (1991). However, Plaintiffs are not claiming an invasion of privacy due solely to the disclosure of their birth certificates or the sex listed on their birth certificates. Plaintiffs are claiming that “disclosing the Plaintiffs’ assigned sex at birth in a context that reveals them to be transgender violates their right to privacy.” Resp. 14, ECF No 23. In other words, in any situation where Plaintiffs must present their birth certificate, including those alleged in the Complaint, they are forced to

involuntarily disclose their transgender status due to a mismatch with other identity documents, their outward appearance, or both. *Cf. Carcano v. McCrory*, 203 F. Supp. 3d 615, 648 (M.D.N.C. 2016) (explaining that as opposed to laws that govern the modification of birth certificates, where the law required transgender persons use the bathroom that matched the sex on their birth certificate but a person could change the sex on their birth certificate, “an individual’s choice of bathroom does not directly or necessarily disclose whether that person is transgender; it merely discloses the sex listed on the person’s birth certificate”). Thus, the invasion of privacy becomes different and significant when that information is linked to particular Plaintiffs upon presentation of their birth certificates. *See Ray*, 502 U.S. at 176.

Unlike the victim’s name in *Cohn*, Plaintiffs’ transgender status does not appear in a public record. Accordingly, Plaintiffs’ privacy interest in their transgender status does not fade away because their birth certificates are public record. *See U.S. Dep’t. of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994) (“An individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.”); *U.S. Dept. of Justice v. Reports Comm. for Freedom of Press*, 489 U.S. 749, 770 (1989) (“[T]he fact that an event is not wholly ‘private’ does not mean that an individual has no interest in limiting disclosure or dissemination of the information.” (internal quotations omitted));

*Abraham & Rose, P.L.C. v. U.S.*, 138 F.3d 1075, 1083 (6th Cir. 1998) (“[A] clear privacy interest exists with respect to such information as names, addresses, and other identifying information even if such information is already available on publicly recorded filings.”).

## 2. State Action

Under 42 U.S.C. § 1983, Plaintiffs must prove that Defendants are acting under the color of state law to deprive them of rights secured by federal law. *Bloch*, 156 F.3d at 677. It is not contested that, in denying Plaintiffs corrected birth certificates, Defendants were acting in their capacities as state government employees of ODH. Compl. ¶¶ 15-17, ECF No. 1. However, Defendants contend that because the Sixth Circuit only recognizes a right to informational privacy when the government is responsible for releasing protected information, Plaintiffs’ Due Process claim fails. Mot. Dismiss 11, ECF No. 18. Defendants argue that it is Plaintiffs, not Defendants, that are disclosing the information in their birth certificates to third parties. *Id.* at 12.

Unlike *Kallstrom*, this Court need not address whether the actions or potential actions of private actors can be attributed to Defendants. 136 F.3d at 1066. Here, there is no dispute that a birth certificate is a government document. According to Defendants, because a birth certificate is a government document, “the state maintains absolute control over what information can be displayed on birth certificates.” Mot. Dismiss 7–9, ECF No. 18. While ODH is not the entity

requiring disclosure or the entity actually disclosing the information, the threat of disclosure is imposed indirectly by the government through its birth certificates. *K.L. v. State, Dep't. of Admin., Div. of Motor Vehicles*, 2012 WL 2685183, at \*6 (Sup. Ct. Alaska Mar. 12, 2012); see also *Arroyo Gonzalez*, 305 F. Supp. 3d at 333 (finding a violation of constitutional right to privacy where the Commonwealth forced plaintiffs to reveal their transgender status by permitting plaintiffs to change their name on their birth certificate but not their gender marker); *Love*, 146 F. Supp. 3d at 856 (finding that state action infringed upon a fundamental right by requiring plaintiffs to carry an identification card with a sex that conflicts with their lived sex, thereby forcing them to reveal their transgender status).

It is without question that the government “may not deny a benefit to a person on a basis that infringes his constitutionally protected interests.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). “Just as the State may not directly order someone to stop exercising his rights, it may not coerce him into ‘giving them up’ by denying [] benefits if he exercises those rights[.]” even if he is not entitled to that benefit. *Planned Parenthood of Greater Ohio v. Hodges*, 917 F.3d 908, 911–12 (6th Cir. 2019). When Plaintiffs present their birth certificates, the discrepancy between their physical appearance, other identity documents, and their birth certificates force disclosure of Plaintiffs’ transgendered status. Plaintiffs cannot avoid such disclosure unless Defendants change their Policy or Plaintiffs forego participating in public life—“determining eligibility for

employment, obtaining other identity documents (including driver's licenses, state identification cards, social security cards, passports . . . ), establishing school records, proving age, and enrolling in government programs." Compl. ¶ 33, ECF No. 1. The Court is not persuaded at this stage of the litigation that Defendants, through the "absolute control" over the information contained in Plaintiffs' birth certificates, have no part in the forced disclosure of Plaintiffs' transgender status.

### **3. Potential State Interests**

When a law infringes on a fundamental right, it is subject to strict scrutiny and cannot be upheld absent a showing by the State that the law is narrowly tailored to further a compelling interest. *United States v. Brandon*, 158 F.3d 947, 959–60 (6th Cir. 1998). Whether a law is narrowly tailored "will turn on whether it is the least restrictive and least harmful means of satisfying the government's goal . . . ." *Id.* at 960.

#### **a. Accurate Records and Prevention of Fraud**

In their motion, Defendants do not assert any compelling interests that specifically support the Birth Certificate Policy in addressing Plaintiffs' Due Process argument. Rather, Defendants rest on the argument that because Ohio's birth certificates are public record and Defendants' refusal to change the sex designation on their birth certificates does not implicate a fundamental liberty interest, Plaintiffs' claim fails as a matter of law. Mot. Dismiss 10, ECF No. 18. However, Defendants do raise two government interests in support of the Birth

Certificate Policy in the context of an intermediate scrutiny or rational basis equal protection analysis: “the well-ordered operation of the state’s vital recordkeeping and the prevention of fraud.” *Id.* at 17. Even if the Court were to find that these are compelling interests, Defendants’ Birth Certificate Policy is not narrowly tailored or “least restrictive” to satisfy either.

There is no dispute that Ohio allows transgender individuals to change their sex to reflect their gender identity on their driver’s licenses and state identification cards. Compl. ¶ 47, ECF No. 1; Mot. Dismiss 20, ECF No. 18. In attempting to distinguish birth records from these other state identity documents, Defendants argue that “[b]irth certificates are historical records.” Mot. Dismiss 19, ECF No. 18. The Court assumes that Ohio has a compelling interest in maintaining the historical accuracy of all information in its birth records. Yet, Ohio law does provide procedures to amend a birth certificate to change one’s name and the names of one’s parents in the case of an adoption. Ohio Rev. Code §§ 3705.12, 3705.13. Moreover, forty-eight other states provide procedures for transgender individuals to change the sex on their birth certificates. Compl. ¶ 45, ECF No. 1. As the District Court noted in *Love*, “[t]he Court seriously doubts that these states have any less interest in ensuring an accurate record-keeping system.” 146 F. Supp. 3d at 857.

Similarly, Defendants fail to articulate how the State’s interest in preventing fraud provides for laws that allow amendments to some parts of the birth

certificate but not others, or permits changes to driver's licenses and state identification cards and not birth certificates. Under Defendants' Policy, Plaintiffs all currently possess government-issued identity documents that provide they are *both* male and female. See Compl. ¶¶ 50, 51, 61, 62, 80–82, 92, 93, ECF No. 1. The Court cannot conceive how this helps prevent fraud rather than perpetuate it.

**b. Other Compelling Reasons**

Defendants also identify several other “compelling reasons” they believe support the request to dismiss the Complaint. Defendants claim that invalidating Ohio's Policy would “violate traditional judicial-restraint principles,” “upend a comprehensive legislative scheme,” and “implicate[] core federalism concerns.” Mot. Dismiss 18, ECF No. 18.

In the strict scrutiny context, “these vague, speculative, and unsubstantiated state interests do not rise anywhere near the level necessary to counterbalance the specific, quantifiable, and particularized injuries” alleged by Plaintiffs and suffered by transgender people as a whole when they miss out on basic government benefits or face being outed as transgender upon presentation of their birth certificates. *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968, 981 (S.D. Ohio Dec. 23, 2013), *rev'd sub nom. DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014), *rev'd sub nom. Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). Further, the Court is not persuaded that “[f]ederalism principles dictate that this Court leave this task to the reasoned consideration of Ohio's legislature[,]” simply



because no national consensus exists on what is required to allow an individual to change the sex on their birth certificate. Mot. Dismiss 19, ECF No. 19.

“The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right.” *Obergefell*, 135 S. Ct. at 2605. “An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act.” *Id.* State laws and policies are still subject to guarantees afforded by the Constitution. *Obergefell*, 962 F. Supp. 2d at 981. Additionally, it is not compelling that a change to Defendants’ Policy might be challenging to implement. Forty-eight other states have figured it out. See *In re A.L.*, 81 N.E.3d 283, 288 (Ind. Ct. App. 2017) (“[T]he amendment of a birth certificate with respect to gender is not novel. The vast majority of states . . . have allowed it in practice for some time.” (internal quotations omitted)). Therefore, none of these other asserted interests are compelling enough to counteract the alleged infringement on Plaintiffs’ right to privacy on a motion to dismiss.

### **C. Remaining Claims**


In light of the Court’s finding that Plaintiffs have raised a cognizable claim under the Due Process Clause, the principle of judicial restraint cautions against deciding the sufficiency of Plaintiffs’ remaining constitutional claims. *Love*, 146 F. Supp. 3d at 857; see *Camreta v. Greene*, 563 U.S. 692, 705 (2011) (“[A] longstanding principle of judicial restraint requires that courts avoid reaching

constitutional questions in advance of the necessity of deciding them.” (internal quotations omitted)); *Harmon v. Brucker*, 355 U.S. 579, 581 (1958) (explaining that courts have a “duty to avoid deciding constitutional questions presented unless essential to proper disposition of a case”). Therefore, the remainder of Defendants’ motion to dismiss is denied without prejudice. Defendants may seek leave to renew the motion should future developments require the Court to rule on either of the remaining claims.

#### IV. CONCLUSION

For the foregoing reasons, Defendant’s motion, ECF No. 18, is **DENIED**.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
**MICHAEL H. WATSON, JUDGE**  
**UNITED STATES DISTRICT COURT**

# EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE**

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KAYLA GORE; JASON SCOTT; L.G.; )  
and K.N., )

*Plaintiffs,* )

v. )

WILLIAM BYRON LEE, in his official )  
capacity as Governor of the State of )  
Tennessee; and LISA PIERCEY, in her )  
official capacity as Commissioner of the )  
Tennessee Department of Health, )

*Defendants.* )

No. 3:19-cv-00328

Judge Eli J. Richardson  
Magistrate Judge Barbara D. Holmes

JURY DEMAND

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**DEFENDANTS' RESPONSES TO PLAINTIFFS' REQUESTS FOR ADMISSION**

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Pursuant to Fed. R. Civ. P. 36, Defendants respond as follows to Plaintiffs' Requests for Admission:

**OBJECTIONS**

1. Defendants object to the extent any Definitions or Instructions exceed or are otherwise inconsistent with the requirements of the Federal Rules of Civil Procedure.
2. Defendants object to the definition of "Birth Certificate Policy" and/or "Policy." Tennessee statutory and regulatory law mandates how and when changes may be made to a Tennessee birth certificate. There is no different or additional "policy."
3. Defendants object to the definition of "Gender marker" because it inaccurately describes the field on a Tennessee birth certificate. Defendants assume this definition is

referencing the field on a Tennessee birth certificate labeled “sex” and responds to each Request as if it were referencing the “sex” field on a Tennessee birth certificate.

### **REQUESTS FOR ADMISSION**

1. Admit that the Tennessee Department of Health and Office of Vital Records enforce a policy that effectively prohibits transgender persons from changing the gender marker indicated on Tennessee birth certificates.

**RESPONSE:** Denied. Tennessee law permits changes, corrections and amendments under certain circumstances. *See, e.g.*, Tenn. Code Ann. § 68-3-203.

2. Admit that the Tennessee Department of Health and Office of Vital Records permit non-transgender individuals to correct the gender marker on their birth certificates.

**RESPONSE:** Defendants admit only that Tennessee law permits changes under certain circumstances. *See, e.g.*, Tenn. Code Ann. § 68-3-203.

3. Admit that the gender marker on the birth certificate of a non-transgender person born in Tennessee is consistent with their gender identity.

**RESPONSE:** Defendants can neither admit nor deny this request. Defendants have no way of knowing each person’s gender identity and no way of knowing whether persons consider themselves to be transgender or non-transgender.

4. Admit that the gender marker on the birth certificate of a transgender person born in Tennessee is not consistent with their gender identity.

**RESPONSE:** Defendants can neither admit nor deny this request. Defendants have no way of knowing each person’s gender identity and no way of knowing whether persons consider themselves to be transgender or non-transgender.

5. Admit that the State of Tennessee permits transgender persons to change the gender marker on their drivers' licenses or state identification cards to be consistent with each's gender identity.

**RESPONSE:** To the extent the request is asking Defendants to review all Tennessee statutes and regulations before responding, the request is not proper under Fed. R. Civ. P. 36 and Defendants object to the request. Defendants admit they are generally aware that the Tennessee Department of Safety and Homeland Security permits persons to change the sex field on their drivers' license if certain requirements are met.

6. Admit that the federal government permits transgender people to amend the gender marker to accurately reflect their gender identity on social security records, passports, military and veteran records and consular records.

**RESPONSE:** To the extent that this request seeks a recitation of federal statutes and/or regulations, Defendants object, as this would be an improper request under Fed. R. Civ. P. 36. To the extent this request asks these Defendants to admit or deny that the federal government does or does not do certain things as a matter of fact, these Defendants can neither admit nor deny the request.

7. Admit that the Model State Vital Statistics Act and Regulations published by the National Center for Health Statistics in 1992 expressly permit the change of the gender marker on a person's birth certificates following transition-related medical treatment.

**RESPONSE:** Defendants admit that the Model State Vital Statistics Act and Regulations, 1992 Revision, published by the U.S. Department of Health and Human Services/National Center for Health Statistics (the "Model Act") contains language that permits an amendment "as prescribed by regulation" if "the sex of an individual born in this State has

been changed by surgical procedure.” To the extent the request contradicts this language, it is denied.

8. Admit that the Model State Vital Statistics Act and Regulations were promulgated, in part, to build a national, uniform system of vital statistics that produces records to meet statistical and research needs at the local, state, and national levels.

**RESPONSE:** Defendants admit that the Model Act contains language indicating its intent “to build a uniform system that produces records to satisfy the legal requirements of individuals and their families and also to meet statistical and research needs at the local, State, and national levels.” To the extent the request contradicts this language, it is denied.

9. Admit that Tennessee’s Birth Certificate Policy is inconsistent with Model State Vital Statistics Act and Regulations.

**RESPONSE:** Defendants admit that Tennessee statutory and regulatory law is not the same, in all respects, as the language in the Model Act. Defendants deny that Tennessee statutory and regulatory law are “inconsistent” with the Model Act as the Model Act is, by its own account, “guidance” and because Tennessee statutory and regulatory law, in many respects, contains the same or similar language as the Model Act.

10. Admit that Tennessee's Birth Certificate Policy is inconsistent with the birth certificate policies of 48 other states, the Commonwealth of Puerto Rico, the District of Columbia, and the City of New York, New York, all of which permit transgender people born in their jurisdictions to change the gender marker on their birth certificates in a manner consistent with their gender identity.

**RESPONSE:** This request asks Defendants to give a legal opinion on the content of Tennessee statutory and regulatory law compared with that of other jurisdictions. It is not a proper request under Fed. R. Civ. P. 36 and Defendants therefore object to the request.

11. Admit that some Tennessee statutes and regulations require or contemplate the use of birth certificates as personal identification documents.

**RESPONSE:** Defendants admit that some Tennessee statutes and regulations may contemplate the use of birth certificates as personal identification documents. Defendants deny that some Tennessee statutes and regulations require the use of birth certificates as personal identification documents. This denial is based upon information available to the Defendants. To the extent the request is asking Defendants to review all Tennessee statutes and regulations before responding, the request is not proper under Fed. R. Civ. P. 36 and Defendants object to the request.

12. Admit that some permissible changes to Tennessee birth certificates result in the replacement of information previously contained on a birth certificate without any record of said replacement.

**RESPONSE:** Defendants object to the use of the term "replacement" as Tennessee law uses the terms "correction," "change" and "amendment." Without waiving that objection, the request is denied.



13. Admit that the Tennessee Department of Health and Office of Vital Records do not keep records of a birth certificate's original information following a change to its parentage (mother's and/or father's names(s)) field(s).

**RESPONSE:** Denied.

14. Admit that the Tennessee Department of Health and Office of Vital Records do not keep records of a birth certificate's original information following a change to its name field.

**RESPONSE:** Denied.

15. Admit that the Tennessee Department of Health, notwithstanding Section 68-3-203(d) of the Tennessee Code, could formulate a process for allowing transgender persons to change the gender markers on their birth certificates while maintaining accurate records and vital statistics reporting.

**RESPONSE:** Denied. The Tennessee Department of Health cannot undertake actions which contradict Tennessee law.

16. Admit that the Tennessee Office of Vital Records, notwithstanding Section 68-3-203(d) of the Tennessee Code, could formulate a process for allowing transgender persons to change the gender markers on their birth certificates while maintaining accurate records and vital statistics reporting.

**RESPONSE:** Denied. The Tennessee Office of Vital Records cannot undertake actions which contradict Tennessee law.

17. Admit that, if transgender persons were permitted to change the gender markers on their birth certificates, the Tennessee Department of Health could nevertheless maintain accurate records by internally creating and retaining a record evidencing that such a change has taken place.

**RESPONSE:** Defendants object to this request, as it seeks a response to a hypothetical question and is, therefore, outside the scope permitted by Fed. R. Civ. P. 36(a)(1).

18. Admit that, if transgender persons were permitted to change the gender markers on their birth certificates, the Tennessee Office of Vital Records could nevertheless maintain accurate records by internally creating and retaining a record evidencing that such a change has taken place.

**RESPONSE:** Defendants object to this request, as it seeks a response to a hypothetical question and is, therefore, outside the scope permitted by Fed. R. Civ. P. 36(a)(1).

19. Admit that the Tennessee Department of Health and Office of Vital Records do not control what content may be input into the name field(s) on Tennessee birth certificates.

**RESPONSE:** Admitted. The content is controlled by law.

20. Admit that the Tennessee Department of Health and Office of Vital Records does not control what content may be input into any identity field on Tennessee birth certificates.

**RESPONSE:** Denied. “Identity field” is not a term defined by Tennessee law or otherwise defined herein.

21. Admit that the Tennessee Department of Health and Office of Vital Records do not undertake any independent assessment to determine an individual’s gender for purposes of creating and maintaining birth certificates.

**RESPONSE:** Admitted. However, Tennessee statutes and regulations require an institution to obtain data on sex and to include that data in its filing of the birth certificate. See, e.g., Tenn. Code Ann. § 68-3-302(a).

22. Admit that Section 68-3-203(d) of the Tennessee Code cannot be read or interpreted without reference to sex.

**RESPONSE:** Admitted.

23. Admit that Section 68-3-203(d) of the Tennessee Code implicates the notion of sex.

**RESPONSE:** Defendants admit that the Tenn. Code Ann. § 68-3-203(d) uses the word “sex.”

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of October 2019 I served the foregoing upon the following counsel by electronic mail:

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Dianna Baker Shew

# EXHIBIT C

**i** INFORMATION ABOUT THE ONGOING NOVEL CORONAVIRUS OUTBREAK.**i** DUE TO SEVERE WEATHER OUR CENTRAL OFFICE AND OFFICE OF VITAL RECORDS ARE CLOSED TODAY.

# How do I get my certificate corrected?

The Office of Vital Records is required to follow Tennessee law when amending birth, death, marriage or divorce certificates. It is important to us and to you that the certificates issued by this office are accurate. For this reason, each request is given individual attention.

Generally, the documentation listed in the following frequently asked questions is adequate to make the requested correction. However, occasionally we will need additional information. We understand that each and every request is important and work diligently to complete them quickly. Please be patient as some amendment requests could take as long as 10-12 weeks.

## Amendment Questions

1. *My given or middle name is missing or spelled incorrectly on my birth certificate. How do I get it corrected?*
2. *My name was legally changed. How do I get it changed on my birth certificate?*
3. *The date of birth is incorrect on my birth certificate. What is needed to correct it?*
4. *How do I correct the sex on my birth certificate?*
5. *The parent's name, date of birth or place of birth is incorrect on my birth certificate. How do I get it corrected?*
6. *What is a notarized affidavit? What should the affidavit include?*
7. *How do I get a court order?*
8. *What is acceptable documentary evidence?*
9. *What are some examples of acceptable documentary evidence?*

## **My given or middle name is missing or spelled incorrectly on my birth certificate. How do I get it corrected?**

1. If **any** of the following circumstances are true, a court order is needed to make a name change on the birth certificate:

1. A new birth certificate was created due to an adoption or a court-order of parentage (this does not apply if the amendment is necessary because of a keying error made when creating the new certificate).

2. The name on the certificate has been amended previously.

3. Changing the first & middle name entirely requires review by this office before proceeding. Please contact this office for instructions.

2. If none of the circumstances listed in item 1 are true and the child is **less than one year old**, this office will need:

1. A notarized affidavit, signed by all parents listed on the birth certificate, which shows the child's full name, date of birth, the incorrect name as it is listed on the certificate and the name as it should be correctly listed.

2. No fee is required to amend a certificate that is less than one year old.

3. If none of the circumstances listed in item 1 are true and the registrant is **more than one year old**, this office will need:

1. A notarized affidavit showing the child's full name, date of birth, the incorrect name as it is listed on the certificate and the name as it should be correctly listed.

2. Documentary evidence that supports the change being requested (see examples of acceptable documentary evidence).

3. A check or money order for the required amendment fee, and an additional fee for a copy of the corrected certificate.

[\(Back to Amendment Questions\)](#)

### **My name was legally changed. How do I get it changed on my birth certificate?**

In the event of a court-ordered name change, to amend the birth certificate we require the following:

1. An original, certified copy of the court order that changed your name.

2. A check or money order for the required amendment fee, and an additional fee for a copy of the corrected certificate.

[\(Back to Amendment Questions\)](#)

### **The date of birth is incorrect on my birth certificate. What is needed to correct it?**

If the date of birth has never been amended on the certificate, you should submit the following:

1. A signed and notarized affidavit showing the full name, date of birth as it is shown on the certificate and the date of birth as it should be correctly listed.

2. Documentary evidence supporting the correct date of birth (see examples of acceptable documentary evidence).

1. If the correction is to the **day only**, the document must have been created prior to your 21st birthday.\*
2. If the correction is to the **month**, the document should have been created prior to your 10th birthday.\*
3. If the correction is to the **year**, the document should have been created prior to your 10th birthday,\* and we need a list of your siblings names and dates of birth.
4. A check or money order for the required amendment fee, and an additional fee for a copy of the corrected certificate.

\*If the registrant is under the age of 21, the document must be dated at least 5 years prior to the request for amendment.

[\(Back to Amendment Questions\)](#)

### **How do I correct the sex on my birth certificate?**

Tennessee law does not allow for the amendment of a birth certificate due to gender reassignment surgery. If a mistake was made on the certificate when recording the sex of the child, the following should be submitted to this office:

1. A signed and notarized affidavit showing the full name, date of birth, the sex as it is shown on the certificate and the sex as it should be correctly listed.
2. Documentary evidence showing the correct sex of the individual (see examples of acceptable documentary evidence).
3. A check or money order for the required amendment fee, and an additional fee for a copy of the corrected certificate.

[\(Back to Amendment Questions\)](#)

### **A parent's name, date of birth or place of birth is incorrect on my birth certificate.**

#### **How do I get it corrected?**

If any of the following are true, a court order would be required to amend the certificate.

1. The same information was previously amended
2. A new certificate was created due to adoption and the request for amendment is not due to a keying error made when creating the new certificate
3. A new certificate was created due to a court order of parentage, the requested amendment involves the father's information, and the request was not made to correct a keying error made when creating the new certificate.
4. A certificate is on file in this office, and the requested amendment involves the father's information.



Otherwise please submit the following:

1. A signed and notarized affidavit showing the full name, date of birth, the data as it is shown on the certificate, and the data as it should be correctly listed.
2. A copy of the parent's birth certificate which supports the amendment request.
3. A check or money order for the required amendment fee, and an additional fee for a copy of the corrected certificate.

[\(Back to Amendment Questions\)](#)

### **What is a notarized affidavit? What should the affidavit include?**

A notarized affidavit is a written statement made under oath and signed in the presence of a notary public. The notary public places his/her seal on the document to verify that the signature is authentic. The affidavit submitted to this office must be signed by one of the following persons:

1. The registrant if they are over the age of 18.
2. If the registrant is under 18, a parent listed on the certificate or
3. The legal guardian of the child listed on the certificate (A copy of the guardianship papers must be included.)

The affidavit should include the name and date of the event, the incorrect data as it is listed on the certificate and the data as it should be listed.

[\(Back to Amendment Questions\)](#)

### **How do I get a court order?**

For instructions on obtaining a court order contact the court clerk's office in your county of residence. [Click here](#) for Tennessee court clerks offices.

[\(Back to Amendment Questions\)](#)

### **What is acceptable documentary evidence?**

The documentary evidence submitted in support of an amendment should be the oldest document available. It must provide all of the following information:

1. It must **support the facts of the amendment request**. For example, if you are asking that your name be amended the documentation must show your name as you wish it to be shown on your certificate.
2. It must be **at least 5 years old** (sometimes older documents are required). If the amendment is for a child under 5, the document must have been created as close to the date of birth as possible.

3. It must show **the date that the document was created**
4. It must show the registrant's **full name and date of birth or age**

**What are some examples of acceptable documentary evidence?**

1. **A school record** - School records can be obtained by contacting the Board of Education in the county or district where you attended school. A list of Tennessee school districts with contact information can be found at the [Department of Education](#) website.
2. **A marriage certificate** – If the marriage occurred in Tennessee during 1951 or later, provide the names of the bride and groom and the date of marriage and we will retrieve the certificate.
3. **The birth certificate of a child** – If the birth occurred in Tennessee within the past 100 years, provide the child's name and date of birth and we will retrieve the certificate.
4. **A parent's birth certificate or death certificate** – If the birth occurred in Tennessee within the past 100 years or the death occurred in Tennessee within the past 50 years, provide names and dates and we will retrieve the certificate.
5. **A Social Security** - Instructions for requesting a numident can be found at the [Social Security Administration](#) website.
6. **A Federal Census Record** can be ordered through the U.S. Government Archives website by [clicking here](#).

[\(Back to Amendment Questions\)](#)

# EXHIBIT D



**T**he 2015 U.S. Transgender Survey (USTS) is the largest survey examining the experiences of transgender people in the United States, with 27,715 respondents nationwide. The USTS was conducted by the National Center for Transgender Equality in the summer of 2015. Of respondents in the USTS, 416 were Tennessee residents.<sup>1</sup> This report discusses the experiences of respondents living in Tennessee.

## Income and Employment Status

- 20% of respondents in Tennessee were unemployed.<sup>2</sup>
- 34% were living in poverty.<sup>3</sup>

## Employment and the Workplace

- 21% of respondents who have ever been employed reported losing a job in their lifetime because of their gender identity or expression.
- In the past year, 26% of those who held or applied for a job during that year reported being fired, being denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.
- Respondents who had a job in the past year reported being verbally harassed (29%) and sexually assaulted (1%) at work because of their gender identity or expression.
- 33% of those who had a job in the past year reported other forms of mistreatment based on their gender identity or expression during that year, such as being forced to use a restroom that did not match their gender identity, being told to present in the wrong gender in order to keep their job, or having a boss or coworker share private information about their transgender status with others without their permission.
- Overall, 43% of respondents who had a job in the past year reported being fired, being denied a promotion, or experiencing some other form of mistreatment related to their gender identity or expression during that year.

## Education

- 80% of those who were out or perceived as transgender at some point between Kindergarten and Grade 12 (K–12) experienced some form of mistreatment, such as being verbally harassed, prohibited from dressing according to their gender identity, disciplined more harshly, or physically or sexually assaulted because people thought they were transgender.
  - 53% of those who were out or perceived as transgender in K–12 were verbally harassed, 22% were physically attacked, and 10% were sexually assaulted in K–12 because of being transgender.

- 15% faced such severe mistreatment as a transgender person that they left a K–12 school.
- 21% of respondents who were out or perceived as transgender in college or vocational school were verbally, physically, or sexually harassed because of being transgender.

## Housing, Homelessness, and Shelter Access

- 28% of respondents experienced some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender.
- 36% have experienced homelessness at some point in their lives.
- 17% experienced homelessness in the past year because of being transgender.
- 29% of respondents who experienced homelessness in the past year avoided staying in a shelter because they feared being mistreated as a transgender person.

## Public Accommodations

- Respondents reported being denied equal treatment or service, verbally harassed, or physically attacked at many places of public accommodation—places that provide services to the public, like retail stores, hotels, and government offices.
- Of respondents who visited a place of public accommodation where staff or employees thought or knew they were transgender, 35% experienced at least one type of mistreatment in the past year. This included 19% who were denied equal treatment or service, 24% who were verbally harassed, and 1% who were physically attacked because of being transgender.

## Restrooms

- 7% of respondents reported that someone denied them access to a restroom in the past year.
- In the past year, respondents reported being verbally harassed (11%), physically attacked (1%), and sexually assaulted (1%) when accessing a restroom.
- 60% of respondents avoided using a public restroom in the past year because they were afraid of confrontations or other problems they might experience.
- 28% of respondents limited the amount that they ate or drank to avoid using the restroom in the past year.

## Police Interactions

- Respondents experienced high levels of mistreatment and harassment by police. In the past year, of respondents who interacted with police or other law enforcement officers who thought or knew they were transgender, 57% experienced some form of mistreatment. This included being verbally harassed, repeatedly referred to as the wrong gender, physically assaulted, or sexually assaulted, including being forced by officers to engage in sexual activity to avoid arrest.
- 56% of respondents said they would feel uncomfortable asking the police for help if they needed it.

## Health

- 19% of respondents experienced a problem in the past year with their insurance related to being transgender, such as being denied coverage for care related to gender transition or being denied coverage for routine care because they were transgender.
- 34% of those who saw a health care provider in the past year reported having at least one negative experience related to being transgender. This included being refused treatment, verbally harassed, or physically or sexually assaulted, or having to teach the provider about transgender people in order to get appropriate care.
- In the past year, 23% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person, and 43% did not see a doctor when needed because they could not afford it.
- 44% of respondents experienced serious psychological distress in the month before completing the survey (based on the Kessler 6 Psychological Distress Scale).<sup>4</sup>
- 14% of respondents reported that a professional, such as a psychologist, counselor, or religious advisor, tried to stop them from being transgender.

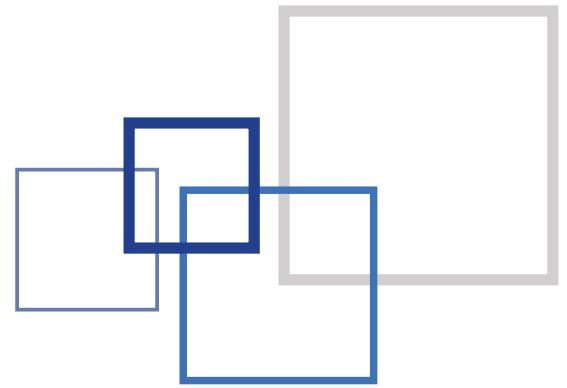
## Identity Documents

- Only 6% of respondents reported that *all* of their IDs had the name and gender they preferred, while 82% reported that *none* of their IDs had the name and gender they preferred.
- The cost of changing IDs was one of the main barriers respondents faced, with 38% of those who have not changed their legal name and 32% of those who have not updated the gender on their IDs reporting that it was because they could not afford it.
- 31% of respondents who have shown an ID with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.

### ENDNOTES | TENNESSEE STATE REPORT

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1. The number of respondents in Tennessee (n=416) is an unweighted value. All reported percentages are weighted. For more information on the weighting procedures used to report 2015 U.S. Transgender Survey data, see the full survey report, available at [www.USTransSurvey.org](http://www.USTransSurvey.org).
2. For reference, the U.S. unemployment rate was 5% at the time of the survey, as reported by the Bureau of Labor Statistics. See the full report for more information about this calculation.
3. For reference, the U.S. poverty rate was 12% at the time of the survey. The research team calculated the USTS poverty measure using the official poverty measure, as defined by the U.S. Census Bureau. USTS respondents were designated as living in poverty if their total family income fell under 125% of the official U.S. poverty line. See the full report for more information about this calculation.
4. For reference, 5% of the U.S. population reported experiencing serious psychological distress during the prior month as reported in the 2015 National Survey on Drug Use and Health. See the full report for more information about this calculation.



# 2015 U.S. Transgender Survey

## Tennessee State Report

February 2017



The full report and Executive Summary of the 2015 U.S. Transgender Survey are available at [www.USTransSurvey.org](http://www.USTransSurvey.org).

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Recommended Citation: *2015 U.S. Transgender Survey: Tennessee State Report*. (2017). Washington, DC: National Center for Transgender Equality.

Updated October 2017

[USTransSurvey.org](http://USTransSurvey.org) | [TransEquality.org](http://TransEquality.org)

# EXHIBIT E



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
KANSAS CITY DIVISION**

NYLA FOSTER; LUC BENSIMON;  
JESSICA HICKLIN; C.K.; and KANSAS  
STATEWIDE TRANSGENDER  
EDUCATION PROJECT,

*Plaintiffs,*

v.

JEFF ANDERSEN, in his official capacity as  
Secretary of the Kansas Department of Health  
and Environment; ELIZABETH W. SAADI,  
in her official capacity as State Registrar for  
the State of Kansas; and KAY HAUG, in her  
official capacity as Director of Vital Statistics  
for the State of Kansas,

*Defendants.*

Civil Action No. 18-02552-DDC-KGG

**CONSENT JUDGMENT**

1. *Whereas*, on October 15, 2018, Plaintiffs Nyla Foster, Luc Bensimon, Jessica Hicklin, and C.K., and the Kansas Statewide Transgender Education Project, a Kansas-based organization that represents transgender people and their families, filed a Complaint for Declaratory, Injunctive, and Other Relief against Defendants alleging that Kansas's Birth Certificate Policy, prohibits transgender people born in Kansas from obtaining birth certificates reflecting their true sex, consistent with their gender identity, violates, *inter alia*, Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the United States Constitution (Dkt. 1).

2. *Whereas*, a federal court has held that the State of Idaho “violate[d] the Equal Protection Clause by failing to provide an avenue for transgender people to amend the sex listed on their birth certificates.” *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018).

3. *Whereas*, a federal court determined that the Commonwealth of Puerto Rico’s birth certificate policy, prohibiting transgender people born in Puerto Rico from obtaining birth certificates reflecting their true sex, consistent with their gender identity, “violate[d] transgender persons’ decisional privacy and informational privacy” by forcing them to disclose their transgender status. *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018). And that “[s]uch forced disclosure of a transgender person’s most private information is not justified by any legitimate government interest.” *Id.*

4. *Whereas*, the parties to this litigation desire to resolve the issues raised by Plaintiffs’ Complaint and subsequent proceedings without the necessity of further litigation.

5. *Whereas*, the parties agree to jointly resolve this matter and consent to entry of the following final and binding consent judgment as dispositive of all issues raised in this case; and

6. *Whereas*, the parties intend this Consent Judgment to benefit all Kansans, including transgender people born in Kansas, and to be binding on Defendants unless and until modified by the Court on motion with proper cause shown under Federal Rule of Civil Procedure 60.

***Accordingly, it is hereby ordered, adjudged, and decreed:***

1. Kansas statutes and regulations hereinafter referred to as “Kansas’s Birth Certificate Policy”, which prohibits transgender people born in Kansas from obtaining birth certificates reflecting their true sex, consistent with their gender identity, violates the Equal

Protection Clause and the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

2. Defendants, their officers, employees, and agents; all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control; and all other persons within the scope of Federal Rule of Civil Procedure 65, are permanently enjoined from enforcing the Birth Certificate Policy, and shall provide certified copies of birth certificates to transgender individuals that accurately reflect their sex, consistent with their gender identity, without the inclusion of information that would, directly or indirectly, disclose an individual's transgender status on the face of the birth certificate;

3. Defendants, their officers, employees, and agents; all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control; and all other persons within the scope of Federal Rule of Civil Procedure 65, shall adopt and enforce a policy whereby a transgender person born in Kansas may obtain a certified copy of that person's birth certificate that reflects a change in sex designation, reflecting their true sex, consistent with their gender identity, by submitting a sworn statement requesting such change and accompanied by: (1) a passport that reflects the person's true sex; or (2) a driver's license that reflects the person's true sex; or (3) a certification issued by a healthcare professional or mental health professional with whom the person has a doctor-patient relationship stating that based on his or her professional opinion the true gender identity of the applicant and that it is expected that this will continue to be the gender with which the applicant will identify in the future.

4. The Kansas Department of Health and Environment's Office of Vital Statistics shall issue certified copies of birth certificates that reflect the change in sex designation to

plaintiffs Nyla Foster, Luc Bensimon, Jessica Hicklin, and C.K. that reflect their true sex, consistent with their gender identity, respectively.

5. The obligations and this Consent Judgment apply to and are binding upon the Defendants and any successors charged with enforcing laws regarding birth certificates.

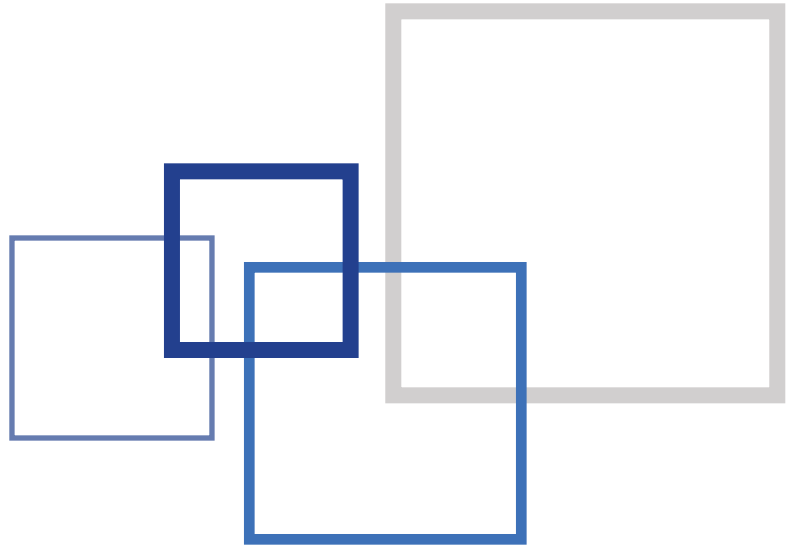
6. The Parties shall bear their own costs of this action, including attorney's fees.

***IT IS SO ORDERED.***

Dated this 21<sup>st</sup> day of June, 2019.

  
\_\_\_\_\_  
United States District Judge

# EXHIBIT F



THE REPORT OF THE

2015

U.S.

TRANSGENDER

SURVEY

# EXECUTIVE SUMMARY

December 2016

# USTS Executive Summary

**T**he 2015 U.S. Transgender Survey (USTS) is the largest survey examining the experiences of transgender people in the United States, with 27,715 respondents from all fifty states, the District of Columbia, American Samoa, Guam, Puerto Rico, and U.S. military bases overseas. Conducted in the summer of 2015 by the National Center for Transgender Equality, the USTS was an anonymous, online survey for transgender adults (18 and older) in the United States, available in English and Spanish. The USTS serves as a follow-up to the groundbreaking 2008–09 National Transgender Discrimination Survey (NTDS), which helped to shift how the public and policymakers view the lives of transgender people and the challenges they face. The report of the 2015 USTS provides a detailed look at the experiences of transgender people across a wide range of categories, such as education, employment, family life, health, housing, and interactions with the criminal justice system.

The findings reveal disturbing patterns of mistreatment and discrimination and startling disparities between transgender people in the survey and the U.S. population when it comes to the most basic elements of life, such as finding a job, having a place to live, accessing medical care, and enjoying the support of family and community. Survey respondents also experienced harassment and violence at alarmingly high rates. Several themes emerge from the thousands of data points presented in the full survey report.

## Pervasive Mistreatment and Violence

Respondents reported high levels of mistreatment, harassment, and violence in every aspect of life. One in ten (10%) of those who were out to their immediate family reported that a family member was violent towards them because they were transgender, and 8% were kicked out of the house because they were transgender.

The majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally harassed (54%), physically attacked (24%), and sexually assaulted (13%) because they were transgender. Further, 17% experienced such severe mistreatment that they left a school as a result.

In the year prior to completing the survey, 30% of respondents who had a job reported being fired, denied a promotion, or experiencing some other form of mistreatment in the workplace due to their gender identity or expression, such as being verbally harassed or physically or sexually assaulted at work.

In the year prior to completing the survey, 46% of respondents were verbally harassed and 9% were physically attacked because of being transgender. During that same time period, 10% of respondents were sexually assaulted, and nearly half (47%) were sexually assaulted at some point in their lifetime.

## Severe Economic Hardship and Instability

The findings show large economic disparities between transgender people in the survey and the U.S. population. Nearly one-third (29%) of respondents were living in poverty, compared to 12% in the U.S. population. A major contributor to the high rate of poverty is likely respondents' 15% unemployment rate—three times higher than the unemployment rate in the U.S. population at the time of the survey (5%).

Respondents were also far less likely to own a home, with only 16% of respondents reporting homeownership, compared to 63% of the U.S. population. Even more concerning, nearly one-third (30%) of respondents have experienced homelessness at some point in their lifetime, and 12% reported experiencing homelessness in the year prior to completing the survey because they were transgender.

## Harmful Effects on Physical and Mental Health

The findings paint a troubling picture of the impact of stigma and discrimination on the health of many transgender people. A staggering 39% of respondents experienced serious psychological distress in the month prior to completing the survey, compared with only 5% of the U.S. population. Among the starkest findings is that 40% of respondents have attempted suicide in their lifetime—nearly nine times the attempted suicide rate in the U.S. population (4.6%).

Respondents also encountered high levels of mistreatment when seeking health care. In the year prior to completing the survey, one-third (33%) of those who saw a health care provider had at least one negative experience related to being transgender, such as being verbally harassed or refused treatment because of their gender identity. Additionally, nearly one-quarter (23%) of respondents reported that they did not seek the health care they needed in the year prior to completing the survey due to fear of being mistreated as a transgender person, and 33% did not go to a health care provider when needed because they could not afford it.



## The Compounding Impact of Other Forms of Discrimination

When respondents' experiences are examined by race and ethnicity, a clear and disturbing pattern is revealed: transgender people of color experience deeper and broader patterns of discrimination than white respondents and the U.S. population. While respondents in the USTS sample overall were more than twice as likely as the U.S. population to be living in poverty, people of color, including Latino/a (43%), American Indian (41%), multiracial (40%), and Black (38%) respondents, were more than three times as likely as the U.S. population (12%) to be living in poverty. The unemployment rate among transgender people of color (20%) was four times higher than the U.S. unemployment rate (5%). People of color also experienced greater health disparities. While 1.4% of all respondents were living with HIV—nearly five times the rate in the U.S. population (0.3%)—the rate among Black respondents (6.7%) was substantially higher, and the rate for Black transgender women was a staggering 19%.

Undocumented respondents were also more likely to face severe economic hardship and violence than other respondents. In the year prior to completing the survey, nearly one-quarter (24%) of undocumented respondents were physically attacked. Additionally, one-half (50%) of undocumented respondents have experienced homelessness in their lifetime, and 68% have faced intimate partner violence.

Respondents with disabilities also faced higher rates of economic instability and mistreatment. Nearly one-quarter (24%) were unemployed, and 45% were living in poverty. Transgender people with disabilities were more likely to be currently experiencing serious psychological distress (59%) and more likely to have attempted suicide in their lifetime (54%). They also reported higher rates of mistreatment by health care providers (42%).

## Increased Visibility and Growing Acceptance

Despite the undeniable hardships faced by transgender people, respondents' experiences also show some of the positive impacts of growing visibility and acceptance of transgender people in the United States.

One such indication is that an unprecedented number of transgender people—nearly 28,000—completed the survey, more than four times the number of respondents in the 2008–09 NTDS. This number of transgender people who elevated their voices reflects the historic growth in visibility that the transgender community has seen in recent years. Additionally, this growing visibility has lifted up not only the voices of transgender men and women, but also people who are non-binary, which is a term that is often used to describe

people whose gender identity is not exclusively male or female, including those who identify as having no gender, a gender other than male or female, or more than one gender. With non-binary people making up over one-third of the sample, the need for advocacy that is inclusive of all identities in the transgender community is clearer than ever.

Respondents' experiences also suggest growing acceptance by family members, colleagues, classmates, and other people in their lives. More than half (60%) of respondents who were out to their immediate family reported that their family was supportive of them as a transgender person. More than two-thirds (68%) of those who were out to their coworkers reported that their coworkers were supportive. Of students who were out to their classmates, more than half (56%) reported that their classmates supported them as a transgender person.

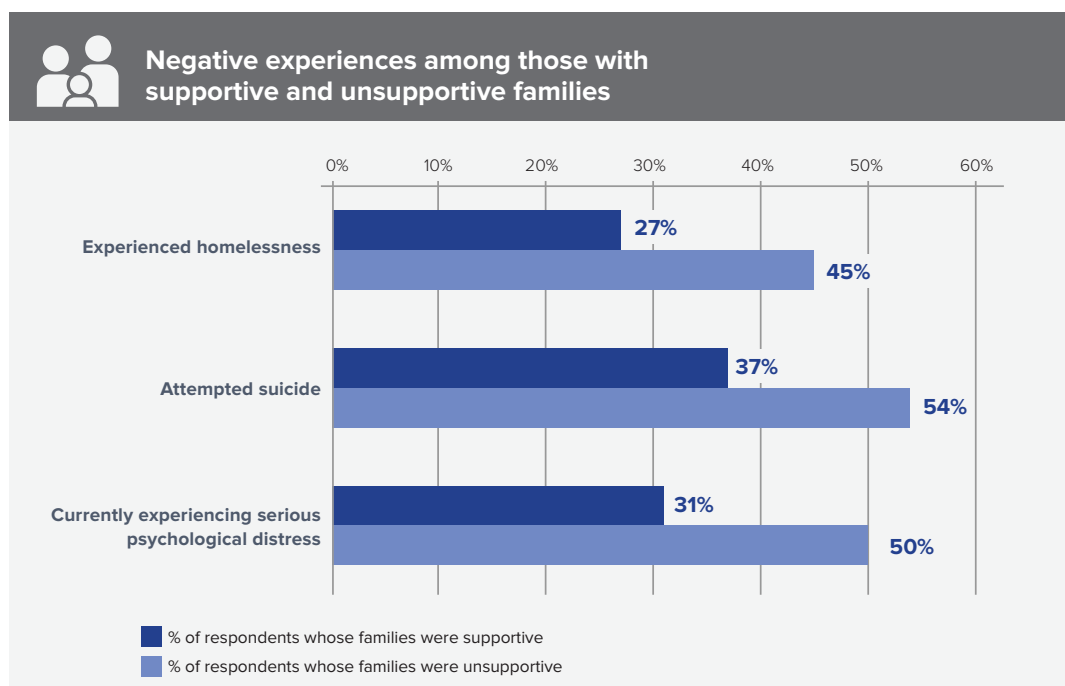
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**O**verall, the report provides evidence of hardships and barriers faced by transgender people on a day-to-day basis. It portrays the challenges that transgender people must overcome and the complex systems that they are often forced to navigate in multiple areas of their lives in order to survive and thrive. Given this evidence, governmental and private institutions throughout the United States should address these disparities and ensure that transgender people are able to live fulfilling lives in an inclusive society. This includes eliminating barriers to quality, affordable health care, putting an end to discrimination in schools, the workplace, and other areas of public life, and creating systems of support at the municipal, state, and federal levels that meet the needs of transgender people and reduce the hardships they face. As the national conversation about transgender people continues to evolve, public education efforts to improve understanding and acceptance of transgender people are crucial. The rates of suicide attempts, poverty, unemployment, and violence must serve as an immediate call to action, and their reduction must be a priority. Despite policy improvements over the last several years, it is clear that there is still much work ahead to ensure that transgender people can live without fear of discrimination and violence.

# Overview of Key Findings

## Family Life and Faith Communities

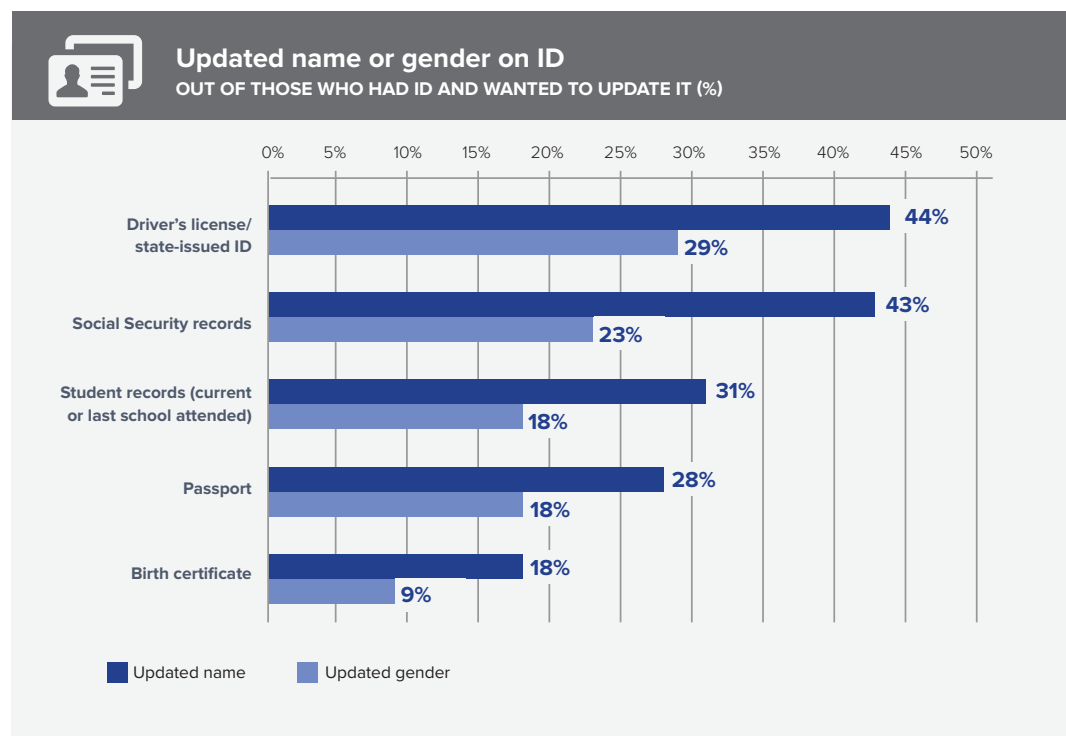
- **A majority of respondents (60%) who were out to the immediate family they grew up with said that their family was generally supportive of their transgender identity,** while 18% said that their family was unsupportive, and 22% said that their family was neither supportive nor unsupportive.
- **Those who said that their immediate families were supportive were less likely to report a variety of negative experiences related to economic stability and health,** such as experiencing homelessness, attempting suicide, or experiencing serious psychological distress.



- **One in ten (10%)** respondents who were out to their immediate family reported that a **family member was violent towards them** because they were transgender.
- **One in twelve (8%)** respondents who were out to their immediate family **were kicked out of the house**, and one in ten (10%) ran away from home.
- **Nineteen percent (19%)** of respondents who had ever been part of a **spiritual or religious community left due to rejection**. Forty-two percent (42%) of those who left later found a welcoming spiritual or religious community.

# Identity Documents

- Only 11% of respondents reported that *all* of their IDs had the name and gender they preferred, while more than two-thirds (68%) reported that *none* of their IDs had the name and gender they preferred.



- **The cost of changing ID documents was one of the main barriers respondents faced,** with 35% of those who have not changed their legal name and 32% of those who have not updated the gender on their IDs reporting that it was because they could not afford it.
- Nearly **one-third (32%)** of respondents **who have shown an ID with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.**

## Health Insurance and Health Care

- **One in four (25%) respondents experienced a problem in the past year with their insurance related to being transgender**, such as being denied coverage for care related to gender transition or being denied coverage for routine care because they were transgender.
- **More than half (55%) of those who sought coverage for transition-related surgery in the past year were denied**, and 25% of those who sought coverage for hormones in the past year were denied.
- **One-third (33%) of those who saw a health care provider in the past year reported having at least one negative experience related to being transgender**, with higher rates for people of color and people with disabilities. This included being refused treatment, verbally harassed, or physically or sexually assaulted, or having to teach the provider about transgender people in order to get appropriate care.
- In the past year, **23% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person**, and 33% did not see a doctor when needed because they could not afford it.

## Psychological Distress and Attempted Suicide

- **Thirty-nine percent (39%) of respondents experienced serious psychological distress** in the month before completing the survey (based on the Kessler 6 Psychological Distress Scale), compared with only 5% of the U.S. population.
- **Forty percent (40%) have attempted suicide in their lifetime**, nearly nine times the rate in the U.S. population (4.6%).
- **Seven percent (7%) attempted suicide in the past year**—nearly twelve times the rate in the U.S. population (0.6%).

## HIV

- Respondents were **living with HIV (1.4%) at nearly five times the rate in the U.S. population (0.3%)**.
- **HIV rates were higher among transgender women (3.4%)**, especially transgender women of color. **Nearly one in five (19%) Black transgender women were living with HIV**, and American Indian (4.6%) and Latina (4.4%) women also reported higher rates.

# Experiences in Schools

- **More than three-quarters (77%)** of those who were out or perceived as transgender at some point between Kindergarten and Grade 12 (K–12) **experienced some form of mistreatment**, such as being verbally harassed, prohibited from dressing according to their gender identity, disciplined more harshly, or physically or sexually assaulted because people thought they were transgender.
- **Fifty-four percent (54%)** of those who were out or perceived as transgender in K–12 **were verbally harassed, nearly one-quarter (24%) were physically attacked, and 13% were sexually assaulted in K–12 because of being transgender.**
- **Seventeen percent (17%)** faced such severe mistreatment as a transgender person that they left a K–12 school.
- **Nearly one-quarter (24%)** of people who were out or perceived as transgender in college or vocational school **were verbally, physically, or sexually harassed.**

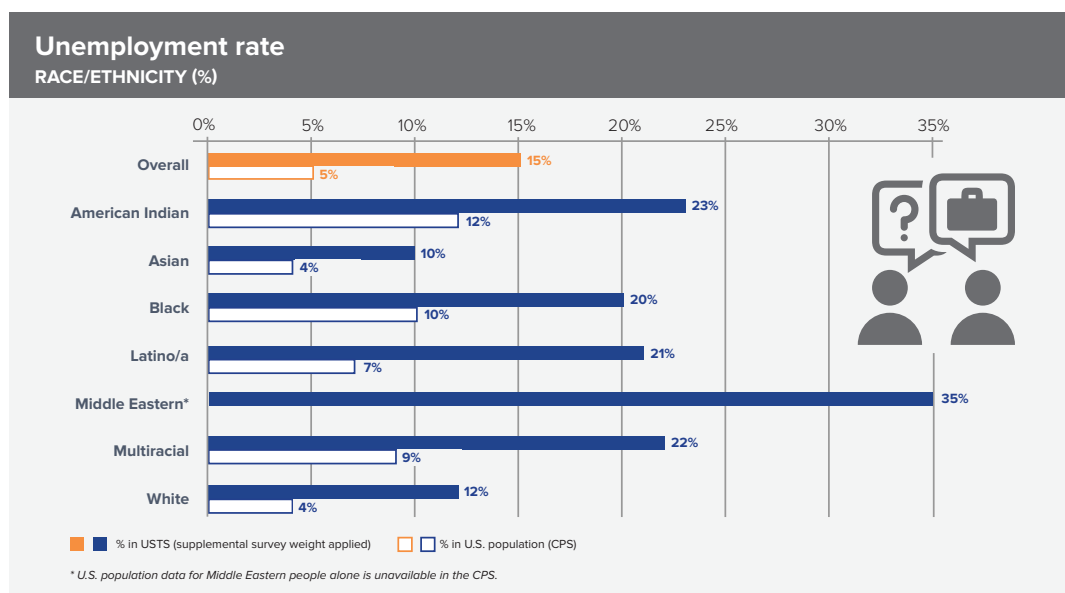


## Experiences of people who were out as transgender in K–12 or believed classmates, teachers, or school staff thought they were transgender

EXPERIENCES	% OF THOSE WHO WERE OUT OR PERCEIVED AS TRANSGENDER
Verbally harassed because people thought they were transgender	54%
Not allowed to dress in a way that fit their gender identity or expression	52%
Disciplined for fighting back against bullies	36%
Physically attacked because people thought they were transgender	24%
Believe they were disciplined more harshly because teachers or staff thought they were transgender	20%
Left a school because the mistreatment was so bad	17%
Sexually assaulted because people thought they were transgender	13%
Expelled from school	6%
<b>One or more experiences listed</b>	<b>77%</b>

## Income and Employment Status

- The unemployment rate among respondents (15%) was three times higher than the unemployment rate in the U.S. population (5%), with Middle Eastern, American Indian, multiracial, Latino/a, and Black respondents experiencing higher rates of unemployment.



- Nearly one-third (29%) were living in poverty, more than twice the rate in the U.S. population (12%).

## Employment and the Workplace

- **One in six (16%)** respondents who have ever been employed—or 13% of all respondents in the sample—**reported losing a job because of their gender identity or expression** in their lifetime.
- **In the past year, 27%** of those who held or applied for a job during that year—19% of all respondents—**reported being fired, denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.**
- **Fifteen percent (15%)** of respondents who had a job in the past year were verbally harassed, physically attacked, and/or sexually assaulted at work because of their gender identity or expression.
- **Nearly one-quarter (23%)** of those who had a job in the past year reported other forms of mistreatment based on their gender identity or expression during that year,

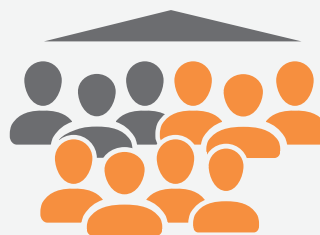
such as being forced to use a restroom that did not match their gender identity, being told to present in the wrong gender in order to keep their job, or having a boss or coworker share private information about their transgender status without their permission.

- **Overall, 30% of respondents who had a job in the past year reported being fired, denied a promotion, or experiencing some other form of mistreatment related to their gender identity or expression.**
- **More than three-quarters (77%) of respondents who had a job in the past year took steps to avoid mistreatment in the workplace,** such as hiding or delaying their gender transition or quitting their job.

## Housing, Homelessness, and Shelter Access

- **Nearly one-quarter (23%) of respondents experienced some form of housing discrimination in the past year,** such as being evicted from their home or denied a home or apartment because of being transgender.
- **Nearly one-third (30%) of respondents have experienced homelessness at some point in their lives.**
- **In the past year, one in eight (12%) respondents experienced homelessness** because of being transgender.
- **More than one-quarter (26%) of those who experienced homelessness in the past year avoided staying in a shelter because they feared being mistreated as a transgender person.** Those who did stay in a shelter reported high levels of mistreatment: **seven out of ten (70%)** respondents who stayed in a shelter in the past year reported some form of mistreatment, including being harassed, sexually or physically assaulted, or kicked out because of being transgender.

**Seven out of ten respondents who stayed in a shelter in the past year reported being mistreated because of being transgender.**



- Respondents were nearly **four times less likely to own a home (16%) compared to the U.S. population (63%).**



## Sex Work and Other Underground Economy Work

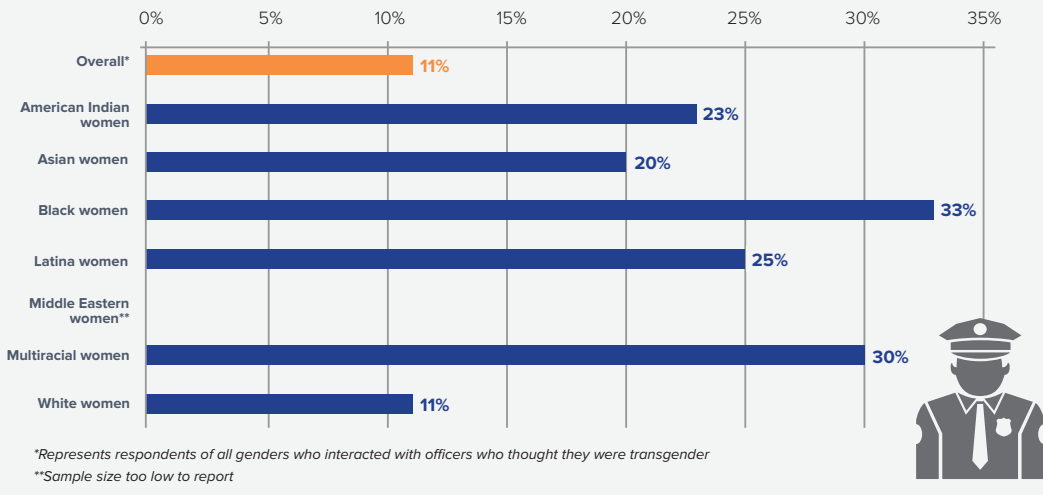
- Respondents reported high rates of experience in the underground economy, including sex work, drug sales, and other work that is currently criminalized. **One in five (20%) have participated in the underground economy** for income at some point in their lives—including 12% who have done sex work in exchange for income—and 9% did so in the past year, with higher rates among women of color.
- Respondents who interacted with the police either while doing sex work or while the police mistakenly thought they were doing sex work reported high rates of police harassment, abuse, or mistreatment, with **nearly nine out of ten (86%) reporting being harassed, attacked, sexually assaulted, or mistreated in some other way by police.**
- **Those who have done income-based sex work were also more likely to have experienced violence.** More than three-quarters (77%) have experienced intimate partner violence and 72% have been sexually assaulted, a substantially higher rate than the overall sample. Out of those who were working in the underground economy at the time they took the survey, nearly half (41%) were physically attacked in the past year and over one-third (36%) were sexually assaulted during that year.

## Police Interactions and Prisons

- **Respondents experienced high levels of mistreatment and harassment by police.** In the past year, of respondents who interacted with police or law enforcement officers who thought or knew they were transgender, **more than half (58%) experienced some form of mistreatment.** This included being verbally harassed, repeatedly referred to as the wrong gender, physically assaulted, or sexually assaulted, including being forced by officers to engage in sexual activity to avoid arrest.
- **Police frequently assumed that respondents—particularly transgender women of color—were sex workers.** In the past year, of those who interacted with law enforcement officers who thought or knew they were transgender, one-third (33%) of Black transgender women and 30% of multiracial women said that an officer assumed they were sex workers.
- **More than half (57%)** of respondents said they would feel **uncomfortable asking the police for help** if they needed it.
- Of those who were arrested in the past year (2%), **nearly one-quarter (22%) believed they were arrested because they were transgender.**

**Transgender women reporting that police assumed they were sex workers in the past year (out of those who interacted with officers who thought they were transgender)**

RACE/ETHNICITY (%)



- Respondents who were held in jail, prison, or juvenile detention in the past year faced **high rates of physical and sexual assault by facility staff and other inmates**. In the past year, nearly one-quarter (23%) were physically assaulted by staff or other inmates, and one in five (20%) were sexually assaulted. Respondents were over **five times more likely to be sexually assaulted by facility staff** than the U.S. population in jails and prisons, and over **nine times more likely to be sexually assaulted by other inmates**.

## Harassment and Violence

- **Nearly half (46%) of respondents were verbally harassed** in the past year because of being transgender.
- **Nearly one in ten (9%) respondents were physically attacked** in the past year because of being transgender.
- **Nearly half (47%) of respondents were sexually assaulted** at some point in their lifetime and **one in ten (10%) were sexually assaulted in the past year**. Respondents who have done sex work (72%), those who have experienced homelessness (65%), and people with disabilities (61%) were more likely to have been sexually assaulted in their lifetime.
- **More than half (54%) experienced some form of intimate partner violence**, including acts involving coercive control and physical harm.
- **Nearly one-quarter (24%) have experienced severe physical violence by an intimate partner, compared to 18% in the U.S. population.**

## Places of Public Accommodation

- Respondents reported being denied equal treatment or service, verbally harassed, or physically attacked at many places of public accommodation—places that provide services to the public, like retail stores, hotels, and government offices. Out of respondents who visited a place of public accommodation where staff or employees thought or knew they were transgender, **nearly one-third (31%) experienced at least one type of mistreatment in the past year in a place of public accommodation.** This included 14% who were denied equal treatment or service, 24% who were verbally harassed, and 2% who were physically attacked because of being transgender.
- **One in five (20%) respondents did not use at least one type of public accommodation** in the past year because they feared they would be mistreated as a transgender person.

### Denied equal treatment or service, verbally harassed, or physically attacked in public accommodations in the past year because of being transgender

LOCATION VISITED	% OF THOSE WHO SAID STAFF KNEW OR THOUGHT THEY WERE TRANSGENDER
Public transportation	34%
Retail store, restaurant, hotel, or theater	31%
Drug or alcohol treatment program	22%
Domestic violence shelter or program or rape crisis center	22%
Gym or health club	18%
Public assistance or government benefit office	17%
Department of Motor Vehicles (DMV)	14%
Nursing home or extended care facility	14%
Court or courthouse	13%
Social Security office	11%
Legal services from an attorney, clinic, or legal professional	6%



## Experiences in Restrooms

The survey data was collected before transgender people's restroom use became the subject of increasingly intense and often harmful public scrutiny in the national media and legislatures around the country in 2016. Yet respondents reported facing frequent harassment and barriers when using restrooms at school, work, or in public places.

- **Nearly one in ten (9%) respondents reported that someone denied them access to a restroom in the past year.**
- In the past year, **respondents reported being verbally harassed (12%), physically attacked (1%), or sexually assaulted (1%)** when accessing a restroom.

- **More than half (59%)** of respondents **avoided using a public restroom** in the past year because they were afraid of confrontations or other problems they might experience.
- **Nearly one-third (32%)** of respondents **limited the amount that they ate and drank** to avoid using the restroom in the past year.
- **Eight percent (8%)** reported having a **urinary tract infection, kidney infection, or another kidney-related problem** in the past year as a result of avoiding restrooms.

**More than half (59%)** of respondents **avoided using a public restroom** in the past year because they were afraid of confrontations or other problems they might experience.



## Civic Participation and Party Affiliation

- **More than three-quarters (76%)** of U.S. citizens of voting age in the sample reported that they were registered to vote in the November 2014 midterm election, compared to 65% in the U.S. population.
- **More than half (54%)** of U.S. citizens of voting age reported that they had voted in the midterm election, compared to 42% in the U.S. population.
- **Half (50%)** of respondents identified as Democrats, **48%** identified as Independents, and **2%** identified as Republicans, compared to 27%, 43%, and 27% in the U.S. population, respectively.

### Political party affiliation

POLITICAL PARTY	% IN USTS	% IN U.S. POPULATION (GALLUP)
Democrat	50%	27%
Independent	48%	43%
Republican	2%	27%



## About the National Center for Transgender Equality

The National Center for Transgender Equality (NCTE) is the nation's leading social justice policy advocacy organization devoted to ending discrimination and violence against transgender people. NCTE was founded in 2003 by transgender activists who recognized the urgent need for policy change to advance transgender equality. NCTE now has an extensive record winning life-saving changes for transgender people. NCTE works by educating the public and by influencing local, state, and federal policymakers to change policies and laws to improve the lives of transgender people. By empowering transgender people and our allies, NCTE creates a strong and clear voice for transgender equality in our nation's capital and around the country.

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The Report of the  
**2015 U.S. Transgender Survey: Executive Summary**

by:

Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet, and Ma'ayan Anafi  
**December 2016**

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The full report of the 2015 U.S. Transgender Survey is available at [www.USTransSurvey.org](http://www.USTransSurvey.org).

Updated December 2017

THE REPORT OF THE




[ustranssurvey.org](http://ustranssurvey.org) | [transequality.org](http://transequality.org)

# EXHIBIT G

**SPECIAL ISSUE: EXPERIENCES OF  
DISCRIMINATION IN AMERICA**

# Discrimination in the United States: Experiences of lesbian, gay, bisexual, transgender, and queer Americans

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#### Abstract

**Objective:** To examine reported experiences of discrimination against lesbian, gay, bisexual, transgender, and queer (LGBTQ) adults in the United States, which broadly contribute to poor health outcomes.

**Data Source and Study Design:** Data came from a national, probability-based telephone survey of US adults, including 489 LGBTQ adults (282 non-Hispanic whites and 201 racial/ethnic minorities), conducted January-April 2017.

**Methods:** We calculated the percentages of LGBTQ adults reporting experiences of discrimination in health care and several other domains related to their sexual orientation and, for transgender adults, gender identity. We report these results overall, by race/ethnicity, and among transgender adults only. We used multivariable models to estimate adjusted odds of discrimination between racial/ethnic minority and white LGBTQ respondents.

**Principal Findings:** Experiences of interpersonal discrimination were common for LGBTQ adults, including slurs (57 percent), microaggressions (53 percent), sexual harassment (51 percent), violence (51 percent), and harassment regarding bathroom use (34 percent). More than one in six LGBTQ adults also reported avoiding health care due to anticipated discrimination (18 percent), including 22 percent of transgender adults, while 16 percent of LGBTQ adults reported discrimination in health care encounters. LGBTQ racial/ethnic minorities had statistically significantly higher odds than whites in reporting discrimination based on their LGBTQ identity when applying for jobs, when trying to vote or participate in politics, and interacting with the legal system.

**Conclusions:** Discrimination is widely experienced by LGBTQ adults across health care and other domains, especially among racial/ethnic minorities. Policy and programmatic efforts are needed to reduce these negative experiences and their health impact on sexual and/or gender minority adults, particularly those who experience compounded forms of discrimination.

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**KEY WORDS**

discrimination, gender identity, Lesbian, gay, bisexual, transgender, queer (LGBTQ) health, Racial/ethnic differences in health and health care, sexual orientation, Social determinants of health, Survey research

## 1 | INTRODUCTION

Lesbian, gay, bisexual, transgender, and queer (LGBTQ) people in the United States have experienced a long history of discrimination, including criminalization and classifications as mentally ill, attempts to forcibly change LGBTQ people's sexual orientation and/or gender identity, hate crimes and violence, and exclusion from employment, housing, public spaces, and social institutions.<sup>1-3</sup> And yet, despite this history and despite research examining beliefs about discrimination generally and the consequences of experiencing discrimination (discussed below), relatively few national efforts have been made to systematically study LGBTQ people's reported personal experiences of discrimination.<sup>3-5</sup> While such efforts are hindered by the inherent challenge of surveying a small, dispersed, difficult-to-define, and internally diverse population,<sup>6-8</sup> it is nonetheless critically important to study experiences of discrimination because of the established impact of discrimination on health and well-being.

Research demonstrates that experiencing discrimination or harassment has significant and negative consequences for both physical and mental health.<sup>9,10</sup> This field of research shows that experiences of enacted stigma, discrimination, and/or harassment induce psychological, behavioral, and physiological stress responses in the body and that the impacts of these reactions accumulate over time,<sup>11</sup> leading to a wide range of negative health outcomes and health-related behaviors. Even the anticipation of or mental preparation for discrimination, whether discrimination actually occurs (ie, felt stigma), has significantly harmful effects on health.<sup>12-14</sup>

While much related research has focused on the effects of racism<sup>10,15,16</sup> and sexism on health,<sup>16,17</sup> these same effects have also been observed in the context of discrimination, harassment, and assault against nonrepresentative samples of LGBTQ people.<sup>18-21</sup> In some cases, these effects persist even after basic protection policies have been implemented.<sup>22</sup> Experiencing discrimination persistently leads to negative health effects for LGBTQ people,<sup>23,24</sup> and it limits their opportunities and access to critical resources in areas such as health care, employment, and public safety.<sup>21,22</sup> It also leads to avoidance of care, further amplifying these negative health consequences.<sup>14</sup> For example, transgender people who have experienced discrimination in health care are more likely than those who have not experienced discrimination to subsequently avoid both preventative and urgent health care services, including needed care due to illness or injury.<sup>22</sup> This leads to worse health outcomes, including higher likelihood of depression and suicidal ideation or attempts.<sup>14</sup>

Further, these negative consequences for health are likely to be compounded for individuals from multiple minority backgrounds, such as LGBTQ racial/ethnic minorities or LGBTQ women.<sup>18,25-30</sup> Transgender people, with their unique health concerns, may also face special health-related vulnerabilities as a result of discrimination, including social and economic vulnerabilities that increase health risks.<sup>31,32</sup> These effects are particularly alarming given that LGBTQ people are significantly less likely than non-LGBTQ people to have health insurance<sup>31,33</sup> and therefore may have less access to medical care that could mitigate the adverse health consequences of discrimination.

Few surveys have documented LGBTQ people's personal experiences of discrimination using national data and/or across multiple domains of life. The landmark Institute of Medicine report<sup>6</sup> on LGBT health in 2011 identified the need for research to overcome some of the methodological challenges that arise in studying LGBTQ population health, such as noninclusion of items to assess sexual orientation and/or gender identity in federal surveys, small population size, stigma, discrimination, privacy, and dispersion in sampling, among others.<sup>8,34,35</sup> Although some progress has been made, large national probability studies of discrimination across multiple domains among LGBTQ adults remain the exception, rather than the rule. Particularly needed are studies that allow comparisons by race/ethnicity within the LGBTQ population.<sup>3-6,8</sup> This study attempts to expand on prior telephone polling methods by examining LGBTQ adults' experiences across many areas of life, drawn from a large national sample of US adults.

This study, alongside complementary articles in this issue of *Health Services Research*, brings a public health perspective to the complexity and pervasiveness of discrimination in the United States today. It was conducted as part of a larger survey fielded in 2017 in response to a growing national debate about discrimination in the United States today,<sup>36</sup> to understand experiences of discrimination against several different groups in America, including blacks, Latinos, Asians, Native Americans, women, and LGBTQ people. This particular study has four main purposes: (a) to examine the prevalence of discrimination, harassment, and violence against LGBTQ adults specifically because of their sexual orientation and, for transgender adults and gender nonconforming adults, their gender identity; (b) to examine such experiences across multiple domains of life raised as areas of concern among experts,<sup>36</sup> including health care, education, employment, housing, political participation, police, and the criminal justice system, as well as interpersonal areas including slurs, microaggressions, harassment, and violence; (c) to examine variation in experiences of discrimination within LGBTQ adults by race/ethnicity, as prior



research illustrates that racial/ethnic minority LGBTQ adults may be at particular risk for experiencing discrimination; and (d) to examine experiences of discrimination and harassment among a subsample of transgender adults (including those who identified as genderqueer or gender nonconforming), who are also at particular risk for experiencing discrimination.

## 2 | METHODS

### 2.1 | Study design and sample

Data were obtained from a nationally representative, probability-based telephone (cell and landline) survey of US adults, conducted from January 26 to April 9, 2017. The survey was jointly designed by Harvard TH Chan School of Public Health, the Robert Wood Johnson Foundation, and National Public Radio. SSRS, an independent firm, administered the survey. Because Harvard researchers were not directly involved in data collection and de-identified datasets were used for analysis, the study was deemed "not human subjects research" by the Harvard TH Chan School of Public Health Office of Human Research Administration.

The full sample included 3453 US adults aged 18 years and older, including nationally representative samples of blacks, Latinos, Asian Americans, Native Americans, whites, men, women, and LGBTQ adults. This paper examines the subsample of 489 LGBTQ adults, including 282 whites and 201 racial/ethnic minorities and an oversample of 86 transgender adults. Screening questions regarding sexual orientation and gender identity were asked at the beginning of the survey, so that LGBTQ respondents could be identified and asked relevant questions (see Appendix S1). For sexual orientation, respondents were classified as LGBQ if they identified as gay or lesbian, bisexual, or another sexual orientation specified by the respondent that was not heterosexual or straight. For gender identity, respondents were classified as transgender if they identified as transgender male, transgender female, genderqueer or gender nonconforming, or another gender identity specified by the respondent that was not male or female.

The completion rate for this survey was 74 percent among respondents who answered initial demographic screening questions, with a 10 percent overall response rate, calculated based on the American Association for Public Opinion Research's (AAPOR) RR3 formula.<sup>37</sup> Because data from this study were drawn from a probability sample and used the best available sampling and weighting practices in polling methods (eg, 68 percent of interviews were conducted by cell phone, and 32 percent were conducted via landline), they are expected to provide accurate results consistent with surveys with higher response rates.<sup>38,39</sup> Surveying LGBTQ populations faces major challenges in constructing adequate sampling frames and sample sizes, as well as a stigmatized respondent population, underreporting, and variations in question wording on sexual orientation and/or gender identity.<sup>6-8,34,35</sup> While federal benchmark data are limited, respondents for this

survey were similar demographically to LGB adults in other national, population-based samples obtaining higher response rates (General Social Survey and National Health Interview Survey),<sup>40</sup> though federal surveys are also subject to the limitations noted above. We expect these results to be generalizable to the US adult population within a margin of error of  $\pm 6.6$  percentage points at the 95% confidence interval, while noting the potential for underreporting among the US adult LGBTQ population. See Benson, Ben-Porath, and Casey (2019) for a further description of the survey methodology.<sup>41</sup>

### 2.2 | Survey instrument

In this poll, we analyzed 25 questions about lifetime experiences of discrimination, including adults' personal experiences of discrimination and perceptions of discrimination in the nation. The objective of this study was to examine the extent of discrimination experienced by LGBTQ adults in America, building on question modules in this field adapted from prior surveys on racial and LGBTQ discrimination.<sup>3-5,42,43</sup> We conceptualized discrimination as differential or unfair treatment of individuals based on their LGBTQ identity, and we include discrimination that is "institutional" (based in laws, policies, institutions, and related behavior of individuals who work in or control these laws, policies, or institutions) and "interpersonal" (based in individuals' beliefs, words, and behavior).<sup>8,43,44,a</sup>

For this study, we analyzed questions about personal experiences, covering six institutional and seven interpersonal areas of discrimination (full questions and wording in Appendix S1). Institutional areas included employment, education, health care, housing, political participation, and police and courts. Interpersonal areas included anti-LGBTQ slurs, microaggressions, other people's fear of LGBTQ adults, sexual harassment, being threatened or nonsexually harassed, being harassed or questioned regarding bathroom use, and experiencing violence, among other experiences. We also examined two areas where individuals might avoid seeking help or services due to anticipation or fear of being discriminated against: seeking medical care or the services of police or other authority figures. We examined these numerous domains in order to capture a wide range of possible discriminatory experiences across adults' lives.

Questions were only asked among a random half-sample of respondents to maximize the number of questions while limiting respondent burden (half-sample A = 259, half-sample B = 230). Questions were only asked of relevant subgroups (eg, college-related questions only asked among adults who had ever applied to or attended college). Questions about harassment (sexual and nonsexual), violence, and avoiding institutions for fear of discrimination were asked about yourself or friends or family members who are also LGBTQ, because of the sensitive nature of the questions and prior literature demonstrating that vicariously experiencing stress (eg, through discrimination experienced by family members) can directly and adversely affect individuals.<sup>45</sup>

## 2.3 | Statistical analyses

We first calculated the prevalence of all LGBTQ people who reported they had ever experienced discrimination because of their sexual orientation and/or gender identity in each of the aforementioned domains. Second, we generated bivariate statistics to assess whether experiencing discrimination because of LGBTQ identity was associated with race. Because of the sample size, particularly with split-sampled questions, responses of nonwhite racial/ethnic minorities were pooled together, and we compared whites to racial/ethnic minorities. Six people were included in overall analyses but excluded from racial/ethnic comparisons because of insufficient race/ethnicity data. Using pairwise *t* tests of differences in proportions, we made uncontrolled comparisons of the weighted percentage of adults reporting discrimination between racial/ethnic minority and white adults, to examine where race/ethnicity affects LGBTQ adults' experiences of discrimination, irrespective of cause. For all analyses, statistical significance was determined at  $P < .05$ .

We then conducted logistic regression models to assess whether identifying as a racial/ethnic minority remained statistically significantly associated with discrimination after controlling for the following covariates and possible confounders: self-identified gender (male or female, excluding genderqueer or gender nonconforming due to insufficient sample size,  $n = 28$ ); age in years (18-29 or 30+); self-reported household income (<\$25 000 or \$25 000+); and education (less than college degree or college graduate). We also examined whether each of these sociodemographic variables was significantly associated with experiencing discrimination across domains. Metropolitan status, region, and health insurance status were omitted from these models for parsimony, due to the sample size. Odds ratios (OR) and 95% confidence intervals (95% CI) were estimated.

Finally, we conducted a subgroup descriptive analysis of transgender adults ( $n = 86$ ), to assess their experiences separately from the larger LGBTQ population, given that we expected transgender experiences to be unique.<sup>3</sup> We did not directly compare transgender adults to LGBQ adults because the groups are not mutually exclusive. Due to randomly assigned split sampling of the survey questionnaire, there were some questions that had too few transgender respondents to report these percentages (half-sample A = 33, half-sample B = 55). Results are only reported if  $n > 50$ .

To compensate for known biases in telephone surveys (eg, nonresponse bias) and variations in probability of selection within and across households, sample data were weighted by household size and composition, cell phone/landline use, and demographics (gender, age, education, race/ethnicity, and census region) to reflect the true population distribution of adults in the country. Other techniques, including random-digit dialing, replicate subsamples, and random selection of a respondent within a household, were used to ensure that the sample is representative. All analyses were conducted using STATA version 15.0 (StataCorp),

and all tests accounted for the variance introduced by weighted data.

## 3 | RESULTS

### 3.1 | Characteristics of the LGBTQ study sample

Demographic and socioeconomic characteristics of US LGBTQ adults are displayed in Table 1; percentages of LGBTQ adults who have experienced discrimination because of their sexual orientation and/or gender identity are shown in Table 2; adjusted odds ratios of reporting discrimination are shown in Table 3; descriptive analysis of transgender adults is shown in Table 4. All estimates display data weighted using survey weights.

Table 1 shows that a majority of the LGBTQ sample were cisgender (77 percent), with 23 percent identifying as transgender or genderqueer or gender nonconforming. A majority were also white (61 percent), while 39 percent identified as racial and/or ethnic minorities. LGBTQ racial/ethnic minorities were significantly less likely than LGBTQ whites to have a college degree (23 percent vs 38 percent,  $P < .01$ ) and to make \$25 000 or more per year (46 percent vs 66 percent,  $P < .04$ ). LGBTQ racial/ethnic minorities were also significantly more likely (23 percent) than LGBTQ whites (10 percent) to be without health insurance ( $P < .02$ ).

### 3.2 | Discrimination attributed to sexual orientation and/or gender identity

Table 2 shows the weighted percent of LGBTQ adults, both in aggregate and by race/ethnicity, who reported personally experiencing various forms of discrimination because of their sexual orientation and/or gender identity.<sup>b</sup> The majority of LGBTQ adults reported personally experiencing interpersonal discrimination: 57 percent said they have experienced slurs and 53 percent said they had experienced microaggressions related to their sexual orientation or gender identity. Similarly, the majority of LGBTQ adults reported interpersonal discrimination either personally or in their immediate friends or family: 57 percent said they or an LGBTQ friend or family member had been threatened or nonsexually harassed because of their LGBTQ identity, and 51 percent said they had experienced sexual harassment or violence because of their sexual orientation and/or gender identity.

More than one-third (34 percent) of LGBTQ people said that they or an LGBTQ friend or family member has personally been verbally harassed while in a bathroom or been told or asked if they were in the wrong bathroom. Another third (32 percent) said that they or an LGBTQ friend/family member have been told or felt they would be unwelcome in a neighborhood or place to live because they are LGBTQ.

In the context of institutional discrimination, 18 percent of LGBTQ adults reported they have avoided seeking health care for themselves or family members due to anticipated discrimination, while 16 percent reported discrimination in clinical encounters. One-fifth or more

**TABLE 1** Characteristics of LGBTQ adults in the study sample (N = 489)<sup>a</sup>

	All LGBTQ adults N = 489	White LGBTQ adults N = 282	Racial/ethnic minority LGBTQ N = 201
	Weighted percentage of respondents <sup>b</sup>		
LGBQ (lesbian, gay, bisexual, and queer) <sup>c</sup>	84	83	84
Cisgender	77	-	-
Transgender (including genderqueer and gender nonconforming) <sup>c</sup>	23	25	20
Self-reported gender			
Male (cisgender and transgender)	38	35	43
Female (cisgender and transgender)	56	58	53
Genderqueer or gender nonconforming	6	6	5
Race			
White (non-Hispanic)	61	-	-
Nonwhite (racial/ethnic minority) <sup>d</sup>	39	-	-
Age			
18-29 y	41	39	45
30 + y	59	61	55
Education			
No college degree <sup>e</sup>	68	62	<b>77*</b>
College degree or more	32	38	<b>23*</b>
Household income			
<\$25 000	36	31	44
\$25 000+	55	61	<b>46*</b>
Health insurance current status <sup>f</sup>			
Uninsured	15	10	<b>23*</b>
Insured, Medicaid	14	16	11
Insured, non-Medicaid	68	71	65
Area of residence <sup>g</sup>			
Urban	30	26	3
Nonurban	64	67	61
Don't know/refused	6	7	4
US region of residence <sup>h</sup>			
Northeast	23	22	26
Midwest	20	23	17
South	30	33	27
West	20	16	26
Don't know/refused	6	6	4

<sup>a</sup>Percentage of US LGBTQ population estimated with survey weights to adjust for unequal probability of sampling.

<sup>b</sup>The sample size shown reflects the total number of respondents in each category. Percentages may not add up to 100% due to rounding and don't know/refused responses that are included in the total n but not reported in Table 1.

<sup>c</sup>LGBQ and transgender are not mutually exclusive. A person can identify as one or both.

<sup>d</sup>There were too few LGBTQ-identified racial/ethnic minority respondents to conduct independent analyses for each racial category (black, Latino, Asian American, Native American), particularly when questions are split-sampled.

<sup>e</sup>Including those with some college experience (including business, technical, or vocational school after high school) but no college degree, as well as those with a high school degree or GED certificate or less.

<sup>f</sup>Primary source of health insurance.

<sup>g</sup>Nonurban includes suburban and rural.

<sup>h</sup>Regions defined by US Census Bureau 4-region definition.

\*Different from whites, statistically significant at  $P < .05$  (shown in bold).

**TABLE 2** Differences between white and racial/ethnic minority LGBTQ adults in reporting discrimination because of their LGBTQ identity<sup>a</sup>

	Subject of discrimination <sup>b</sup>	N	Weighted percent of all LGBTQ adults <sup>c</sup>	Weighted percent of white LGBTQ <sup>c</sup>	Weighted percent of racial/ethnic minority LGBTQ <sup>c</sup>
<i>Belief in overall discrimination</i>					
	General belief that discrimination against lesbian, gay, and bisexual people exists today in the United States <sup>d</sup>	489	91	92	88
	General belief that discrimination against transgender people exists today in the United States <sup>d</sup>	489	91	93	88
<i>Experiences of institutional discrimination</i>					
Employment					
	Being paid equally or considered for promotions <sup>e</sup>	245	22	19	28
	Applying for jobs <sup>f</sup>	245	20	13	32*
Education					
	Applying to or while attending college <sup>g</sup>	192	20	20	20
Health care					
	Going to a doctor or health clinic	230	16	20	9
Housing					
	Trying to rent a room/apartment or buy a house <sup>h</sup>	177	22	25	14
Political participation					
	Trying to vote or participate in politics	255	11	7	16
Police and courts					
	Interacting with police	258	16	11	24*
	Unfairly stopped or treated by the police <sup>i</sup>	259	26	26	26
	Unfairly treated by the courts <sup>i</sup>	259	26	23	31
<i>Experiences of interpersonal discrimination</i>					
	LGBTQ identity-based microaggressions <sup>j</sup>	230	53	64	35*
	Racial identity-based microaggressions	230	18	6	38*
	LGBTQ identity-based slurs <sup>j</sup>	230	57	65	41*
	Racial identity-based slurs	230	38	14	53*
	People acted afraid because of your LGBTQ identity <sup>j</sup>	230	15	17	14
	People acted afraid because of your race/ethnicity	230	12	6	23*
	Violence <sup>i</sup>	259	51	57	42
	Threatened or nonsexually harassed <sup>i</sup>	259	57	60	52
	Sexual harassment <sup>i</sup>	259	51	57	43

(Continues)

TABLE 2 (Continued)

	Subject of discrimination <sup>b</sup>	N	Weighted percent of all LGBTQ adults <sup>c</sup>	Weighted percent of white LGBTQ <sup>c</sup>	Weighted percent of racial/ethnic minority LGBTQ <sup>c</sup>
Harassed while using bathroom <sup>i</sup>	You or LGBTQ family member (half-sample A)	259	34	32	36
Been told or felt unwelcome because of being LGBTQ <sup>k</sup>	You or LGBTQ family member (total sample)	489	32	34	31
<i>Actions based on concerns about discrimination</i>					
Avoided doctor or health care because of concerns of discrimination/poor treatment	You or LGBTQ family member (half-sample B)	230	18	21	12
Avoided calling the police because of concerns of discrimination	You or LGBTQ family member (half-sample A)	259	15	11	21
Thought about moving to another area because of personally experienced discrimination <sup>l</sup>	You (total sample)	489	31	31	30

<sup>a</sup>White and racial/ethnic minority LGBTQ adults aged 18+, excluding n = 6 adults with missing race/ethnicity that are included in the total sample. Most questions only asked among a randomized subsample of half of respondents. Don't know/refused responses included in the total for unadjusted estimates.

<sup>b</sup>Questions about you are personal experiences only; questions about you or friend/family member ask if items have happened to you or a friend/family member because you or they are part of the LGBTQ community.

<sup>c</sup>Percent calculated using survey weights. Bolded and starred values show a statistically significant difference between white and nonwhite LGBTQ adults at  $P < .05$  using a  $t$  test.

<sup>d</sup>Question asked as "Generally speaking, do you believe there is or is not discrimination against [lesbian, gay, and bisexual people OR transgender people] in America today?"

<sup>e</sup>Equal pay question only asked among respondents who have ever been employed for pay.

<sup>f</sup>Jobs question only asked among respondents who have ever applied for a job.

<sup>g</sup>College application/attendance was only asked among respondents who have ever applied for college or attended college for any amount of time.

<sup>h</sup>Housing question only asked among respondents who have ever tried to rent a room or apartment, or to apply for a mortgage or buy a home.

<sup>i</sup>Question wording: "Do you believe that you or a friend or family member who is also part of the LGBTQ community has [experienced/been \_\_\_\_\_] because you or they are part of the LGBTQ community, or not?"

<sup>j</sup>Question wording: "In your day-to-day life, have any of the following things ever happened to you, or not?" and respondent indicated they had experienced this *and* believed this happened because your sexual orientation or gender identity. Slurs = someone referred to you or a group you belong to using a slur or other negative word; Microaggressions = someone made negative assumptions or insensitive or offensive comments about you; People acted afraid = people acted as if they were afraid of you.

<sup>k</sup>You or a friend/family member who is also part of the LGBTQ community has been told or felt you would be unwelcome in a neighborhood, building, or housing development you were interested in because you are part of the LGBTQ community.

<sup>l</sup>You have thought about moving to another area because you have experienced discrimination or unequal treatment where you were living.

reported personally experiencing discrimination specifically because of their LGBTQ identity across multiple domains of life: when seeking housing (22 percent), equal pay or promotions (22 percent), applying for jobs (20 percent), and applying to or while attending college (20 percent). About one-quarter of LGBTQ adults said they or LGBTQ friends or family members had also been unfairly treated by the courts (26 percent) or unfairly stopped or treated by police (26 percent) because of their LGBTQ identity.

Importantly, LGBTQ racial/ethnic minorities were more than twice as likely as LGBTQ whites to say they had personally experienced institutional discrimination because of their LGBTQ identity when applying for jobs (32 percent vs 13 percent,  $P < .02$ ) and when interacting with police (24 percent vs 11 percent,  $P < .05$ ). Compared to LGBTQ whites, LGBTQ racial/ethnic minorities reported lower prevalence of some forms of interpersonal discrimination, specifically LGBTQ-based microaggressions (35 percent vs 64 percent,  $P < .01$ ) and slurs (41 percent vs 65 percent,  $P < .02$ ). However, LGBTQ racial/ethnic minorities had a higher prevalence than whites

of reporting race-based microaggressions (38 percent vs 6 percent,  $P < .01$ ), slurs (53 percent vs 14 percent,  $P < .01$ ), and racial fear (23 percent vs 6 percent,  $P < .01$ ).

### 3.3 | Adjusted odds of reporting personal experiences of discrimination in LGBTQ adults

Table 3 reports odds ratios with 95% confidence intervals examining whether race/ethnicity differences in reported experiences of discrimination persist after controlling for pertinent demographic variables, including age, race, gender, education, and income. For institutional discrimination, LGBTQ racial/ethnic minority adults had significantly higher odds than LGBTQ whites for reporting discrimination on the basis of being LGBTQ when applying for jobs, voting or participating in politics, and being treated unfairly by the courts. LGBTQ racial/ethnic minorities had lower odds for reporting LGBTQ-based discrimination when going to a doctor or health clinic than LGBTQ whites.

**TABLE 3** Adjusted odds of reporting personal experiences of discrimination across institutional and interpersonal domains among US LGBTQ adults

Institutional discrimination		Employment		Education		Health care		Housing		Political participation		Police and courts		Avoidance	
		Equal pay/pro-motions <sup>c</sup>	College ap-plication/attendance <sup>d</sup>	Doctor or health clinic visits	Trying to rent or buy a house <sup>e,f</sup>	Trying to vote or participate in politics	Interacting with Police	Unfairly stopped or treated by police	Unfairly treated by the courts	Avoided calling the police due to discrimination concerns	Avoided doctor due to discrimination concerns				
N <sup>a</sup>	214	213	167	189	151	219	222	221	223	223	193				
Race/ethnicity <sup>g</sup>															
White	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref				
Racial/ethnic minority	3.16 <sup>*</sup> (1.35, 7.40)	1.57 (0.66, 3.75)	0.83 (0.24, 2.81)	0.31 <sup>*</sup> (0.10, 0.97)	0.31 (0.08, 1.24)	3.13 <sup>*</sup> (1.00, 9.73)	1.75 (0.69, 4.48)	0.90 (0.41, 1.96)	2.80 <sup>*</sup> (1.26, 6.24)	1.25 (0.50, 3.13)	0.56 (0.19, 1.64)				
Self-identified gender															
Male	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref				
Female	0.39 <sup>*</sup> (0.15, 0.96)	0.34 <sup>*</sup> (0.14, 0.82)	2.12 (0.77, 5.86)	1.40 (0.54, 3.66)	0.87 (0.26, 2.96)	0.28 <sup>*</sup> (0.09, 0.86)	0.36 (0.13, 0.94)	1.14 (0.50, 2.64)	0.40 <sup>*</sup> (0.17, 0.96)	0.89 (0.32, 2.53)	1.11 (0.42, 2.91)				
Education															
<College	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref				
College+	1.12 (0.44, 2.87)	0.92 (0.38, 2.23)	0.46 (0.14, 1.48)	1.26 (0.41, 3.88)	0.24 <sup>*</sup> (0.08, 0.74)	1.33 (0.35, 5.09)	1.46 (0.48, 4.45)	2.28 (0.93, 5.57)	1.72 (0.71, 4.17)	1.55 (0.53, 4.51)	3.35 <sup>*</sup> (1.32, 8.48)				
Income															
<25k	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref				
25k+	0.67 (0.29, 1.56)	0.87 (0.34, 2.23)	1.28 (0.35, 4.76)	0.86 (0.24, 3.09)	0.77 (0.21, 2.86)	0.37 (0.11, 1.22)	0.31 <sup>*</sup> (0.10, 0.96)	0.79 (0.32, 1.95)	1.08 (0.46, 2.56)	0.40 (0.14, 1.15)	0.72 (0.25, 2.04)				
Age															
18-29	Ref	Ref	Ref	Ref	-	Ref	Ref	Ref	Ref	Ref	Ref				
30+	0.52 (0.20, 1.33)	1.17 (0.43, 3.24)	2.46 (0.53, 11.39)	2.89 (0.69, 12.12)	-	0.86 (0.27, 2.72)	0.35 <sup>*</sup> (0.13, 0.93)	0.84 (0.36, 1.97)	1.06 (0.45, 2.50)	0.41 (0.15, 1.13)	0.31 <sup>*</sup> (0.11, 0.92)				

(Continues)

**TABLE 3** (Continued)

Interpersonal discrimination									
	LGBTQ iden- tity-based microaggressions	LGBTQ identity- based slurs	Sexual harassment	Threats or non- sexual harassment	Violence	Harassed while using the bathroom	Been told/felt un- welcome because you are LGBTQ	Thought about moving to another area	
N <sup>a</sup>	421	421	222	224	225	225	412	420	
OR (95% CI)									
Race/ethnicity <sup>b</sup>									
White	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref
Racial/ethnic minority	<b>0.44*</b> (0.21, 0.88)	0.51 (0.25, 1.02)	0.72 (0.33, 1.58)	0.79 (0.35, 1.76)	0.52 (0.23, 1.15)	1.43 (0.64, 3.22)	1.07 (0.59, 1.94)	0.95 (0.51, 1.77)	
Self-identified gender									
Male	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref
Female	1.11 (0.59, 2.05)	0.97 (0.52, 1.82)	0.87 (0.41, 1.86)	0.68 (0.32, 1.45)	<b>0.40*</b> (0.19, 0.83)	1.28 (0.59, 2.75)	1.01 (0.57, 1.79)	1.28 (0.70, 2.34)	
Education									
<College	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref
College+	1.06 (0.56, 2.00)	1.48 (0.79, 2.80)	1.94 (0.87, 4.32)	2.20 (0.96, 5.01)	1.29 (0.57, 2.88)	2.06 (0.89, 4.81)	1.20 (0.66, 2.17)	0.85 (0.45, 1.59)	
Income									
<25k	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref
25k+	1.46 (0.71, 2.99)	0.92 (0.44, 1.91)	1.04 (0.44, 2.43)	1.16 (0.49, 2.70)	0.82 (0.34, 1.99)	1.43 (0.58, 3.50)	1.22 (0.65, 2.31)	0.97 (0.50, 1.89)	
Age									
18-29	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref	Ref
30+	<b>0.44*</b> (0.21, 0.89)	0.88 (0.41, 1.89)	0.50 (0.22, 1.16)	0.50 (0.21, 1.20)	0.68 (0.29, 1.57)	0.72 (0.31, 1.66)	0.67 (0.36, 1.24)	0.89 (0.46, 1.73)	

Abbreviations: CI, confidence interval; OR, odds ratio.

<sup>a</sup>Individual questions only asked among a randomized half-sample of respondents. Don't know/refused responses coded as missing.

<sup>b</sup>Jobs question only asked among respondents who have ever applied for a job.

<sup>c</sup>Equal pay question only asked among respondents who have ever been employed for pay.

<sup>d</sup>College application/attendance only asked among respondents who have ever applied for college or attended college for any amount of time.

<sup>e</sup>Housing question only asked among respondents who have ever tried to rent a room or apartment, or to apply for a mortgage or buy a home.

<sup>f</sup>Age variable omitted in the housing model due to too few respondents aged 18-29 who had ever attempted to rent an apartment or buy a house or mortgage.

<sup>g</sup>White (non-Hispanic) or racial/ethnic minority (including African American/black, Hispanic/Latino, Asian, American Indian, Alaska Native, Native Hawaiian, Pacific Islander, and other nonwhite identities).

\*Significant at P < .05 (shown in bold). US LGBTQ adults aged 18+.

**TABLE 4** Prevalence of transgender adults reporting discrimination<sup>a</sup>

	Subject of discrimination <sup>b</sup>	N	Weighted percent of transgender adults <sup>c</sup>
<i>Belief in overall discrimination</i>			
General belief that discrimination against transgender people exists today in the United States <sup>d</sup>	All transgender adults (total sample)	86	84
<i>Personal experiences of institutional discrimination</i>			
Health care			
Going to a doctor or health clinic	You (half-sample B)	55	10
<i>Personal experiences of interpersonal discrimination</i>			
Microaggressions <sup>e</sup>	You (half-sample B)	55	28
Slurs <sup>e</sup>	You (half-sample B)	55	38
People acted afraid <sup>e</sup>	You (half-sample B)	55	18
Been told or felt unwelcome because of being transgender <sup>f</sup>	You or LGBTQ friend/family member (total sample)	86	22
<i>Actions based on concerns about discrimination</i>			
Avoided doctor or health care because of concerns of discrimination/poor treatment	You or LGBTQ family member (half-sample B)	55	22
Thought about moving to another area because of personally experienced discrimination <sup>g</sup>	You (total sample)	86	27

<sup>a</sup>Transgender adults include transgender, genderqueer, and gender nonconforming adults aged 18+. Most individual questions only asked among a randomized subsample of half of respondents. Don't know/refused responses included in the total for unadjusted estimates.

<sup>b</sup>Questions about you are personal experiences only; questions about you or LGBTQ friend/family member ask if items have happened to you or a friend/family member because you or they are part of the LGBTQ community.

<sup>c</sup>Percent calculated using survey weights.

<sup>d</sup>Question asked as "Generally speaking, do you believe there is or is not discrimination against transgender people in America today?"

<sup>e</sup>Question wording: "In your day-to-day life, have any of the following things ever happened to you, or not?" and respondent indicated they had experienced this *and* believed this happened because your sexual orientation or gender identity. Slurs = someone referred to you or a group you belong to using a slur or other negative word; Microaggressions = someone made negative assumptions or insensitive or offensive comments about you; People acted afraid = people acted as if they were afraid of you.

<sup>f</sup>You or a friend/family member who is also part of the LGBTQ community has been told or felt you would be unwelcome in a neighborhood, building, or housing development you were interested in because you are part of the LGBTQ community.

<sup>g</sup>You have thought about moving to another area because you have experienced discrimination or unequal treatment where you were living.

Gender also had statistically significant associations in modeling institutional discrimination. Here, LGBTQ females (transgender-inclusive) had lower odds than LGBTQ males of reporting institutional discrimination when applying for jobs, seeking equal pay or promotions, when trying to vote or participate in politics, and in unfair treatment by the courts. Models did not meaningfully change in sensitivity analyses excluding transgender adults.

Education was also influential: LGBTQ adults with a college degree had significantly higher odds than those without a college degree of reporting they had avoided seeking medical care out of concern they would be discriminated against or treated poorly. LGBTQ adults with a college degree had lower odds of reporting discrimination when seeking housing, compared to those without a college degree.

For interpersonal forms of discrimination, LGBTQ racial/ethnic minorities were less likely than LGBTQ whites to report experiencing LGBTQ-based microaggressions. LGBTQ adults aged 30 and older also had lower odds of reporting microaggressions, compared to those aged 18-29. Finally, females were less likely than males to report experiencing LGBTQ-related violence. No other demographic variables were statistically significant in models of interpersonal discrimination.

### 3.4 | Subsample of transgender adults

Table 4 presents the unadjusted percent of transgender adults, where sample size allowed, reporting various experiences of discrimination because of their gender identity and/or sexual orientation. In the context of interpersonal forms of discrimination, 38 percent of transgender adults say they have personally experienced slurs, and 28 percent have experienced microaggressions specifically related to their gender identity and/or sexual orientation. Due to split sampling, there were too few transgender respondents to analyze the question regarding bathroom harassment.

When it comes to health care, 10 percent of transgender people said they have personally experienced discrimination because of their gender identity when going to a doctor or health clinic, and more than one in five (22 percent) said they have avoided seeking health care due to anticipation of discrimination or poor treatment. With regard to the domain of housing, nearly one-quarter (22 percent) of transgender people reported that they have been told or felt they would be unwelcome in a neighborhood, building,



or housing development because they were transgender, while over one-quarter (27 percent) said they have thought about moving to another area to live because of the discrimination they have already experienced.

## 4 | DISCUSSION

In this national US study of reported discrimination among LGBTQ adults, four key findings emerge. First, study results extend prior findings that LGBTQ adults in the United States experience pervasive discrimination across many areas of life.<sup>3-6,18-21,24,27,28</sup> In particular, we found widespread interpersonal manifestations, including slurs, harassment, and violence.

Second, institutional discrimination is also clearly present in health care. Prior research has reported perceived mistreatment in health care settings among LGB and transgender adults.<sup>6,18,32</sup> In this study, more than one in six LGBTQ adults say they have avoided health care due to anticipated discrimination and experienced discrimination in health care encounters. Among transgender adults, these estimates are even higher. This is particularly worrisome and merits further education and antidiscriminatory policies and training in health care, as avoiding health care can further exacerbate health disparities between LGBTQ and non-LGBTQ adults.<sup>6,14,22</sup>

Third, LGBTQ racial and ethnic minorities are significantly more likely to report many forms of discrimination, even when controlling for other factors. LGBTQ racial and ethnic minority adults had a significantly lower odds of reporting LGBTQ identity-based microaggressions relative to whites, though they were more likely than LGBTQ whites to report experiencing racially based microaggressions (not adjusted for demographic characteristics). These results are largely consistent with prior research finding higher reported racial discrimination among racial/ethnic sexual minorities relative to white sexual minorities in public settings, accompanied by both sexual orientation and gender discrimination.<sup>18</sup> Our findings also support other studies demonstrating that racial/ethnic identity compounds experiences of discrimination in addition to LGBTQ identity in many areas of life.<sup>25-27,29,30</sup>

While it is beyond the scope of our results to promote specific policies or practices to end discrimination in the United States, these findings indicate both top-down (eg, policy) and bottom-up (eg, community organizations or local initiatives) efforts need to take steps to address this widespread discrimination, on both institutional and (especially) interpersonal levels. For transgender people, housing and health care appear to be major areas of concern, while LGBTQ racial/ethnic minorities face significant obstacles with employment and the legal system. Multisector partnerships are urgently needed to implement interventions, propel policy efforts, and create social change to protect LGBTQ people across different systems, including employment, health care, housing, and legal systems.

In addition, more research is needed that includes both new methods and novel data sources to improve the study of LGBTQ populations, given the current methodological limitations.<sup>6-8,34,35</sup> In particular,

research using electronic health record data is a promising approach to further study LGBTQ persons and other small populations, while mobile device or computer apps and other novel methods for data capture may also improve research on the unique experiences of discrimination among LGBTQ persons within the health care system.<sup>8,46</sup> At a minimum, improving medical and administrative staff training on cultural competency for serving LGBTQ people, as well as improving data collection on sexual orientation and gender identity in health care, is needed.

### 4.1 | Limitations

The findings should be viewed with several limitations in mind. First, although we examined a broad range of domains of life, this study covers only a subset of types of discrimination and harassment that LGBTQ people may experience. Second, we asked whether LGBTQ people had experienced these types of discrimination at any point in their life, without regard to timing or severity. This limits the ability to estimate current levels of discrimination and harassment and instead focuses on lifetime experiences.

Third, the prevalence of many sensitive topics, including sexual harassment and violence, is often underreported—particularly on surveys administered by an interviewer,<sup>47</sup> such as this study—and therefore, the “true” prevalence of LGBTQ people’s experiences of discrimination is likely higher than reported herein. Perceptions of various kinds of discrimination (eg, race-based and sexuality-based) are also significantly associated with each other,<sup>26,29,30</sup> and it is not always possible to disentangle these experiences from each other, so asking specifically about LGBTQ-based discrimination may lead to underreporting of overall discrimination experienced by some respondents. Questions about discrimination based on race/ethnicity and gender (among females only) are examined separately in other articles in this issue.

Fourth, our low response rate is a notable limitation, though evidence suggests that low response rates do not bias results if the survey sample is representative of the study population.<sup>38,39</sup> Recent research has shown that such surveys, when based on probability samples and weighted using US Census parameters, yield accurate estimates in most cases when compared with both objective measures and higher-response surveys.<sup>38,39,48,49</sup> For instance, a recent study showed that across 14 different demographic and personal characteristics, the average difference between government estimates from high-response rate surveys and a Pew Research Center poll with a response rate similar to this poll was 3 percentage points.<sup>38</sup> However, it is still possible that some selection bias may remain that is related to the experiences being measured, particularly given the challenges of surveying the LGBTQ population noted earlier.<sup>6-8,34-45</sup>

Fifth, transgender people are often discriminated against due to their presumed gender or gender identity. Given that trans people may be of any sexual orientation, they may also be discriminated against because of their sexual orientation. Furthermore, some people may not know the difference between sexual orientation and gender identity, so they may discriminate against someone because of their gender but using language about sexual orientation (or vice versa). Therefore, it should be expected that transgender people report

experiences of discrimination related to both their gender identity and sexual orientation, and so we report these experiences together, and this study was unable to distinguish between these experiences.

Despite these limitations, this study was strengthened by its probability sampling design and by the breadth of questions asked on LGBTQ-based discrimination across institutions and interpersonal experiences. It allowed us to examine personal experiences of discrimination and harassment among LGBTQ adults. Our findings may underreport experiences of discrimination and harassment; thus, our results can be considered a lower bound estimate of discrimination and harassment in the United States today. We may also underreport the added burden of discrimination against LGBTQ people who are racial/ethnic minorities.

This study highlights the wide extent to which the LGBTQ adult population as one group experiences discrimination, providing important data to inform national discussions and current policy debates. Yet, future research is needed to assess the distribution and burden of discrimination experiences faced by subgroups within the LGBTQ population.

## 5 | CONCLUSION

This study shows that lesbian, gay, bisexual, transgender, and queer adults in America share common, yet diverse experiences of consistent and pervasive discrimination based on their sexual orientation and/or gender identity. Some of the most widespread reported experiences of enacted stigma include slurs, microaggressions, violence, threats, and both sexual and nonsexual harassment. In health care, additional efforts are needed to reduce discrimination against LGBTQ adults. LGBTQ racial/ethnic minorities experience particularly high rates of LGBTQ-based discrimination in employment and workplace settings and interacting with the legal system, while transgender adults report significant discrimination in both housing and health care. Findings of this study further illustrate the need for substantial changes in institutional policies and practices to protect the civil rights of LGBTQ people. Changes in social norms are also needed to confront stigma and counteract the harmful effects of discrimination in personal interactions. Addressing both institutional and interpersonal discrimination will be vital to improving and ensuring the health and well-being of LGBTQ Americans.

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## ENDNOTES

<sup>a</sup> Institutional and interpersonal forms of discrimination are not mutually exclusive, but this framework is used here for organizational purposes.

<sup>b</sup> There were no statistically significant differences between LGBTQ men and women in their unadjusted reported experiences of anti-LGBTQ discrimination.

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## SUPPORTING INFORMATION

Additional supporting information may be found online in the Supporting Information section.

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