Shifting the Narrative
A Reproductive Justice Analysis of the Health Inequities Affecting Trans and Gender-Diverse Folx in Georgia and the Policies Necessary for Progress.

AUTHORS
Hebron Kelecha, MPH (she/her)
Former Research and Policy Fellow
SPARK Reproductive Justice NOW!

Jennifer Mahan Esq (she/her)
If/When/How Law and Policy Fellow
SPARK Reproductive Justice NOW!

Krystal Redman, DrPH, MHA (she/they)
Executive Director
SPARK Reproductive Justice NOW!

Sabrina Rewald Esq (she/her)
Board Secretary
SPARK Reproductive Justice NOW!

Karen A. Scott, MD, MPH, FACOG (she/her)
Board President
SPARK Reproductive Justice NOW!

REVIEWERS
Meghan Maury (they/them)
Policy Director
The National LGBTQ Task Force

Taissa Morimoto (she/they)
Senior Policy Counsel
The National LGBTQ Task Force

Marla Renee Stewart, MA (she/her)
Board Treasurer
SPARK Reproductive Justice NOW!

Cortez J. Wright (they/them)
Development and Marketing Manager
The Southern Center for Human Rights
EXECUTIVE SUMMARY

Trans and Gender-Diverse (TGD) people in Georgia report disproportionate experiences of poor health outcomes due to systemic barriers when navigating and utilizing health care systems. Through research conducted by Trans and Gender-Diverse communities in the 2015 U.S. Transgender Survey and the 2018 Transcending Barriers Survey-Georgia, TGD folx report experiences of discrimination and harassment in health care settings. Health care providers too often lack the knowledge and training in cultural sensitivity and cultural intelligence necessary to effectively care for TGD folx' health and well-being. Furthermore, stigma and discrimination against TGD folx and people who do not conform to cisnormativity has been historically and concurrently perpetuated through policies and practices at both state and federal levels. The systems within which TGD folx function and thrive have failed to provide the same protection of one’s rights, dignity and bodily autonomy that has been extended to cisgender people and other protected classes.

This report aims to highlight and lift up the critical research conducted by Trans and Gender-Diverse communities to provide an intersectional analysis of the current state of health care experienced by TGD folx in Georgia. It furthermore seeks to identify the policies in place that both harm and help TGD communities, and how laws and policies play a role in the health and wellbeing of TGD communities by determining the extent to which TGD folx are exposed to social determinants of health such as racism, transmisogyny, and economic inequity. This report provides an overview of helpful language and concepts from the reproductive justice framework that guide SPARK Reproductive Justice NOW!'s advocacy. Finally, this report and its inserts offer an accessible overview of TGD rights and protections under the law in Georgia and the U.S. and what SPARK’s policy recommendations are to improve the health disparities experienced by Trans and Gender-Diverse people.

As COVID-19 takes its toll on vulnerable populations globally, SPARK recognizes that its impact will likely be felt most by gender minorities, communities of color and low resource communities. The health disparities experienced by these populations and those at the intersection of these identities are present in the best of conditions but with a public health crisis these inequities are exacerbated. In a time of great uncertainty, Trans and Gender-Diverse (TGD) folx face decreased access to health care, medications and gender-affirming therapies as overwhelmed hospitals transition resources to provide for COVID-19 patients. While health care systems are in flux, TGD folx are more likely to experience worse health outcomes. Further, TGD folx are at increased risk of intimate partner and sexual violence that may be exacerbated by stay-at-home and quarantine orders. It’s crucial for COVID-19 relief efforts both local and national to be inclusive of TGD folx and consider how a public health crisis aggravates the structural systems that have long oppressed this community. SPARK stands in solidarity with TGD folx who are disproportionately affected by the COVID-19 crisis both here and abroad. We will use this time of crisis to address the imbalances that exist in health care and provide our support in challenging the structural systems that disproportionately affect this population.
1. DISCRIMINATION IN HEALTH CARE FACING TRANS AND GENDER-DIVERSE PEOPLE IN GEORGIA

Introduction

As we begin to take a deep dive into the complex issues that face Trans and Gender-Diverse folx, it is important to first understand the terminology that will be used throughout this report. Transgender, or Trans, is an identifying term for people whose gender identity, expression and/or behavior is different from or does not fully align with traits typically associated with the sex they were assigned at birth. The opposite of the term transgender is the term cisgender, which is an identifying term for people whose gender identity corresponds with the sex they were assigned at birth. The term Trans and Gender-Diverse reflects that face Trans and Gender-Diverse folx, it is important to understand the terminology that will be used throughout this report. Transgender, or Trans, is an identifying term for people whose gender identity, expression and/or behavior is different from or does not fully align with traits typically associated with the sex they were assigned at birth. The opposite of the term transgender is the term cisgender, which is an identifying term for people whose gender identity corresponds with the sex they were assigned at birth. Gender Non-Binary, Gender Non-Conforming, or Gender-Diverse people are people whose gender expression differs from societal expectations, and the term may include people who identify as Genderqueer, Genderfluid, Genderfuck, Genderless, Agender, Non-Gendered, Third Gender, Two-Spirit, Bigender, Transgender, or Trans.

We use the term Trans and Gender-Diverse (“TGD”) folx as an inclusive term for discussion of the experiences facing people based on their gender identity, behavior and/or expression. We furthermore replace the spelling of “folks” with its gender-expansive version, “folx”. By using folx we express our intentional inclusion of TGD people, people of color, and people with other marginalized identities.

Moving through the health care system can be a difficult or traumatic experience for people who identify as TGD. The health and overall well being of TGD folx in the United States, in the regional South, and in Georgia in particular, are disproportionately adversely affected by stigma and discrimination, which is perpetuated by various institutional and structural systems. The health care system is one such system.

TGD members of SPARK Reproductive Justice Now! (SPARK) have anonymously discussed and shared their experiences accessing health care. One member of our community who identifies as a Trans man shared his struggle to find a local reproductive health care provider willing to provide him with a gynecological exam. Another member of the community shared the fact that she was unable to continue to afford hormone therapy because it is not covered by her insurance, and as a result she is experiencing difficult and harmful physical and emotional changes. These stories are too common among people with marginalized gender identities. This report aims to uncover some of the foundations of the systemic inequities through a reproductive justice lens and suggest solutions and areas for progress. This report furthermore highlights the information gathered and work done by Trans-led organizations on health disparities affecting folx who exist outside of cisnormativity.

The Magnitude of Disparities & Discrimination in Health Care

Approximately 1.4 million (0.6%) of the U.S. population identify as Transgender as of 2016. One recent study suggests the number of young people who identify as Trans or Gender-Diverse may be closer to 2.7%. Georgia is among the 5 states with the largest adult Transgender community, meanwhile the data is lacking regarding how many young TGD folx reside in Georgia.

---


3 Interviews by Hebron Kelecha, Policy Fellow at SPARK Reproductive Justice NOW! with TGD community members (2017).


5 G. Nicole Rider et al., Health and Care Utilization of Transgender and Gender Nonconforming Youth: A Population-Based Study, PEDIATRICS (2018), https://pediatrics.aappublications.org/content/141/3/e20171683.

6 Id.
TGD folk face discrimination, harassment, and violence in a variety of ways, with different levels of effect, intensity and duration, both across and within different service industries and systems: education, health care, labor, housing, banks, grocery stores, law enforcement, and the legal system, to name a few. The Transcending Barriers Survey-Georgia reports that nearly 95% of Trans and Gender-Diverse respondents reported experiencing discrimination while being openly Trans or Gender-Diverse, while 48% of the respondents reported a history of violence and harassment while being openly Transgender or Gender-Diverse. A 2019 study of Transgender people in the South conducted by the Transgender Law Center and Southerners on New Ground found that 47% of participants reported experiencing high levels of violence from strangers and 40% reported experiencing high levels of violence from health care providers. Experiences of discrimination and injustice impact quality of and access to health care. Trans and Gender-Diverse folk require the same types of health care services as cisgender people. TGD folk may additionally require gender affirming medical care, such as hormone therapy, genital reconstruction, or top surgery (breast or chest surgery), and may have unique gynecological or urological needs. Regardless of the type of care sought, moving through a health system and seeing health care providers is riddled with barriers for people who identify as TGD.

Health care providers and staff at institutions often lack cultural humility and knowledge about gender identity, including use of and training on respectful and affirming language and communication. In the most severe yet all-too-common scenarios, health care providers and systems may refuse to provide care to people who do not conform to cis-normative societal standards. In response, due to previous experiences of discrimination or in anticipation of discrimination, TGD folk have reported withholding or denying accurate and relevant information from health care providers, or postponing seeking medical care due to actual or expected refusal of care. Even if a health care provider is gender affirming, TGD folk may still avoid seeking care if there is no public outreach identifying the provider as such. The outcome is curtailed access to care for TGD folk, who then experience disproportionately high rates of illness and disability.

### Interconnections and Inequities in Health & Health Care

The founders of the reproductive justice movement adopted the idea of intersectionality as a complementary analytic tool, to strengthen our knowledge and understanding of the complex ways in which disparities in society are created and sustained. Intersectionality acknowledges the existing power differentials at play in a person’s life, based on social constructs and ideologies including but not limited to racism, sexism, gender bias, transphobia, classism, ableism, xenophobia, and islamophobia. Adapting an intersectional approach leads us to identify the interconnected power relations involved in social constructs of race, class, and gender. These and other constructs work together as social determinants of health to produce disparities in illness, poor health and wellness, and mortality among people who tend to be marginalized by society.

In the 2015 U.S. Transgender Survey (USTS), the authors identified the intersecting and compounding effects of discrimination affecting TGD folk, including that “Transgender people of color experience deeper and broader patterns of discrimination” than those experienced by white Transgender respondents and the

---

11 The term ‘cis-normative’ defines the currently prevailing social assumption that all people are cisgender and born into a body in which their biological sex aligns with their gender identity. It excludes the possibility or acknowledgment of folx being Trans or Gender Non-Binary.
The authors of the study found a four-fold disparity in unemployment between Trans people of color and people in the general U.S. population. Notably, the study also identified that Trans people of color, including Latinx persons (43%), American Indians (41%), and Black persons (38%) were reported to be “more than three times as likely as the US population (12%) to be living in poverty.” Economic instability can have a significant impact on access to health care for TGD folx. For example, an analysis of the 2019 Black census found that 50% of Black TGD folx reported putting off seeing a doctor for financial reasons, compared to 35% of cisgender respondents.

The USTS also illuminated the fact that undocumented respondents experienced various types of economic and housing instability and violence at higher rates when compared to other respondents. Furthermore, according to the 2018 Transcending Barriers Survey-Georgia, over one third of TGD respondents reported being homeless at the time of the survey. Additionally, 68% of respondents reported having a history of homelessness, and 65% reported not having knowledge of resources to assist them with any of their housing needs.

Studies show that Transgender individuals fare worse in overall health outcomes compared to cisgender people. A recent study out of Emory University School of Public Health reported that, compared to cisgender participants in the study, Transgender participants were more likely to have higher rates of nearly all mental health conditions including depression. Another study looked at the prevalence of disabilities, mental health and chronic conditions in TGD populations over a two year period (2014-2016) and concluded that TGD populations experience higher burdens of disabilities, poorer mental health and multiple chronic conditions compared to the non-TGD population. These studies show that health disparities exist for TGD folx and that more supportive services and care coordination, combined with advocacy to end the systemic barriers and hardships facing TGD communities, is necessary to address these disparities.

### Summary of U.S. Transgender Survey (USTS) and National Center for Transgender Equality (NCTE) Findings

The U.S. Transgender Survey (USTS) is the largest survey that centers the lives and experiences of Transgender people, with over 27,000 respondents in the United States. Conducted by the National Center for Transgender Equality (NCTE), the 2015 USTS provides significant insight into the disparities and injustices faced by Transgender persons throughout many facets of life and society. The USTS serves the critical role of filling in gaps of knowledge and understanding for advocates, policymakers and health care providers. The expertise, narratives, and lived experiences represented in the survey are inclusive, representative of and responsive to a diverse range of Trans and Gender-Diverse persons.

The 2015 findings revealed Transgender survey respondents’ pervasive experiences of rejection, maltreatment, negligence and violence, in comparison to the experiences of the general U.S. population. Below are some of the studies’ summarized takeaway points:

- Transgender communities cannot be expected to eliminate or mitigate experiences of discrimination and inequity on their own. This is particularly true for people living at the intersections of multiple overlapping and reciprocating systems of oppression, coercion, discrimination, and stigma, across both private and public social spaces and relationships.

- Disruption and destruction of social networks and stable housing; limited and unstable economic and employment opportunities; and psychological and physical harm and health disparities require immediate
attention and action.

- The lack of accountability and responsiveness from society at large to address injustice, inequities, and illnesses is no longer acceptable.

- We must call out and dismantle the roots of institutional, structural, and provider-level violence that maintains power differentials and inequities and stifles the equal achievement, liberation, health, and happiness of people who exist outside of cis-normativity.

The increased amplification of all of gender identities, narratives, and experiences through increased visibility and participation is necessary to generate knowledge that is authentic and representative of the strengths, needs, and priorities of Trans and Gender-Diverse folx.

Social Determinants of Health and Patient-Centered Access to Health Care

Social Determinants of Health (SDOH) are the conditions in which a person is born, grows up, lives, works, plays, and ages. As seen in Figure 1, they include factors such as economic stability, environment, education attainment, access to food, community, and access to health care systems which all impact overall access to health and wellness. Furthermore, social determinants of health consider how cultural and societal constructs like classism, sexism, racism, homophobia, Transmisogyny, and HIV stigma can have a profound impact on a person’s overall health and wellbeing. For TGD folx, social determinants of health like Transphobia, Trans-misogyny, and racism structure the relationships between health systems and individuals or communities. Experiences of violence and harassment result in barriers, delays, or delivery of inappropriate health care, which can instigate or exacerbate poor health outcomes. For people who identify with multiple marginalized identities, the effect of systemic inequity on health can be compounded. For example, young Black people who also identify as Trans are one of the most at-risk and marginalized groups in the nation. Young Black Trans people experience significantly worse health outcomes than their white, cisgender peers, particularly in terms of exposure to HIV. The task of navigating a combination of marginalized identities through structures that maintain vestiges of white supremacy and are designed to work against the rights and wellbeing of folx who live outside of cis-normativity is a burden upon Trans and Gender-Diverse folx that we can and must fight to alleviate.

---

Reproductive Justice (RJ) at play in Health Care

Reproductive Justice (RJ) emerged from Black women-led and centered advocacy as a necessary and radical theory that ignited a movement. Reproductive Justice (RJ) is a framework rooted in the belief that individuals and communities should have the resources and power to make sustainable and liberatory decisions about their bodies, genders, sexualities, and lives. RJ applies an intersectional analysis to social issues, which means it demands recognition of the full context of a person’s life and the unique social conditions we each navigate and live within. The RJ framework focuses on centering the voices and experiences of marginalized individuals and communities.

SPARK Reproductive Justice Now! (SPARK) embraces the RJ framework, which is in alignment with the human right to: 1) bodily autonomy, including the right to have safe, consensual, and pleasurable sex and with whomever we want; 2) prevent pregnancy, end a pregnancy, or to get pregnant and stay pregnant; 3) birth a child, keep or give up a child, and live through and beyond the first year of after labor, birth and delivery, for both parent and child; 4) cultivate, sustain, and grow the family one desires with the person or people one chooses, in the community one chooses. Reproductive Justice dictates that the above rights must be possible to realize and enjoy with respect and dignity, and free from violence or coercion.

Furthermore, in agreement with international legal norms, RJ acknowledges that governing bodies and institutions have an obligation to respect, protect and fulfill the above rights, by ensuring the conditions exist for every person to self-actualize and make their own decisions for themselves, their families and their communities.

As an analytic framework embedded within the human rights and social justice paradigms, RJ requires sexual and reproductive autonomy as well as gender-equity for all humans. RJ offers new language, meanings, and concepts to better characterize the multiple forms of systemic and institutionalized oppression that constrain people’s everyday interactions, decisions, and overall quality of life, particularly for people who are marginalized or have multiple marginalized identities. We at SPARK value the breadth and depth of RJ to serve in multiple ways: as an analytic framework, a movement, a practice, and a vision. Intersectionality is the process and human rights are the goal by which we achieve RJ and therefore meet the needs of communities that have been marginalized throughout history.

Access to health care is the opportunity for an individual or community to reach and obtain appropriate health care services in situations where a need for care is perceived. Access empowers individuals and communities to make decisions that allow them to then engage with the health system in order to obtain health care. Disparities in access to health care depends on the following factors: a person’s or community’s ability to recognize their health care needs; to seek health care services; to reach or obtain health care services (or to delay in obtaining them); to utilize those services; and, finally and crucially, to engage in the health system in a manner that results in being offered services appropriate to the person’s needs.

---

29 Ross, supra note 28.
31 Id.
2. POLICIES AFFECTING THE HEALTH & WELLBEING OF TRANS AND GENDER-DIVERSE FOLX IN GEORGIA

Ensuring Trans and Gender-Diverse folx have legal non-discrimination protections is a critical part of supporting the health and overall wellness of TGD folx in Georgia. This report has identified how discrimination based on a person’s gender identity and expression is a social determinant of health because experiences of discrimination are strongly linked to poor health outcomes. In order to achieve health equity, TGD folx must be protected from discrimination in all areas of day-to-day life.

This June, the Supreme Court’s opinion in Bostock v. Clayton County has rendered TGD folx across the country legally protected from discrimination in employment. (See Section 4: In A Landmark Decision the Supreme Court Upholds Anti-Discrimination Protections for Queer and TGD Employees.) This case is a landmark decision. Nevertheless, until broad non-discrimination protections are enacted across the country, TGD folx remain vulnerable to the various forms of discrimination that exist outside of an employment setting.

Statewide non-discrimination protections are one way to support TGD folx. Nationwide today, only 22 states and the District of Columbia have passed at least one statewide non-discrimination law that includes protections for gender identity. Georgia is one of the 30 states that has yet to adopt any state-wide laws to protect people from discrimination based on their gender identity and expression. Georgia’s failure to establish statewide protections can render TGD folx vulnerable to discrimination and harassment, particularly in spaces like public bathrooms, parks, banks, or hospitals.

Where statewide protections are lacking, some local governments have taken the initiative to put non-discrimination ordinances in place. Local ordinances provide residents with legal protections within that jurisdiction, but the protections evaporate once outside of the relevant jurisdiction. As of January 2018, there are 225 local and city non-discrimination ordinances specific to gender identity throughout the United States. However many of these local protections are not comprehensive, meaning they may provide protections for one area of life (such as housing) but not for another (such as public accommodations). As of June 2020, only 7 cities in Georgia have enacted comprehensive protections prohibiting discrimination in employment (now protected across the country), as well as in bot housing, and in public accommodations. Those cities are Atlanta, Brookhaven, Chamblee, Clarkston, Decatur, Doraville, and Dunwoody. Georgians fighting for equality have been working to pass the state civil rights law, HB 19, which would provide for those same comprehensive non-discrimination protections to exist across to the entire state.

State and local ordinances provide a degree of protection, but without concrete federal protections TGD folx are still vulnerable to discrimination outside of the specified state or local jurisdictions. Three states (North Carolina, Tennessee and Arkansas) have gone so far as to prohibit local governments from unilaterally passing non-discrimination ordinances. Members of the Georgia legislature have also tried to ban any local non-discrimination ordinances from existing in the state at all. Thankfully, no such ban has passed into law. Nevertheless, the attempt to do so sends a strong message to TGD people in Georgia that efforts are being made to limit structural safety protections and to instead sanction discrimination and the violation of TGD folx’ human rights. This is a persistent threat against TGD people, and robust non-discrimination protections

35 MOVEMENT ADVANCEMENT PROJECT, Georgia’s Equality Profile (2020), http://www.lgbtmap.org/equality_maps/profile_state/GA.
at the federal level are critically needed to provide relief from this threat.

With the absence of statewide non-discrimination protections and an inconsistent smattering of local non-discrimination ordinances, TGD folx in Georgia don’t have the security and stability they need to be healthy and thrive as they move through society. A lack of legal protection from discrimination can have real results, like TGD folx being harassed, denied housing or loans, or refused health care services, without accessible remedy or recourse.\(^{39}\)

Permitting discrimination to remain unchecked undermines Trans and Gender-Diverse folx’ human rights, including the rights to health and wellness, self-determination, and earning potential, undercutting one’s ability to support a family, achieve financial stability, and contribute to the economy.\(^{40}\) Studies show that Queer and TGD folx in general are more likely to experience poverty than cisgender and heterosexual people as a result of the persistent and systemic barriers that Queer and TGD folx still face in U.S. society.\(^{41}\) The impact of systems of poverty on Queer and TGD folx are exacerbated for those who are people of color, elderly, disabled, or otherwise experience marginalization on multiple levels.\(^{42}\) Importantly, there is a mental health toll as well, as TGD folx have reported experiencing psychological harm from the prevalence of discrimination.\(^{43}\) Experiences of being discriminated against increase a person’s likelihood of suffering emotional distress, anxiety, depression, and self-harm or suicidal ideation. Among young people, these experiences are exacerbated.\(^{44}\)

Although progress has been made to protect the rights of TGD folx in Georgia, this progress remains lacking, inconsistent, and vulnerable to change. If not on a state or federal level, it is imperative that more cities in Georgia pass ordinances expressly prohibiting discrimination against Trans and Gender-Diverse folx.

**Federal Protections in Case Law**

The Supreme Court’s recent decision in *Bostock* secured the right to non-discrimination for TGD folx in employment by interpreting the protected class of ‘sex’ in Title VII of the Civil Rights Act. The decision substantially reinforces the array of case law to date that prohibits discrimination based on gender identity.

In 1989, the Supreme Court held that the Civil Rights Act prohibited gender stereotyping, finding it to be a form of discrimination based on a person’s sex.\(^{45}\) In 2011, the Eleventh Circuit Court of Appeals held that discrimination based on sex includes discrimination based on a person’s gender identity or expression. From that point forward, federal laws prohibiting discrimination have increasingly come to be interpreted to include the protection of a person’s gender identity and expression. Courts have affirmed that discrimination based on a person’s gender identity is prohibited\(^{46}\) under the Title IX education law, the Fair Housing Act, the Equal Credit Opportunity Act, and the Affordable Care Act.\(^{47}\)

While case law provides a level of protections for TGD folx, there is an absence of federal legislation offering comprehensive non-discrimination protections in all areas of TGD folx’ day-to-day life.

What could solve this problem is the *Equality Act*, a 2019 federal bill that would ensure non-discrimination

---


42 Id.

43 Id.


protections across the U.S. in employment, housing, education, public spaces, and other areas of day-to-day life and society. Successfully passing the *Equality Act* into law would provide the security and assurance for TGD folx across the country to be themselves and live fully, with dignity and without fear of state-sanctioned discrimination.

**Discriminatory laws & policies causing harm to TGD folx**

Since 2016 TGD and LGB folx have faced a barrage of offenses from the White House, Congress, and republican-controlled state legislatures via law, policy and rhetoric. From actions that may seem only symbolic, like failing to mention Queer and TGD folx in the World Aids Day address⁴⁸, to direct policy change, like banning transgender folx from the U.S. military⁵⁰, the scope of the attacks from the White house has been broad and delivered at a continuous cadence.

Most recently, in June 2020 the Department of Health and Human Services finalized a rule taking back the non-discrimination protections for TGD folx in health care (See ACA and S. 1557 Text Box). The rule only adds to the myriad ways in which the administration has undermined anti-discrimination measure and endorsed the use of religion as a weapon to harass and intimidate Queer and TGD folx. In October of 2019 the Administration vocalized its support for permitting faith-based schools to discriminate against LGBTQ students and staff, and the following month the Administration proposed a rule that would allow faith-based foster care and adoption agencies to continue to receive federal funding even if they refuse to place children in the homes of LGBTQ families.⁵⁰

In July 2019, the Department of Housing and Urban Development removed requirements that applicants for homelessness funding maintain anti-discrimination policies for LGBTQ people and their families, who are more likely to be homeless. When 33% of homeless youth identify as LGBTQ, and LGBTQ youth have a 120% increased risk of experiencing homelessness compared to their cisgender and heterosexual counterparts, this measure is a clear and outrageous attack on some of the most in-need members of society.⁵¹

As Section 1 of this report identified the reeling back of anti-discrimination protections causes real harm. By promoting a dialogue of disdain, disrespect, and disregard for Queer and TGD folx, the Trump administration is reinforcing the stigma, harassment and violence that undermines the health and wellbeing of TGD folx in the U.S. Furthermore, by invoking anti-LGBTQ sentiment the Trump Administration is acting in violation of its obligations to respect, protect and fulfill the rights of people who live in the U.S., according to international human rights standards to which the U.S. is a signatory.⁵² From a comprehensive, intersectional perspective with consideration for the fact that exposure to discrimination is a social determinant of health, the Trump Administration has been causing serious harm to TGD folx since the 2016 inauguration.

---

⁴⁹ In August 14, 2019, the Department of Labor announced a proposed rule that would radically expand the ability of federal contractors to exempt themselves from EEOC requirements. The result would be to allow for-profit and non-profit employers to impose “religious criteria” on employees that could include barring LGBTQ employees altogether. *Id.*

---

⁵¹ The U.S. is a signatory to the Universal Declaration of Human Rights, which identifies basic rights to equality and non-discrimination, as well as the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These concepts are firmly held by the international human rights community to apply to TGD and LGBTQ folx broadly. See ACLU, *Treaty Ratification* (2020), https://www.aclu.org/issues/human-rights/treaty-ratification.

⁵² The U.S. is a signatory to the Universal Declaration of Human Rights, which identifies basic rights to equality and non-discrimination, as well as the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These concepts are firmly held by the international human rights community to apply to TGD and LGBTQ folx broadly. See ACLU, *Treaty Ratification* (2020), https://www.aclu.org/issues/human-rights/treaty-ratification.
The Affordable Care Act and Section 1557

The Affordable Care Act (ACA) has assisted millions of Americans with obtaining health insurance coverage, in part due to the ACA’s ban on denial of coverage based on discrimination, incomprehensive coverage, or preexisting conditions. Queer and TGD folk have historically experienced high rates of un-insurance (or, under-insurance) and barriers to care, including discrimination on the basis of gender identity and sexual orientation. Following the ACA’s enactment, rates of un-insurance among Queer and TGD folk decreased significantly.\(^{53}\)

The Affordable Care Act (ACA) was a watershed moment for legislation providing comprehensive non-discrimination protections in health care. The ACA set in place discrimination prohibitions based on race, “color”, national origin, disability, age, and sex.\(^{54}\) Specifically, Section 1557 of the ACA protects individuals from “be[ing] excluded from participation in, be[ing] denied the benefits of, or be[ing] subjected to discrimination under” a health program or activity on the basis of the person’s sex. Under the Obama Administration, the Department of Health and Human Services (HHS) clarified in a 2016 rule the meaning of “on the basis of sex” to include pregnancy and the termination of pregnancy, sex stereotyping, and gender identity. The 2016 rule thereby expressly included trans and gender-diverse people as protected from discrimination in federally-funded health care settings and services under the ACA.\(^{55}\)

On June 12, 2020, the Trump Administration reversed these protections. After requesting a legal hold on the administration’s obligation to enforce the protections based on gender, the HHS issues a new rule defining ‘sex’ as a binary concept (either male or female) that is defined by one’s genitalia at birth.\(^{56}\) The new rule is an attempt to erase protections based on gender identity under the law, and in doing so renders TGD folk vulnerable to discrimination in health care. The rule furthermore removes the prohibition from discrimination against people on the basis of pregnancy or a prior abortion – an outcome that attempts to invite harm against anyone who can get pregnant, including Trans men and Gender-Diverse folk.\(^{57}\)

While the new rule illuminated the administration’s approval of institutionalized discrimination, harassment and stigma, it is unlikely that it will be permitted to stand. Three days after the new rule was finalized, the Supreme Court in \textit{Bostock v. Clayton County} held that the prohibition of discrimination “because of sex” in Title VII of Civil Rights Act applies to gender identity.\(^{58}\) By this ruling, the Court clarified that the employment law expressly protects Trans and Gender-Diverse folk from discrimination. What the ruling also did was remove any legal ambiguity that gender identity is included in protections on the basis of ‘sex.’ Before the \textit{Bostock} decision, the ambiguity in the courts as to whether ‘sex’ included gender identity permitted the HHS to pick whichever interpretation of ‘sex’ it wished to enforce.\(^{59}\) Absent ambiguity, the HHS will likely be required to enforce Section 1557 of the ACA in accordance with the Supreme Court’s interpretation of ‘sex’.

---


\(^{56}\) Federal Register, Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, https://www.federalregister.gov/documents/2020/06/19/2020-11758/nondiscrimination-in-health-and-health-education-programs-or-activities-delegation-of-authority

\(^{57}\) \textit{Id.}

\(^{58}\) Bostock v. Clayton County, 590 U.S.

State-sanctioned discrimination

Attacks on TGD folx by the Georgia legislature are in part fueled by the White House’s abhorrent disregard of TGD folx’ human rights and dignity through its actions and language. With that said, representatives in the Georgia legislature have been attempting to pass legislation for years that would offer a license to discriminate to anyone who wished to use it, on the basis of religious or moral belief. The legislation model is known as a religious Freedom Restoration Act, of RFRA, modeled after the federal law of the same name intended to protect people’s religious freedoms. To date, no such law has passed in Georgia, due to the continual activism and advocacy of passionate activists on the group, including SPARK, its members and its partners.

The Power of Grassroots Organizing

Georgia is a red state with an incredibly powerful grassroots movement embedded within. In 2015, the Georgia legislature came close to passing a bill known as the First Amendment Defense Act (FADA), cited as a religious liberty bill, which would have allowed people and businesses alike to refuse to serve or conduct business with any person whose marriage or sexual practices countered their religious beliefs. The law would have further undermined existing local nondiscrimination ordinances.

After advocacy groups spoke out against the bill for its broad permission to discriminate and it’s clear attempt to control and limit marginalized communities in Georgia a coalition of 400 companies joined forces in opposition to the bill and threatening to pull their operations out of Georgia if the bill passed. The efforts were effective and the bill was quashed.

In March 2018, another FADA bill was introduced, this time federally in the Senate, with a clear purpose to protect people who discriminate based on a belief tied to traditional notions of marriage - for example, that marriage should only occur between a cis-man and cis-woman. This bill also thankfully failed to pass thanks to the work of advocates, activists, and allies in Congress, yet nevertheless the effort reminds us that we must remain vigilant in preventing the exploitation of religious freedom in service of anti-LGBTQ sentiment and policy.

Failure to provide accessible health care is another form of attack on TGD folx committed by the state of Georgia. Namely, Georgia’s legislature has failed to fully expand Medicaid, which severely limits the state’s ability to fully care for its most marginalized communities. If Georgia were to fully expand Medicaid it is estimated that 400,000 to 500,000 people currently without health care would gain coverage.

In November 2019 the Georgia legislature passed the Patients First Act, which permits the Governor to apply to the federal government for two Medicaid waivers. A Medicaid waiver is essentially a hall pass for a state to take action in contravention of the Affordable Care Act. While the waivers Georgia applied for would partially expand Medicaid, they would also be detrimental to Georgians’ access to and quality of health care and fail to replace the benefits that would have been provided by full Medicaid expansion.

The waivers would normalize a substandard and inaccessible health care system in Georgia, which would disproportionately limit TGD folx’ access to comprehensive health and wellness. For example, one of the waivers imposes a work requirement on Georgians who would otherwise be eligible for Medicaid. Similar Medicaid work requirements in other states have been struck by Federal Courts, and with good reason: It is estimated that only 13% of the over 400,000 Georgians living in poverty would actually meet the work requirements. The waivers furthermore permit health care plans to exclude coverage of ten essential health benefits outlined by the ACA, including mental health care and prescription drugs. The waivers combined are predicted to only expand coverage to about 80,000 people, and for the same cost as full Medicaid expansion.

There are other laws and policies on the books that exacerbate TGD health disparities in Georgia. One example is Georgia’s six-week abortion ban, which was ultimately blocked in court. The ban limits the reproductive freedom of anyone who can get pregnant, which includes Trans and Gender-Diverse folx. Another

64 Id.
65 Id.
example of laws hurting access to care is Georgia’s HIV criminalization statute. Georgia law punishes people living with HIV who are aware of their HIV status and fail to disclose their status before engaging in sexual activity. The law makes the act a felony punishable up to 10 years in prison, regardless of whether HIV was transmitted. This type of legislation is recognized to deter people from getting tested for HIV, since a person can only be punished under the law if they know their status. Trans and Gender-Diverse folx are at a disproportionate risk of HIV and require the freedom to make the best choices for themselves and their health without fear of criminalization and stigmatization.67

There is a lot of work to do, but in the meantime, there have been successful measures by grassroots advocates and allies in the Georgia legislature in the direction of supporting the health, wellness and reproductive justice of TGD folx. One such measure is Georgia’s Pilot PrEP Program, which established a pilot program effective July 2019 to distribute the HIV-prevention pill PrEP (Pre-Exposure Prophylaxis) around the state. The measure has high potential to benefit Trans and Gender-Diverse folx because of the disproportionate rate by which TGD folx are affected by HIV compared to cisgender people.68

Another proactive measure is the law H.B. 217, which was signed into law in April 2019 to create a needle-exchange program in Georgia. The importance of needle exchange programs is that they allow people who inject drugs to exchange used needles for clean ones, and in doing so reduce the spread of HIV and Hepatitis C. Needle exchanges also provide education on safe use and linkage to treatment options.69 This measure will benefit TGD folx who use drugs or who inject hormones, and particularly for those who use street hormones due to real or perceived discrimination in health care settings.70

---


68 Id.


70 Id.

---

3. POLICY RECOMMENDATIONS

Intro

TGD folx do not have the same access to health care as their cisgender counterparts. There is a health care crisis facing TGD folx and it is rooted in and resulting from structural discrimination and inequity. The result is that TGD folx experience severe health and wellness disparities, which in turn affects enjoyment of life and the ability to work and contribute to one’s families and communities. The situation demands attention and urgency. We can improve and, in some cases, save the lives of TGD folx by recognizing and improving the social determinants that ultimately impact TGD folx’ health and wellness. In order to make sure every person can live a long, meaningful, autonomous, joyful and healthy life, we must continue to fight for real change to take place throughout the structures and institutions that we all inevitably pass through and interact with.

Goals of policy recommendations

- Supporting non-discrimination protections for gender identity in federal, state and local law and policy, particularly when related to access to accommodations, housing, employment, and health care services and insurance.

- Reducing and eliminating harassment, discrimination, cost barriers, and unnecessary procedures or mandatory wait times experienced by TGD folx seeking care, by increasing cultural responsiveness in health insurance coverage options and among health care providers via cultural intelligence training for providers.

- Recognizing the holistic nature of health and well-being and its root causes by utilizing an intersectional analysis and the reproductive justice framework in discussions involving health care and marginalized communities.

- Increasing the amplification of all of gender identities, narratives, and experiences through increased visibility and participation of affected people in the policymaking processes.

SPARK’s Recommendations for 2020

Recommendations for Health Care Institutions

- Incorporate cultural competence, humility and intelligence training at all levels of service provision
- Ensure gender expansive language is used on intake forms and reporting
- Track experiences of discrimination and stigma and take actionable steps to identify the source and enforce improvements

Recommendations for Governmental Agencies

- Reinstate quarterly conference calls with LGBTQ organizations regarding updates in federal regulations
- Oppose HHS efforts to narrowly interpret sex as binary and effectively exclude sexual orientation and gender identity from contemplation under the definition of sex discrimination.
- End the Transgender Military Ban
- End the imprisonment, attacks on and indifference to Black and Brown refugees, many of whom identify as LGBTQ and are escaping persecution for being who they are.

Legislative Priorities

SPARK is committed to the promotion of legislation that advances a just and equitable society for TGD folx in Georgia. Our focus for 2020 is rooted in how we can SHIFT THE NARRATIVE. This year we commit to shift our energy away from prioritizing a response to policies rooted in violence in order to support those that enrich our community. We are still dedicated to the tracking and dissemination of information related to regressive bills, but we will not permit white supremacy to dictate the work we do and the ways in which we move.

According to the Georgia Constitution, passing the state budget is the only thing lawmakers are mandated to do annually. Lawmakers spent a significant portion of the 2020 session reviewing and deciding on Governor Kemp’s proposal to cut 10% in spending over the next two-years. On the final day of session, the legislature passed a $26 billion state budget for the fiscal year 2021, including $2.2 billion cuts in agency spending. Georgia already spends less per resident than the state did prior to the last recession.
In March of 2020, the Georgia state legislature suspended session in response to the COVID-19 pandemic. The announcement to suspend session was made on cross-over day, the last legislative day that a bill can be passed in one chamber and sent to the next chamber to have a chance of becoming law during legislative session. The house and senate reconvened for the 30th legislative day on Monday, June 15th and concluded on June 26th.

Support (Federal)

- The Equality Act: HR 2282/ S1006
  - Summary - The Equality Act would protect Queer and Trans folk from discrimination in housing, the workplace, and public accommodations. The bill aims to address a gap in civil rights laws. While current federal law protects folk from discrimination based on race, religion, sex, and disability, there are no federal laws explicitly protecting Queer and Trans folk from discrimination.
  - Status – Following successful passage in the House, the act was introduced in the Senate in May. Senate Republican leaders have said there is “no scheduling” for the Equality Act. H. Res. 613 *Resolution

- H. Res. 613 *Resolution
  - Summary - Condemning Secretary Ben Carson’s bigoted comments regarding the Trans community and decrying the Department’s continued effort, under Secretary’s Carson’s leadership, to single out and discriminate Queer folk.
  - Status- Introduced on October 1, 2019, but not yet agreed to in House.

- H.R. 2687 - “Customer Non-Discrimination Act”
  - Summary - The act prohibits discrimination in public accommodations based on sex, gender identity, and sexual orientation, and for other purposes.
  - Status – Introduced on May 10, 2019.

- H.R. 1032
  - Summary - To provide for the retention and service of Trans folk in the Armed Forces
  - Status – Introduced on February 7, 2019.

Oppose (Federal)

- H.R. 897; S. 274, Child Welfare Provider Inclusion Act
  - Summary - The bill would allow child welfare organizations, including adoption and foster care providers, to make placement determinations based on the organization’s “religious beliefs or moral convictions” regardless of the needs of the child.
  - Status - House – Introduced on January 30, 2019; Referred to the Subcommittee on Worker and Family Support.

Oppose (Federal, Regulations)

- Summary - On August 14, 2019 the Department of Labor announced a proposed rule that would radically expand the ability of federal contractors to exempt themselves from EEOC requirements, allowing for-profit and non-profit employers to impose “religious criteria” on employees that could include barring Queer and Trans employees.

- Summary- September 19, 2019 – The Department of Health and Human Services cancelled a plan to explicitly prohibit hospitals from discriminating against Queer and Trans patients as a requirement of Medicare and Medicaid funds.

Support (State)

- H.B. 158 - Medicaid/ADAP formulary sync
  - Summary - This bill would require Medicaid to follow the Georgia AIDS Drug Assistance Program (ADAP) formulary for HIV medicines. This legislation would remove delays in accessing HIV medication for folk living with HIV due to differences in the formularies.
  - Status - This bill passed the House but ultimately died in the Senate. However, the Department of Community Health, which oversees the state Medicaid program, has pledged to accomplish the same goal through creating rules and regulations.

- H.B. 114 – Maternal Mortality Bill
  - Summary – The measure would extend Medicaid for birthing parents from two to six months following the birth of a child.
  - Status – This bill passed both chambers of the General Assembly. The bill has been sent to Governor Kemp to be signed into law.
**H.B. 719 – HIV Decriminalization**
- Summary - Provides for the modernization of HIV related laws to align with science to ensure that laws and policies support current understanding of best public health practices for preventing and treating HIV, scientific evidence about routes of transmission, and the public health goals of promoting HIV prevention and treatment. Under the current state law it is a felony for a person who is aware that they have HIV to engage in sex without first disclosing their HIV status.
- Status – Introduced on January 13, 2020. This bill passed unanimously from the House Health and Human Services committee. This bill ultimately died in the Senate. Advocated voiced concerned regarding the proposed bill’s failure to reduce a violation of the law from a felony to a misdemeanor.

**H.B. 19 - State Civil Rights Act**
- Summary - The act would create nondiscrimination protections in housing, employment, and in public spaces mirroring the 1964 federal Civil Rights Act prohibiting discrimination based on race, color, religion, sex, sexual orientation, gender identity, age, disability, familial status or national origin.
- Status - The act was introduced during the 2019 legislative session and stalled in the House Judiciary committee without a hearing and was not revived during the 2020 session.

**H.B. 791 – Emergency Prescriptions Bill**
- Summary – Would allow pharmacists to fill certain prescriptions for up to 90 days in the event of a state of emergency or a hurricane warning in Georgia.
- Status – This bill passed both chambers of the General Assembly. This bill has been sent to Governor Kemp to be signed into law.

Oppose (State)

**H.B. 747 – Opposing Trans athletes in collegiate sports**
- Summary - Would prohibit public universities in the state from hosting athletic competitions in which “a person who is not biological male is allowed to participate in athletic events conducted exclusively for males or a person who is not biological female is allowed to participate in athletic events conducted exclusively for females.”
- Status – Pre-filed in the House on December 19, 2019 and subsequently died in the House.

**S.B. 368 - Permitting adoption agencies to deny prospective parents on religious grounds**
- Summary - The bill would allow agencies to refuse to place children with same sex couples or those whose religious beliefs do not align with the organizations’ mission. The bill would permit agencies to refuse to work with couples that violate “certain religious or moral convictions.”
- Status - The bill was introduced on February 5, 2020 and subsequently died in the House.

**H.B. 1060 – Criminalizing gender affirming care for Trans youth**
- In October of 2019 State Representative Ginny Ehrhart, said she plans to introduce legislation making it a felony for medical professionals to assist minors with gender transition. Under current law, parental consent is required for minors to obtain gender affirming surgery or medication. The legislation would effectively criminalize private medical decisions made between families in consultation with medical and mental health professionals.
- Status – Would make it a felony for medical professionals to assist minors with gender transition. Under current law, parental consent is required for minors to obtain gender affirming surgery or medication. The legislation would effectively criminalize private medical decisions made between families in consultation with medical and mental health professionals. Young folx must be given the autonomy to make decisions regarding gender identity, including gender-affirming care.72
- Status – Introduced in January of 2020 and subsequently died in the House.

---

• S.B. 221 – Religious Freedom Restoration Act (RFRA)
  o Summary - Allows for businesses to refuse services to Queer and Trans customers and gives taxpayer funded agencies a license to discriminate. This year, Georgia Governor Brian Kemp has said he will sign a RFRA bill if passed if it is a copy of the federal legislation.
  o Status – Stalled in Senate Judiciary committee without a hearing and was not revived during the 2020 session.

• H.B. 426/ S.B. 329 – Hate Crimes Bill
  o Summary – Permits judges imposing sentences to increase punishment against those who target victims based on perceived race, color, religion, national origin, sex, sexual orientation, gender, mental disability or physical disability.
  o Status – This bill passed both chambers of the General Assembly. Governor Kemp confirmed he would sign the bill into law, pending legal review.
  o SPARK recognizes that violence perpetuated against TGD folx is real and must be addressed. However, SPARK opposed the passage of this legislation based on our opposition to increased carcerality and commitment to advancing harm reduction within prisons and jails.

• H.B. 838 – Anti-“Black Lives Matter” Bill
  o Summary - Under that legislation, anyone who is found guilty of “targeting” a first responder — defined as a firefighter, police officer or paramedic — could face between one and five years in prison and a fine of up to $5,000. This legislation should be viewed for what it really is, an attempt to criminalize those currently calling for an end to police brutality and protesting the killings of Black folx at the hands of law enforcement.
  o Status – This bill passed both chambers of the General Assembly. The bill has been sent to Governor Kemp to be signed into law.
  o Call to action – Advocates are urged to contact Governor Kemp demanding he veto the bill.

• S.B. 402 – Bad Bail Bill
  o Summary – Would eliminate the use of signature bonds for people entering into pre-trial release and diverse programs. The legislation proposes changes to the cash bail system that will disproportionately harm Black and poor folx.
  o Status –This legislation passed both chambers of the General Assembly. The bill has been sent to Governor Kemp to be signed into law.
  o Call to action – Advocates are urged to contact Governor Kemp demanding he veto the bill.
4. IN A LANDMARK DECISION THE SUPREME COURT UPHOLDS ANTI-DISCRIMINATION PROTECTIONS FOR QUEER AND TGD EMPLOYEES

The U.S. Supreme Court delivered a historic victory to TGD folx in a trilogy of cases, consolidated as Bostock v. Clayton County on June 15, 2020.\(^73\) Altitude Express Inc. v. Zarda, Bostock v. Clayton County, and R.G. & G.R. Harris Funeral Homes v. EEOC, hereinafter referred to as Bostock, required the justices to determine whether federal law prohibiting sex discrimination in employment includes discrimination on the basis of sexual orientation and gender identity.\(^74\) Zarda and Bostock both involved Gay men who allege they were fired because of their sexual orientation. While Harris Funeral Homes involved Aimee Stephens, who was fired after coming out to her boss as a Trans woman.\(^75\) The court determined, “It is impossible to discriminate against a person for being homosexual or transgender without discrimination against that individual based on sex.”\(^76\) This case is momentous for TGD folx because it means that pursuant to federal law an employer cannot refuse to hire or fire folx because they are Queer or TGD.

In October of 2019 the American Civil Liberties Union (ACLU) appeared before the Supreme Court for oral arguments in Bostock. The case turned on how the court interpreted Title VII of the Civil Rights Act, enacted in 1964.\(^77\) Pursuant to this federal law, private employers cannot discriminate “because of (an employee’s) race, color, religion, sex, or national origin.”\(^78\) The decisions rested on how the justices construed the phrase “because of . . . sex” under the act. The court determined sexual orientation and gender identity are integral to the concept of “sex.” Therefore, a prohibition on sex discrimination under the law includes protections for Queer and TGD folx.\(^79\)

A Trilogy of Cases Behind the Bostock Decision

**Altitude Express Inc. v. Zarda**

Don Zarda performed hundreds of jumps as a skydiving instructor at Altitude Express in Long Island, New York before he was fired for being gay.\(^80\) As an instructor Zarda was required to perform tandem skydives, during which he and the client were strapped physically close together.\(^81\) He would occasionally tell female clients about his sexual orientation in order to alleviate any concerns they may have about being strapped to a man.\(^82\) In June of 2010, Zarda was terminated after stating that he was “100 percent gay” to a client as they prepared for a dive.\(^83\) Upon seeking unemployment benefits, Zarda was notified that his employer contacted the New York Department of Labor explaining that his termination was a result of sharing inappropriate information about his personal life with a customer.\(^84\) In response Zarda filed a discrimination charge with the EEOC alleging that he had been

---


\(^82\) Id. at 4.


---

Shifting the Narrative | www.sparkrj.org |
discriminated against because of his gender, specifically claiming that he was terminated because he did not conform his behavior and appearance to the sex stereotypes of a straight man.85

The EEOC issued Zarda a right to sue letter and he commenced an action in federal court, where he contended that his termination violated Title VII of the Civil Rights Act of 1964, which prohibits discrimination “because of sex.”86 Zarda’s suit alleged that he was fired because he failed to conform to the sex stereotype that men should only be attracted to women.87 The trial court dismissed the Title VII claim on holding that law does not permit claims alleging discrimination based on sexual orientation.88 Zarda appealed to the second circuit which reversed the trial court’s decision, reasoning that Title VII is applicable to the case because discrimination based on sexual orientation is motivated in part by sex and is therefore a subset of sex discrimination.89 The Seventh Circuit as well as the federal Equal Employment Opportunity Commission has ruled that firing an individual because of their sexual orientation is a form of sex discrimination.90 Unfortunately, Zarda died during a skydiving accident in 2014. His surviving partner and sister have continued the lawsuit on behalf of Zarda’s estate.

Bostock v. Clayton County

Gerald Bostock worked as a child-welfare services coordinator for at-risk youth in Clayton County, Georgia until his employer discovered he was gay.91 However, his former employer claimed that Bostock was fired after an audit indicated he had misused county funds, which he denied.92 The county also asserted that Title VII permits the firing of employees for being gay, and therefore the case should have been dismissed by the trial court.93 Bostock alleges after joining a gay softball league in 2013 he was met with negative comments about his sexual orientation at work.94 He claims to have been criticized for recruiting volunteers from the gay community in Atlanta for a program that provides representation for children in juvenile court.95 In federal court Bostock argued that his termination violated Title VII.96 The district court dismissed the case holding that Title VII does not apply to discrimination based on sexual orientation and the U.S. Court of Appeals for the 11th circuit upheld that ruling.97 The Supreme Court granted a writ of certiorari and consolidated Bostock with Altitude Express for one hour of oral argument in October of 2019.98

R.G. & G.R. Harris Funeral Homes Inc. v. EEOC

Aimee Stephens worked for six years as a funeral director at a funeral home outside of Detroit. Stephens, a Trans woman, was fired after her boss stated that allowing Stephens “to deny [her] sex” while representing the organization would violated “God’s commands.”99 The case, much as in Glenn v. Brumby, was brought on behalf of a Trans woman who was fired from her place of employment after she came out that she was Transgender and would be undergoing gender reassignment surgery. Aimee’s employer knew her initially as a man, but Aimee knew from the age of five that she was female. After decades of concealing her gender identity, Aimee came out to her family, friends, and co-workers as a woman. Stephens was fired immediately after giving a letter to her boss in which she introduced herself as Aimee.100 Her boss openly admitted to terminating Stephens because she is Trans, stating “this isn’t going to work out.” The ACLU represented Stephens before the Sixth Circuit Court of Appeals, which ruled the termination to be a form of sex discrimination under Title VII of the Civil Rights Act.

85 Id.
86 Id.
87 Id. “Firing a man because he is attracted to other men is like refusing to hire a woman because she has school-age children, failing to promote a woman because she is too ‘macho,’ or countenancing the sexual harassment of a man who is perceived by his coworkers to be vulnerable.”
88 Howe, supra note 6.
89 Liptak, supra note 82.
91 Liptak, supra note 82.
92 Id.
Sex Discrimination Under Title VII of the Civil Rights Act

Title VII of the 1964 Civil Rights Act protects employees from discrimination “because of such individual’s...sex.” Counsel for the employers in Bostock argued before the Supreme Court that the language of Title VII does not provide a legal basis for extending “sex” to include sexual orientation or gender identity in part because Congress’ intent was to address only certain forms of discrimination when the last was enacted in 1964. Counsel for the employer in Harris Funeral Homes contended that identifying as Trans is not legally relevant to Title VII because when law was enacted in 1964, “sex” meant “biologically male or female,” exclusively. The petitioner in Harris asserted that discrimination based on sex pursuant to Title VII’s ordinary meaning occurs only when an employer treats “biological” men better than “biological” women. However, the Supreme Court has repeatedly rejected these arguments. In Newport News Shipbuilding v. E. E. O. C., 682 F.2d 113, the Court determined that male employees are protected from sex discrimination under Title VII even though they were not the intended beneficiaries at the time the law was enacted.

The Supreme Court’s 1989 decision in Price Waterhouse v. Hopkins further established that companies could not discriminate based on gender stereotypes of how a man or woman should appear or behave. A 2011 legal decision out of the U.S. Court of Appeal for the 11th Circuit, Glenn v. Brumby, then became one of the first steps in developing legal precedent to specifically

---


---

Aimee Stephen’s letter to her employer

Dear friends and co-workers, I have known many of you for some time now. And I count you all as my friends. What I must tell you is very difficult for me and is taking all the courage I can muster. I am writing this both to inform you of a significant change in my life, and to ask for your patience, understanding and support, which I would treasure greatly. I have a gender identity disorder that I have struggled with my entire life. I have managed to hide it very well all the years. It all started when I was about 5 years old. I knew something was different about me, but I could not have told you what it was then. I have been in therapy for nearly four years now, and I have been diagnosed as a Transsexual. I have felt imprisoned in a body that does not match my mind, and this has caused me great despair and loneliness. With the support of my loving wife, I have decided to become the person that my mind already is. I cannot begin to describe the shame and suffering that I have lived with. Toward that end, I intend to have sex reassignment surgery. The first step I must take is to live and work full-time as a woman for one year. At the end of my vacation, on August 26, 2013, I will return to work as my true self, Aimee Australia Stephens, in appropriate business attire. I realize that some of you may have trouble understanding this. In truth, I have had to live with it every day of my life, and even I do not fully understand it myself. I have tried hard all my life to please everyone around me, to do the right thing and not rock the boat. As distressing as this is sure to be to my friends and some of my family, I need to do this for myself, to end the agony in my soul. It is my wish that I can continue my work at R.G. and G.R. Harris Funeral Homes doing what I have always done, which is my best. The Daily, ‘Because of Sex,’ The New York Times (Nov. 7, 2019), https://www.nytimes.com/2019/11/07/podcasts/the-daily/transgender-supreme-court.html
protect TGD folx from discrimination on the basis of their gender identity. The Eleventh Circuit Court of Appeals found the Plaintiff, Vandy Beth Glenn, a Trans woman, had suffered discrimination when she was fired after disclosing to her employer that she was planning to Transition physically to align with her female gender identity. These cases laid the foundational precedent by which the Equal Employment Opportunity Commission now considers a person’s identity as TGD to be included under the protected class of ‘sex’. Other courts have determined Title VII protects TGD employees outside of the sex-stereotyping analysis in Price Waterhouse acknowledging that it is not possible to discriminate against a person for being TGD without relying on sex-based considerations. The Supreme Court’s opinion in Bostock is momentous because it solidified discrimination based on individual’s sexual orientation or TGD status as an impermissible sex-based classification under the law because it cannot be defined without reference to a person’s sex. 105

**Bostock’s Potential Impact and Limitations**

The implications that Bostock raises for TGD rights are immense and could have far reaching effects beyond the scope of employment. Pivotal Queer rights cases before the Supreme Court up to this point were grounded in constitutional law, including *Rover v. Evans* 106, *Lawrence v. Texas* 107, *U.S. v. Windsor* 108, and *Obergefell v. Hodges*. 109 While the decision in Bostock turned on statutory interpretation, 110 Despite extensive case law and the EEOC’s position that Title VII extends sexual orientation and gender identity, the Department of Justice under the Trump administration urged the Supreme Court to circumvent the language of the statute to deny Queer and TGD folx protections against employment discrimination. Fortunately, the Supreme Court determined it is unlawful under federal law to fire or refuse to hire a Queer or TGD person for their gender identity or sexual orientation. 111

*Bostock* is a 6-3 majority decision, notably authored by conservative Justice and Trump nominee, Neil Gorsuch. This was the first case on Queer and TGD before the Supreme Court since the retirement of Justice Kennedy last year. 112 Kennedy notoriously authored the majority opinions in the court’s four major Queer rights decision. Advocates and legal scholars were concerned that with the current makeup of the court it would be difficult to find a fifth vote to join the four liberal justices to vote in favor of the Queer and TGD rights claims before the court.

The timing of the *Bostock* ruling is significant because it may serve as an essential blow to the Trump administration as the Department of Health and Human Services (HHS), Department of Justice (DOJ), and Department of Education (ED), attempt to deny Queer and TGD folx protection from sex discrimination under federal law. The Supreme Court handed down its decision in *Bostock* three days after the Trump Administration finalized a rule removing protections for Queer and TGD folx under the Affordable Care Act, casting the legality of the regulation into serious doubt. 113

The administration’s attempt to strip TGD protections is clear. In 2017 the DOJ filed a brief in *Zarda v. Altitude Express* with the U.S. Court of Appeal for the Second Circuit. The brief noted that since 1974, Congress has declined to add a sexual-orientation provision to Title VII and the federal government’s status as the largest employer in the country, has a substantial interest in

105 *See also*, Liptak, supra note 82; Big picture: it’s hard to see how firing someone for being LGBTQ doesn’t involve the person’s sex. You can’t even describe being Trans or gay without talking about the individuals’ sex. At its core, the federal ban on sex discrimination is simple: workers are not supposed to be treated differently because of their sex.

106 517 U.S. 620 (1996), struck down a Colorado constitutional amendment that had banned laws protecting gay men and lesbians.

107 539 U.S. 558 (2003), struck down laws making gay sex a crime.

108 570 U.S. 744 (2013), overturned a ban on federal benefits for married same-sex couples.

109 576 U.S._ (2015), struck down state bans on same-sex marriage, ruling that the Constitution guarantees a right to such unions.

110 Liptak, supra note 82.


112 Liptak, supra note 82.

the proper interpretation of Title VII. The DOJ’s position on the issue not only broke from recent court decisions, but also contravened guidance issued by the EEOC.114

The Court in Bostock explicitly rejected the argument that Congress did not intend to include protections for Queer and TGD folx when Title VII of the Civil Rights Amendment was enacted and should therefore refuse to expand the definition of sex to be inclusive of sexual orientation and gender identity under the law. Gorsuch, writing for the court, determined the language in the law, because of sex, was clear and therefore Congressional intent was not relevant or necessary to make the decision. Instead Gorsuch found it is impossible to discriminate against a person for being Queer or Trans without discriminating against that individual based on sex. Thereby interpreting the plain meaning of the word sex in the statute to be inclusive of sexual orientation and gender identity.115

Prior to the Bostock decision, TGD folx residing in the majority of the country could be fired because of their sexual orientation or gender identity. The decision comes at a time when at least one in three TGD folx will experience discrimination in the workplace.116

Only twenty-one states and the District of Columbia have explicitly prohibited discrimination on the basis of sexual orientation and gender identity.117 The Bostock decision is significant but is likely limited and certainly does not go far enough. Title VII still permits religious organizations to discriminate based on “faith.” In Bostock, the Court refers to the Religious Freedom Restoration Act (RFRA) as a “kind of super statute, displacing the normal operation of other federal laws [that] might supersede Title VII’s commands in appropriate cases.”118 This reasoning should give TGD folx and advocates pause. Especially in light of the Supreme Court’s decision in Burwell v. Hobby Lobby, where the Court held that RFRA applies to religious organizations as well as for-profit corporations with a religious owner or board, thereby empowering them with a license to discriminate against Queer and TGD employees.119 In light of the Bostock decision it is imperative that Congress enact the Do No Harm Act, which would cart out of RFRA the power to discriminate against Queer and TGD folx.120 It is also up to Congress to pass legislation, such as The Equality Act, to ensure comprehensive non-discrimination protections for TGD folx.

Limitations and Implications for future work
We acknowledge the limitations in creating a report highlighting and synthesizing studies and analyses conducted by TGD communities yet authored by non-TGD co-conspirators. SPARK is committed to applying its resources to illuminate and create urgency surrounding the root causes of health disparities affecting TGD folx in Georgia, not only from a policy standpoint but also to affect change from within the medical arena. For that reason, SPARK is engaging medical professionals and co-conspirators on SPARK’s Board and network to publish medical journal articles that will identify and educate on health disparities and the social determinants of health. Furthermore, SPARK is committing to a subsequent participatory and narrative-based policy report where TGD folx’ lived experiences and stories will be centered and lead the design, content, analysis, writing, and dissemination of the report. Reproductive justice demands centering and uplifting the voices and experiences of directly affected people. We firmly believe no single voice can describe the complex and diverse range of human experiences in the context of injustice and liberation.121 To embrace the vision of RJ, one must embrace polyvocality – many voices telling their stories that together may be woven into a unified movement for human rights.” We commit to lifting up TGD folx voices and stories in our pursuit of moving towards sexual and reproductive liberation and safety, dignity, and respect in health care.

114 Feuer, supra note 115.
117 Millhiser, supra note 98; See also Anna North, How the LGBTQ rights cases before the Supreme Court affect all Americans, Vox (Oct. 8, 2019, 10:10 AM), https://www.vox.com/2019/10/8/20903088/supreme-court-lgbt-lgbtq-case-scotus-stephens.
118 Marcia Hamilton, The Scope of Bostock v. Clayton

119 Id.
120 Id.