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## **Ironic Transitions: Conflicting Results of Greater Visibility During the Last 20 Years of Transgender Experience in the United States**

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# **Ironic Transitions: Conflicting Results of Greater Visibility During the Last 20 Years of Transgender Experience in the United States**

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## **Abstract**

The spread of internet and social media access in the 21<sup>st</sup> century led to increased visibility of transgender persons in the U.S., especially within such popular culture venues as art, music, literature, television, and movies. The rapid communication facilitated by the internet also allowed for the formation of larger, more widespread trans communities. This foundation of visibility and community association enabled transgender persons to achieve many breakthroughs in health and mental health care, as well as in anti-discrimination laws. At the same time, this visibility sparked a countermovement against the rights of transgender persons, paralleling a year-by-year increase in violence towards transgender persons. Over the past 20 years, the five years preceding 2021 saw the highest levels of the revocation of rights and increased violence against the transgender community, even as social acceptance had risen to the highest levels. As recently as the 1990's, elements and documentation of queer and trans history were often uncollected, or even worse, destroyed. This left trans and queer lives, their identities, and their histories suppressed. We must gain understanding, education, and the realistic portrayals of trans lives to undo the damage and appeal of sensationalism, and the eroticization of trans lives and their existence. We the people means all the people, not just the people that think the way, look the way, or act the way that you do.

## **Introduction**

In the 1859 novel *A Tale of Two Cities*, Charles Dicken begins with “*It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of light, it was the season of darkness, it was the spring of hope, it was the winter of despair.*”<sup>1</sup> Though written over a century and a half earlier, this passage is a fitting summation of life for transgender person’s living in the United States during the beginning of the 21<sup>st</sup> century.

Through increased visibility within popular culture such as art, music, literature, television, and movies society became much more aware of transgender person’s existence and their gender identities. Finding and understanding transgender issues and existence also became easier through the increased usability of the internet, and the advent of social media with Myspace premiering in 2003<sup>2</sup> replacing the older bulletin board systems and becoming a companion to chat rooms found within internet services such as AOL, Netscape Navigator and Yahoo. With increased visibility, and new technological advances in communication and formation of online communities, such technology was used successfully by the LGBT

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<sup>1</sup> Charles Dickens, *A Tale of Two Cities* (New York: Scott, Foresman and Company, 1919), 49. This quote is the opening paragraph of Dickens classic novel, alluding to the class conflict illustrated within France and England, respectively. It describes a period of controversies, chaos, conflict, and happiness.

<sup>2</sup> The Editors of Encyclopaedia Britannica. 2020. Myspace. Encyclopædia Britannica, July 23, <https://www.britannica.com/topic/Myspacecom> (accessed December 07, 2020).

communities throughout these two decades to successfully acquire same-sex marriage rights within the United States with help and support from the transgender community.<sup>3</sup> LGBT stands for Gay-Lesbian-Bisexual-Transgender.

This visibility gained transgender persons breakthroughs in medical and mental health care, and a porous patchwork of anti-discrimination laws and regulations, equality, and acceptance. These gains led to pushback comprised of increased discrimination within the legal system, attempts to revoke and some outright revocation of rights, increased violence, and failures within the healthcare field culminating during the administration of the 45<sup>th</sup> President of the United States, Donald Trump, and the wildcard damage from the SARS-COVID-19 pandemic of 2020.

## Contextual Nomenclature

It has been only within the past 20 years that terminology has truly settled within discussions that intersect with those who are transgender, leaving it necessary to clarify which terms will be used, and what the most recent terms used to be. Transgender is an umbrella term, which denotes a person who does not conform to the social binary of gender, and whose gender is non-conforming with their natal sex<sup>4</sup>, which was determined by observation of their visible primary sexual characteristics at birth. Recently this is often shortened to simply trans. Transgender and Trans are used interchangeably and will be primarily used here. The term transgender encompasses all variations of gender, including but not limited to, transwomen (MtF, Male to Female), transmen (FtM, Female to Male), and Non-Binary (another umbrella term which encompasses the gender spectrum between male and female, also called Enby)<sup>5</sup>, genderqueer (a fluid gender identity and presentation of gender). The act of becoming one's authentic self is termed as transitioning. This is most often used to describe the time where a transgender person transitions socially, and sometimes medically to their gender identity. Depending on the individual, transitions may include name change, gender marker change, change in clothing style and type, voice therapy, medical interventions such as hormones and/or surgery, and others although none are required to be transgender.

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<sup>3</sup> Rhonda Gibson, *Same-Sex Marriage and Social Media* (New York: Routledge, 2018).

<sup>4</sup> "transgender, adj. and n." OED Online. March 2021. Oxford University Press. <https://www-oed-com.scsuproxy.mnpals.net/view/Entry/247649?redirectedFrom=transgender> (accessed February 6, 2021).

<sup>5</sup> Janell Carroll, *Sexuality Now 6<sup>th</sup> Edition* (Boston: Cengage, 2019), 78-79. The noted feature of non-binary is the abject rejection of the gender binary for gender identity and/or gender expression.

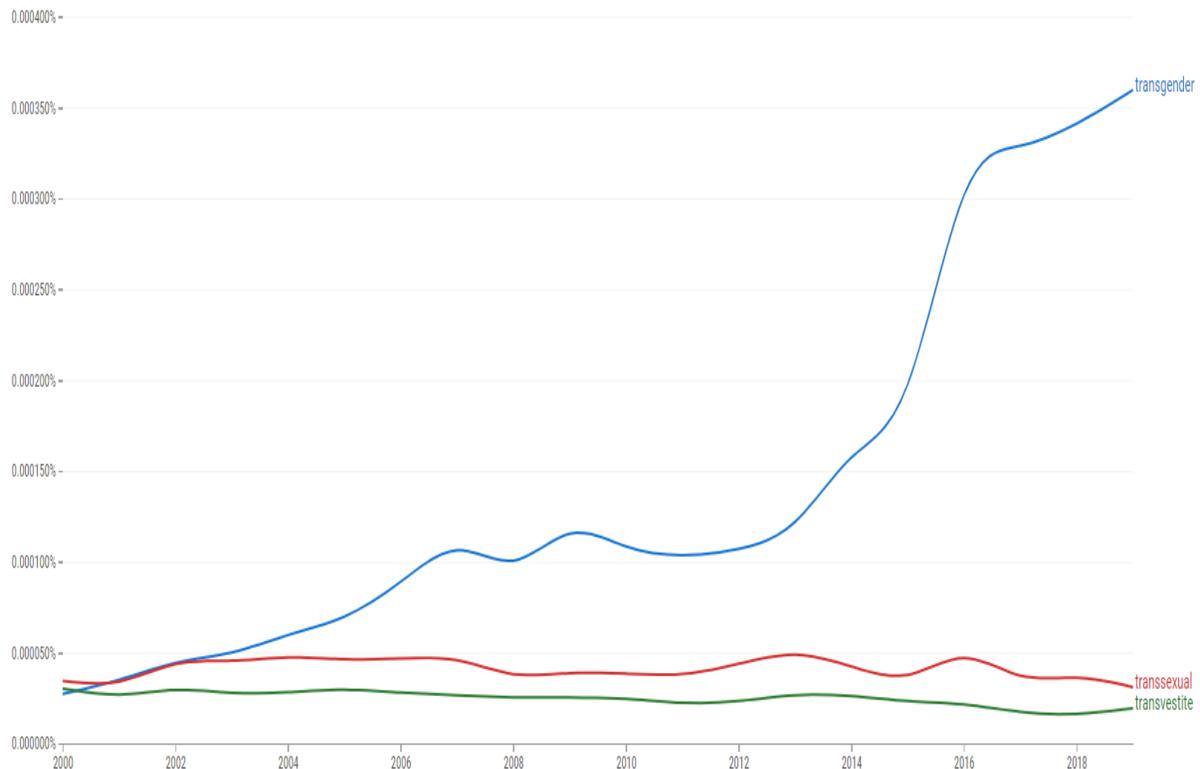


Figure 1 *Transvestite, transsexual, and transgender usage on Google Ngram*<sup>6</sup>

Although the psychological sciences and many of the medical disciplines have moved away from the older terms and their associated definitions, they were still in common use and used interchangeably until the early 20-teens and can still be found within the health care field today for coding and billing purposes. Three such terms are transvestite, transsexual, and transgenderism. Although transgender was first found in print in 1969, it took almost 30 years to begin to rise in prominent usage.<sup>7</sup> At the time of the new millennium, transvestite was often confused with transgender, though its definition then is as it is now, a person who just dresses in the clothes of their opposing gender for pleasure.<sup>8</sup> Transgenderism was used as term for a transgender person who lived as their gender identity.<sup>9</sup> And Transsexual was used as the earlier

<sup>6</sup> Google, "Google Books Ngram Viewer," last modified January 10, 2021, accessed January 10, 2021, [https://books.google.com/ngrams/graph?content=transgender%2Ctranssexual%2Ctransvestite&year\\_start=2000&year\\_end=2019&corpus=26&smoothing=0](https://books.google.com/ngrams/graph?content=transgender%2Ctranssexual%2Ctransvestite&year_start=2000&year_end=2019&corpus=26&smoothing=0). Google Ngram shows a rough chart of the change and frequency in terms from transsexual to transgender beginning in 2000 and becoming the dominant term within text in 2001.

<sup>7</sup> Jeffrey Weeks, *the languages of sexuality*, (New York: Routledge, 2011), 217-218.

<sup>8</sup> Janell Carroll, *Sexuality Now 2<sup>nd</sup> Edition* (Boston: Cengage, 2007), 86-87, 550-552. Transvestite is like cross-dressing, where a person merely dresses as the opposing gender, though it differs in that it is a form of a fetish, and not tied to a gender identity or expression. Transvestic identities are now considered to be either a form of a gender identity or a fetish depending on the individual.

<sup>9</sup> Carroll, *Sexuality Now*, 86-87. Transgenderism used to be a descriptor term used to describe the social behaviors and gender expression of a transgender person. This was a broad definition of behaviors, which encompassed not only those who are transgender, but also other social gender expressions such as cross-dressing, transvestite, drag queens, and female impersonators which led to confusion and conflation about gender identity and gender expression of trans persons.

term for a transgender person.<sup>10</sup> Although psychiatry and psychology moved away from the term transsexual in 2013, it is still used for only medical coding and billing purposes with the ICD-10-CM 2021.<sup>11</sup> Today transgenderism as a term is primarily found within anti-transgender literature or used within online slurs against transgender persons or the community and no longer associated with being transgender or the life a trans person lives.

The last terms that need to be defined are gender confirmation surgery (GCS) and hormone replacement therapy (HRT). Previously, as recently as 2016, gender confirmation surgery was called sexual reassignment surgery (SRS).<sup>12</sup> Some people still call this a “sex change” operation though that is not accurate and is the act of surgically adjusting the body to the mind.<sup>13</sup> This term is still used occasionally within media today. Hormone replacement therapy is the state of suppressing the body’s natal sex hormones and replacing them to achieve masculinization or feminization of the body to meet the mind.<sup>14</sup> Hormone suppressants, estrogen, and testosterone are the common medications used with HRT.

## Turn of the Millennium

As the twentieth century ended, only two states in the U.S. included gender identity as a protected class, and only one as a personal right and barred discrimination against transgender people. In 1993 the state of Minnesota had included gender identity in their Human Rights Act.<sup>15</sup> In 1995 Rhode Island had included gender identity within their public accommodation.<sup>16</sup> There were no federal protections, although a small number of cities such as San Francisco, Santa Cruz, Seattle, and Iowa City had some form of legal protection for their transgender residents. Even with protections, there was still pushback such as in the state of Minnesota. In 1999 there was a movement from parents of primary school aged children and some of the states’ conservative advocacy groups to have gender identity removed from the Human Rights Act. Ultimately unsuccessful in their attempt to change state laws, they did succeed in forcing some

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<sup>10</sup> Carroll, *Sexuality Now*, 86-89. Transsexual in prior usage meant a person who felt “trapped” within the wrong gendered body concurrently with the definition of medical gender transition aspects. In recent years although the medical transition aspect has been retained, the psychological and social aspect is no longer used.

<sup>11</sup> American Medical Association, ICD-10-CM 2021: The Complete Official Codebook (Eden Prairie: Optum360, LLC.), 3636. The code within the ICD is F64.0 Transsexualism, which is the code for both gender identity disorder in adolescence and adulthood and for gender dysphoria in adolescents and adults and is the medical code for medical billing. The American Psychiatric Association removed gender identity disorder from the DSM replacing it with gender dysphoria in the 2013 DSM5 and no longer classifying it as a disorder.

<sup>12</sup> Janell Carroll, *Sexuality Now 5<sup>th</sup> Edition* (Boston: Cengage, 2016), 90-93. This term was the accepted medical definition as shown in 2016 textbooks concerning sexuality and gender to describe surgical gender transitions.

<sup>13</sup> Mark Fisher, Mark Smith, and Adam D. Perry, *Chapter 10: Gender Confirmation Surgery* found within Leonid Poretsky and Wylie C. Hembree (eds.) *Transgender Medicine: A Multidisciplinary Approach* (New York: Springer Nature Switzerland, 2019), 183-184.

<sup>14</sup> Sarah L. Fishman, Maria Paliou, Leonid Proetsky, and Wylie C. Hembree, *Chapter 8: Endocrine Care of Transgender Adults* found within Leonid Poretsky and Wylie C. Hembree (eds.) *Transgender Medicine: A Multidisciplinary Approach* (New York: Springer Nature Switzerland, 2019), 143-145.

<sup>15</sup> “Minnesota Session Laws – 1993, Regular Session,” Minnesota Legislature: Office of the Revisor of Statutes, accessed on 16 January 2021. <https://www.revisor.mn.gov/laws/1993/0/Session+Law/Chapter/22/>

<sup>16</sup> Journal Staff, “Timeline: Gay and lesbian history in Rhode Island, and nationally,” *Providence Journal*, 15 June 2015. Accessed on March 12, 2021. <https://www.providencejournal.com/article/20140727/News/307279987>

educators to resign because they were transgender, such as Alyssa Williams, a music teacher in Minnesota, after they had tirelessly campaigned against her when she had publicly disclosed that she was transgender.<sup>17</sup> In the rest of the United States, it was common for transgender persons to often be denied employment, housing, education, access to gyms, restaurants, changing rooms, health care, even simple public accommodations such as the ability to use a public restroom, and cruelly, homeless shelters, rape crisis centers, and battered women shelters.<sup>18</sup>

Although technically a part of the LGBT movement, there was little support, and often open hostility, towards transgender rights and persons from the rest of this movement. The civil rights, black liberation, women's, and feminist movements had long used activism and visibility to enact social change. This practice had over the course of the 1980's and 1990's also been adopted by the gay rights movement which had provided gains in the form of anti-discrimination laws and the acknowledgement of rights. Transgender rights activists had, beginning in the mid-1990's, also begun to adopt this practice for social change. Crucially for this activism and visibility was the ability for the varied and widespread communities to connect with each other. Visibility and communication were necessary to begin true activism. When those who have shared understandings and attributes become connected it allows for what is called within sociology a collective identity. This identity is necessary to form larger groups capable of becoming a social movement and eliciting social change.<sup>19</sup>

Visibility within society, especially in the media, had made people more aware that transgender persons existed. The gay rights movement had shifted from the fringes of society to the mainstream, showing that they were just like their heterosexual counterparts, and the only differing aspect was the sex of whom they loved. Their fear was that transgender rights would undo the acceptance and gains they had made. This was not an unrealistic or unfounded fear, as in 1999 Connecticut governor John G. Rowland (R) refused to sign a gay pride proclamation. He refused because it included a reference to transgender persons.<sup>20</sup> And only a year prior, the Human Rights Campaign, the still well-known and respected national rights and lobbying group for LGBTQIA+ issues, had publicly refused to support transgender rights in federal legislation. Nancy Buermeier, the Human Rights Campaign's senior policy advocate, told the Chicago Tribune on 29 September 1998: "*We absolutely agree that the transgender community should have employment protections. But getting support for gay and lesbian issues is hard enough without adding the still volatile issue of transgender rights. There just isn't the level of acceptance and understanding that needs to happen before transgender legislation on a federal level is viable.*"<sup>21</sup>

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<sup>17</sup> Stephanie Simon, "In Minnesota, a New Battle of the Sexes: State is the only one to protect transgender residents from discrimination. Some conservatives want to change that." *Los Angeles Times*, April 8, 1999. <https://www.newspapers.com/image/161482629/?terms=transgender&match=1>

<sup>18</sup> Steve Johnson, "New minority: Transgender people fight for acceptance." *The Daily Sun*, September 16, 1998. <https://www.newspapers.com/image/483512359/?terms=transgender&match=1>.

<sup>19</sup> Anthony J. Nownes, *Organizing for Transgender Rights: Collective Action, Group Development, and the Rise of a New Social Movement* (Albany: State University of New York Press, 2019), 133-142

<sup>20</sup> Daniela Altamari, "Seeking A Path From Fringes To Mainstream: Transgender Community Struggles Against Stereotypes and Intolerance," *Hartford Courant*, August 2, 1999, <https://www.newspapers.com/image/202824133/?terms=transgender&match=1>

<sup>21</sup> Steve Johnson, "Transgender rights: A new minority – the transgender community – is fighting for acceptance in California." *Chicago Tribune*, September 29, 1998, <https://www.newspapers.com/image/169311768/?terms=transgender&match=1>.

As the 1982 hit song *1999* by Prince played on radio stations across the nation, this is where transgender persons and the transgender community stood. Becoming visible to society, bereft of allies on a national level, discrimination within most states, and pushback from most quarters of the political world, is how the last century was closed.

## A New Beginning: The First Decade

As the nation transitioned into the new millennium, the trans community struggled just to exist. Transgender persons were becoming more visible, living as their true selves within American society. Living their authentic life, leaving their home as themselves, and being visible to others came with a cost. It came down to identity, something often taken for granted. How do you prove you are who say you are? In the United States there are many documents used to prove identity: birth certificate, social security card, state driver's license or identification card, passport, or even residency card. In the early years of the new millennium, it was not easy in many instances to change your identification. Not everyone who is transgender transitions to the same degree. Some medically transition, some do not. During this time, as today, the most common form of identification was a state driver's license or identification card. Depending on the local and legal requirements, it was often necessary to acquire a court order to change identifying documents. In many instances it was necessary to have had a gender confirmation surgery to change the sex marker of identification documents as well. This would leave ID cards often having a name and sex listed which were opposed to the gender identity and gender presentation of the person.

Visibility was complicated by how the person presenting did not, and does not, always match the identification they have at the time. This led to many confrontations with law enforcement, especially for those who did not "pass,"<sup>22</sup> or who were "clocked,"<sup>23</sup> as being transgender. When asked for an ID by a law enforcement officer this would lead to the officer being handed an ID which could have a "woman's picture, a man's name, and "M" under sex," an ID with a "woman's picture and name, but "M" under sex," an ID with a "man's picture and a man's name, and "F" under sex," or an ID with a "man's name and picture, "M" under sex," but the person who gave the officer the license appears and is presenting as a woman (Bushnell, 2020). Such diversity of presentation opposing state issued ID's is still a common occurrence today.

During this early part of the millennium, there were many laws which addressed different aspects of identities with the intention to commit fraud. It was common for a transgender person, especially transwomen, to be arrested under those type of laws even though they had committed no crime. To support such a charge, it was often alleged that there were grounds to suspect the individual either was or was going to engage in prostitution. Most often the charges were dismissed, but the cost of these incidents was often that the transgender person would lose their employment due to being incarcerated until the hearing where the judge would most often

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<sup>22</sup> Passing is the term and concept of a transgender person "passing" as the gender they identify as. This primarily applies to transmasculine and transfeminine individuals. If a transmasculine person is perceived and seen as a man, or a transfeminine person is perceived and seen as a woman, then they "pass." Passing is not required, nor necessarily a goal of a transgender person.

<sup>23</sup> Clocked is the term used when a person can identify a person visually as being transgender. Many elements contribute to this form of identification, such as physical appearance, body language, the pitch/resonance/cadence of the voice and speech, style of dress, etc.

dismiss the charges. In a cruel irony, many transgender persons, after losing their sources of income due to these incidents would resort to prostitution just to survive and earn money for basic needs and sustenance.<sup>24</sup>

One area which did not have much visibility was transgender youth, a group of which was relatively invisible, even more so if they ended up homeless which approximately one out of five did, as their families rejected them in an action termed *being thrown away*, which further led to *displacement*, which was the trans youth seeking refuge in larger cities. In the United States, it was common for trans children as young as 12 to be thrown away when their gender identity was revealed to their family. This included, and includes biological, adoptive, and foster families.<sup>25</sup> It was difficult if not impossible in many cases for a trans youth to find a shelter or a resource to aid them. Most homeless shelters were segregated by birth sex and had no acknowledgement of gender identity diversity. Sadly, many of the resources and shelters available to their LGB peers were also often unavailable to them for the same reason.<sup>26</sup> Many trans youth were also hesitant of social workers due to prior experiences within the foster care system, or from rejection at religious based social services settings. From desperation many trans youth who had been thrown away engaged in survival sex. Survival sex is the term for a person exchanging sex for necessities such as food, shelter, money, and other items. To survive the shadowy street economies they daily were forced to navigate, some would also exchange sex for drugs and alcohol.<sup>27</sup>

For transgender persons, social media was a tool for both connection and visibility. Visibility now also purchased harassment, bullying, and discrimination. A 2009 study found that 62% of transgender students experienced this type of behavior from others.<sup>28</sup>

Trans visibility increased dramatically in the media during this first decade. Films and documentaries such as *Junk Box Warrior* (2002), *Just Call Me Kade* (2002), *Mind If I Call You Sir* (2004) and *Tomboy* (2008) focused on transgender lived experiences and lives.<sup>29</sup> Transgender also became a new go-to type of character archetype within popular television media as well as being as well-received by a public often unaware, dismissive, or hostile towards

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<sup>24</sup> “Cops and robbers II: Transsexuals and the Police; Cops and robbers,” Pacifica Radio Archives, American Archive of Public Broadcasting (GBH and the Library of Congress), Boston, MA and Washington, DC, accessed March 10, 2021, <http://americanarchive.org/catalog/cpb-aacip-28-g44hm52x2x>.

<sup>25</sup> Lorna C. Barton, 2018, *What the Literature Says about Survival Sex among Young Trans People in the United Kingdom and the United States* found with Larry Nuttbrock (ed.) *Transgender Sex Work and Society* (New York: Harrington Press, 2018), 48-58. Due to a gender identity which is outside of the accepted social binary, trans youth often face invisibility within society. From such a position a homeless trans youth faces the issues of homelessness their cisgender peers face, the issues their LGB peers face, but also the added burdens of social invisibility coupled with discrimination when they are seen.

<sup>26</sup> Nicholas Ray, 2006, *An Epidemic of Homelessness: Lesbian, Gay, Bisexual and Transgender Youth*, National Gay and Lesbian Task Force Policy Institute & the National Coalition for the Homeless. <https://graphics8.nytimes.com/packages/pdf/national/20070307HomelessYouth.pdf>. Due to the conflict with law enforcement from survival sex and street drug usage, trans youths faced additional hurdles beyond the normal youth homeless issues of lack of completed education and minority age many other homeless youths faced.

<sup>27</sup> Lorna C. Barton, (New York: Harrington Press, 2018), *What the Literature Says about Survival Sex among Young Trans People in the United Kingdom and the United States* found with Larry Nuttbrock (ed.) *Transgender Sex Work and Society*, 48-58. Trans youth were most often recruited into survival sex work by their peers rather than exploiters, whom they observed making money necessary for survival, something they also desperately needed.

<sup>28</sup> Greytak, E. A., Kosciw, J. G., and Diaz, E. M. (2009), *Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools*, New York: GLSEN.

<sup>29</sup> Ardel Haefele-Thomas, *Introduction to Transgender Studies*, (New York: Harrington Park Press).

trans rights and trans persons. Popular shows such as *Ugly Betty*, *All My Children*, and the *Riches* included trans appearing characters.<sup>30</sup> The popular show *L Word* continued the pattern begun by the show *Queer as Folk* in showing lives of sexual minorities, also including issues such as gender confirmation surgeries and trans issues.<sup>31</sup> Even Tyra Bank's *Top Model* included for the first time a transgender woman in its 11<sup>th</sup> season.<sup>32</sup>

A small number of states joined Minnesota in adding gender identity non-discrimination protections during the early years of the millennium. Rhode Island in 2001; California and New Mexico in 2003; Illinois and Maine in 2005; New Jersey and Washington in 2006; Vermont, Colorado, Iowa, and Oregon in 2007.<sup>33</sup>

## Capricious Progress: The Second Decade

Beginning around 2010, social science research began to pick up steam on the transgender community. In 2011 a large study “discovered” that prior understanding of gender diversity within the transgender community was wrong, it was much more diverse than previously thought.<sup>34</sup> Instead of a binary male and female, which was understood within society and seen on popular media of transmen and transwomen, it was a spectrum. People were not only masculine or feminine, but also androgynous, agender, non-binary, genderqueer, genderfluid, mostly-male, mostly-female, with other self-identities of gender as well.<sup>35</sup> A much larger study the following year also showed this diversity in gender identity, but also in sexual orientation. The sexual orientations of transgender persons are just as varied as that of their cisgender counterparts. Trans persons also have sexual identities of straight, gay, lesbian, bisexual, pansexual, queer and others.<sup>36</sup> Media also started to help the public understand transgender issues and terminology, such as articles discussing the dysphoria many transgender

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<sup>30</sup> Regine Labossiere, “Gaining more visibility: Transgender people are emerging from the closet,” *Citizens’ Voice*, June 24, 2007.

<https://www.newspapers.com/image/520987354/?terms=transgender%20visibility&match=1>. There was an openness to see transgender persons and lives in entertainment media. It was hoped this acceptance could also translate into acceptance for transgender persons. At this time of increased visibility in media it was those pursuing gender confirmation surgeries and coming out as transgender who were still facing hostile work environments, often losing their jobs simply for being who they were.

<sup>31</sup> Kimberly Nordyke, “Influence of ‘L Word’ may last.” *Leader-Post*, March 13, 2008. <https://www.newspapers.com/image/498487915/?terms=transgender%20visibility&match=1>. Both *Queer as Folk* and the *L Word* provided visibility for those within sexual minorities, in some cases lending courage to people to come out of the closet.

<sup>32</sup> Editors, “‘Top Model’ Could Be Transgender.” *The Tampa Tribune*, August 15, 2008. <https://www.newspapers.com/image/342637022/?terms=transgender%20visibility&match=1>. A transgender woman named Isis who was 22 at the time was the first transgender model to compete on America’s Next Top Model.

<sup>33</sup> Jami K. Taylor, Daniel C. Lewis and Donald P. Haider-Marker, *The Remarkable Rise of Transgender Rights* (Ann Arbor: University of Michigan Press, 2018), 32.

<sup>34</sup> Barry Reay, *Trans History: A Counter History* (Cambridge: Polity Press, 2020), 10.34.

<sup>35</sup> Genny Beemyn & Susan Rankin, *The Lives of Transgender People* (NY York: Columbia University Press, 2011).

<sup>36</sup> L. E. Kuper, R. Nussbaum, and B. Mustanski, “Exploring the Diversity of Gender and Sexual Orientation Identities in an Online Sample of Transgender Individuals,” *Journal of Sex Research*, 49:2–3 (2012), 244–54.

persons may feel, the terms used to talk about gender transitions, and the issues facing access to care by those within the trans community.<sup>37</sup>

Such research also came with a new set of issues for researchers. Christine Labuski and Colton Keo-Meier in 2014 asked “*We define transgender as dynamic, unstable, and porous, and we use these characteristics to explore the relative use of measuring transgender people. How, in other words, can we quantify an experience*” that is often called “*becoming*” themselves?” They acknowledged that such quantification was necessary for such a vulnerable group to achieve political recognition.<sup>38</sup> This process was aided in 2013 when the American Psychiatric Association published the fifth Diagnostic and Statistical Manual of Mental Disorders. The prior manual, the DSM-IV-TR had classified transgender as *Gender Identity Disorder*, with the focus being on transmen or transwomen with no real acknowledgement of the diversity within gender identity.<sup>39</sup> The DSM5 changed this to *Gender Dysphoria*, noting that this may not be experienced by all transgender persons, nor is it required to be transgender. Gender dysphoria is a descriptor term to describe emotional distress over their experienced, expressed, or assigned gender and not a mental health disorder.<sup>40</sup>

Such changes were needed according to the APA taskforce assigned to re-evaluate gender identity disorder as existing guidelines were not inclusive of the multidisciplinary teams necessary for transgender health care.<sup>41</sup> Standards for multidisciplinary teams came from the World Professional Association for Transgender Health, a guide still used today by most clinics and health care providers.<sup>42</sup> By renaming gender identity disorder to gender dysphoria the goal was to help reduce the stigma attached to disorders and focus upon the emotional distress and not the gender identity.<sup>43</sup>

Advances in social media allowed transgender persons to share their lives and connect in ways not possible before. Many trans people had used Myspace and Facebook, migrating to platforms such as Vimeo and Mediascape. With the advent of Google’s YouTube this became the most popular social media outlet. By 2014 there were more than six hundred thousand videos, most of which had been made by transgender persons. In years prior, trans lives and lived experiences were only gleaned through blogs or biographies, with a few documentaries. YouTube provided a way for trans people to create transition videos, which is a do-it-yourself

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<sup>37</sup> Amy Bowen, “Dysphoria: A medical condition within”, “Resources are few in Minnesota,” St. Cloud Times editors, “Terms Used to Discuss Gender Transition,” *St. Cloud Times*, November 12, 2011.

<https://www.newspapers.com/image/225066924/?terms=apa%20change%20to%20gender%20dysphoria&match=1>

<sup>38</sup> Christine Labuski and Colton Keo-Meier, “The (Mis)Measure of Trans,” *TSQ: Transgender Studies Quarterly* 2, no.1 (2015), <https://doi.org/10.1215/23289252-2848868>.

<sup>39</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders Fourth Edition, DSM-IV-TR* (Washington: American Psychiatric Association, 2000), 576-582.

<sup>40</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders Fourth Edition, DSM5* (Washington: American Psychiatric Association, 2013), 451-459.

<sup>41</sup> William Bryne, Susan Bradley, Eli Coleman, A. Evan Eyler, Richard Green, Edgardo J. Menvielle, Heino F.L. Meyer-Brahlburg, Richard R. Pleak, and D. Andre Tompkins, “Report of the APA Task Force on Treatment of Gender Identity Disorder,” *Am J Psychiatry* 169, no. 8 (August 2012), 875-876, <https://doi.org/10.1176/appi.ajp.2012.169.8.875>.

<sup>42</sup> The World Professional Association for Transgender Health, “Standards of Care: for the Health of Transsexual, Transgender, and Gender-Nonconforming People” Version 7, *International Journal of Transgenderism* 13, no. 4 (2012), [https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7\\_English2012.pdf?t=1613669341](https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?t=1613669341).

<sup>43</sup> Kim Palmer, “beyond gender,” *Star Tribune*, September 21, 2013, <https://www.newspapers.com/image/250990359>.

video documenting the transition of a trans person. Another feature was provided by the platform, the rise of transgender vloggers, people who began and maintained video blogs of their lives, experiences, and issues facing not only them but the trans community. This connection allowed for people to learn from others within the transgender community.<sup>44</sup> Prior to 2010 there was a lack of cohesion for the trans community, with most communities being smaller, and often focused on individual lives instead of community or group issues.<sup>45</sup>

For a person who is transgender, there is a process called *coming out*, which is like the process for a person who has a non-heteronormative sexual orientation. It begins with coming out to themselves, and then to others around them. And while it is a positive process worth celebrating, being both liberating and affirming, it is often a messy, lengthy process and can be traumatic. Being within a society that is often hostile towards transgender experiences, where it is not common to have a transgender identity respected or in many instances understood, leaves many bereft of support. Visibility gave transgender people role models from transgender persons who have also gone through this process or are going through their own transition process.<sup>46</sup>

Visibility and the accompanying gains came with pushback, many times extreme. Although transgender persons were visible with pop culture media, they were most often portrayed as being a sex worker or a criminal of some fashion.<sup>47</sup> It was rare for a trans person to not have experienced workplace discrimination, whether they lived in a jurisdiction that had protections or not. Transgender persons often experienced prolonged stints of unemployment, at a rate higher than double than cisgender counterparts.<sup>48</sup>

Medical science and the social sciences terminology had been settled by around 2015. And as had been hoped, increased visibility to the people of the United States had prompted political action. Many municipalities and states attempted to pass legislation to protect the safety of transgender persons. These attempts often failed and continue to fail. Transgender persons are a vulnerable population, experiencing homelessness and violence at substantially higher levels than any other segment of the U.S. population. That aspect of non-discrimination laws is not what is challenged by those opposed. The key was an aspect of daily life everyone needs. A restroom. In the latter half of the first decade and the beginning of the second, the tactic employed was to ignore the safety of trans persons, and instead focus on bathrooms. This was accomplished through fear of the other, by talking repeatedly about “men in woman’s restroom” and implying without being explicit that there is a high risk of child molestation, rape, sexual assault, or other types of violence against women even though there was absolutely no evidence, even after much searching, of this fear being a reality. This tactic often succeeded as the public was, and is, often unaware of the reality of trans lives.<sup>49</sup> Those opposed to such protections for trans persons engage in what is called *oppositional sexism*, which is the attempt to dismiss or punish anyone who is outside of a rigid and non-mutually exclusive category of male and female,

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<sup>44</sup> Laura Horak, “Trans on YouTube: Intimacy, Visibility, Temporality,” *TSQ: Transgender Studies Quarterly* 1, no. 4 (November 2014), 572-585, <https://doi.org/10.1215/23289252-2815255>

<sup>45</sup> Vanessa Sheridan, *The Complete Guide to Transgender in the Workplace*, (Santa Barbara: Praeger, an Imprint of ABC-CLIO LLC), 24-27.

<sup>46</sup> Reid Vanderburgh, *Chapter 7 Coming Out* found within Laura Erickson-Schroth (ed.) *Trans Bodies Trans Selves: A Resource for the Transgender Community* (New York: Oxford University Press, 2014), 105-109.

<sup>47</sup> Kristin Cronn-Mills, *Transgender Lives*, (Minneapolis: Twenty-First Century Books, 2015), 60-61.

<sup>48</sup> Alison Ash Fogarty and Lily Zheng, *Gender Ambiguity in the Workplace: Transgender and Gender Divers Discrimination* (Santa Barbara: Praeger, an Imprint of ABC-CLIO LLC, 2018), 37-39.

<sup>49</sup> Kyla Bender-Baird, *Transgender Employment Experiences: Gendered Perceptions and the Law* (New York: State University of New York Press, 2011), 79-82.

and the mistaken belief that men and women are inherently different in ability, skills, aptitudes, and desires, and that these cannot overlap with each other. Such a belief is what leads to statements that a transgender person's gender identity is "fake" or that it is not "real." Within the social sciences, it is understood that gender is a social construct, one of four components which comprise every individual's sexual identity. Julia Serano summed up how people handle this when she wrote "*We make assumptions every day about other people's genders without ever seeing their birth certificates, their chromosomes, their genitals, their reproductive systems, their childhood socialization, or their legal sex. There is no such thing as a "real" gender—there is only the gender we experience ourselves as and the gender we perceive others to be.*"<sup>50</sup> The success of this tactic led to a swath of bills being proposed, and often passed at state level in 2016 restricting the usage of restrooms to deny access to those who are transgender using the same cisnormalizing and oppositional sexism approach.

This lack of understanding within the social culture of the United States also means that trans people are often presented with a Sophie's choice scenario. There is a cultural perception that the body, identity, or presentation of a transgender person is somehow deceitful and dishonest. This narrative is promoted within popular media, the cutting edge of the two-sided blade, which is visibility, in that there is an almost constant portrayal of the need to "uncover" the "real" gender or sex of a transgender person in drama shows. The implication is that the identity of a transgender person is dangerous, or harmful. This is often portrayed within these series in the form of "shock" and "horror" of their sexual partner. Such portrayals have also translated into the interactions of transgender persons with law enforcement and society. As in the earlier years of the millennium, it is still common for government sanctioned identification not always matching the gender and gender presentation of a transgender person. One of the most damaging places this affects trans persons is during voting in places which have strict voting ID laws where the trans person may not have an ID which is considered acceptable to those checking IDs since their appearance does not match their ID. This also causes anxiety amongst many in law enforcement as since 9/11 there is worry and fear over people who have more than a single name or identity on record at any concurrent moment.<sup>51</sup> In 2015 only 11% of transgender respondents to the largest trans community study to that date, had all their IDs with their gender and their preferred name. Only 29% had their state issued IDs with their correct gender and their preferred name.<sup>52</sup>

These conflicts with law enforcement over ID's led to a fear within the trans community of government and law enforcement officials. Such a fear creates an opening which is exploited by those who commit interpersonal violence against their partners. Most interpersonal violence laws are worded and defined for cisgender and often heterosexual couples. This leaves an opening for exploitation which is common within trans relationships where the trans person experiences physical, sexual, and psychological violence not always listed or recognized as such within legal statutes, and from the damage of the social narrative they are often cast as being deserving of the abuse they receive. With their fear of law enforcement, they remain in such relationships to avoid becoming homeless where they would likely experience even worse

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<sup>50</sup> Julia Serano, *Whipping Girl*, (Emeryville: Seal Press, 2007).

<sup>51</sup> Toby Beauchamp, *Going Stealth: Transgender Politics and U.S. Surveillance Practices* (Durham: Duke University Press, 2019).

<sup>52</sup> James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*, Washington, DC: National Center for Transgender Equality, 9.

abuse.<sup>53</sup> Attempts to change these laws through legislation have continue to often fail, whereby the trans community has resorted to the same tactic used by the gay and lesbian rights groups and has sought resources through the courts. This has resulted in mixed results.<sup>54</sup>

The 2015 U.S. Transgender Survey also showed 77% of school aged minors experienced harassment and bullying for being transgender at their schools, while 24% experienced such harassment at college. One out of three had been fired for being transgender, with three out of four trans persons taking personal steps such as hiding their identity to avoid mistreatment at work. One out of three trans persons had been homeless in their lifetime, where seven out of ten homeless transgender persons were met with harassment, sexual or physical assault, or being denied entry to a homeless shelter. From these results it was unsurprising that 39% of trans persons had experienced psychological distress in 2015, compared to 5% for the general U.S. population. Such abuse and discriminatory experiences also led to a higher level of attempted suicide, with 40% of trans respondents admitting they had attempted suicide in their lifetime. This is a shockingly high and alarming number as only 4.6% of the general U.S. population have done the same.<sup>55</sup> Relief from the public was unlikely as only 44% of the U.S. population supported a trans person's gender identity.<sup>56</sup> Trans youth still have difficulties at schools. In 2017 it was estimated there were approximately 150,000 transgender students. Many of them, 75%, felt unsafe in their school because of discrimination. And 70% avoided using a bathroom if possible because they felt unsafe or deeply uncomfortable.<sup>57</sup>

State and municipal level gains and losses had been the norm until the administration of the 44<sup>th</sup> President, Barack Obama, whose administration took a broad interpretation of existing statutes which provided some protection to trans persons within federally funded programs, healthcare, and schools. Those actions were undone by his successor's administration, that of the 45<sup>th</sup> President Donald Trump beginning on 20 January 2017 when all references or mentions of LGBTQIA+ persons were removed from the websites of the White House, State Department, and the Department of Labor. In total, 71 actions directly against trans persons were taken by the administration across all areas of life, including removing protections against discrimination, harassment, housing, healthcare, education, and many others. In the final year of the administration two of the most harmful actions took place, the removal of discrimination rules protecting transgender persons at homeless shelters and removing discrimination protections within health care. Another action began which would later be taken up by states, with the Department of Education demanding transgender students be banned from school sports if they played on the team that matched their gender.<sup>58</sup> These actions were challenged in court to mixed results.

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<sup>53</sup> Adam M. Messinger and Xavier L. Guadalupe-Diaz, *Transgender Intimate Partner Violence: A Comprehensive Introduction* (New York: New York University Press).

<sup>54</sup> Jami K. Taylor, Daniel C. Lewis, and Donald P. Haider-Markel, *The Remarkable Rise of Transgender Rights* (Ann Arbor: University of Michigan Press).

<sup>55</sup> James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016), *The Report of the 2015 U.S. Transgender Survey*, Washington, DC: National Center for Transgender Equality.

<sup>56</sup> Melissa R. Michelson & Brian F. Harrison, *Transforming Prejudice: Identity, Fear, and Transgender Rights* (New York: Oxford University Press).

<sup>57</sup> Movement Advancement Project and GLSEN. "Separation and Stigma: Transgender Youth & School Facilities" April 2017, Accessed March 6, 2021, <http://lgbtmap.org/transgender-youth-school>.

<sup>58</sup> "The Discrimination Administration: Trump's record of action against transgender people," National Center for Transgender Equality, 2021, Accessed February 20, 2021, <https://transequality.org/the-discrimination-administration>.

In 2012 the Department of Health and Human Services under President Obama issued a rule that gender identity was protected within health care under section 1557 of the Affordable Care Act.<sup>59</sup> While this rule would not guarantee treatment for gender dysphoria, it would guarantee a transgender patient could not be turned away just because they were trans. This was reversed on 12 June 2020 when the Department of Health and Human Services under President Trump finalized the rule that would remove all non-discrimination protections for LGBTQIA+ persons.<sup>60 61</sup> This rollback would once again allow for trans persons to be misgendered and denied health care.<sup>62</sup> This rule was temporarily blocked just days before going into effect in federal court.<sup>63</sup> This rollback sent shockwaves and instilled fear within the transgender community. Until the 2012 rule change, it was common within healthcare for a transgender person to receive incomplete and subpar healthcare, or to be refused healthcare outright due to being transgender regardless of whether they were seeing a healthcare provider for a transgender related concern or not. Immediately prior to the 2012 ruling, a transgender man named Jay Kallio was not immediately given his diagnosis of breast cancer, and later denied being given treatment options by his oncologist just because he was transgender.<sup>64</sup>

This is not an outlier experience for transgender persons. In 1995, a black 24-year-old transgender woman named Tyra Hunter in Washington, D.C., was injured in a car accident. When the paramedics arrived, they ceased treatment upon discovering that Tyra was transgender, at which point bystanders reported the EMT's laughed, joked, and made transphobic and racial slurs about Tyra.<sup>65</sup> One paramedic according to witnesses interfered with attempts to save Tyra's life.<sup>66</sup> According to bystanders, he screamed, "*This [expletive] ain't no girl... it's a [racial slur], he's got a [expletive]!*"<sup>67</sup> Tyra bled untreated on the pavement and it was not until the fire chief Otis Latin arrived that treatment resumed on the injured woman and transported Tyra to the hospital. At the hospital, the paramedics continued their very vocal ridicule of Ms. Hunter in the visiting area, becoming so disruptive that hospital staff had to call the police. In the emergency

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<sup>59</sup> Letter to Maya Rupert, Esq., from HHS Leon Rodriguez, July 12, 2012, <https://www.scribd.com/doc/101981113/Response-on-LGBT-People-in-Sec-1557-in-the-Affordable-Care-Act-from-the-U-S-Dept-of-Health-and-Human-Services#page=1>.

<sup>60</sup> Selena Simmons-Duffin, "Transgender Health Protections Reversed By Trump Administration," *NPR*, 12 June 2020, <https://www.npr.org/sections/health-shots/2020/06/12/868073068/transgender-health-protections-reversed-by-trump-administration>.

<sup>61</sup> HHS Press Office, "HHS Finalizes Rule on Section 1557 Protecting Civil Rights in Healthcare, Restoring the Rule of Law, and Relieving Americans of Billions in Excessive Cost," HHS, 12 June 2020, <https://www.hhs.gov/about/news/2020/06/12/hhs-finalizes-rule-section-1557-protecting-civil-rights-healthcare.html>

<sup>62</sup> Charlotte Clymer, "Why trans folks are terrified about Trump's withdrawal of health care protections," *Xtra*, 15 June 2020, <https://www.dailyxtra.com/trans-trump-health-care-174323>.

<sup>63</sup> The Associated Press, "Trump rule on transgender health blocked at the 11<sup>th</sup> hour," *NBC News*, August 17, 2020, <https://www.nbcnews.com/news/us-news/trump-rule-transgender-health-blocked-11th-hour-n1237044>.

<sup>64</sup> Susan Donaldson James, "Trans Man Denied Cancer Treatment: Now Feds Say It's Illegal," *ABC News*, August 7, 2012, <https://abcnews.go.com/Health/transgender-bias-now-banned-federal-law/story?id=16949817>.

<sup>65</sup> Scott Bowles, "A Death Robbed of Dignity Mobilizes a Community," *The Washington Post*, December 10, 1995, <https://www.washingtonpost.com/archive/local/1995/12/10/a-death-robbed-of-dignity-mobilizes-a-community/2ca40566-9d67-47a2-80f2-e5756b2753a6/>.

<sup>66</sup> Jeff Stryker, "Bigotry and ignorance vs. the 'transgendered,'" *The San Francisco Examiner*, December 13, 1995, <https://www.newspapers.com/image/462206465/?terms=Tyra%20Hunter&match=1>.

<sup>67</sup> McBride, Sarah, Laura E. Durso, Hannah Hussey, Sharita Gruberg, and Bishop Gene Robinson. *We the People: Why Congress and the U.S. States Must Pass Comprehensive LGBT Nondiscrimination Protections*. Washington, D.C: Center for American Progress, 2014, <https://cdn.americanprogress.org/wp-content/uploads/2014/12/LGBT-WeThePeople-report-12.10.14.pdf>.

room Ms. Hunter was given a medication to temporarily paralyze her to keep her from moving, and was left in the hallway, where she died. It was determined in court she would have had a 71-88% chance of survival if she had received competent care; instead, she died alone in a hallway, unable to move or speak, with feelings of suffocation, and the ringing sound of hate from the nearby paramedics.<sup>68</sup>

In 1999 the first Trans Day of Remembrance was held for Rita Hester, a black trans woman who was murdered in November 1998. Every year since it has grown and on each 20 November those from the transgender community who were murdered within the past year are mourned. Each name is read. Is acknowledged. Is seen. In the media, the name the person was given at birth is often used, an act called deadnaming. It is a common occurrence.<sup>69</sup> Within the Trans Day of Remembrance only their chosen name corresponding to their identity is said, not their deadname. The year 2020 was the deadliest on record, each year becoming more deadly than the last. Recently, 21 trans persons were killed in 2015,<sup>70</sup> 21 in 2016,<sup>71</sup> 25 in 2017,<sup>72</sup> 22 in 2018,<sup>73</sup> 25 in 2019,<sup>74</sup> and 44 by the end of summer of 2020,<sup>75</sup> with a total of 53 by the 2020 Trans Day of Remembrance on November 20<sup>th</sup>.<sup>76</sup> The majority of those killed in 2020 were Black or Latina women of color. Many trans persons have lost their lives in these past years just for being transgender. Trans persons are often not just murdered but murdered in the most brutal and vicious ways imaginable. The most common ways a transgender person is murdered *within* the United States are being shot multiple times, stabbed repeatedly, beaten to death with blunt objects, burned alive, strangled, tortured to death, and dismembered.<sup>77</sup> With so many people

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<sup>68</sup> Sarah D. Fox, “Damages Awarded after Transsexual Woman’s Death: Payout to Mother of Victim of Bigoted Emergency Workers’ Negligence,” *Polare Magazine*, January 1999, <https://genprogress.org/on-20th-anniversary-of-tyra-hunters-death-lgbt-people-are-still-waiting-for-basic-protections/>.

<sup>69</sup> Tim Fitzsimons, “News sites backtrack after ‘deadnaming’ transgender woman in obituary: The New York Times and The Associated Press published the birth name of trans woman Aimee Stephens, igniting swift and fierce criticism from LGBTQ advocates,” *The Huffington Post*, May 15, 2020, <https://www.nbcnews.com/feature/nbc-out/news-sites-backtrack-after-deadnaming-transgender-woman-obituary-n1207851>.

<sup>70</sup> “Addressing Anti-Transgender Violence,” Human Rights Campaign, 2015, Accessed February 27, 2021, [http://assets2.hrc.org/files/assets/resources/HRC-AntiTransgenderViolence-0519.pdf?\\_ga=2.124118351.452666871.1615554406-2013938237.1615554406](http://assets2.hrc.org/files/assets/resources/HRC-AntiTransgenderViolence-0519.pdf?_ga=2.124118351.452666871.1615554406-2013938237.1615554406).

<sup>71</sup> “A Matter of Life and Death,” Human Rights Campaign, 2016, Accessed February 27, 2021, [https://assets2.hrc.org/files/assets/resources/A-Matter-of-Life-and-Death-2016.pdf?\\_ga=2.124118351.452666871.1615554406-2013938237.1615554406](https://assets2.hrc.org/files/assets/resources/A-Matter-of-Life-and-Death-2016.pdf?_ga=2.124118351.452666871.1615554406-2013938237.1615554406).

<sup>72</sup> “A Time to Act,” Human Rights Campaign, 2017, Accessed February 27, 2021, [http://assets2.hrc.org/files/assets/resources/A\\_Time\\_To\\_Act\\_2017\\_REV3.pdf?\\_ga=2.124118351.452666871.1615554406-2013938237.1615554406](http://assets2.hrc.org/files/assets/resources/A_Time_To_Act_2017_REV3.pdf?_ga=2.124118351.452666871.1615554406-2013938237.1615554406).

<sup>73</sup> “A National Epidemic: Fatal Anti-Transgender Violence in America in 2018,” Human Rights Campaign, 2018, Accessed February 27, 2021, <https://www.hrc.org/resources/a-national-epidemic-fatal-anti-transgender-violence-in-america-in-2018>.

<sup>74</sup> “A National Epidemic: Fatal Anti-Transgender Violence in America in 2019,” Human Rights Campaign, 2019, Accessed February 27, 2021, <https://www.hrc.org/resources/a-national-epidemic-fatal-anti-trans-violence-in-the-united-states-in-2019>.

<sup>75</sup> “Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2020,” Human Rights Campaign, 2020, Accessed February 27, 2021, <https://www.hrc.org/resources/violence-against-the-trans-and-gender-non-conforming-community-in-2020>.

<sup>76</sup> “Transgender Day of Remembrance 2020,” PFLAG, 2020, Accessed February 27, 2021, <https://pflag.org/blog/transgender-day-remembrance-2020>.

<sup>77</sup> “Transgender Day of Remembrance: Honoring those lost to anti-transgender violence, memorializing 2019,” TDOR, 2019, Accessed February 27, 2021. <https://tdor.info/>.

deadnamed, or not out publicly, it is not possible to know how many more each year are unaccounted for. According to the FBI Hate Crime Statistics, in 2019 gender identity accounted for 2.7% of all hate crimes, with 16.7% being for sexual orientation.<sup>78</sup> Being the deadliest year on record, it did receive some media news coverage. A total of 54 minutes across 23 different segments was aired. ABC, CBS, NBC, CNN, and Fox News each covered transgender violence and death for less than 6 minutes in 2020. The rest of the time was covered by MSNBC.<sup>79</sup>

An aspect of this violence that does not see much attention is that many of these murders and other violent acts are in effect legally sanctioned by a legal principle called the Trans Panic Defense. Only ten U.S. states and the District of Columbia prohibit this type of defense, leaving two out three trans persons living in a state where it is a legal, and often successful, defense to engage in violence and murder of a transgender person just for being transgender.<sup>80</sup> The American Bar Association began calling for this type of legal defense to be removed legislatively in 2013.<sup>81</sup> Although the American Psychiatric Association removed Panic Disorder due to sexual orientations from the DSM in 1973, this legal defense is still allowed. In practicality it falls into three types of defense. The first, is that upon discovering that a person is transgender, it causes temporary insanity or leaves the person with diminished capacity and makes them panic and justifies their lethal self defense against the trans person. The second form is that *any* sexual advance from a person who is a transgender person, no matter how innocuous or innocent, is sufficient to justify lethal force against the transgender person. And the third is that just because the person is transgender, that is sufficient cause for the person to determine the trans person was about to cause them imminent bodily harm and justifies the use of lethal force.<sup>82</sup> As this is an oft successful tactic with juries, in practical terms it allows for the killing of a transgender person just because they are transgender in 40 U.S. states and all U.S. territories and commonwealths.

## A Bittersweet Interlude: The End of the Second Decade

In 1849 Jean-Baptiste Alphonse Karr wrote “*plus ça change, plus c’est la même chose*,” which translates as “*the more it changes, the more it’s the same thing*.”<sup>83</sup> A question often asked is “are things better than they were 20 years ago?” The answer would be mostly subjective and would take a much larger space than here to unpack in full, because the answer is mixed, and using a word often said by transgender persons when trying to explain what being transgender is like, it’s complicated.

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<sup>78</sup> “2019 Hate Crime Statistics: Victims,” Department of Justice: Federal Bureau of Investigation, Accessed February 27, 2021, <https://ucr.fbi.gov/hate-crime/2019/topic-pages/victims>.

<sup>79</sup> Alex Paterson, “Broadcast and cable TV news spent only 54 minutes covering anti-trans violence in 2020,” *Media Matters*, 17 February 2021. Accessed on February 28, 2021, <https://www.mediamatters.org/justice-civil-liberties/broadcast-and-cable-tv-news-spent-only-54-minutes-covering-anti-trans>.

<sup>80</sup> “Gay/Trans Panic Defense Bans,” Movement Advance Project, 2021. Accessed on March 9, 2021, [https://www.lgbtmap.org/equality-maps/panic\\_defense\\_bans](https://www.lgbtmap.org/equality-maps/panic_defense_bans).

<sup>81</sup> “American Bar Association Adopted by the House of Delegates August 12-13, 2013 Resolution,” LGBTBAR, 2021, Accessed March 9, 2021, <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

<sup>82</sup> “The Gay/Trans Panic Defense: What It is, and How to end It,” American Bar Association, 2020, Accessed March 9, 2021, <https://www.americanbar.org/groups/crsj/publications/member-features/gay-trans-panic-defense/>.

<sup>83</sup> Alphonse Karr, *Les Guêpes* (“The Wasps”), January 1849.

The second millennium began with the transgender community lacking cohesion, mostly invisible to society, and with virtually no support or allies. Over the next two decades through the aid of the media and social media, the community was able to form a more collective identity, making gains with anti-discrimination laws. At the end of 1999, only a single state had discrimination laws protecting trans persons. In 2020, 15 states had full anti-discrimination laws for housing, employment, and healthcare; 21 have some anti-discrimination laws, and only 14 states have none.<sup>84</sup> While visibility aided the passage of anti-discrimination laws, and there were gains to be had, the gains and rights at the federal level had been mostly erased by the end of 2020. Visibility came with a high cost for the gains that were made.

The most substantial gain was the Supreme Court case *Bostock vs. Clayton County* which was decided on the 15<sup>th</sup> of June 2020. This case was decided in favor of the plaintiffs, that current federal law concerning sex does prohibit anti-transgender discrimination within employment, providing transgender employees protection at the federal level, one of the only protections under federal law at present.<sup>85</sup> For trans youth, there has been a slight decrease in violence since 2001. Looking from the 2001 to 2019 results of GLSEN's National School Climate Surveys, verbal assaults, physical harassment, and physical assault for not conforming to societal gender expressions declined only slightly.<sup>86</sup>

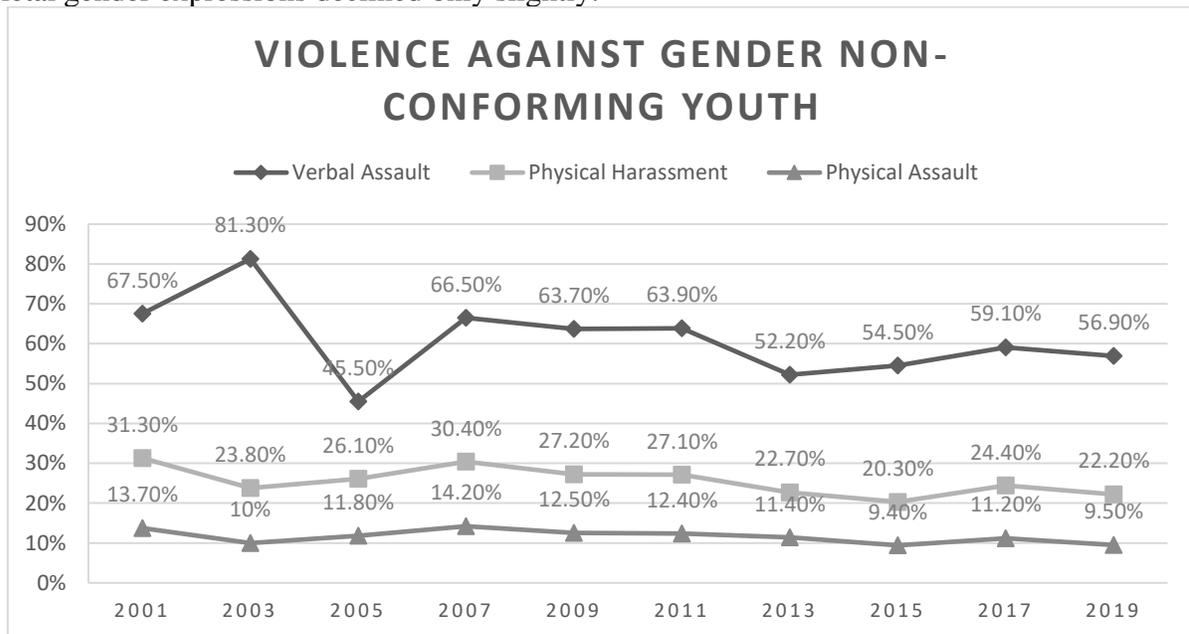


Figure 2 Compilation of percentages from 2001 to 2019 GLSEN National School Climate Surveys.<sup>87</sup>

<sup>84</sup> "Snapshot: LGBTQ Equality by State," Transgender Law Center, Accessed on February 28, 2021, <https://transgenderlawcenter.org/equalitymap>.

<sup>85</sup> *Bostock v. Clayton County, Georgia*, 17-1618, (2020), [https://www.supremecourt.gov/opinions/19pdf/17-1618\\_hfci.pdf](https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf).

<sup>86</sup> Kosciw, J. G., Clark, C. M., Truong, N. L., & Zongrone, A. D. (2020), *The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*, New York: GLSEN; Kosciw, J. G. (2002), *The 2001 National School Climate Survey: The school related experiences of lesbian, gay, bisexual and transgender youth*, New York: GLSEN.

<sup>87</sup> Kosciw, J. G., Clark, C. M., Truong, N. L., & Zongrone, A. D. (2020), *The 2019 National School Climate*

## Inexorable Change: 2021 Forward

As the United States enters the third decade, the 2020's, it begins with a new administration, that of the 46<sup>th</sup> President, Joe Biden. President Biden has taken some steps to change direction on transgender rights and issues from the previous administration. Whether things return to the status of the Obama administration, or cement them into lasting change is yet to be seen.

As of March 6<sup>th</sup>, 2021, there were 71 state bills that targeted transgender persons, and an additional 37 bills which targeted the LGBTQIA+ population. Twenty-five of these bills seek to prevent trans youth from receiving gender affirming care, while 37 of those bills seek to prevent trans youth from participating in sports through various restrictions.<sup>88</sup> Under current guidelines, trans youth are not given gender confirmation surgeries, and beginning HRT is not a quick or easy process. The one medical action they can receive after extensive therapy is a gonadotropin releasing hormone medication, which will temporarily block sex hormones during puberty to prevent the development of secondary sex characteristics such as a deeper voice and facial hair for someone with dominant male hormones and prevent breast development and menarche for someone with dominant female hormones. This treatment does not cause any permanent change, and once stopped puberty would progress as normal as if it had never been blocked.<sup>89</sup> This is done to prevent hormonal effects which are permanent. A person's voice that was deepened due to testosterone cannot undo that thickening of the vocal cords. Extensive voice therapy or surgery can compensate, to a point. A person who developed breasts cannot undo that and would have to seek breast reduction surgery. These procedures are both invasive and painful, and

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*Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*, New York: GLSEN; Kosciw, J. G., Greytak, E. A., Zongrone, A. D., Clark, C. M., & Truong, N. L. (2018), *The 2017 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*, New York: GLSEN; Kosciw, J. G., Greytak, E. A., Giga, N. M., Villenas, C. & Danischewski, D. J. (2016), *The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*, New York: GLSEN; Kosciw, J. G., Greytak, E. A., Palmer, N. A., & Boesen, M. J. (2014), *The 2013 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools*, New York: GLSEN; Kosciw, J. G., Greytak, E. A., Bartkiewicz, M. J., Boesen, M. J., & Palmer, N. A. (2012), *The 2011 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools*, New York: GLSEN; Kosciw, J. G., Greytak, E. A., Diaz, E. M., and Bartkiewicz, M. J. (2010), *The 2009 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools*, New York: GLSEN; Kosciw, J. G., Diaz, E. M., and Greytak, E. A. (2008), *2007 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools*, New York: GLSEN; Kosciw, J. G. and Diaz, E. M. (2006), *The 2005 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools*, New York: GLSEN; Kosciw, J. G. (2004), *The 2003 National School Climate Survey: The school-related experiences of our nation's lesbian, gay, bisexual and transgender youth*, New York: GLSEN; Kosciw, J. G. (2002), *The 2001 National School Climate Survey: The school related experiences of lesbian, gay, bisexual and transgender youth*, New York: GLSEN.

<sup>88</sup> Trudy Ring, "There are currently 108 bills targeting LGBTQ+ people," *the Advocate*, March 6, 2021, accessed 10 March 2021, [https://www.advocate.com/politics/2021/3/06/there-are-currently-108-bills-targeting-lgbtq-people?fbclid=IwAR2qUK1liNf04eMulqHg2bByHHNde6MjuU1\\_pBKyVVbacReOpyrvQfCVPE](https://www.advocate.com/politics/2021/3/06/there-are-currently-108-bills-targeting-lgbtq-people?fbclid=IwAR2qUK1liNf04eMulqHg2bByHHNde6MjuU1_pBKyVVbacReOpyrvQfCVPE).

<sup>89</sup> "Pubertal blockers for transgender and gender diverse youth," Mayo Clinic, August 16, 2019, Accessed on 11 March 2021. <https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/in-depth/pubertal-blockers/art-20459075>.

unnecessary with current medical skills and knowledge.<sup>90</sup> These bills<sup>91</sup> seek to needlessly force<sup>92</sup> trans youth to let their bodies develop<sup>93</sup> in a way that is known to cause them psychological pain and distress.<sup>94</sup> Some of the bills go so far as to prohibit therapy for a trans youth as well. These bills will cause an ethical nightmare for both mental health and healthcare providers. These bills directly oppose current empirically based science and understandings, and they will cause suffering for the trans youth who are being cast aside and left without support of their healthcare providers. It also must be noted and clarified that not every trans person seeks medical intervention, and not every trans person seeks the same types of intervention.

In the United States, recent surveys have shown 68% of Americans support laws which prohibit discrimination against transgender persons. But only 49% believe that U.S. has not done enough to be accepting of transgender persons. From this survey, it is shown that only one out of three people know someone who is transgender in person.<sup>95</sup> It is not surprising that so few know a transgender person, as only about 0.6% of Americans identify as transgender, a number which has held constant over time.<sup>96</sup> According to the United States Census Clock on 14 March 2021 at 16:07 UTC, there are approximately 330,138,553 Americans. This means that in the United States there are only about 1,980,831 transgender persons.<sup>97</sup> Even though it is not the case, 89% of Americans already believe it is illegal to evict a trans person from housing for being transgender, 80% believe they cannot be denied service at a restaurant or business just for being transgender, and 59% believe that trans persons cannot be denied access to a bathroom just for being transgender.<sup>98</sup>

While these positives could be attributed to the increased visibility of trans persons, many people are still not comfortable with transgender persons. Within the United States 37% of people would not be comfortable with a friend coming out as transgender. 44% would not be

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<sup>90</sup> Finlayson, Courtney. *Pubertal Suppression in Transgender Youth*, St. Louis, MO: Elsevier, 2019.

<sup>91</sup> Trudy Ring, "Alabama senate votes to ban gender-affirming care for minors," *the Advocate*, 2 March 2021, Accessed on March 12, 2021, <https://www.advocate.com/transgender/2021/3/02/alabama-senate-votes-ban-gender-affirming-care-minors>.

<sup>92</sup> Emily Bohatch, "SC bill would block doctors from giving gender affirming treatment to transgender youth," *The State*, March 10, 2021, Accessed on March 11, 2021, <https://www.thestate.com/news/politics-government/article249829038.html>.

<sup>93</sup> Meredith Deliso, "'Catastrophic' number of state bills target transgender youth, advocates say," *ABC News*, March 7, 2021, Accessed 11 March 2021, <https://abcnews.go.com/US/catastrophic-number-state-bills-target-transgender-youth-advocates/story?id=76138305>

<sup>94</sup> Trudy Ring, "Blaming Biden, Mississippi enacts 2021's first anti-trans law," *the Advocate*, March 11, 2021, Accessed 11 March 2021, <https://www.advocate.com/transgender/2021/3/11/blaming-biden-mississippi-enacts-2021s-first-anti-trans-bill>

<sup>95</sup> "Poll: Large Majorities, Including Republicans, Oppose Discrimination Against Lesbian, Gay, Bisexual and Transgender People by Employers and Health Care Providers: Half Say Society Hasn't Gone Far Enough in Accepting Transgender People," Kaiser Family Foundation, June 24, 2020, Accessed March 9, 2020, <https://www.kff.org/other/press-release/poll-large-majorities-including-republicans-oppose-discrimination-against-lesbian-gay-bisexual-and-transgender-people-by-employers-and-health-care-providers/>.

<sup>96</sup> Jeffrey M. Jones, "LGBT Identification Rises to 5.6% in Latest U.S. Estimate," *Gallup*, February 24, 2021, Accessed March 11, 2021, <https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx>

<sup>97</sup> "U.S. and World Population Clock," United States Census Bureau, 2021. Accessed March 14, 2021. <https://www.census.gov/popclock/>.

<sup>98</sup> Joshua Bote, "Most Americans believe LGBTQ people are legally protected from discrimination. They're not," *USA Today*, October 29, 2020, Accessed March 10, 2021, <https://www.usatoday.com/story/news/nation/2020/10/29/glaad-americans-wrongly-think-lgbtq-protected-discrimination/3749368001/>.

comfortable with a local schoolteacher being transgender. And 52% would not be comfortable with their own child being transgender. 55% of Americans still believe there are only male and female genders. While 79% of Americans believe that transgender people face stigma and discrimination in their life, 45% still support forcing transgender people to use the restroom that corresponds to their natal birth sex.<sup>99</sup> This lack of comfort translates beyond family and friendships into romantic relationships, as well. A recent study by Blair and Hoskin, 2018, found that 87.5% of people would not date a transgender person. 98.2% of straight women, 96.7% of straight men, 88.5% of gay men, 71% of lesbian women, and 48% of bisexual persons would refuse to date someone just because they were transgender.<sup>100</sup>

How these bills will pass, fail, or be challenged within the judicial system is yet to be known. What is known is that trans persons will still be here. They will still go about their lives to the best of their abilities within the social framework they must contend with that our society creates and maintains. They will live. History shows us that change will occur over time; it is inevitable. And either trans persons will be accepted within our society, or we will continue to throw them away as we have been doing for decades. With being thrown away something trans persons already expect from U.S. society and see as a defining characteristic of our society.

An oft spoken phrase in the United States is “*We the people of the United States.*” Perhaps by the end of the third decade of the new millennium, “*we the people*” will truly mean everyone.

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<sup>99</sup> Robert P. Jones, Natalie Jackson, Maxine Najle, Oyindamola Bola, and Daniel Greenberg. “America’s Growing Support for Transgender Rights.” *PRRI*, June 10, 2019, Accessed 14 March 2021, <https://www.prii.org/research/americas-growing-support-for-transgender-rights>.

<sup>100</sup> Blair, Karen L., and Rhea Ashley Hoskin. “Transgender Exclusion from the World of Dating: Patterns of Acceptance and Rejection of Hypothetical Trans Dating Partners as a Function of Sexual and Gender Identity.” *Journal of Social and Personal Relationships* 36, no. 7 (July 2019): 2074–95, <https://doi.org/10.1177/0265407518779139>.

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