



EXPLAINER

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The Road to Equality: Bills to Protect the LGBTQ+ Community

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Introduction

The first half of 2022 has seen devastating attacks on the LGBTQ+ community. State legislatures across the country are passing laws that discriminate against already-marginalized LGBTQ+ people. For example, over a dozen states have enacted laws or statewide rules that [prohibit transgender youth](#) from playing in sports teams that correspond to their gender identity. Some states, like Florida, are also [preventing educators from teaching](#) about sexual health and sexual orientation. **In fact, more than 300 anti-LGBTQ+ bills have been introduced in 28 state legislatures this year and at least 24 bills have been enacted in eight states.**

Congress has yet to establish federal laws that specifically protect the LGBTQ+ community from these kinds of attacks, in turn allowing discriminatory policies to proliferate at the state level. Current federal civil rights laws protect people against discrimination in public accommodations on the basis of race, color, national origin, religion, and disability. **However, no federal law exists that protects against discrimination on the basis of sex, gender identity, or sexual orientation.**

Consequently, LGBTQ+ individuals in many states can legally be turned away at restaurants, refused home loans or rental properties, and even denied medical care by health care providers. This explainer will discuss existing antidiscrimination protections for the LGBTQ+ community, gaps that remain, and efforts in Congress to fill those gaps. It will also examine a number of other threats facing LGBTQ+ people in the U.S. and globally, as well as legislation that could help mitigate those threats.

Existing Protections under *Bostock v. Clayton County*

The Supreme Court's June 2020 decision in [Bostock v. Clayton County](#) secured some employment nondiscrimination protections for the LGBTQ+ community. Title VII of the Civil Rights Act prohibits sex discrimination in the hiring and firing process, compensation, and employment benefits. The Court ruled in *Bostock* that this prohibition on sex discrimination in employment also prohibits discrimination on the basis of sexual orientation and gender identity. The majority opinion in the 6-3 decision, penned by 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.”

Many current federal laws rely on the definition of “sex” under Title VII of the Civil Rights Act. In theory, the *Bostock* decision therefore provides a strong legal basis to address anti-LGBTQ+ discrimination in most areas of life. For example, 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 health care discrimination in Section 1557 of the Affordable Care Act also refer to the definition of “sex” under Title VII of the Civil Rights Act. Similarly, the Fair Housing Act, which protects people from discrimination in housing, uses the Title VII definition of “sex.” However, because the Court in its decision did not explicitly extend their interpretation of sex discrimination beyond employment, state legislatures can continue to introduce and advance bills that target the LGBTQ+ community outside of hiring, firing, compensation, and other employment-related issues.

Nonetheless, progress has been made on the federal level. In fact, on his first day in office, President Joe Biden issued [Executive Order 13988](#), Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation. This executive order implemented the *Bostock* decision across the federal government by directing all agencies to include discrimination based on sexual orientation and gender identity when enforcing federal laws that prohibit sex discrimination. For example, the Department of Education issued a [Notice of Interpretation](#) explaining that it will also include discrimination on the basis of sexual orientation and gender identity when enforcing Title IX's prohibition on sex discrimination.

While the *Bostock* ruling is monumental, employment discrimination against LGBTQ+ people continues to be widespread. A [study from the UCLA School of Law](#) **examined** employment discrimination in the LGBTQ+ community in the year following the *Bostock* decision and found that around one-in-ten of employed LGBTQ+ people reported discrimination because of their sexual orientation or gender identity in 2021 alone. **Forty-six percent reported discrimination at work, including being fired or harassed, because of their sexual orientation or gender identity at some point in their lives.** The ongoing nature of discrimination and harassment in the workplace and beyond indicates the need for federal laws that provide LGBTQ+ people with basic legal protections.

The Equality Act: Protecting Against LGBTQ+ Discrimination

Many Members of Congress have already introduced legislation to address the gaps in legal protections for the LGBTQ+ community, from prohibiting sexual orientation or gender identity discrimination in public accommodations to codifying same-sex marriage. Several of these bills have been folded into a comprehensive package targeting anti-LGBTQ+ discrimination: the Equality Act (H.R. 5 and S. 393).

[The Equality Act](#), introduced by Rep. David Cicilline (D-RI-01) and Sen. Jeff Merkley (D-OR), is a comprehensive bill that would modernize federal civil rights laws to prohibit discrimination on the basis of sexual orientation or gender identity. Its

provisions address discrimination in employment, credit, education, public spaces and services, federally funded programs, jury service, housing, and more, expanding the definition of public accommodations. 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 misused to discriminate against transgender people or the LGBTQ+ community as a whole. The Equality Act would additionally protect an individual's right to use a facility—such as a restroom or dressing room—that corresponds with their gender identity.

If enacted, the Equality Act would establish a clear floor for civil rights protections for LGBTQ+ individuals in key areas of life and would prevent future administrations from rolling back these protections without an act of Congress. The U.S. House of Representatives passed the Equality Act on February 25, 2021 by a bipartisan 224-206 vote, but the Senate has yet to vote on the legislation.

Deweaponizing “Health Care”

In addition to facing discrimination in employment, housing, education, and beyond, LGBTQ+ individuals also experience attacks disguised as health care. For example, some providers encourage and participate in efforts to change the sexual orientation or gender identity of individuals, a harmful practice known as conversion therapy. Though widely [discredited](#), some providers continue to engage in this practice that can lead to depression, decreased self-esteem, substance use disorders, homelessness, and even suicide. **As of 2019, almost [700,000](#) LGBTQ+ adults in the U.S. had received conversion therapy, including about [350,000](#) who were subjected to the practice as children.**

Multiple bills have been introduced targeting this dangerous practice. The [Therapeutic Fraud Prevention Act](#) (H.R. 4146 and S. 2242), introduced by Rep. Ted Lieu (D-CA-33) and Sen. Patty Murray (D-WA), would prohibit commercial conversion therapy by clarifying that carrying out or advertising the practice in exchange for money constitutes consumer fraud. In addition, the [Prohibition of Medicaid Funding for Conversion Therapy Act](#) (H.R. 2328), introduced by Rep. Sean Patrick Maloney (D-NY-18), would prohibit state Medicaid programs from covering conversion therapy.

Other legislation aims to improve the health and wellness of LGBTQ+ people. For example, the [Real Education and Access for Healthy Youth Act](#) (H.R. 3312 and S. 1689), introduced by Rep. Barbara Lee (D-CA-13) and Sen. Cory Booker (D-NJ), would establish grant programs for K-12 schools, universities, youth-serving organizations, and health care entities to support sex education and sexual health. The bill would require that funded sex education programs are inclusive of LGBTQ+ youth and end federal funding for programs that do not address their needs. Neither chamber has acted on this legislation.

Protecting LGBTQ+ Youth in Schools

LGBTQ+ individuals not only face discrimination in their adult lives, but are also the victims of bullying and harassment in K-12 schools and universities. **In fact, a 2019 study found that close to 87% of LGBTQ+ students experienced harassment or assault based on personal characteristics, including sexual orientation, gender expression, or gender that year.** Similarly, a 2022 study found that almost one-third of LGBTQ+ students experienced bullying, harassment, or assault at a college or university, compared to 18.9% of non-LGBTQ+ people. LGBTQ+ youth who are constantly harassed [experience lower grade point averages](#) than students who are not harassed, and even miss entire days of school because they feel unsafe.

Again, legislation to address this issue has been introduced in Congress. The [Safe Schools Improvement Act](#) (H.R. 4402 and S. 2410), introduced by Rep. Linda Sánchez (D-CA-38) and Sen. Bob Casey (D-PA), would require school districts that receive federal funds to establish policies specifically prohibiting bullying and harassment on the basis of race, color, national origin, sex, sexual orientation, gender identity, disability, or religion. Similarly, the [Tyler Clementi Higher Education Anti-Harassment Act](#) (H.R. 5342 and S. 2791), introduced by Rep. Mark Pocan (D-WI-02) and Sen. Patty Murray, would require colleges and universities that receive federal student aid funding to create policies that prohibit harassment on the basis of a student's race, color, national origin, sex, sexual orientation, gender identity, disability, or religion. The bill would also provide grants to colleges and universities to initiate, expand, or improve programs that prevent harassment or provide counseling or redress services to students who have been harassed.

If enacted, these bills would improve the mental health and educational experiences and outcomes of LGBTQ+ youth across the country. Congress, however, has yet to act on either.

Protecting LGBTQ+ Human Rights Worldwide

Discrimination against the LGBTQ+ community is not exclusive to the United States. **In fact, at least 69 countries have laws criminalizing same-sex relations and at least nine countries have laws criminalizing forms of gender expression.** Consequences for violating some of these laws include prison time, corporal punishment, and even the death penalty.

Of course the United States Congress cannot create laws in other countries, but it can encourage governments to better protect marginalized groups like the LGBTQ+ community. The [Global Respect Act](#) (H.R. 3485 and S. 2277), introduced by Rep. David Cicilline and Sen. Jeanne Shaheen (D-NH) would impose visa-blocking sanctions on people responsible for violating the human rights of individuals due to their sexual orientation, gender identity, or sex characteristics. Similarly, the [Greater Leadership Overseas for the Benefit of Equality \(GLOBE\) Act](#) (H.R. 3800 and S. 1996), introduced by Rep. Dina Titus (D-NV-01) and Sen. Ed Markey (D-MA), would prioritize protecting human rights for LGBTQ+ people in international diplomacy by creating a permanent Special Envoy for the Human Rights of LGBTQI Peoples at the

State Department. The bill would also provide assistance to nongovernmental organizations working to advance and protect LGBTQ+ rights. The GLOBE Act additionally allows the President to impose visa-blocking sanctions on people who violate LGBTQ+ people's human rights. Notably, the bill would also explicitly allow people to seek asylum in the U.S. if they are being persecuted in their home country on the basis of sexual orientation or gender identity.

Finally, the [International Human Rights Defense Act](#) (H.R. 1201 and S. 424), introduced by Rep. Alan Lowenthal (D-CA-47) and Sen. Ed Markey, would establish a permanent Special Envoy for the Human Rights of LGBTQI Peoples and task that person with advising the State Department and delivering to Congress a strategy to prevent and respond to human rights violations against LGBTQ+ people worldwide.

If made law, these bills would advance the human rights of LGBTQ+ people around the world. However, Congress has yet to act on the GLOBE Act or the International Human Rights Defense Act. The Global Respect Act passed the U.S. House of Representatives on February 9, 2022 by a bipartisan vote of 227-206, but has not been taken up in the Senate.

Conclusion

While the United States has made some progress in advancing the rights of LGBTQ+ people, further statutory protections are necessary to ensure that all people in this country and worldwide are safe from discrimination. The recent wave of state-level attacks against the LGBTQ+ community makes clear the urgent need for new federal laws to protect their rights in every aspect of their lives. Enacting legislation like the bills mentioned above would go a long way in improving the mental and physical health of the LGBTQ+ community and ensuring that all members of that community are treated as full and equal citizens of this country.