



EXPLAINER

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170+ State Bills Attack Transgender People, 1 Federal Law Would Protect Them

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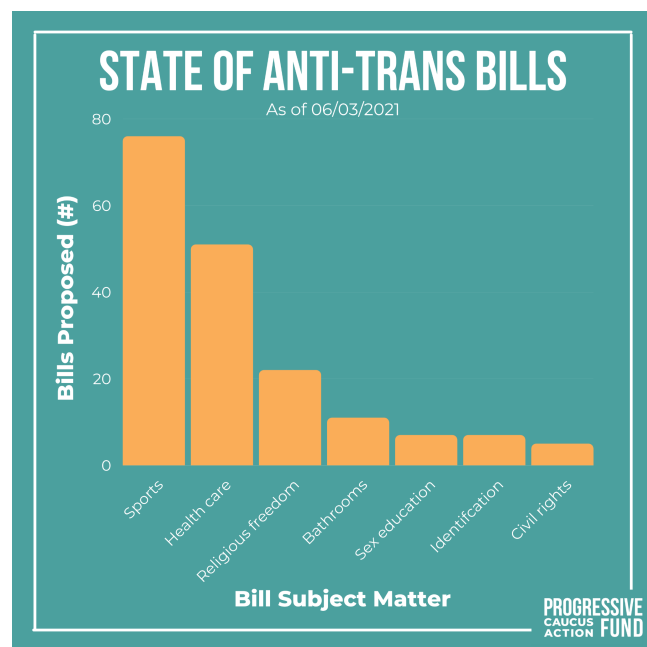
Transgender people have been attacked for decades by far-right actors who try to divide us based on gender. From deliberate misgendering to violent assaults and killings, the lives and livelihoods of transgender people are regularly under threat. During the [four years](#) of the Trump Administration, transgender people were banned from serving in the military, erased from government websites, and denied nondiscrimination protections in health care, housing, and education.

While these policies are being reversed under the Biden Administration, discrimination and violence against transgender people was a serious concern before the previous administration and continues today. **State legislatures across 37 states have introduced 170+ bills that further discriminate against transgender people, 24 of which have been enacted.** It is important to note that some state governments, like Tennessee, enact both the House and Senate companion bills.

The Progressive Caucus Action Fund has prepared a comprehensive [database](#) of state-level attacks on the transgender community. The proliferation of anti-transgender legislation underscores the need for stronger federal protections, such as those proposed in the Equality Act.

Anti-Transgender Bills in States

At least [170 bills](#) targeting transgender people have been introduced by anti-equality politicians in [37 states](#) this year. The bills range from restricting transgender students from joining sports teams that reflect their gender identity, criminalizing doctors for providing gender-affirming care to transgender youth, prohibiting transgender people from using bathrooms that correspond to their gender identity, erasing content on gender identity from school curriculums, and falsely exploiting the first amendment to allow discrimination against transgender people.



Ten states, all of which are controlled by Republicans, have already enacted these harmful and discriminatory policies.

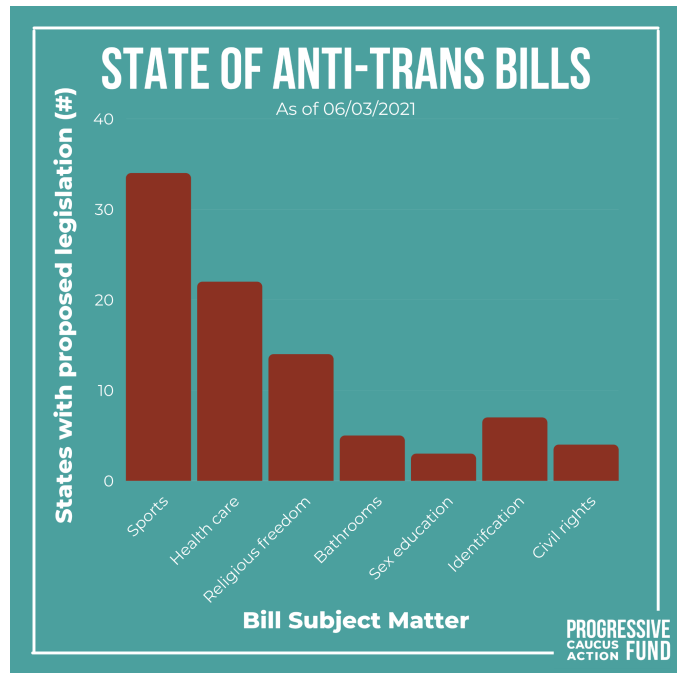
[Alabama](#), [Arkansas](#), [Florida](#), [Mississippi](#), [Montana](#), [Tennessee](#), and [West Virginia](#) enacted bills that prohibit transgender students from playing on school sports teams that match their gender identity. [Idaho](#) also enacted a sports ban in March 2020 and is currently defending the law in the U.S. Court of Appeals for the 9th Circuit after a federal district judge issued an injunction in August 2020.

[Arkansas](#), [Montana](#), [North Dakota](#), and [South Dakota](#) established laws that allow discrimination against transgender people—and the LGBTQ+ community at large—under the guise of religious freedom and freedom of speech. These policies abuse the first amendment to discriminate against transgender people, allowing businesses to deny services and healthcare providers to refuse to give non-emergency care under the guise of religious or moral objections.

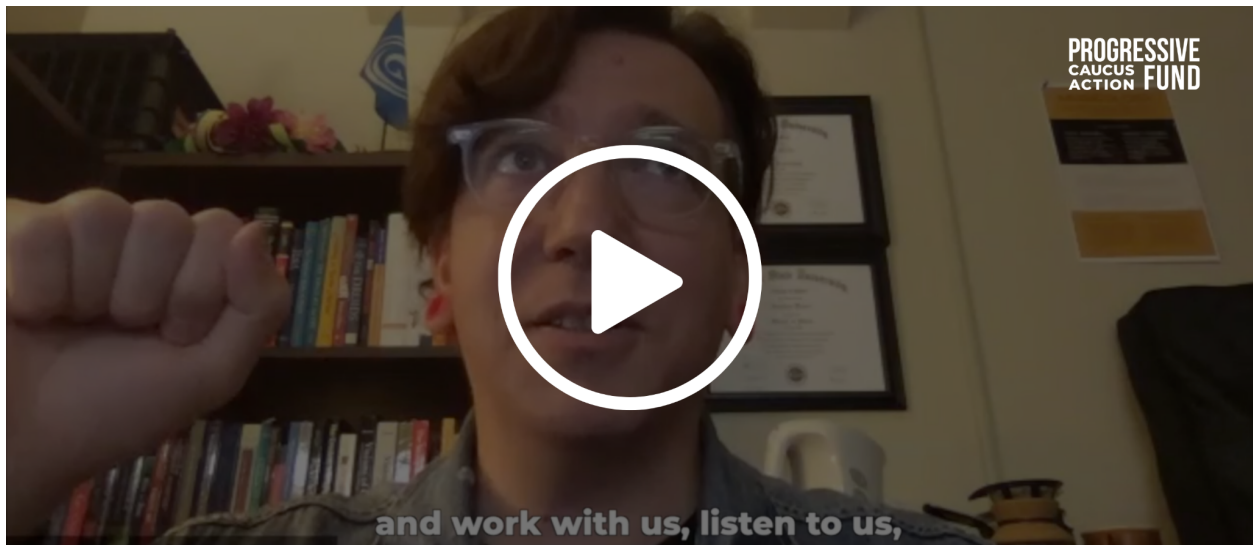
Furthermore, [Oklahoma](#) and [Tennessee](#) have enacted bills that restrict teaching about gender identity and sexual orientation in schools, meaning young transgender people won't have access to appropriate sexual and health education like their peers. Tennessee also enacted bills that allow students and teachers to [refuse to share restrooms](#) with transgender people and [require that businesses](#) which allow transgender people to use the correct restroom to post signage indicating their policy. [Montana](#) enacted a restrictive and intrusive bill that requires transgender people to submit a court order confirming that they have undergone gender-affirming surgery in order to change the gender listed on their birth certificate.

While 23 states have introduced bills that would deny gender-affirming medical care to transgender youth, [Arkansas](#) is the only state to have codified the policy after the state legislature overrode the governor's veto. Similar to the Arkansas law, [Tennessee](#) enacted a bill that bans gender-affirming care to "prepubertal minors." Ten states are actively considering these bills which will affect an estimated [45,100](#) young transgender people.

Find a comprehensive list of the states considering anti-transgender bills [here](#).



From the Field: Dr. Ruadhán Woods, Hometown Action in Alabama



Existing Protections under the *Bostock* Decision

In June 2020, the Supreme Court ruled in *Bostock v. Clayton County* that the prohibition on sex discrimination in employment, under Title VII of the Civil Rights Act of 1964, prohibits discrimination because of sexual orientation and gender identity. The [majority opinion](#) in the 6-3 decision, penned by conservative Justice Neil Gorsuch, asserted, “It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

The Supreme Court ruled that the prohibition on sex discrimination under **Title VII of the Civil Rights Act** prohibits discrimination because of sexual orientation and gender identity.

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A nationally representative 2020 survey by the Center for American Progress revealed that 1 in 3 LGBTQ adults, including 3 in 5 transgender adults, experienced discrimination in just the past year. The Supreme Court’s interpretation of sex discrimination in the *Bostock* ruling should have [wideranging effects](#) on the lives of transgender people and the LGBTQ+ community as a whole.

In employment, Title VII of the Civil Rights Act prohibits sex discrimination in the hiring and firing process, compensation, and employment benefits. The definition of “sex” in Title VII of the Civil Rights Act extends to other federal protections as well. Title IX of the Education Amendments Act of 1972, which protects students from discrimination in publicly funded schools, relies on the Title VII definition of “sex.” The protections against healthcare discrimination in Section 1557 of the Affordable Care Act also refer to this definition. Similarly, the Fair Housing Act uses the Title VII definition. The *Bostock* decision provides the Biden Administration a strong legal basis to address anti-LGBTQ discrimination in all these areas of life. On his first day in office, President Biden issued [Executive Order 13988](#), *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, which implemented the *Bostock* decision across the federal government by directing all agencies to enforce federal laws that prohibit sex discrimination to include discrimination based on sexual orientation and gender identity.

While the Supreme Court’s *Bostock* ruling is monumental, extensive, and necessary to protect the transgender community, further statutory protections are needed.

The Equality Act

[The Equality Act](#) (H.R. 5 and S. 393), introduced by Rep. David Cicilline (RI-01) and Sen. Jeff Merkley (D-OR), is a comprehensive bill that would modernize federal civil rights laws to ensure nondiscrimination protections based on sexual orientation and gender identity in employment, housing, credit, education, public spaces and services, federally funded programs, and jury service. The bill would also clarify that the Religious Freedom Restoration Act, which prohibits the federal government from substantially burdening individuals’ exercise of religion, cannot be used to discriminate against transgender people and the LGBTQ+ community as a whole.

The Equality Act would establish a clear floor for civil rights protections for transgender people and prevent future administrations from rolling back these protections.

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The U.S. House of Representatives passed the Equality Act on February 25, 2021, by a bipartisan 224-206 vote, but it is currently stalled in the Senate.

If enacted, the Equality Act would establish a clear floor for civil rights protections for transgender people in key areas of life. This would prevent future administrations from rolling back protections for transgender people. It would clarify for states that

transgender students and patients are protected under federal law. It would also ensure that transgender individuals have the basic right to use the public restroom that best fit their gender identity -- something cisgender people take for granted. The bill would clarify the right for transgender people to seek gender-affirming care and health care providers to administer the care without fear of imprisonment or losing their medical license. It would also make sure that LGBTQ+ families are not denied the opportunity to adopt or foster children solely because of how they identify or who they love.

Tackling State-Level Hate with Federal Protections

With more than 170 anti-transgender bills introduced in 37 states and 24 bills already enacted, this year is devastating for transgender people across the country. Transgender students in seven states cannot participate in sports. Four states are weaponizing the First Amendment to discriminate against the LGBTQ+ community under the guise of religious freedom. In two states, transgender youth are being denied the opportunity to live as their true selves by prohibiting gender-affirming care to people under the age of 18. Two states are denying curriculum that teaches about gender identity and sexual orientation in schools.

The Supreme Court Decision in *Bostock v. Clayton County* should nullify the far-right state-level attacks on transgender people. However, without explicit federal statutes, the protections provided under the *Bostock* decision will always be threatened by future administrations or federal judges that disregard the lives and livelihoods of the LGBTQ+ community.

While the movement for transgender rights has made massive strides, discriminatory laws still prevent transgender people from living full and authentic lives. At a time when far-right state legislatures are aggressively targeting transgender people, especially transgender youth, the Equality Act presents an opportunity to codify equal protections for transgender people and the entire LGBTQ+ community. Everyone should have the freedom to be who they are and love who they love—no exceptions.

The Progressive Caucus Action Fund thanks Hometown Action and the Center For American Progress for their insights