

Meaningless Involvement: How Traditional Modes of Involvement Exclude Transgender People from Environmental Justice

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ABSTRACT

Environmental justice is a promise for the meaningful involvement of people unjustly harmed by environmental hazards—a promise that is unfulfilled for transgender Americans. Transgender individuals face unique, life-threatening health and environmental disparities while being excluded by the Environmental Protection Agency and community groups tasked with alleviating those injustices. This Article details how the marginalization of transgender people aggravates the environmental harms that they experience, thus demanding the proactive, facilitated involvement of the transgender community in environmental outreach and response. While transgender rights continue to achieve public acknowledgment, transgender people remain almost forgotten in scientific, policy, and legal literature concerning environmental inequities. This Article thus proposes a foundation of policy and practice to adopt a more queer- and transgender-inclusive perspective for meaningful involvement in environmental law in order to safeguard the lives of transgender people that hang in the balance.

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Introduction	845
A. Environmental Justice, Equity, and Racism	846
B. New Perspectives from Queer Ecology.....	848
C. Overview and Roadmap	849
I. Transgender People and Gender Identity	850
A. The Breadth of Gender Identity and Expression	851
B. Science and Medicine of Gender Identity	852
C. Transgender Identity and Gender Dysphoria	852
D. Demographics of Transgender People.....	853
E. Transitioning.....	854
F. “Living in the Closet” and Discrimination.....	855
II. Experiences of Prejudice and Discrimination.....	856
A. Social Marginalization.....	858
1. Social Rejection of Transgender People	858
2. Religious Discrimination and Christianity.....	859
3. Rejection by Family Members	860
4. Physical and Sexual Violence	860
5. Gender-Affirming Identity Documents	862
6. Gender-Affirming Bathroom Access	863
B. Economic Marginalization	864
C. Political and Governmental Marginalization.....	866
III. Health and Environmental Disparities.....	869
A. Limited Study and Data Collection	869
B. Inequities in Healthcare Access.....	870
C. Insurance and Expenses for Medical Care	871
D. Mental and Behavioral Health Outcomes.....	872
E. Suicide, Suicidal Ideation, and Self-Harm	873
F. Physical Health Outcomes.....	874
G. Inequities in Social Services in General.....	875
H. Poor Quality Living Conditions	876
I. Disastrous Effects of Climate Change.....	877
IV. Failures of Meaningful Involvement.....	878
A. Definitions of Environmental Justice	879
B. No Policies around Transgender Involvement	880
C. Hosting Public Events in Religious Spaces.....	881
D. Practices During Disaster Response.....	885
E. The Flint Water Crisis	886
V. Recommendations to Promote Meaningful Involvement	887
A. Establishing Formal Inclusion Policies	888
B. Community Involvement Plans	889
C. Messaging and Communications.....	890
D. Building Relationships with Transgender Organizations.....	892
E. Holding Safe and Accessible Meetings.....	892
F. Affirming Access to Bathrooms	893

G. Disaster Response Practices	894
H. Using Inclusive Language	895
I. Training and Cultural Competency	896
Conclusion	897

INTRODUCTION

*Environmental justice is served when people can realize their highest potential, without experiencing “isms.”*¹

On August 29, 2005, Hurricane Katrina made landfall in Louisiana and Mississippi as a Category 3 hurricane.² One of the most destructive natural disasters in U.S. history, Katrina caused devastating flooding in New Orleans, after numerous levees around the city failed.³ By August 31, at least 80 percent of the city was under water.⁴ Hurricane Katrina was responsible for over 1,800 deaths, wrought over \$150 billion in damages, and displaced more than one million people in the Gulf region.⁵

Among the tales of destruction is the story of Sharli’e Vicks, a transgender woman, New Orleans resident, and survivor of Hurricane Katrina.⁶ In the hurricane’s wake, Ms. Vicks and two of her cousins were forced to swim a mile and a half to escape their flooded downtown neighborhood.⁷ Finding shelter at the New Orleans Convention Center, then on an overpass of Interstate 10, and then at the Louisiana Superdome, the trio was finally evacuated days later by bus to College Station, Texas.⁸ In College Station, a shelter was set up at Texas A&M University.⁹

However, the shelter would not become the refuge Ms. Vicks had sought. Once she arrived, Ms. Vicks spoke with a shelter volunteer about showering, explaining her need to use women’s facilities, as she was uncomfortable using

1. Interview, BUNYAN BRYANT, PHD, <http://www-personal.umich.edu/~bbryant/interview1.html> (last visited July 25, 2020).

2. *Hurricane Katrina Statistics Fast Facts*, CNN, <https://www.cnn.com/2013/08/23/us/hurricane-katrina-statistics-fast-facts/index.html> (last updated Aug. 27, 2021, 8:56 PM); Jeffrey Medlin et al., *Extremely Powerful Hurricane Katrina Leaves a Historic Mark on the Northern Gulf Coast*, NAT’L WEATHER SERV., <https://weather.gov/mob/katrina> (last updated Nov. 2016).

3. *Hurricane Katrina Statistics Fast Facts*, *supra* note 2.

4. Medlin et al., *supra* note 2.

5. *Hurricane Katrina Statistics Fast Facts*, *supra* note 2.

6. Lisa Gray, *Transgender Evacuee Survives All Obstacles*, HOUSTON CHRON. (Sept. 15, 2005), <https://www.chron.com/news/hurricanes/article/Transgender-evacuee-survives-all-obstacles-1931933.php>.

7. *Id.*; Laura Hensley, *Transgendered Evacuee Arrested*, EAGLE, https://theeagle.com/news/local/transgendered-evacuee-arrested/article_1e6d0ab3-8123-5050-9b71-11528863bb17.html (Oct. 23, 2015).

8. Gray, *supra* note 6.

9. *Id.*

facilities with men.¹⁰ Later that evening, Ms. Vicks showered in the women's facilities without incident.¹¹ After receiving medical care the following day, Ms. Vicks returned to the showers again that evening.¹² Shortly after leaving the shower this time, Ms. Vicks was confronted and arrested by the university police department.¹³ Her charge was trespassing by using the women's facilities of the shelter, despite her womanhood.¹⁴

Ms. Vicks languished in a solitary cell at the local jail for the better part of a week.¹⁵ Ms. Vicks faced a \$6,000 bond she could not afford, much less as an evacuee of Hurricane Katrina.¹⁶ Only after a local paper ran the story of her struggle did public attention shine scrutiny on Ms. Vicks' case.¹⁷ The Human Rights Campaign, which began to advocate on Ms. Vicks' behalf, contacted the local sheriff's department, and heard from deputies who referred to Ms. Vicks as an "it."¹⁸ Finally, the county attorney was pressured into declining to press charges, and Ms. Vicks was released.¹⁹

A. *Environmental Justice, Equity, and Racism*

The story of Sharli'e Vicks, a transgender woman who simply wanted to shower after escaping from the most destructive hurricane in United States history, is a story without environmental justice. The principles of environmental justice state that all communities where people live, work, play, and learn²⁰ should be "safe, nurturing and productive."²¹ Ms. Vicks survived an environmental disaster, yet was denied equal access to shelter and sanitation, impeding her safety, health, and productivity.

The environmental justice movement originated from cries against environmental racism and the disparate impacts environmental hazards and pollution impose on communities of color.²² The first widely recognized action of the environmental justice movement took place in Warren County, North

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Hensley, *supra* note 7.

15. *Id.*; Gray, *supra* note 6.

16. Hensley, *supra* note 7; Gray, *supra* note 6.

17. Gray, *supra* note 6.

18. *Id.*

19. *Id.*

20. QUEER ECOLOGIES: SEX, NATURE, POLITICS, DESIRE 200 (Catriona Mortimer-Sandilands & Bruce Erickson eds., 2010).

21. R.I. LEGAL SERVS., ENVIRONMENTAL JUSTICE FOR STATES: A GUIDE FOR DEVELOPING ENVIRONMENTAL JUSTICE PROGRAMS FOR STATE ENVIRONMENTAL AGENCIES 5 (2006), dem.ri.gov/envequity/pdf/rilsrept.pdf (quoting ENVIRONMENTAL JUSTICE: ISSUES, POLICIES, AND SOLUTIONS 5–6 (Bunyan Bryant ed., 1995)).

22. *Id.* at 5–6.

Carolina in 1982.²³ There, community members made an organized protest against the addition of a polychlorinated biphenyl landfill in the predominantly Black community.²⁴ After 500 people were arrested for resisting the landfill, the project still went forward.²⁵ But the Warren County protests proved to be a watershed moment, establishing environmental justice as a movement in the United States.²⁶ Soon after, the United States General Accounting Office would conduct research finding that three-fourths of commercial hazardous waste landfills were located in predominately Black communities nationwide, formalizing the importance of the environmental justice struggle.²⁷

Today, environmental justice is not merely an idea—it is also law. In 1994, President Bill Clinton signed Executive Order No. 12,898, which established environmental justice as a mission of every executive agency.²⁸ Environmental justice has since been adopted into common law, and challenges of environmental justice analyses have been recognized in several circuit courts under the Administrative Procedure Act.²⁹ For its frontline work in environmental issues, the Environmental Protection Agency (EPA) is an essential player for pursuing environmental justice in communities nationwide. The definition of environmental justice, as established by the EPA, thus remains highly influential in environmental justice discourse: “Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies.”³⁰

But what does “meaningful involvement” entail? How are people meaningfully involved in environmental concerns that affect them? The EPA provides a definition for meaningful involvement:

23. *Id.* at 7; LESLIE R. KAHIIHIKOLO, HAWAII ENVIRONMENTAL JUSTICE INITIATIVE REPORT 2-1 (Jan. 9, 2008), oecq2.doh.hawaii.gov/Miscellaneous_Docs/2008-Hawaii-Environmental-Justice-Report.pdf.

24. KAHIIHIKOLO, *supra* note 23, at 2-1; R.I. LEGAL SERVS., *supra* note 21, at 7.

25. Clifford Villa, Nadia Ahmad, Rebecca Bratspies, Roger Lin, Clifford Rechtschaffen, Eileen Gauna, & Catherine O’Neill, ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION 4 (3d ed. 2020); *see also* KAHIIHIKOLO, *supra* note 23, at 2-1.

26. VILLA ET AL., *supra* note 25, at 4; *see also* KAHIIHIKOLO, *supra* note 23, at 2-1;

27. *See id.*; U.S. GEN. ACCOUNTING OFF., RCED-83-168, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES 2 (1983), <https://www.gao.gov/products/rced-83-168>.

28. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994).

29. *See, e.g.*, *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 255 F. Supp. 3d 101, 136 (D.D.C. 2017) (citing *Cmtys. Against Runaway Expansion, Inc. v. Fed. Aviation Admin.*, 355 F.3d 678 (D.C. Cir. 2004)); *Coal. for the Advancement of Reg’l Transp. v. Fed. Highway Admin.*, 576 Fed. App’x 477, 495 (6th Cir. 2014) (utilizing Executive Order No. 12,898 as a standard to evaluate “procedural and substantive requirements” for assessing environmental justice impacts); *Coliseum Square Ass’n, Inc. v. Jackson*, 465 F.3d 215, 232 (5th Cir. 2006); *see also* Administrative Procedure Act, 5 U.S.C. §§ 500–96.

30. *Learn About Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (last updated Sept. 22, 2021).

People have an opportunity to participate in decisions about activities that may affect their environment and/or health; The public's contribution can influence the regulatory agency's decision; Community concerns will be considered in the decision making process; and Decision makers will seek out and facilitate the involvement of those potentially affected.³¹

In other documents, the EPA expands its definition, stating that meaningful involvement should: "Provide the public with the opportunity to give informed and meaningful input; Ensure adequate time and opportunity for the public to provide input and for that input to be considered[.]"³²

B. *New Perspectives from Queer Ecology*

When Sharli'e Vicks, a survivor of Hurricane Katrina, was arrested at an evacuation shelter for her transgender identity, was she meaningfully involved in the implementation of disaster response? Was her involvement in the rescue process meaningfully facilitated in any way?

A perspective of environmental justice grounded in queer ecology would certainly say no. Queer ecology, referencing not only transgender people but LGBTQ people in general,³³ is a field which combines concepts of feminism and environmentalism into a new social justice perspective, advocating for inclusivity and diversity.³⁴ While some argue that LGBTQ rights and environmental justice do not overlap,³⁵ queer ecology instead acknowledges the often queer nature of the environment itself.³⁶ Nature is queer by its vibrant complexity; it is also queer through its ignorance of prescriptive roles imposed with human assumptions, such as heterosexuality. The red squirrel mounts partners of both sexes with fever, and around 12 percent of pairs of the "estimable" Canada geese are same sexed.³⁷ Nature's queerness defies the "easy" narrative of nature as "pure," and thus heterosexual. Likewise, queer ecology rejects the cis-heteronormative³⁸ perspective of environmentalism that

31. *Id.*

32. EPA REGION 2, HUDSON RIVER PCBs SUPERFUND SITE DRAFT COMMUNITY INVOLVEMENT PLAN 4-1 (2003), https://www3.epa.gov/udson/draft_cip.pdf.

33. Caitlin Marie Doak, *Queering Nature: The Liberatory Effects of Queer Ecology* 1–2 (May 13, 2016) (Honors Thesis, Dickinson College), scholar.dickinson.edu/cgi/viewcontent.cgi?article=1229&context=student_honors.

34. QUEER ECOLOGIES: SEX, NATURE, POLITICS, DESIRE, *supra* note 20, at 203.

35. Margaret Overton, *Blog Post Why Queer Ecology Is Pointless*, DUKE GREEN CLASSROOM (Jan. 28, 2017), https://sites.duke.edu/lit290s-1_02_s2017/2017/01/28/blog-post-why-queer-ecology-is-pointless/.

36. Alex Johnson, *How to Queer Ecology One Goose at a Time*, ORION MAG., <https://orionmagazine.org/article/how-to-queer-ecology-once-goose-at-a-time/> (last visited Dec. 2, 2021).

37. *Id.*; BRUCE BAGEMIHL, *BIOLOGICAL EXUBERANCE: ANIMAL HOMOSEXUALITY AND NATURAL DIVERSITY* 461–64, 483–87 (2000).

38. The term "cis-heteronormative" refers to ideas that conform to gender- and sexuality-based expectations of society, particularly to ideas that are "cis" (not transgender) and "hetero" (straight) in expectation. *See Terms & Definitions*, AMHERST COLL., <https://www.amherst.edu/campuslife/our-community/queer-resource-center/terms-definitions> (last visited Oct. 23, 2021).

cisgender and heterosexual individuals are the standard for “normal” and thus the primary people of focus in all environmental injustice concerns.³⁹

It was the recognition of this ingrained normalcy of cis-heteronormativity in environmental justice that led to this Article. This Article began as an investigation into how well the EPA and community groups pursue outreach with the transgender community and meaningfully involve the transgender community in discourse around health and environmental concerns. It was an investigation into how a queer ecology may have found roots in the modes of the EPA and disaster response organizations, such as state emergency management offices, the Federal Emergency Management Agency (FEMA), other agencies like the Coast Guard, and groups like the American Red Cross. But a more somber picture emerged: meaningful involvement of the transgender community is almost entirely nonexistent in environmental justice.

This Article details how the failures of the EPA and community groups to meaningfully involve the transgender community come with real-world costs. Silence on transgender issues—by the very groups tasked with advocating and pursuing environmental justice—excludes and threatens the lives of transgender people who already suffer greatly under health and environmental disparities.⁴⁰

C. Overview and Roadmap

To address how transgender people are excluded from meaningful involvement in health and environmental concerns, this Article will proceed in five parts. Part I will discuss the breadth of gender identity and major elements of the transgender experience. Part II will address the social, economic, and political oppression of transgender people, which in turn silences voices in the transgender community. Then, Part III will address the health and environmental disparities experienced by transgender people in the United States. Part IV will discuss how the EPA and community groups have failed to meaningfully involve transgender individuals. And finally, Part V will provide concrete suggestions for the EPA and other organizations to meaningfully involve the transgender community.

This Article will not perpetuate the belief that transgender bodies are fair game for debate and dissection.⁴¹ Instead, it assumes that transgender people, as human beings, are worthy of concern and support when their health and safety are jeopardized. Thus, this Article will not address the question of *whether* transgender people should be meaningfully involved, but instead asks *how* transgender individuals can be meaningfully involved.

39. See Johnson, *supra* note 36.

40. See Kyle C. Velte, *Mitigating The “LGBT Disconnect” Title IX’s Protection of Transgender Students, Birth Certificate Correction Statutes, and the Transformative Potential of Connecting the Two*, 27 AM. U. J. GENDER, SOC. POL’Y, & L. 193, 258 (2019).

41. See M. Dru Levasseur, *Gender Identity Defines Sex: Updating the Law to Reflect Modern Medical Science Is Key to Transgender Rights*, 39 VT. L. REV. 943, 998 (2015).

I. TRANSGENDER PEOPLE AND GENDER IDENTITY

There's a gender in your brain and a gender in your body. For 99 percent of people, those things are in alignment. For transgender people, they're mismatched. That's all it is. It's not complicated, it's not a neurosis. It's a mix-up.⁴²

Transgender people are people whose gender identities or expressions do not match the sex assigned to them at birth.⁴³ "Transgender" is an umbrella term, encompassing a wide range of identities and expressions of gender.⁴⁴ Because transgender people as a community and as individuals are not monolithic, this Part describes the key elements of transgender identity as they are commonly known, based on present data and information.⁴⁵ However, terminology and identities are ever-evolving.⁴⁶

"Sex assigned at birth" is a label made mostly by an observer's interpretation of a newborn's external anatomy and genitals.⁴⁷ This label is usually then applied to a newborn's birth certificate as legal recognition of the initial observation.⁴⁸ When a transgender person realizes their identity, it often includes a sensation or self-knowledge that their assignment at birth was incorrect.⁴⁹ Many also realize that their body's characteristics, genitals, and other physical attributes are not congruent with their internal sense of gender.⁵⁰

Transgender people differ from *cisgender* people, those who do not experience an incongruence between assigned sex and their gender identity.⁵¹ Transgender people can also be distinguished from intersex people, whose

42. Cintra Wilson, *The Reluctant Transgender Role Model*, N.Y. TIMES (May 6, 2011), <https://www.nytimes.com/2011/05/08/fashion/08CHAZ.html>.

43. Catherine Jean Archibald, *Transgender and Intersex Sports Rights*, 26 VA. J. SOC. POL'Y & L. 246, 249–50 (2019).

44. *Transgender Persons*, CTRS. FOR DISEASE CONTROL & PREVENTION, cdc.gov/lgbthealth/transgender.htm (last visited Dec. 2, 2021). I use the term "transgender" throughout this Article for the sake of consistency. I also reference specific gender identities when specific information is available in the literature. However, "transgender" should be interpreted in its broadest form to include transgender women and men; nonbinary people; agender, genderqueer and genderfluid people; third-gender and two-spirit people; and all other people who acknowledge being transgender as or as part of their gender identity.

45. See Jessica A. Clarke, *They, Them, and Theirs*, 132 HARV. L. REV. 894, 904–05 (2019).

46. *Id.* at 904.

47. Christy Hall & Conner Suddick, *Beyond the Binary Practical Advice for Using Gender Pronouns*, BENCH & B. MINN., Feb. 2019, at 22, 22, <https://my.mnbar.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=a39bc242-d146-c6a5-abda-87f58bcb055a&forceDialog=0>.

48. See Pamela Halliwell, *The Psychological & Emotional Effects of Discrimination Within the LGBTQ, Transgender, & Non-Binary Communities*, 41 T. JEFFERSON L. REV. 222, 223–24 (2019).

49. Clarke, *supra* note 44, at 899 n.22; Levasseur, *supra* note 41, at 955.

50. Clarke, *supra* note 45, at 897–98.

51. See Levasseur, *supra* note 41, at 946.

physical attributes of sex differ from or may lie in between categories of male and female.⁵² Intersex people, however, may still identify as transgender.⁵³

A. *The Breadth of Gender Identity and Expression*

Because “transgender” is an umbrella term, it is important to recognize the breadth of gender identity and expression that it reflects.⁵⁴ Gender identity is commonly defined as the internal understanding of an individual’s own gender, or the gender someone identifies with.⁵⁵ Gender expression is often understood to be an individual’s outward presentation of their gender, such as their clothing, haircut, behavior, etc.⁵⁶ How an individual describes their gender, and then chooses to express it, is often influenced by a host of social, cultural, and psychological factors.⁵⁷

Transgender people may have a gender identity that aligns with the binary identities of men and women or associate with one of many nonbinary identities.⁵⁸ Nonbinary people generally do not identify exclusively as male or female⁵⁹ but can instead be both binary genders, multiple genders, no gender, a third gender, or simply right in between.⁶⁰ People whose identity flows between genders may identify as genderqueer or genderfluid.⁶¹ Outside of modern U.S. perceptions of gender, other peoples recognize third gender categories, such as two-spirit persons among First Nations, American Indian, and Alaskan Native peoples and *mahuwahine* among Native Hawaiians.⁶²

All people can also express their gender along a spectrum, sometimes conceptualized as a range from feminine, through androgynous, to masculine.⁶³ How an individual expresses their gender may or may not conform to societal ideas and expectations of one’s gender.⁶⁴ People who do not conform to these

52. AYDEN SCHEIM ET AL., COUNTING TRANS PEOPLE IN: ADVANCING GLOBAL DATA COLLECTION ON TRANSGENDER COMMUNITIES AND HIV 7 (2016), <https://transglobalactivism.org/wp-content/uploads/2016/07/Counting-Trans-People-In-Web.pdf>; Clarke, *supra* note 45, at 898.

53. See Clarke, *supra* note 45, at 898.

54. *Transgender Persons*, *supra* note 44.

55. *Id.*; MOVEMENT ADVANCEMENT PROJECT ET AL., A BROKEN BARGAIN FOR TRANSGENDER WORKERS 1 (2013), https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1244474.pdf.

56. *Transgender Persons*, *supra* note 44; MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 1.

57. Hall & Suddick, *supra* note 47, at 22.

58. ORG. FOR REFUGEE, ASYLUM & MIGRATION, ORAM TRAINING ON SEXUAL AND GENDER MINORITIES: WHAT REFUGEE PROFESSIONALS NEED TO KNOW AND DO 5 (2015), https://65cf986c-561b-404d-86c6-239bb71dad13.usrfiles.com/ugd/65cf98_02f09ee0311b4c16873ad42ebdf0d986.pdf.

59. Archibald, *supra* note 43, at 250; Clarke, *supra* note 45, at 897.

60. Clarke, *supra* note 45, at 905–08.

61. Heather A. McCabe & M. Killian Kinney, *LGBTQ+ Individuals, Health Inequities, and Policy Implications*, 52 CREIGHTON L. REV. 427, 429 (2019).

62. Clarke, *supra* note 45, at 907; Halliwell, *supra* note 48, at 226.

63. ORG. FOR REFUGEE, ASYLUM & MIGRATION, *supra* note 58, at 5.

64. See Hall & Suddick, *supra* note 47, at 22.

expectations are sometimes recognized as gender nonconforming, and gender-nonconforming people may or may not identify as transgender as well.⁶⁵

B. Science and Medicine of Gender Identity

While recognizing the fundamentals of gender identity is crucial to humanizing the transgender experience, gender also has roots in medical and psychological study.⁶⁶ Gender itself is not merely psychological, but biological and genetic.⁶⁷ Neurological studies have explored how gender may exist as both neurological structures in the brain and as a cognitive experience.⁶⁸ In fact, many transgender individuals have brain structures that align more closely to their gender identity than assigned gender.⁶⁹

Though sex has traditionally been observed and assigned at birth through a genital shorthand, genitals are not determinative in scientifically evaluating physical sex.⁷⁰ Simple binary classifications of sex are in and of themselves faulty because the physiological expression of sex exists on a spectrum.⁷¹ Instead, at least nine elements of sex are recognized, including: (1) chromosomal sex, (2) gonadal sex, (3) hypothalamic sex, (4) fetal hormonal sex, (5) internal morphologic sex (internal genitalia), (6) external morphological sex (external genitalia), (7) sex assigned at birth and through rearing, (8) pubertal hormonal sex, and (9) gender identity.⁷² However, the gender identity asserted by a person is determinative.⁷³

C. Transgender Identity and Gender Dysphoria

One area of special confusion around transgender identity and medicine is the diagnosis of gender dysphoria.⁷⁴ Gender dysphoria is the distress a person experiences due to the differences between their true gender, the gender assigned to them at birth, and the physical attributes associated with that gender.⁷⁵ Although recognized in the *Diagnostic and Statistical Manual of Mental Disorders*, gender dysphoria is not itself defined as a mental illness or disorder.⁷⁶

65. *Id.*

66. See generally Shannon P. Minter & Mara Keisling, *The Role of Medical and Psychological Discourse in Legal and Policy Advocacy for Transgender Persons in the United States*, 14 J. GAY & LESBIAN MENTAL HEALTH 145 (2010).

67. Levasseur, *supra* note 41, at 951.

68. Velte, *supra* note 40, at 202–03.

69. *Id.*; Levasseur, *supra* note 41, at 955.

70. Velte, *supra* note 40, at 200–01; Levasseur, *supra* note 41, at 983.

71. Archibald, *supra* note 43, at 255.

72. Levasseur, *supra* note 41, at 980–81.

73. *Id.* at 984.

74. See Ann P. Haas et al., *Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and Recommendations*, 58 J. HOMOSEXUALITY 10, 36 (2010).

75. Levasseur, *supra* note 41, at 952–54.

76. Jennifer Cobb & Myra McKenzie-Harris, “And Justice for All” . . . Maybe Transgender Employee Rights in America, 34 ABA J. LAB. & EMP. L. 91, 94–95 (2019); AM. PSYCHIATRIC ASS’N,

Many transgender people do not even experience gender dysphoria.⁷⁷ Transgender individuals also may not want a diagnosis of gender dysphoria because it pathologizes their experiences.⁷⁸ However, a diagnosis of gender dysphoria may still be required by healthcare providers prior to medical transitions.⁷⁹

D. Demographics of Transgender People

The prevalence of transgender people in the United States is a crucial factor for discussing the need for meaningful involvement with the transgender community. Currently, a slight majority of Americans do not personally know a transgender individual.⁸⁰ Instead, mass media is where most Americans are exposed to transgender people.⁸¹

However, two studies from 2016 indicate that over a million adults in the United States are transgender, which is between 0.4 and 0.6 percent of the adult population.⁸² The first of these studies recognized that its findings were likely an undercount.⁸³ The second study found the number of transgender adults to be fairly stable throughout the country, ranging from 0.3 percent of adults in North Dakota to 0.8 percent in Hawaii.⁸⁴ Estimations also indicate that 0.21 percent of adults in the United States⁸⁵, or around 35 percent of all transgender people, identify as nonbinary.⁸⁶ Because transgender individuals comprise a small but notable segment of the adult population, and because of the transgender community's lack of social and political power historically, transgender people are often referred to as a gender minority.⁸⁷

DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 451–60 (5th ed. 2013); *see also* Haas et al., *supra* note 74, at 35–36

77. Velte, *supra* note 40, at 201.

78. *See id.*; Michele Goodwin & Erwin Chemerinsky, *The Transgender Military Ban Preservation of Discrimination Through Transformation*, 114 NW. U. L. REV. 751, 757–58 (2019); U.N. DEV. PROGRAMME ET AL., IMPLEMENTING COMPREHENSIVE HIV AND STI PROGRAMMES WITH TRANSGENDER PEOPLE: PRACTICAL GUIDANCE FOR COLLABORATIVE INTERVENTIONS 49 (2016), https://undp.org/content/dam/undp/library/HIV-AIDS/Key%20populations/3_TRANSIT_Chapter%202.pdf.

79. Velte, *supra* note 40, at 201.

80. *Id.* at 247.

81. Cobb & McKenzie-Harris, *supra* note 76, at 94; *see also id.* at 195

82. Esther L. Meerwijk & Jae M. Sevelius, *Transgender Population Size in the United States A Meta-Regression of Population-Based Probability Samples*, AM. J. PUB. HEALTH, Feb. 2017, at e1, e7, doi.org/10.2105/AJPH.2016.303578; ANDREW R. FLORES ET AL., WILLIAMS INST., HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 3 (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Adults-US-Aug-2016.pdf>.

83. Meerwijk & Sevelius, *supra* note 82, at e7.

84. FLORES ET AL., *supra* note 82, at 3.

85. Clarke, *supra* note 45, at 899.

86. Marie-Amélie George, *Framing Trans Rights*, 114 NW. U. L. REV. 555, 560 (2019).

87. *See* ORG. FOR REFUGEE, ASYLUM & MIGRATION, *supra* note 58.

E. Transitioning

One of the cornerstone experiences of many transgender people is transitioning.⁸⁸ Transitioning can be defined as when a transgender individual stops living as their assigned gender and begins living as their true gender.⁸⁹ Transitioning can include social, medical, and legal transitions, though transgender individuals may only desire to, or only have the resources to, pursue some of these avenues of transition.⁹⁰

Social transitions are the processes of publicly changing one's gender.⁹¹ Social transitioning can include changing one's appearance, sometimes through changes in clothing, hair, makeup, or other style choices.⁹² It can also include adopting a new name and new pronouns in order to better reflect one's gender.⁹³ Social transition is the most common transition that a transgender individual pursues.⁹⁴ Because there are few physical consequences, transgender youth are especially encouraged to explore social transitioning as part of discovering their gender identity.⁹⁵

Medical transitions can involve surgical, hormonal, or other treatments to affirm a transgender individual's gender.⁹⁶ Mass media popularly focuses on transgender people's genital surgeries, even though a small percentage of transgender individuals undergo such surgeries.⁹⁷ Medical transitions usually focus on affirming gender identity and relieving gender dysphoria in order to make transgender people feel at home in their bodies.⁹⁸ For adolescents, medical transitions can involve puberty blockers, which reversibly delay the onset of puberty, and give youth a chance to first explore an affirming gender identity.⁹⁹

Despite the popular focus on gender-affirming surgeries, surgery in general is not required for transgender people to live as their gender identity, or to be considered transgender.¹⁰⁰ However, for some transgender individuals, surgical operations are essential.¹⁰¹ Surgeries are much more than aesthetic, and can be

88. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 1, 17–18.

89. *Id.*; BECKY REITZES, TRANSGENER AND GENDER NON-BINARY HEALTHCARE AND INEQUITIES (2019), <https://kingcounty.gov/depts/health/locations/health-insurance/access-and-outreach/~media/depts/health/health-insurance/documents/in-service/2019/Transgender-Gender-Non-Binary-Healthcare-Inequities.ashx>.

90. Velte, *supra* note 40, at 204.

91. NAT'L AERONAUTICS & SPACE ADMIN., NASA GUIDELINES ON GENDER TRANSITION 3 (2014), https://www.nasa.gov/sites/default/files/atoms/files/gender_trans_guide.pdf.

92. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 17.

93. See Hall & Suddick, *supra* note 47, at 22.

94. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 1.

95. Velte, *supra* note 40, at 205.

96. Levasseur, *supra* note 41, at 956–58.

97. Velte, *supra* note 40, at 203–04.

98. Christoph M. Zhang, *Biopolitical and Necropolitical Constructions of the Incarcerated Trans Body*, 37 COLUM. J. GENDER & L. 257, 258 (2019).

99. Velte, *supra* note 40, at 206.

100. *Id.* at 204; Archibald, *supra* note 43, at 250–51.

101. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 1.

crucial to alleviate gender dysphoria and aid a transgender individual in feeling congruence between their body and identity.¹⁰² Still, many transgender individuals cannot afford or are medically ineligible to receive gender confirmation surgeries.¹⁰³

Finally, legal transitions are the establishment of governmental recognition of a transgender individual's gender identity.¹⁰⁴ Legal transitioning can include formally adopting a gender-affirming name, or changing sex markers and names on legal identification.¹⁰⁵ Changing legal identification involves numerous documents, including birth certificates, driver's licenses, passports, and social security cards.¹⁰⁶ While rife with numerous administrative hurdles, legal transitions can be important for transgender individuals to live as themselves.¹⁰⁷

F. "Living in the Closet" and Discrimination

The foregoing discussion provided a surface-level description of transgender experiences. In reality, transitioning can be a harrowing, life-altering journey, filled with the intrusions of prejudice and discrimination.¹⁰⁸ Many transgender individuals lose employment during the process of transitioning.¹⁰⁹ Transgender individuals may transition later in life, long after realizing their transgender identity, in order to avoid conflict and stigma from family, friends, workplaces, and the general public.¹¹⁰

Prejudice and discrimination are no less realities for transgender people of multiple minorities, especially transgender people of color and transgender elders.¹¹¹ Prejudice against transgender people can also be aggravated by nationality, religion, economic status, and disability.¹¹² Transgender people of color face higher unemployment rates, greater discrimination in healthcare settings, and are more likely to experience bias-motivated violence than other transgender people.¹¹³ The magnification of prejudice from multiple minorities

102. Levasseur, *supra* note 41, at 956.

103. Velte, *supra* note 40, at 204.

104. See Clarke, *supra* note 45, at 945–47.

105. Velte, *supra* note 40, at 204.

106. *Id.*

107. Levasseur, *supra* note 41, at 956.

108. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 13.

109. *Id.* at 17.

110. Jaclyn M. White Hughto et al., *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 SOC. SCI. & MED. 222, 228 (2015).

111. LOURDES ASHLEY HUNTER ET AL., INTERSECTING INJUSTICE: A NATIONAL CALL TO ACTION: ADDRESSING LGBTQ POVERTY AND ECONOMIC JUSTICE FOR ALL 9, 37, 45, 54, 63 (2018), https://static1.squarespace.com/static/5a00c5f2a803bbe2eb0ff14e/t/5aca6f45758d46742a5b8f78/1523216213447/FINAL+PovertyReport_HighRes.pdf.

112. U.N. DEV. PROGRAMME ET AL., *supra* note 78 at 33.

113. McCabe & Kinney, *supra* note 61, at 431–32; Levasseur, *supra* note 41, at 949–50; MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at i, 3, 11, 13–14, 32; HUM. RIGHTS CAMPAIGN & TRANS PEOPLE OF COLOR INITIATIVE, ADDRESSING ANTI-TRANSGENDER VIOLENCE: EXPLORING REALITIES, CHALLENGES AND SOLUTIONS FOR POLICYMAKERS AND COMMUNITY ADVOCATES 5–26, 30–32 (Nov. 2015), assets2.hrc.org/files/assets/resources/HRC-AntiTransgenderViolence-0519.pdf; Anna Johnson,

is sometimes called “multiple jeopardy,” reflecting the multiple sources of systemic disadvantages.¹¹⁴ Yet, the full extent to which transgender people of multiple minorities experience disparate impacts is rarely studied.¹¹⁵

Part II of this Article will address the dark realities a transgender individual in the United States faces. Here, it is important to note that prejudice forces many transgender people to live “in the closet,” or not publicly acknowledge or live as their true gender.¹¹⁶ Many transgender people are forced to live with the stress of concealing their transgender identity.¹¹⁷ Nonbinary people, in particular, may downplay their identity to match expected gender binaries.¹¹⁸ Even transgender people with supportive homes may hide their identity at work or school in order to avoid the forces of prejudice and discrimination that would disrupt their lives.¹¹⁹

II. EXPERIENCES OF PREJUDICE AND DISCRIMINATION

“The first [transgender] pride was a riot.”¹²⁰

The idea that “the first pride was a riot” refers to the famous uprising at the Stonewall Inn in 1969, which precipitated the LGBTQ rights movement in the United States.¹²¹ However, less well-known is the uprising at Gene Compton’s Cafeteria in San Francisco in August 1966.¹²² Preceding Stonewall by three years, the Compton’s Cafeteria uprising was sparked by the harassment of transgender and gender-nonconforming customers at Compton’s Cafeteria in the Tenderloin district of San Francisco.¹²³ Law enforcement officers had been called by staff to arrest transgender customers, who were seen as undesirable by

Climate Change It’s an LGBTQ+ Issue, Too, FRESH ENERGY (Aug. 15, 2019), <https://web.archive.org/web/20200924043408/https://fresh-energy.org/climate-change-its-an-lgbtq-issue-too/>.

114. Sel Julian Hwahng & Larry Nuttbrock, *Sex Workers, Fem Queens, and Cross-Dressers: Differential Marginalizations and HIV Vulnerabilities Among Three Ethnocultural Male-to-Female Transgender Communities in New York City*, 4 SEXUALITY RSCH. & SOC. POL’Y 36, 37 (2007).

115. Clarke, *supra* note 45, at 952–54.

116. NAT’L AERONAUTICS & SPACE ADMIN., *supra* note 91, at 3; MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 16–17.

117. See Halliwell, *supra* note 48, at 222, 229.

118. Clarke, *supra* note 45, at 912.

119. *Id.*; See Gabriel Benavente, *Reimagining Movements: Towards a Queer Ecology and Trans/Black Feminism* 39 (Aug. 16, 2017) (M.A. thesis, Florida International University), <https://digitalcommons.fiu.edu/etd/3186/>.

120. Peter-Astrid Kane, *Green-Light District*, S.F. WKLY. (June 22, 2017, 5:43 PM), <https://www.sfweekly.com/news/feature/green-light-district/>.

121. Toshio Meronek, *San Francisco May Soon Have the World’s First Transgender Cultural District*, VICE (Feb. 2, 2017, 4:57 PM), https://vice.com/en_us/article/xyvdpd/san-francisco-may-soon-have-the-worlds-first-transgender-cultural-district; *Weekend Read The First Pride Was a Riot*, S. POVERTY L. CTR. (June 22, 2019), <https://www.splcenter.org/news/2019/06/22/weekend-read-first-pride-was-riot>; Human Rights Campaign (@HRC) TWITTER (June 30, 2019, 11:00 AM), <https://twitter.com/HRC/status/1145376449895047168>.

122. Kane, *supra* note 120.

123. Meronek, *supra* note 121.

management.¹²⁴ The officers went to arrest transgender customers when community resistance broke out against a tradition of police harassment and abuse.¹²⁵ Protests continued for days, entrenching a movement for transgender rights in the United States.¹²⁶

The Compton's Cafeteria Uprising reflects both the individual and systemic discrimination routinely faced by transgender people.¹²⁷ Transgender people are a severely at-risk population.¹²⁸ On an individual level, transgender people face stigma, which can manifest in harassment and physical and sexual assaults.¹²⁹ But on a systemic level, the stigma transgender people confront is structural. It surfaces in police brutality, the tapestry of discriminatory laws in employment, housing, and education, as well as barriers to healthcare, public benefits, and social services.¹³⁰ For serious acts of discrimination, including assault, homelessness, rejection by family, denial of medical services, job loss, eviction, and harassment at school, 63 percent of transgender people in the United States report having one of these experiences.¹³¹ More strikingly, 23 percent of transgender people report three or more serious acts of discrimination in their lifetime.¹³²

A complete review of prejudice and discrimination against transgender people in the United States warrants its own article, and has indeed been addressed in many other academic pieces.¹³³ This Part will retain its focus on social, economic, and political disparities particularly pertinent to the failures of meaningful involvement of transgender people in environmental issues. The footnotes, however, act as useful sources for further reading on those topics that could not be addressed in this space or that could only be touched upon briefly.

124. Kane, *supra* note 120; Nicole Pasulka, *Ladies in the Streets Before Stonewall, Transgender Uprising Changed Lives*, NPR (May 5, 2015, 4:52 PM), <https://www.npr.org/sections/codeswitch/2015/05/05/404459634/ladies-in-the-streets-before-stonewall-transgender-uprising-changed-lives>.

125. Pasulka, *supra* note 124; Sam Levin, *Compton's Cafeteria riot a historic act of trans resistance, three years before Stonewall*, THE GUARDIAN (June 21, 2019 1:00 AM), <https://www.theguardian.com/lifeandstyle/2019/jun/21/stonewall-san-francisco-riot-tenderloin-neighborhood-trans-women>.

126. *Id.* No historical records exist of the exact date of the Compton's Cafeteria uprising nor of its length. Today, the old space that once housed Gene Compton's Cafeteria is a halfway house, a place of incarceration for transgender bodies where a liberation movement once began. Kane, *supra* note 120.

127. Levasseur, *supra* note 41, at 946.

128. *Id.* at 948.

129. See Benavente, *supra* note 119, at 39; see generally REITZES, *supra* note 89.

130. See generally Julie Euber, *American Medical Association Transgender Deaths Are an Epidemic*, NONPROFIT Q. (Oct. 2, 2019), <https://nonprofitquarterly.org/american-medical-association-transgender-deaths-are-an-epidemic/>; HUNTER ET AL., *supra* note 111.

131. REITZES, *supra* note 89.

132. *Id.*

133. See, e.g., Judson Adams et al., *Transgender Rights and Issues*, 21 GEO. J. GENDER & L. 479 (2020); Clarke, *supra* note 45; Halliwell, *supra* note 48; Cobb & McKenzie-Harris, *supra* note 76.

A. Social Marginalization

In their daily lives, transgender people experience *transphobia*, prejudice that is directed at people whose gender identity or expression does not conform to social norms or expectations.¹³⁴ Transphobia on an individual level is often expressed through derogatory or dehumanizing language¹³⁵ or hostility and disgust, but can also be acted on through physical and sexual violence.¹³⁶ At a systemic level, transphobia is engrained through discrimination, social exclusion, and hate speech,¹³⁷ as well as hostile media coverage.¹³⁸ While transphobia refers to prejudice relating to gender identity and expression, the remainder of this Article will refer to prejudice and discrimination more generally to recognize the confluence of multiple jeopardies for many transgender individuals.

1. Social Rejection of Transgender People

Transgender people in the United States face the wholesale rejection of their gender. They are treated as artificial,¹³⁹ criticized for engaging in identity politics,¹⁴⁰ and derided for their so-called “lifestyle choices.”¹⁴¹ Transgender people are often treated as frauds for “pretend[ing]” to be their gender,¹⁴² or considered sexually deviant or even genetically inferior.¹⁴³ Nonbinary people in particular are derided as attention-seeking.¹⁴⁴ At its most basic level, prejudice rejects transgender individuals as being “true” men or women, because they were not assigned their gender at birth or raised as that gender.¹⁴⁵

134. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 31–32.

135. See Zhang, *supra* note 98, at 290–91.

136. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 31–33.

137. *Id.* at 33.

138. A parade of articles condemning the basic visibility and acceptance of transgender people can be found at any given time. See, e.g., Mary Rice Hasson, *The Equality Act and the End of Females*, NEWSWEEK (Feb. 24, 2021), <https://www.newsweek.com/equality-act-end-females-opinion-1571432>; OAN Newsroom, *Teachers and Parents Join Forces to End CRT*, CONSERVATIVE NEWS DAILY (June 3, 2021), <https://www.conservativenewsdaily.net/breaking-news/teachers-and-parents-join-forces-to-end-crt/>; Fox News Staff, *Rachel Campos-Duffy: The Problem with Having a 'Woke' Military*, FOX NEWS (April 1, 2021), <https://www.foxnews.com/media/rachel-campos-duffy-the-problem-with-having-a-woke-military>; see also Molly Mulready, *I Can't Protect My Transgender Son from Hostile Media Coverage Any More. But Those with a Platform Can Help*, INDEP. (Sept. 20, 2020), <https://www.independent.co.uk/voices/transgender-jk-rowling-trans-lgbt-cancel-culture-phillip-schofield-b506821.html>.

139. Levasseur, *supra* note 41, at 968.

140. Clarke, *supra* note 45, at 939.

141. Zhang, *supra* note 98, at 296; Levasseur, *supra* note 41, at 973.

142. *Oiler v. Winn-Dixie La., Inc.*, No. Civ.A. 00-3114, 2002 WL 31098541, at *5–6 (E.D. La. Sept. 16, 2002).

143. QUEER ECOLOGIES, *supra* note 20, at 75, 91.

144. Clarke, *supra* note 45, at 910–11.

145. QUEER ECOLOGIES, *supra* note 20, at 189.

With transgender women in particular, discriminatory rhetoric abounds. They are derided for supposedly wanting to invade women's spaces¹⁴⁶ and assault girls in bathrooms.¹⁴⁷ Much of this rhetoric reached a nationwide audience in 2012, when ad campaigns against transgender bathroom access cast transgender people as deviant and socially dangerous sexual predators.¹⁴⁸ These campaigns have found horrifying success. In 2021, Tennessee enacted a law requiring businesses that allow transgender patrons to use the correct bathroom to mark their restrooms with a warning sign, a modern-day scarlet letter.¹⁴⁹ Though such widespread stigma makes pretending undesirable,¹⁵⁰ some rhetoric continues to claim transgender people are just cisgender people in disguise.¹⁵¹

2. *Religious Discrimination and Christianity*

Transgender people worldwide face prejudice and discrimination generated by religious institutions and couched in religious beliefs.¹⁵² In Malaysia, state Islamic Religious Departments and religious law enforcement impose Sharia laws banning “a man posing as a woman,” sometimes sexually assaulting the women arrested.¹⁵³ Orthodox Jewish rabbinic teachings recognize binary gender identities only and may prohibit a transgender woman's gender reassignment surgery as violating rules against “castration.”¹⁵⁴ Transgender people are also unwelcome in some Hindu communities in India, where the vestiges of colonial attitudes that outlawed behavior “against the order of nature” still persist.¹⁵⁵

Many Christian denominations, notably evangelical Christianity, view transgender identity as sinful, deceitful, and “delusion[al].”¹⁵⁶ Because

146. See Clarke, *supra* note 45, at 966, 985.

147. See Bradley Eli, *YMCA Approves Transgender Locker Rooms*, CHURCH MILITANT (July 20, 2016), <https://www.churchmilitant.com/news/article/ymca-has-transgender-locker-rooms>; Timothy J. Graves, *Breaking the Binary Desegregation of Bathrooms*, 36 GA. ST. U. L. REV. 381, 394 (2020).

148. George, *supra* note 86, at 584.

149. 2021 Tenn. Pub. Laws Ch. No. 453, § 1(a)–(b).

150. Clarke, *supra* note 45, at 972.

151. *Oiler v. Winn-Dixie La., Inc.*, No. Civ.A. 00-3114, 2002 WL 31098541, at *5 (E.D. La. Sept. 16, 2002).

152. U.N. Econ. & Soc. Council, *Statement Submitted by Advocates for Youth et al., Non-Governmental Organizations in Consultative Status with the Economic Social Council 2* (Dec. 13, 2017), 2, <https://daccess-ods.un.org/tmp/6202453.97090912.html>.

153. HUM. RIGHTS WATCH, “I’M SCARED TO BE A WOMAN” HUMAN RIGHTS ABUSES AGAINST TRANSGENDER PEOPLE IN MALAYSIA 1–2, 27 (2014), <https://arcusfoundation.org/wp-content/uploads/2015/08/Im-Scared-to-Be-a-Woman-Human-Rights-Abuses-Against-Transgender-People-in-Malaysia.pdf>.

154. *Stances of Faiths on LGBTQ Issues Orthodox Judaism*, HUM. RIGHTS CAMPAIGN, <http://hrc.org/resources/stances-of-faiths-on-lgbt-issues-orthodox-judaism> (last visited Dec. 5, 2021).

155. *Stances of Faiths on LGBTQ Issues Hinduism*, HUM. RIGHTS CAMPAIGN, <http://hrc.org/resources/stances-of-faiths-on-lgbt-issues-hinduism> (last visited Dec. 5, 2021); Jeffrey Gettleman, *The Peculiar Position of India's Third Gender*, N.Y. TIMES (Feb. 17, 2018), <https://nytimes.com/2018/02/17/style/india-third-gender-hijras-transgender.html>.

156. Sky Cline, *The Transgender Delusion*, EVANGELICALBIBLE.COM, <https://evangelicalbible.com/the-transgender-delusion/> (last visited July 26, 2020); Jennie Erin Smith, *The Queer Ecology of the*

Christianity is the dominant religion in the United States (estimated at 63 percent of the population as of 2021)¹⁵⁷ and possesses significant institutional power,¹⁵⁸ it will be the focus in discussing religious contexts regarding transgender individuals.

3. *Rejection by Family Members*

Familial rejection can be one of the greatest upsets in the lives of transgender people of all ages. Many parents are unsupportive or openly hostile to their children's transgender identity.¹⁵⁹ Transgender people may be unsafe around their own families,¹⁶⁰ experiencing physical and verbal abuse from family members.¹⁶¹ Many transgender youth may be kicked out of their homes, becoming homeless.¹⁶² Up to 40 percent of homeless youth identify as LGBTQ, with transgender youth facing the greatest risks of homelessness.¹⁶³ In a 2019 needs assessment in Detroit, New Orleans and South Florida, 30 percent of transgender respondents were kicked out of their homes before age eighteen.¹⁶⁴ Because of this rejection, transgender adults often have limited support networks during unemployment, housing crises, illness, and other common setbacks in life.

4. *Physical and Sexual Violence*

Violence is one of the greatest and most widespread dangers transgender people face.¹⁶⁵ Worldwide, the United Nations has documented violence against transgender people in all regions.¹⁶⁶ In the United States, violence against transgender people is on the rise,¹⁶⁷ while fatal violence against transgender

Colombian Civil War, NAUTILUS (Dec. 8, 2016), <http://nautil.us/issue/43/heroes/-the-queer-ecology-of-the-colombian-civil-war>.

157. GREGORY A. SMITH, ABOUT THREE-IN-TEN U.S. ADULTS ARE NOW RELIGIOUSLY UNAFFILIATED SELF-IDENTIFIED CHRISTIANS MAKE UP 63% OF U.S. POPULATION IN 2021, DOWN FROM 75% A DECADE AGO 4-5 (2021), https://www.pewforum.org/wp-content/uploads/sites/7/2021/12/PF_12.14.21_update_on_religion_trends_report.pdf. However, this number has been on a steady decline for over a decade.

158. Jon Butler, *The Christianization of Modern America*, 11 KIRCHLICHE ZEITGESCHICHTE 143, 144-45 (1998), <https://www.jstor.org/stable/43751546>.

159. Archibald, *supra* note 43, at 263.

160. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 38-39.

161. McCabe & Kinney, *supra* note 61, at 434, 436.

162. Kyle C. Velte, *Straightwashing the Census*, 61 B.C. L. REV. 69, 102 (2020).

163. *Speaking Out to End LGBTQ Youth Homelessness*, HUM. RIGHTS CAMPAIGN (Feb. 14, 2020), <https://www.hrc.org/news/speaking-out-to-end-lgbtq-youth-homelessness>.

164. CECILIA CHUNG ET AL., TRANSGENDER L. CTR., WELLNESS FOR OUR COMMUNITIES: CROSS-SITE REPORT OF KEY FINDINGS FROM A 2018 NEEDS ASSESSMENT OF TRANSGENDER AND GENDER NONCONFORMING PEOPLE LIVING WITH HIV ACROSS THREE COMMUNITIES: DETROIT, MICHIGAN; NEW ORLEANS, LOUISIANA; AND SOUTH FLORIDA (MIAMI AND FORT LAUDERDALE AREAS) 14 (2019), https://transgenderlawcenter.org/wp-content/uploads/2019/11/17608_TLC_Positively_Trans_Needs_CrossSite_Report_Web.pdf.

165. Levasseur, *supra* note 41, at 945-46.

166. U.N. Econ. & Soc. Council, *supra* note 152, at 2.

167. Euber, *supra* note 130.

people has become a national epidemic.¹⁶⁸ And in police reports and obituaries, transgender victims of murder are often intentionally misgendered, feeding the tragic cycle of prejudice.¹⁶⁹ Perpetrators target them with the belief that they are vulnerable and less than human,¹⁷⁰ suggesting that many of these crimes are driven by prejudice and stigma.¹⁷¹ And sadly, this violence is often perpetuated by people they know, including family.¹⁷²

In just the last year, 9 percent of transgender people reported being physically attacked and 10 percent reported being sexually assaulted.¹⁷³ Almost half of transgender individuals in the United States report surviving at least one assault in their lifetime.¹⁷⁴ And 54 percent of transgender people report experiencing intimate partner violence.¹⁷⁵ On average, transgender women are four times more likely to be victims of homicide than cisgender women,¹⁷⁶ and the majority of these murder victims are transgender women of color.¹⁷⁷

Transgender individuals endure a system of violence from the earliest points they express their identity. Transgender people may be the targets of “corrective rape”¹⁷⁸ or other violence intended to provide moral or religious “cleansing.”¹⁷⁹ Transgender youth are especially at risk, with reported acts of sexual violence most often occurring before the age of 12.¹⁸⁰ One statewide analysis showed that transgender students are four times likelier than their cisgender peers to report being victims of rape.¹⁸¹

168. *Id.*

169. See Halliwell, *supra* note 48, at 231.

170. Clarke, *supra* note 45, at 912–13.

171. Halliwell, *supra* note 48, at 230–31.

172. Hugo Greenhalgh, *Families Are Major Source of Abuse for Gay Women, Trans People, Report Says*, THOMSON REUTERS FOUND. NEWS (May 31, 2020), <https://news.trust.org/item/20200531221818-e4du5>.

173. *Violence Against Trans and Non-Binary People*, VAWNET, <https://vawnet.org/sc/serving-trans-and-non-binary-survivors-domestic-and-sexual-violence/violence-against-trans-and> (last visited July 15, 2020).

174. Meronek, *supra* note 121; *Outreach Connecting to the Transgender Community*, OFF. OF JUSTICE PROGRAMS: OFF. FOR VICTIMS OF CRIMES (June 2014), https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/forge/tips_outreach.html.

175. *Violence Against Trans and Non-Binary People*, *supra* note 173.

176. HUM. RIGHTS CAMPAIGN, *supra* note 113, at 28.

177. Euber, *supra* note 130; Levasseur, *supra* note 41, at 996.

178. Cara Thuringer, *Left Out and Behind Fully Incorporating Gender into the Climate Discourse*, WOODROW WILSON INT’L CTR. FOR SCHOLARS (Aug. 22, 2016), <https://www.newsecuritybeat.org/2016/08/left-behind-fully-incorporating-gender-climate-discourse/>.

179. PETER LAVERACK ET AL., HUM. DIGNITY TR., *CRIMINALISING HOMOSEXUALITY AND LGBT RIGHTS IN TIMES OF CONFLICT, VIOLENCE AND NATURAL DISASTERS 7* (2015), <https://www.humandignitytrust.org/wp-content/uploads/resources/8.-Criminalisation-Conflict-and-Natural-Disasters.pdf>.

180. HUM. RIGHTS CAMPAIGN, *supra* note 113, at 30.

181. See generally VT. DEP’T OF HEALTH, *HEALTH DISPARITIES FACED BY TRANSGENDER YOUTH: RESULTS FROM THE 2017 VERMONT HIGH SCHOOL YRBS* (2019), https://www.healthvermont.gov/sites/default/files/documents/pdf/HSVR_YRBS_transgender_youth.pdf.

5. *Gender-Affirming Identity Documents*

In the post-9/11 world, proof of identity has become ever more pervasive, so that identity documents are essentially required to access many basic goods and services.¹⁸² These documents can include birth certificates, driver's licenses, passports, and Social Security cards.¹⁸³ For a transgender person, having one of these documents not match their gender identity can lead to discrimination, harassment, or violence,¹⁸⁴ and to the denial of many opportunities, such as employment or voting.¹⁸⁵ When transgender people present non-affirming IDs in the ordinary course of life, 40 percent of individuals report being harassed, 3 percent report being physically attacked, and 15 percent report being asked to leave.¹⁸⁶ Forms of ID can also be confiscated when a person's gender expression does not conform to the gender listed on their documents.¹⁸⁷

Despite the necessity of affirming documents, updating IDs can be challenging or even impossible.¹⁸⁸ Many states make it extremely burdensome to change gender markers on documents,¹⁸⁹ and fees can be expensive.¹⁹⁰ Birth certificates are especially one of the most difficult documents for transgender people to correct.¹⁹¹ The Model State Vital Statistics Act still requires surgical transitions for transgender individuals to receive recognition of their gender identity in many states,¹⁹² even though many transgender people do not want, need, or can afford surgery.¹⁹³ As of 2019, only eighteen states and the District of Columbia explicitly allowed gender identity to be updated on birth certificates without surgery.¹⁹⁴ But by 2022, only one remaining state, Tennessee, still never allows gender changes to a birth certificate.¹⁹⁵ This is problematic, as other documents feed from birth certificates, and birth certificates may be required for insurance policies, pensions, and other services.¹⁹⁶ Yet, because of this

182. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 24.

183. Velte, *supra* note 40, at 210.

184. Clarke, *supra* note 45, at 903.

185. NAT'L LGBTQ TASK FORCE, QUEER THE VOTE: MICHIGAN DEMOCRACY TOOLKIT 4-5 (2018), <https://www.thetaskforceactionfund.org/wp-content/uploads/sites/84/2020/03/Queer-the-Vote-Michigan-Democracy-Toolkit.pdf>; MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 25–26.

186. Velte, *supra* note 40, at 215.

187. Clarke, *supra* note 45, at 943.

188. Levasseur, *supra* note 41, at 959.

189. Velte, *supra* note 162, at 102.

190. HUM. RIGHTS CAMPAIGN, *supra* note 113, at 32.

191. Archibald, *supra* note 43, at 256, 275.

192. Velte, *supra* note 40, at 212; MODEL STATE VITAL STAT. ACT & REGULS. § 21(d) (CTRS. FOR DISEASE CONTROL & PREVENTION 1992), <https://www.cdc.gov/nchs/data/misc/mvsact92b.pdf>.

193. Levasseur, *supra* note 41, at 960; MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 6, 25.

194. Velte, *supra* note 40, at 213.

195. Sarah Khan-Williamson, "Trans Folks Born in Ohio, Here's How to Finally Correct the Gender Marker on Your Ohio Birth Certificate" (May 26, 2021 11:15 AM), <https://www.acluohio.org/en/news/trans-folks-born-ohio-heres-how-finally-correct-gender-marker-your-ohio-birth-certificate>; *see also* Tenn. Stat. Ann. § 68-3-203(d).

196. *Id.* at 212.

difficulty, only 24 percent of transgender individuals report changing their birth certificates successfully.¹⁹⁷ At the same time, 18 percent report their attempt being rejected, and 53 percent have never tried.¹⁹⁸ Thus, many transgender individuals resign to keeping their gender markers assigned at birth.¹⁹⁹

6. *Gender-Affirming Bathroom Access*

In terms of transgender rights, perhaps no issue has commanded more of the public's attention than bathroom access.²⁰⁰ This has exploded since 2012, when ad campaigns against transgender bathroom access first became prevalent.²⁰¹ And although critics deride gender-affirming bathroom access as intermingling "boys and girls" in private spaces,²⁰² they offer no empirical data that bathroom segregation promotes safety or prevents harm.²⁰³ Indeed, gender-segregated bathrooms emerged to protect Victorian femininity in the early 1900s, when "vulnerable" women began entering the workforce.²⁰⁴ But today, bathrooms are regarded as reflections of biological truths that separate men and women.²⁰⁵

For many transgender individuals, who simply want to use facilities that comport with their gender, bathrooms are a source of harassment and assault.²⁰⁶ At the same time, using the bathroom that aligns with one's gender assigned at birth can also invite violence because of an individual's nonconforming expression of their gender.²⁰⁷ And this is especially true for nonbinary people, whose gender expression may match neither binary gender's expectations.²⁰⁸ In school settings, transgender students may be forced to use bathrooms in far-flung corners of the building, just for the comfort of their cisgender classmates.²⁰⁹ As

197. *Id.* at 214-15.

198. *Id.*

199. Levasseur, *supra* note 41, at 959-63.

200. *See, e.g.*, Jo Yurcaba, *Judge Blocks Tennessee's Transgender Bathroom Sign Law*, NBC NEWS (July 8, 2021, 4:24 PM), <https://www.nbcnews.com/nbc-out/out-news/judge-blocks-tennessees-transgender-bathroom-sign-law-rcna1384>; Michelle Gant, *Congressional Candidate Confronts Transgender Woman at Denny's for Using Women's Bathroom*, FOX NEWS (May 18, 2018), <https://www.foxnews.com/food-drink/congressional-candidate-confronts-transgender-woman-at-dennys-for-using-womens-bathroom>; Michael J. Broyde, *Transgender Bathroom Issue: A Solution?*, CNN OP. (Oct. 28, 2016, 4:33 PM), <https://www.cnn.com/2016/10/28/opinions/the-bathroom-issue-were-not-talking-about/index.html>; Rachael Thorn, *Why Toilets Are a Battleground for Transgender Rights*, BBC NEWS (June 8, 2016), <https://www.bbc.com/news/uk-england-36395646>; Aimee Lee Ball, *In All-Gender Restrooms, the Signs Reflect the Times*, N.Y. TIMES (Nov. 5, 2015), <https://www.nytimes.com/2015/11/08/style/transgender-restroom-all-gender.html>.

201. George, *supra* note 86, at 584.

202. Eli, *supra* note 147.

203. Velte, *supra* note 40, at 217.

204. *Id.* at 216-17; Terry S. Kogan, *Sex-Separation in Public Restrooms: Law, Architecture, and Gender*, 14 MICH. J. GENDER & L. 1, 54 (2007).

205. Levasseur, *supra* note 41, at 977.

206. *See* McCabe & Kinney, *supra* note 61, at 435; Halliwell, *supra* note 48, at 227-28; Clarke, *supra* note 45, at 981.

207. *See* Graves, *supra* note 147, at 398.

208. *See id.*

209. *See* Levasseur, *supra* note 41, at 991.

a result, transgender people often avoid bathroom use in public, which can adversely affect their health.²¹⁰

B. Economic Marginalization

Transgender people experience rampant economic marginalization.²¹¹ Yet, meaningful nondiscrimination policies regarding transgender employees have often been nonexistent.²¹² Until the United States Supreme Court's 2020 decision in *Bostock v. Clayton County*, transgender employees enjoyed no nationwide protection from employment discrimination.²¹³ The landmark ruling opened new doors, described as a "a powerful tool" for all LGBTQ+ employees.²¹⁴ The legacy of *Bostock* has seen the Court's interpretation of "because of sex" be adopted by state courts from North Dakota to Texas.²¹⁵ And *Bostock* has been expanded by federal courts outside the employment context, such as the Affordable Care Act.²¹⁶ Nonetheless, the high rates of transgender unemployment, homelessness, and poverty²¹⁷ are not resolved simply by these groundbreaking rulings, but continue to be ever-present realities in transgender lives.

Employment discrimination is widely credited for the high rates of unemployment in the transgender community.²¹⁸ In just the last year, 30 percent of transgender people report being fired, denied a promotion, or mistreated at work.²¹⁹ And 90 percent of transgender employees report harassment at work, be it from coworkers, customers, or supervisors.²²⁰ When transgender employees require medical leave for transition-related care, leave is often denied because employers refuse to recognize transition-related care as a serious medical

210. Clarke, *supra* note 45, at 981.

211. Velte, *supra* note 162, at 74, 83, 89–90.

212. *Id.* at 74.

213. See *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020); 42 U.S.C. § 2000e-2.

214. Fran Swanson, *Bostock v. Clayton County This Summer's LGBTQ Victory & The Challenges Ahead*, HARV. C.R.—C. L. L. REV. (Sep 22, 2020), <https://harvardcrcl.org/bostock-v-clayton-county-this-summer-lgbtq-victory-the-challenges-ahead/>.

215. Eric Bachman, *The Bostock Decision One Year Later How LGBTQ+ Employment Discrimination Laws Are Evolving*, FORBES (Jun 10, 2021 11:25AM), <https://www.forbes.com/sites/ericbachman/2021/06/10/the-bostock-decision-one-year-later-how-lgbtq-employment-discrimination-laws-are-evolving/?sh=252a88e4293d>.

216. GianCarlo Canaparo & Nicole Imhof, *Justices' Title VII "On Basis of Sex" Ruling Spawning Unintended Consequences in Lower Courts*, HERITAGE FOUND. (March 16, 2021), <https://www.heritage.org/courts/commentary/justices-title-vii-basis-sex-ruling-spawning-unintended-consequences-lower-courts>.

217. Velte, *supra* note 162, at 96–97; HUNTER ET AL., *supra* note 111, at 63.

218. Velte, *supra* note 162, at 96–97.

219. Pamela Halliwell, *The Psychological & Emotional Effects of Discrimination Within the LGBTQ, Transgender, & Non-Binary Communities*, 41 T. JEFFERSON L. REV. 222 (2019).

220. Cobb & McKenzie-Harris, *supra* note 76, at 95–96; Levasseur, *supra* note 41, at 949.

need.²²¹ This discrimination causes transgender people to either be forced out of work or to quit voluntarily.²²²

Pervasive workplace discrimination like this explains why transgender people are twice as likely as cisgender people to be unemployed.²²³ And as a result of this higher job insecurity, 29 percent of transgender people live in poverty, compared to 14 percent of cisgender people.²²⁴ Indeed, up to 64 percent of transgender individuals earn less than \$25,000 a year.²²⁵ Transgender people are also four times as likely to have a household income under \$10,000 a year.²²⁶ Meanwhile, black transgender people are eight times likelier—and Latinx transgender people, seven times likelier—to live in poverty than white cisgender people.²²⁷

And because of their lower incomes, transgender people are more likely to be homeless.²²⁸ Still, discrimination in the housing market further limits transgender access to housing, with 34–50 percent reporting a forced move due to discrimination.²²⁹ Studies show that 30 percent of transgender people report having been homeless during their lives,²³⁰ while 20 percent report being homeless since coming out as transgender.²³¹ One estimate showed LGBTQ youth are 120 percent more likely to be homeless.²³²

These stark economic difficulties also force many transgender people to subsist through underground economies.²³³ Transgender people are almost twice as likely than the general population to work in underground economies, including sex work and selling illegal drugs.²³⁴ Engaging in survival sex work is reported by 11 percent of transgender respondents.²³⁵ Transgender individuals who have experienced a discriminatory job loss are much more likely to begin working in underground economies.²³⁶ This in turn increases their interactions

221. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 32.

222. Joe Foster, *Can Your Employees Bring Their Whole Selves to Work?*, CTR. ON COLFAX (July 15, 2016), <https://lgbtqcolorado.org/can-your-employees-bring-their-whole-selves-to-work/>.

223. Velte, *supra* note 162, at 97; Levasseur, *supra* note 41, at 949.

224. See Halliwell, *supra* note 48, at 230.

225. Velte, *supra* note 162, at 97.

226. *Id.*; Levasseur, *supra* note 41, at 949.

227. HUM. RIGHTS CAMPAIGN, *supra* note 113, at 29.

228. Velte, *supra* note 162, at 97, 110; Levasseur, *supra* note 41, at 949; HUM. RIGHTS CAMPAIGN, *supra* note 113, at 29.

229. Velte, *supra* note 162, at 100.

230. Halliwell, *supra* note 48, at 231.

231. Velte, *supra* note 162, at 97.

232. M.H. MORTON ET AL., CHAPIN HALL AT THE UNIV. OF CHI., MISSED OPPORTUNITIES: YOUTH HOMELESSNESS IN AMERICA: NATIONAL ESTIMATES 12 (2017), <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>.

233. Levasseur, *supra* note 41, at 949; Halliwell, *supra* note 48, at 230–31.

234. See Levasseur, *supra* note 41, at 949; Halliwell, *supra* note 48, at 230–31.

235. HUM. RIGHTS CAMPAIGN, *supra* note 113, at 31.

236. *Id.*

with the police, resulting in harassment,²³⁷ physical assault,²³⁸ requests for sexual favors,²³⁹ sexual assault, and even rape at the hands of officers.²⁴⁰

C. Political and Governmental Marginalization

Because transgender people have long experienced social and economic marginalization, while comprising just a small portion of the U.S. population, they are underrepresented in political structures. As a result, local, state, and national governments, from courts to legislatures, have mounted a legal assault on transgender rights.

Some state legislatures have prohibited funds from being used to recognize gender-neutral pronouns.²⁴¹ Others have sweepingly repealed local antidiscrimination ordinances, specifically targeting ordinances that address transgender rights.²⁴² Nationwide, numerous bills have been proposed that limit transgender individuals' access to gender-affirming bathrooms.²⁴³ Possibly the most famous of these, in 2016, North Carolina enshrined into law the definition of "sex" as being "the physical condition of being male or female, which is stated on a person's birth certificate."²⁴⁴ In 2020, South Dakota considered outlawing all types of gender-affirming healthcare for transgender youth, while paradoxically allowing "corrective" surgery on intersex newborns.²⁴⁵ And in 2021, after citing demonstrably false statistics, the Arkansas state legislature succeeded in outlawing gender-affirming healthcare for youth.²⁴⁶

Meanwhile, the courts are also politically marginalizing transgender individuals. Judges unfamiliar with transgender issues frequently deny transgender individuals' requests for legal gender changes.²⁴⁷ Some courts pry into the sexual and medical histories of transgender litigants, even when it bears no relevance to the dispute.²⁴⁸ When transgender litigants ask courts to

237. *Id.*

238. NAT'L CTR. FOR TRANSGENDER EQUALITY, BLUEPRINT FOR EQUALITY: A TRANSGENDER FEDERAL AGENDA FOR THE NEXT PRESIDENTIAL ADMINISTRATION AND CONGRESS 28 (2016), https://transequality.org/sites/default/files/docs/resources/NCTE%20Federal%20Blueprint%20202016%20web_0.pdf.

239. ANDREA J. RITCHIE, INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR 144 (2017).

240. *Id.* at 165, 168, 182.

241. See Clarke, *supra* note 45, at 923; TENN. CODE ANN. § 9-4-5119 (2016). The battle for state and local nondiscrimination laws, and against legalized discrimination by others, has been a theme for transgender activists since the early 2000s. The number of attempted coups against transgender rights is too great to discuss in this Article. See generally George, *supra* note 86.

242. See Velte, *supra* note 162, at 70–71.

243. Brendan Williams, *President Trump's Crusade Against the Transgender Community*, 27 AM. U. J. GENDER, SOC. POL'Y & L. 525, 540–44 (2019).

244. H.B. 2, 2016 Gen. Assemb., 2d Extra Sess. (N.C. 2016).

245. H.B. 1057, 95th Leg., 2020 Reg. Sess. §§ 2–3 (S.D. 2020).

246. Save Adolescents from Experimentation (SAFE) Act, H.B. 1570, 93d Gen. Assemb., Reg. Sess., §§ 2–3 (Ark. 2021).

247. Levasseur, *supra* note 41, at 962.

248. *Id.* at 972.

respectfully use their correct gender pronouns, they are often rebuked.²⁴⁹ And in cases where legal rights of transgender parties are on the line, personal prejudices of judges can weigh heavily in adjudications.²⁵⁰

But beyond these attacks from state legislatures and the courts, the most flagrant political assault against the transgender community came from the federal executive branch under President Trump,²⁵¹ often coming in the form of Tweets.²⁵² The Trump administration withdrew guidance that protected transgender students from harassment,²⁵³ and rescinded policies that allowed transgender students to use gender-affirming bathrooms.²⁵⁴ The administration also delayed regulations intended to protect transgender people in shelters.²⁵⁵ And despite independent guidance urging otherwise,²⁵⁶ the administration prohibited transgender people from enlisting in the armed forces.²⁵⁷ Additionally, the Federal Bureau of Prisons returned to using prisoners' biological sex for determining housing instead of a case-by-case assessment for individuals.²⁵⁸

In terms of healthcare rights, the Trump administration was particularly hostile toward the transgender community. In 2018, the Department of Health and Human Services aimed to narrowly define gender as “male or female based on immutable biological traits identifiable by or before birth . . . listed on a person’s birth certificate, as originally issued.”²⁵⁹ The administration also repealed a rule prohibiting gender identity discrimination in the Affordable Care

249. One federal court of appeals in 2020 stated that “Congress has said nothing to prohibit courts from referring to litigants according to their biological sex, rather than according to their subjective gender identity.” *United States v. Varner*, 948 F.3d 250, 256 (5th Cir. 2020).

250. *Levasseur*, *supra* note 41, at 965.

251. *See Cobb & McKenzie-Harris*, *supra* note 76, at 104–06; *Goodwin & Chemerinsky*, *supra* note 78, at 753–54; *Williams*, *supra* note 243.

252. *See Goodwin & Chemerinsky*, *supra* note 78, at 754, 788, 790.

253. *Williams*, *supra* note 243, at 537.

254. *Id.*; *Graves*, *supra* note 147, at 400-01; *Velte*, *supra* note 40, at 219-20; U.S. DEP’T OF JUSTICE & U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER 1 (Feb. 22, 2017), <https://i2.cdn.turner.com/cnn/2017/images/02/23/1atransletterpdf022317.pdf>.

255. *Williams*, *supra* note 243, at 531.

256. *Goodwin & Chemerinsky*, *supra* note 78, at 784.

257. *Graves*, *supra* note 147, at 400; *Williams*, *supra* note 243, at 529–30; *Clarke*, *supra* note 45, at 980; *Goodwin & Chemerinsky*, *supra* note 78, at 754; *Cobb & McKenzie-Harris*, *supra* note 76, at 105; Donald J. Trump (@realDonaldTrump), TWITTER (July 26, 2017, 6:55 AM), <https://web.archive.org/web/20170727013251/https://twitter.com/realDonaldTrump/status/890193981585444864>; Donald J. Trump (@realDonaldTrump), TWITTER (July 26, 2017, 7:04 AM), <https://web.archive.org/web/20170727004015/https://twitter.com/realDonaldTrump/status/890196164313833472>; Donald J. Trump (@realDonaldTrump), TWITTER (July 26, 2017, 7:08 AM), <https://web.archive.org/web/20170727013256/twiter.com/realDonaldTrump/status/890197095151546369>.

258. *Graves*, *supra* note 147, at 400; *see also Goodwin & Chemerinsky*, *supra* note 78, at 799–800; *Williams*, *supra* note 243, at 531; *Clarke*, *supra* note 45, at 984–85.

259. *See Cobb & McKenzie-Harris*, *supra* note 76, at 105–06; *Goodwin & Chemerinsky*, *supra* note 78, at 800–01; *Graves*, *supra* note 147, at 400-01; RYAN THORESON, HUM. RIGHTS WATCH, “YOU DON’T WANT SECOND BEST”: ANTI-LGBT DISCRIMINATION IN US HEALTH CARE (2018), https://www.hrw.org/sites/default/files/report_pdf/us_lgbt0718_web.pdf.

Act,²⁶⁰ and replaced it with the “conscience rule,” allowing healthcare workers to deny services sought by transgender individuals.²⁶¹

In its final year, the Trump administration’s hostility did not wane. A proposed rule in July 2020 sought to deny transgender people access to gender-affirming spaces in homeless shelters, under the guise of protecting victims of domestic violence and human trafficking.²⁶² The rule would have provided shelters with a crude guide of physical features to determine whether a homeless person is actually a man or woman.²⁶³

But with the change of administrations, the White House’s policy towards transgender people has made an about-face. In President Biden’s first joint address to Congress, he assured transgender Americans: “[Y]our president has your back.”²⁶⁴ And in May 2021, Biden’s Department of Health and Human Services announced that it would withdraw the Trump era “conscience rule” and begin prohibiting sex discrimination on the basis of gender identity.²⁶⁵ But while these welcome policy changes stem the political marginalization from the previous White House, transgender individuals still lack equal rights and are still vulnerable to hostile state legislatures, unsympathetic courts, and a future administration that could just as easily resume a program of discrimination.

260. See generally Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37,160 (June 19, 2020) (to be codified at 42 C.F.R. pt. 438, 440, 460; 45 C.F.R. pt. 86, 92, 147, 155, 156); see also Clarke, *supra* note 45, at 988–90; Goodwin & Chemerinsky, *supra* note 78, at 801–02; Euber, *supra* note 130; Sam McQuillan, *Legal Arguments for Transgender Care Reshaping Under Trump*, BLOOMBERG L. (Oct. 1, 2019, 4:32 AM), <https://news.bloomberglaw.com/health-law-and-business/legal-arguments-for-transgender-care-reshaping-under-trump>.

261. See generally Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21, 2019) (to be codified at 45 C.F.R. pt. 88); see also Goodwin & Chemerinsky, *supra* note 78, at 802–03.

262. Press Release, U.S. Dep’t of Hous. & Urban Dev., HUD Updates Equal Access Rule, Returns Decision Making to Local Shelter Providers (July 1, 2020), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_099.

263. Such features included “height, the presence (but not the absence) of facial hair, the presence of an Adam’s apple, and other physical characteristics which, when considered together, are indicative of a person’s biological sex.” Katelyn Burns, *The Trump Administration’s Proposed Homeless Shelter Rule Spells Out How to Spot a Trans Woman*, VOX (July 17, 2020, 6:10 PM), <https://www.vox.com/identities/2020/7/17/21328708/proposed-anti-trans-rule-homeless-shelters-judge-women>.

264. Brooke Sopelsa & Jo Yurcaba, *Biden to Transgender Americans Your President Has Your Back.*, NBC NEWS (April 29, 2021, 8:55 AM), <https://www.nbcnews.com/feature/nbc-out/biden-transgender-americans-your-president-has-your-back-n1265836>.

265. Press Release, U.S. Dep’t of Health & Hum. Servs., HHS Announces Prohibition on Sex Discrimination Includes Discrimination on the Basis of Sexual Orientation and Gender Identity (May 10, 2021), <https://www.hhs.gov/about/news/2021/05/10/hhs-announces-prohibition-sex-discrimination-includes-discrimination-basis-sexual-orientation-gender-identity.html>.

III. HEALTH AND ENVIRONMENTAL DISPARITIES

Transgender people have a unique set of mental and physical health needs. These needs are compounded by prejudices against transgender people within both the medical system and society at large.²⁶⁶

This Article's focus now turns to the health and environmental inequities transgender people face in the United States. These inequities are fueled by the experiences discussed in Part II, and especially by the economic hardships that disadvantage transgender individuals and communities.²⁶⁷ Poorer communities in the United States, overall, experience more environmental burdens and fewer environmental goods.²⁶⁸ Sources of environmental hazards are often found in underprivileged populations,²⁶⁹ especially in populations who cannot afford to battle corporate interests.²⁷⁰

Troublingly, these disparities reach beyond pollution and land use.²⁷¹ Poverty itself aggravates suffering during natural disasters, water crises, and illnesses.²⁷² Inequitable access to public health resources amplifies health vulnerabilities of minority communities.²⁷³ And among transgender people, stigma and discrimination deepens these inequities in healthcare access.²⁷⁴ But before such disparities can be explored, it is worth understanding how little these experiences of transgender people are studied.²⁷⁵

A. Limited Study and Data Collection

To their injustice, transgender people are a historically understudied population.²⁷⁶ Even today, they remain invisible in most research.²⁷⁷ And this is made worse by the failures of the United States Census Bureau²⁷⁸ and most studies, in fields such as substance use, to capture gender identity in routine

266. Daphna Stroumsa, *The State of Transgender Health Care Policy, Law, and Medical Frameworks*, 104 AM. J. PUB. HEALTH e31, e31 (2014).

267. NAT'L LGBTQ TASK FORCE, *supra* note 185, at 12.

268. Karen Bell, *Bread and Roses: A Gender Perspective on Environmental Justice and Public Health*, INT'L J. ENV'T RSCH. & PUB. HEALTH 1005, 1014 (2016).

269. EPA, COMMUNITY INVOLVEMENT PLAN FOR THE SOUTHEAST GRAND RAPIDS SITE 6-7 (2016), <https://epa.gov/sites/production/files/2016-10/documents/se-grandrapids-community-involvement-plan-201610.pdf>.

270. NAT'L LGBTQ TASK FORCE, *supra* note 185, at 12.

271. See R.I. LEGAL SERVS., *supra* note 21, at 56.

272. NAT'L LGBTQ TASK FORCE, *supra* note 185, at 14.

273. See R.I. LEGAL SERVS., *supra* note 21, at 18, 25.

274. Sari L Reisner et al., *Global Health Burden and Needs of Transgender Populations: A Review*, 388 LANCET 412, 412, 428 (2016).

275. See Bradley D. McAuliff et al., *Taking the Next Steps: Promoting Open Science and Expanding Diversity*, 43 L. & HUM. BEHAV. 1, 6 (2019); Ayden I. Scheim et al., *Heavy Episodic Drinking Among Transgender Persons: Disparities and Predictors*, 167 DRUG & ALCOHOL DEPENDENCE 156, 156 (2016).

276. See Scheim et al., *supra* note 275, at 156; McAuliff et al., *supra* note 275, at 6; Sari L Reisner et al., *supra* note 275, at 415, 422.

277. SCHEIM ET AL., *supra* note 52, at 5.

278. See generally Velte, *supra* note 162.

demographics.²⁷⁹ In 2019, one respected journal, *Law and Human Behavior*, publicly recognized how scarcely it had published articles on transgender issues.²⁸⁰

When researchers do study transgender people, their investigations often suffer from methodological deficiencies,²⁸¹ and data collection is sometimes unreliable.²⁸² A meta-analysis from 2008 found 48 percent of studies on transgender people with HIV and AIDS had sample sizes under 100.²⁸³ Another found that three-quarters of published studies from 2008 to 2014 focused on transgender women, but ignored transgender men and nonbinary people.²⁸⁴ And recently, a Columbia University researcher committed a fatal methodological error by grouping transgender respondents with those who “refused to answer.”²⁸⁵

The dangers of under- and miscounting the transgender population are hardly theoretical. Funding for public programs is only made possible by reliable demographic data reflecting a population in need.²⁸⁶ Limited data complicates efforts in demonstrating the prevalence of violence against transgender individuals,²⁸⁷ so too in estimating the health needs of transgender people.²⁸⁸

B. Inequities in Healthcare Access

The discrimination transgender people confront in healthcare access is pervasive.²⁸⁹ 70 percent of transgender individuals report discrimination in healthcare settings,²⁹⁰ while nearly 27 percent report experiencing an outright

279. See Nat'l LGBT Cancer Network et al., Open Letter About Coronavirus and the LGBTQ+ Communities: Over 100 Organizations Ask Media & Health Officials to Weigh Added Risk 3 (March 11, 2020), <https://cancer-network.org/wp-content/uploads/2020/03/Press-Release-Open-Letter-LGBTQ-Covid19-4.pdf>; Scheim et al., *supra* note 275, at 156; Annesa Flentje et al., *Missing Data in Substance Abuse Research? Researchers' Reporting Practices of Sexual Orientation and Gender Identity*, HHS PUBLIC ACCESS (Nov. 26, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4297716/>.

280. See McAuliff et al., *supra* note 275, at 6.

281. SCHEIM ET AL., *supra* note 52, at 17–21.

282. McCabe & Kinney, *supra* note 61, at 446–47; *Violence Against Trans and Non-Binary People*, *supra* note 173.

283. *Violence Against Trans and Non-Binary People*, *supra* note 173, at 21.

284. *Id.* at 6.

285. Dionna Nicole Atkinson, *The Impact of Housing on Self-Reported Physical and Mental Health Among Residents in Public and Affordable Housing in the South Bronx: A Cross-Sectional Analysis 13* (May 5, 2020) (M.P.H. thesis, Columbia University), <https://academiccommons.columbia.edu/doi/10.7916/d8-34bt-wt62>.

286. Velte, *supra* note 162, at 77–81.

287. HUM. RIGHTS CAMPAIGN, *supra* note 113, at 27.

288. See BENTON CNTY. HEALTH DEP'T, BENTON COUNTY COMMUNITY HEALTH ASSESSMENT 2017-2021, at 195 (2017), <https://oregon.gov/OHA/PH/ABOUT/LPHACHACHIP/BentonCHA2017.pdf>.

289. Kristie L. Seelman et al., *Transgender Noninclusive Healthcare and Delaying Care Because of Fear: Connections to General Health and Mental Health Among Transgender Adults*, 2 *TRANSGENER HEALTH* 17, 17–18 (2017).

290. Velte, *supra* note 162, at 102.

refusal of care at least once in their lifetime,²⁹¹ often due to the provider's religious or cultural beliefs.²⁹² If not rejected outright, at least 21 percent of transgender patients are verbally abused by their healthcare providers, while 8 percent are physically assaulted.²⁹³ During medical appointments, transgender patients often endure misgendering and demeaning language²⁹⁴—and even lectures moralizing about gender identity.²⁹⁵

Anticipating this discrimination, many transgender individuals avoid seeking healthcare altogether, which exacerbates health inequities even further.²⁹⁶ Indeed, transgender patients who experience discrimination are six times more likely to avoid medical visits than those who do not,²⁹⁷ which explains why one in four transgender individuals avoided healthcare in just the last year.²⁹⁸ Bathroom access in provider offices is an additional barrier to healthcare, with 11 percent of transgender people attributing it as the cause of avoiding medical visits.²⁹⁹

Beyond these reported barriers, many providers are unable to address the healthcare needs of transgender patients, since transgender health issues are often absent from standard medical training.³⁰⁰ In fact, 50 percent of transgender individuals report having to teach their providers about transgender healthcare.³⁰¹ Thus, basic healthcare needs often require specialized providers and clinics,³⁰² which can be few and far between.³⁰³

C. Insurance and Expenses for Medical Care

Even when gender-affirming healthcare is accessible, it may be unaffordable. This is due in part to low rates of insurance coverage among transgender individuals³⁰⁴ and still lower rates of employee-sponsored

291. Levasseur, *supra* note 41, at 950; TRANSGENDER L. CTR., POSITIVELY TRANS: A NATIONAL NEEDS ASSESSMENT OF TRANSGENDER AND GENDER NON-CONFORMING PEOPLE LIVING WITH HIV 1–2 (2015), <https://transgenderlawcenter.org/wp-content/uploads/2015/12/2015-12-01-positively-trans-teaser-report.pdf>.

292. See Christiane S. Cardoza, *Health Care Provider Discrimination Against LGBT Patients in the 2019 HHS Conscience Rights Rule*, 71 ADMIN. L. REV. 881, 882 (2019).

293. Levasseur, *supra* note 41, at 950.

294. THORESON, *supra* note 259.

295. *Id.*

296. McCabe & Kinney, *supra* note 61, at 439–41; NAT'L LGBT CANCER NETWORK ET AL., *supra* note 279, at 2.

297. THORESON, *supra* note 259.

298. Johnson, *supra* note 113; Meronek, *supra* note 121.

299. *Outreach: Connecting to the Transgender Community*, *supra* note 174.

300. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 33.

301. Halliwell, *supra* note 48, at 235.

302. *Health Services*, CTRS. FOR DISEASE CONTROL & PREVENTION: LESBIAN, GAY, BISEXUAL, & TRANSGENDER HEALTH, <https://cdc.gov/lgbthealth/health-services.htm> (last visited July 15, 2020).

303. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 33.

304. HUNTER ET AL., *supra* note 111, at 70–71.

insurance.³⁰⁵ But even insured transgender patients often cannot obtain the coverage necessary for gender confirmation surgeries or hormone therapies,³⁰⁶ which are oftentimes labeled as cosmetic.³⁰⁷ Insurance plans may also deny healthcare to patients whose medical needs disagree with gender stereotypes, such as transgender men seeking gynecological services.³⁰⁸

These cost barriers have drastic consequences. When unable to afford gender-affirming surgeries and therapies, which is often the case,³⁰⁹ transgender individuals may pursue sex work for funding.³¹⁰ Others may obtain hormones through underground markets, risking improper dosages and arrest for illicit drug importation.³¹¹ So ultimately, cost restrictions to transgender medical care feed into vicious cycles of economic insecurity and adverse health outcomes that cause transgender individuals to be more vulnerable to health and environmental inequities.³¹²

D. Mental and Behavioral Health Outcomes

Health inequities in the transgender community manifest in comorbid mental, behavioral, and physical health outcomes.³¹³ Chronic stress from discrimination in healthcare settings and elsewhere is prevalent in the transgender community.³¹⁴ And the relationship between chronic stress and high blood pressure, which itself compromises physical health, is well documented.³¹⁵ Those who experience multiple jeopardy are at even greater risk for adverse mental health outcomes.³¹⁶

305. TIA ZENO ET AL., U.S. DEP'T OF HEALTH & HUM. SERVS., OUTREACH AND ENROLLMENT FOR LGBT INDIVIDUALS: PROMISING PRACTICES FROM THE FIELD (2015), https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/56381/rb_lgbt.pdf.

306. McCabe & Kinney, *supra* note 61, at 441; Levasseur, *supra* note 41, at 950, 957, 960.

307. See Halliwell, *supra* note 48, at 225, 229–30, 235; Levasseur, *supra* note 41, at 950 n.32; MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 32.

308. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 34–35.

309. Velte, *supra* note 40, at 241.

310. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 38, 45.

311. Tara Santora, *Ignored by Doctors, Transgender People Turn to DIY Treatments*, UNDARK (June 29, 2020), <https://undark.org/2020/06/29/transgender-diy-treatments/>.

312. Velte, *supra* note 162, at 103.

313. See generally U.S. DEP'T OF VETERANS AFFS., LGBTQ+ VETERAN HEALTH CARE: TRANS WOMEN AND TRANSFEMININE VETERAN HEALTH CARE [hereinafter TRANS WOMEN AND TRANSFEMININE VETERAN HEALTH CARE], <https://www.patientcare.va.gov/LGBT/docs/va-pcs-lgbt-factsheet-transgender-female.pdf> (last accessed October 24, 2021); U.S. DEP'T OF VETERANS AFFS., LGBTQ+ VETERAN HEALTH CARE: TRANS MEN AND MASCULINE OF CENTER (MOC) VETERANS HEALTHCARE [hereinafter TRANS MEN AND MASCULINE OF CENTER (MOC) VETERANS HEALTHCARE], <https://www.patientcare.va.gov/LGBT/docs/va-pcs-lgbt-factsheet-transgender-male.pdf> (last visited Jan. 5, 2022).

314. TRANS WOMEN AND TRANSFEMININE VETERAN HEALTH CARE, *supra* note 313, at 1; TRANS MEN AND MASCULINE OF CENTER (MOC) VETERANS HEALTHCARE, *supra* note 313, at 1.

315. See generally Robert-Paul Juster et al., *Allostatic Load Biomarkers of Chronic Stress and Impact on Health and Cognition*, 35 NEUROSCIENCE & BIOBEHAVIORAL REVS. 2 (2010).

316. McCabe & Kinney, *supra* note 61, at 433–34.

Nearly half of transgender individuals have depression, anxiety or both.³¹⁷ A recent needs assessment of three urban regions found 70 percent of transgender individuals reported that they could benefit from counselling or mental healthcare.³¹⁸ Negative body image, which may be brought on by gender dysphoria, can be a stressor that leads to or exacerbates bulimia and anorexia.³¹⁹ For transgender individuals forced to remain closeted, these mental health concerns can be worse.³²⁰ Transgender veterans are also affected by mental disabilities at higher rates than other veterans.³²¹

Transgender students, in particular, suffer from poor mental health, experiencing depression and anxiety at higher rates than cisgender students.³²² And transgender youth, in general, often experience lower self-esteem,³²³ usually brought on by parental and familial rejection.³²⁴

Substance use is also a source of adverse behavioral health for transgender people, as it is linked to coping with stigma, survival sex work, and stress.³²⁵ Compared to cisgender people, transgender individuals are more likely to binge drink,³²⁶ and almost twice as likely to have a substance use disorder.³²⁷ These stressors begin early, when mistreatment and bullying in schools leads to increased drug and alcohol use among transgender youth.³²⁸

E. Suicide, Suicidal Ideation, and Self-Harm

Another critical dimension to the inequities transgender people experience is the higher prevalence of suicide, suicidal ideation, and self-harm.³²⁹ Chronic stress, prevalent in the transgender community, is a major cause of attempted suicide and thoughts of suicide among transgender people.³³⁰ Between 40 and 50 percent of transgender people attempt suicide in their lifetimes, compared to

317. Halliwell, *supra* note 48, at 223.

318. CHUNG ET AL., *supra* note 164, at 12.

319. Aaryn Clerk, *Decentering the Narrative: Trans Folks, Body Image, and EDs*, NAT'L EATING DISORDERS ASS'N: BLOG, <https://www.nationaleatingdisorders.org/blog/decentering-narrative-trans-folks-body-image-and-eds> (last visited Dec. 7, 2021); TRANS WOMEN AND TRANSFEMININE VETERAN HEALTH CARE, *supra* note 313, at 2; TRANS MEN AND MASCULINE OF CENTER (MOC) VETERANS HEALTHCARE, *supra* note 313, at 2.

320. TRANS WOMEN AND TRANSFEMININE VETERAN HEALTH CARE, *supra* note 313, at 1; TRANS MEN AND MASCULINE OF CENTER (MOC) VETERANS HEALTHCARE, *supra* note 313, at 1.

321. TRANS WOMEN AND TRANSFEMININE VETERAN HEALTH CARE, *supra* note 313, at 1; TRANS MEN AND MASCULINE OF CENTER (MOC) VETERANS HEALTHCARE, *supra* note 313, at 1.

322. Velte, *supra* note 40, at 206; McCabe & Kinney, *supra* note 61, at 437–38.

323. Velte, *supra* note 40, at 209.

324. Haas et al., *supra* note 74, at 27.

325. Hwahng & Nuttbrock, *supra* note 114, at 38.

326. BENTON CNTY. HEALTH DEP'T, *supra* note 288, at 195.

327. Levasseur, *supra* note 41, at 957.

328. Velte, *supra* note 40, at 209.

329. See McCabe & Kinney, *supra* note 61, at 447.

330. TRANS WOMEN AND TRANSFEMININE VETERAN HEALTH CARE, *supra* note 313, at 1; TRANS MEN AND MASCULINE OF CENTER (MOC) VETERANS HEALTHCARE, *supra* note 313, at 1.

1.6 percent of cisgender people.³³¹ And more than one in ten transgender individuals report attempting suicide in just the last year.³³²

Among transgender youth nationally, 30 percent report attempting suicide at least once, compared to 4.6 percent of cisgender youth.³³³ In one state survey, transgender students were four times likelier to have made a suicide plan, and five times likelier to have attempted suicide than their cisgender peers.³³⁴ Tragically, more than two-thirds of transgender youth report self-harm in just the last year.³³⁵

F. Physical Health Outcomes

Transgender people are more likely to have high blood pressure, heart disease, and kidney disease,³³⁶ and are at higher risk for obesity, asthma, and cancer.³³⁷ Transgender people are also more likely to experience urinary and kidney complications because they often defer using public restrooms to avoid physical confrontations.³³⁸ Indeed, 8 percent of transgender individuals report urinary and kidney infections from avoiding bathrooms.³³⁹ And transgender youth, specifically, are more likely to experience such infections, as well as self-imposed dehydration.³⁴⁰

HIV and AIDS have an especially disparate health impact on the transgender community,³⁴¹ affecting transgender individuals at almost twice the rate of cisgender people.³⁴² The Centers for Disease Control in 2019 estimated that 14 percent of transgender women and 3 percent of transgender men in the United States live with HIV and AIDS, compared to the overall prevalence for adults of 0.5 percent.³⁴³ This statistic rises to 44 percent for Black transgender women.³⁴⁴ And because of the stigma around HIV and AIDS, many transgender people do not get tested, and thus are unaware of their status until they develop

331. See McCabe & Kinney, *supra* note 61, at 432–33; Halliwell, *supra* note 48, at 223; Levasseur, *supra* note 41, at 949.

332. REITZES, *supra* note 89.

333. McCabe & Kinney, *supra* note 61, at 432–33.

334. VT. DEP'T OF HEALTH, *supra* note 181, at 2.

335. REITZES, *supra* note 89.

336. TRANS WOMEN AND TRANSFEMININE VETERAN HEALTH CARE, *supra* note 313, at 2–3; TRANS MEN AND MASCULINE OF CENTER (MOC) VETERANS HEALTHCARE, *supra* note 313, at 1–3.

337. Timothy W. Collins et al., *Environmental Injustice and Sexual Minority Health Disparities: A National Study of Inequitable Health Risks from Air Pollution among Same-Sex Partners*, 191 SOC. SCI. & MED. 38, 39 (2017); ZENO ET AL., *supra* note 305.

338. McCabe & Kinney, *supra* note 61, at 435.

339. *Id.*

340. Velte, *supra* note 40, at 209; Graves, *supra* note 147, at 393–94.

341. HUNTER ET AL., *supra* note 111, at 63–65.

342. Levasseur, *supra* note 41, at 949.

343. DIV. OF HIV/AIDS PREVENTION, CTRS. FOR DISEASE CONTROL & PREVENTION, ISSUE BRIEF: HIV AND TRANSGENDER COMMUNITIES 1 (2019), <https://www.cdc.gov/hiv/pdf/policies/cdc-hiv-transgender-brief.pdf>.

344. *Id.*

serious health conditions.³⁴⁵ Moreover, the financial costs of HIV and AIDS treatment forces some transgender individuals to make tradeoffs to their detriment, such as between HIV and AIDS treatments or hormonal therapy.³⁴⁶

Finally, the health risks from the COVID-19 pandemic are particularly pronounced in the transgender community.³⁴⁷ Higher rates of HIV, AIDS, and cancer compromise individuals' immune systems, which makes them more likely to get severely ill from COVID-19.³⁴⁸ And as a respiratory illness, COVID-19 can have worse effects for the transgender population, which sees higher rates of smoking.³⁴⁹ These effects are even more marked because, when experiencing illness and disease, transgender adults have fewer family connections, relying more on friends and social organizations.³⁵⁰ The 2019 Wellness for Our Communities survey found 42 percent of transgender people reported their birth families cutting off contact with them at some point in their lives.³⁵¹

G. Inequities in Social Services in General

Considering the severity of adverse health outcomes within the transgender population, access to social services can be an important lifeline for food, housing, and health.³⁵² But because of the stigma they experience in public settings, transgender people are more likely to underutilize social services.³⁵³ In Social Security Administration offices alone in just the last year, 11 percent of transgender individuals reported unequal service compared to cisgender individuals, harassment, or physical assault.³⁵⁴ Limited access to social services is also a large risk factor for transgender individuals who experience intimate partner violence, as transgender people may be excluded from shelters and ignored by domestic violence advocates.³⁵⁵ Transgender elders especially are less likely to reach out to senior centers, meal centers, and other social services

345. See Jamie Vickery & Lori M. Hunter, *Native Americans Where in Environmental Justice Research?*, 29 SOC'Y & NAT. RES. 36, 63 (2016); U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 33, 49.

346. See CHUNG ET AL., *supra* note 164, at 19.

347. See NAT'L LGBT CANCER NETWORK ET AL., *supra* note 279, at 2.

348. *Id.* at 2; Nico Lang, *Already Marginalized, Flint's LGBT Community Has Been Devastated by the City's Water Crisis*, LOGO: NEWNOWNEXT (June 14, 2017), <http://www.newnownext.com/flint-michigan-water/06/2017/>.

349. NAT'L LGBT CANCER NETWORK ET AL., *supra* note 279, at 2. The particular health consequences of COVID-19 for transgender individuals are not yet known and may not be for some time. As further research is conducted on the unfolding pandemic, it will be crucial to reinvestigate how the failures to meaningfully involve transgender people in disaster situations carried over to the COVID-19 pandemic, so lives may be saved in the future.

350. McCabe & Kinney, *supra* note 61, at 433.

351. CHUNG ET AL., *supra* note 164, at 13.

352. Velte, *supra* note 162, at 106.

353. *Id.*

354. HUNTER ET AL., *supra* note 111, at 42.

355. HUM. RIGHTS CAMPAIGN, *supra* note 113, at 30.

because of fears of discrimination and harassment.³⁵⁶ This compounds the discrimination transgender elders experience in nursing homes or community living centers, which many transgender elders already avoid due to lifelong experiences of discrimination.³⁵⁷

These barriers to social services are directly linked to food insecurity among transgender people.³⁵⁸ Environmental injustices amplify this food insecurity, such as in cases where vulnerable groups lack access to clean water for cooking.³⁵⁹ But despite their experience with food insecurity, hunger research is mostly absent around transgender people.³⁶⁰ As of 2018, a report by the Social Justice Sexuality Project found no government data on hunger in the transgender community.³⁶¹ Independent research has found 27 percent of LGBTQ people to be food insecure,³⁶² and a 2015 needs assessment found half of transgender people are food insecure.³⁶³

H. Poor Quality Living Conditions

The health and environmental challenges faced by transgender people are intensified even further by poor housing quality.³⁶⁴ Facing greater discrimination in the housing market, transgender individuals are often saddled with higher housing costs despite less desirable living conditions.³⁶⁵ Yet, studies investigating the full extent of these housing disparities are conspicuously absent.³⁶⁶ Instead, housing quality has been understood through the lens of poverty.³⁶⁷ It is also known that people who are routinely disadvantaged by society (as is the transgender community) experience disproportionate exposure to toxic pollution where they live.³⁶⁸

The first study to investigate risks of housing quality and pollution among the lesbian, gay, and bisexual population in the United States was published in 2016.³⁶⁹ The study investigated how hazardous air pollutants may be unequally

356. NAT'L LGBT CANCER NETWORK ET AL., *supra* note 279, at 2.

357. TRANS WOMEN AND TRANSFEMININE VETERAN HEALTH CARE, *supra* note 313, at 3; TRANS MEN AND MASCULINE OF CENTER (MOC) VETERANS HEALTHCARE, *supra* note 313, at 3.

358. HUNTER ET AL., *supra* note 111, at 79.

359. *Id.* at 16, 79–80.

360. *Id.* at 79; Velte, *supra* note 162, at 100–01.

361. HUNTER ET AL., *supra* note 111, at 79.

362. *LGBTQ+ Communities and Disasters*, CTR. FOR DISASTER PHILANTHROPY, <https://disasterphilanthropy.org/issue-insight/lgbtq-communities-and-disasters/> (last visited Aug. 23, 2021).

363. HUNTER ET AL., *supra* note 111, at 79.

364. See Velte, *supra* note 162, at 100; Collins et al., *supra* note 337.

365. Velte, *supra* note 162, at 100; see also discussion *supra* Subpart II.B.

366. Collins et al., *supra* note 337, at 45.

367. *Id.* at 38.

368. Timothy W. Collins et al., *Sexual Orientation, Gender, and Environmental Injustice: Unequal Carcinogenic Air Pollution Risks in Greater Houston*, 107 ANNALS AM. ASS'N GEOGRAPHERS 72, 73 (2017).

369. See generally *id.*

distributed with respect to same-sex households in Greater Houston.³⁷⁰ The study found that same-sex households were a powerful predictor of cancer risk from hazardous air pollutants relative to other independent variables.³⁷¹ A follow-up study of nationwide impacts found same-sex households were a better predictor of variable cancer and respiratory risks from hazardous air pollutants than either Black or Hispanic populations.³⁷²

In both studies, the authors discussed that disproportionate impacts from air pollution may contribute to disparate health outcomes among all LGBTQ people, including transgender people.³⁷³ Lesbian, gay, bisexual, and transgender people have historically been excluded from heteronormative residential spaces in the United States and forced into urban centers.³⁷⁴ These urban centers are often highly polluted.³⁷⁵ While studies warn against clear generalizations to transgender populations, it is important to note that transgender populations in the United States have, in fact, been forced into urban centers over the last hundred years.³⁷⁶ San Francisco, for instance, is now formally recognizing these centers, such as The Transgender District, which has a documented presence of transgender residents since the early 1920s.³⁷⁷ So it is reasonable to conclude that the forced clustering of transgender communities in urban centers has pushed them into highly polluted spaces similar to those examined by LGB studies.

I. *Disastrous Effects of Climate Change*

With the existing vulnerabilities of transgender individuals, the effects of climate change and natural disasters exacerbate inequalities.³⁷⁸ Yet, the community is left out of much of the discussion around climate disasters.³⁷⁹ Proper warnings before, during, and after major storms often do not reach transgender people. This occurs in part because transgender individuals are more

370. *Id.* at 73, 75–77.

371. *Id.* at 86.

372. Collins et al., *supra* note 337, at 44.

373. *See id.*; Collins et al., *supra* note 368, at 86.

374. Collins et al., *supra* note 337, at 44; Collins et al., *supra* note 368, at 74–75.

375. Collins et al., *supra* note 368, at 75.

376. *About the District*, THE TRANSGENDER DIST., <https://www.transgenderdistrictsf.com/about> (last visited July 14, 2020).

377. *Id.*; *see also About Us*, CASTRO LGBTQ CULTURAL DIST., <https://castro-lgbtq.org/about/> (last visited July 14, 2020); John Ferrannini, *SF Transgender District Drops Cafeteria Owner's Name*, BAY AREA REP. (Mar. 20, 2020), https://ebar.com/news/latest_news//289682/online_extra:_sf_transgender_district_drops_cafeteria_owners_name?ch=news&sc=latest_news&sc2=&id=289682&online_extra%3A_sf_transgender_district_drops_cafeteria_owners_name=; David Hyman, *Introduction to the Leather & LGBTQ Cultural District*, S.F. LEATHER & LGBTQ CULTURAL DIST. (last updated Feb. 13, 2020), https://docs.google.com/document/d/1YFwleMfvOh0So5nbNIRip9tL_2tJ5z1aK7f6vwP1Rtk/edit?usp=sharing.

378. Thuringer, *supra* note 178.

379. Benavente, *supra* note 119, at 3–6. The National Preparedness Report, the Federal Emergency Management Agency's annual review of the United States' preparedness to respond to natural and manmade disasters, first used the word "transgender" in 2020. Thomas Frank, *LGBTQ People Are at Higher Risk in Disasters*, SCI. AM. (Dec. 23, 2020), <https://www.scientificamerican.com/article/lgbtq-people-are-at-higher-risk-in-disasters/>.

isolated from the community at large³⁸⁰ and because the media fails to report resources particular to transgender evacuees and communities that are rebuilding.³⁸¹

During evacuation, transgender individuals have fewer family resources to rely upon for essential needs.³⁸² After disaster hits, spikes in gender-based violence present another unique danger to transgender people,³⁸³ who are already at higher risk of assault.³⁸⁴ And as the experience of Sharli'e Vicks in the aftermath of Hurricane Katrina demonstrated, discrimination in disaster relief efforts can exclude or even criminalize transgender access to emergency aid.³⁸⁵ Religious rhetoric that rationalizes disasters as “the wrath of God” for transgender people only makes them more of a target for violence and harassment.³⁸⁶

The inaccessibility of stable housing among transgender people will also reinforce the effects of climate change.³⁸⁷ Every year since 2015 has been the hottest year on record, and extreme weather events of all types are deadly for homeless transgender individuals or those without good shelter.³⁸⁸ While migration is expected to increase with extreme weather patterns,³⁸⁹ transgender people, with lower incomes and less capital, will largely be unable to leave their homes and jobs.³⁹⁰ Overall, people who cannot pay premium prices for food and water, people who cannot leave town during extreme weather events, and people who cannot afford to rebuild after disasters, will bear the brunt of climate change.³⁹¹

IV. FAILURES OF MEANINGFUL INVOLVEMENT

“[E]nvironmental justice is not merely a box to be checked.”³⁹²

This Part addresses how transgender people experience procedural environmental injustice. It examines how traditional modes of meaningful involvement in environmental justice have failed to engage, completely ignored,

380. Frank, *supra* note 379.

381. Scott McKinnon et al., *Disasters, Queer Narratives and the News: How are LGBTI Disaster Experiences Reported by the Mainstream and LGBTI Media?*, 64 J. HOMOSEXUALITY 122, 125, 129, (2017).

382. *LGBTQ+ Communities and Disasters*, *supra* note 362.

383. *Id.*

384. LAVERACK ET AL., *supra* note 179, at 17–20.

385. See discussion *supra* Intro.

386. Thuringer, *supra* note 178.

387. Noah Goodwin, *There Is No Planet B: Why Climate Change Is an LGBTQ Issue*, GLAAD (Mar. 15, 2019), <https://www.glaad.org/amp/no-planet-b-why-climate-change-is-an-lgbtq-issue>.

388. *Id.*

389. Thuringer, *supra* note 178.

390. Johnson, *supra* note 113.

391. *Id.*; see ANNA CLARK, *THE POISONED CITY: FLINT’S WATER AND THE AMERICAN URBAN TRAGEDY*, ch. 12, § II (Kindle ed. 2018).

392. *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 92 (4th Cir. 2020).

or practically excluded transgender individuals. Transgender people have been left out of a conversation wherein their lives may hang in the balance.³⁹³ These failures of meaningful involvement, as this Part explains, stem from a cis-heteronormative conception of “normal” in environmental justice.³⁹⁴

A. Definitions of Environmental Justice

A principal concern with inequitable access to environmental justice is the definition of environmental justice itself. The EPA presently defines environmental justice to apply to “all people regardless of race, color, national origin, or income.”³⁹⁵ This definition is shared by numerous state agencies,³⁹⁶ though the definition is modified by some states.³⁹⁷ Notably absent from these definitions are the roles gender and gender identity play in environmental justice.³⁹⁸ However, these omissions from the EPA’s definition were not accidental.³⁹⁹

393. Velte, *supra* note 40, at 258. While this Part addresses many of the active failures of the EPA and community groups to engage the transgender community, only by integrating many of the suggestions in Part V will proactive meaningful involvement be possible to achieve.

394. Johnson, *supra* note 36.

395. *Learn About Environmental Justice*, *supra* note 30.

396. These include Indiana, South Carolina, New York, and many others. *See Air Quality in Indiana*, IND. DEP’T OF ENV’T MGMT., <https://www.in.gov/idem/airquality/> (last visited July 14, 2020); *Environmental Justice (EJ) Overview*, S.C. DEP’T OF HEALTH & ENV’T CONTROL, <https://sedhec.gov/environment/environmental-justice-ej> (last visited July 14, 2020); *Environmental Justice*, MISS. DEP’T OF ENV’T QUALITY, <https://www.mdeq.ms.gov/about-mdeq/office-of-community-engagement/environmental-justice/> (last visited July 14, 2020); *Environmental Justice*, N.Y. STATE DEP’T OF ENV’T CONSERVATION, <https://dec.ny.gov/public/333.html> (last visited July 14, 2020); N.J. DEP’T OF ENV’T PROT.: OFF. OF ENV’T JUSTICE, <https://nj.gov/dep/ej/> (last visited July 14, 2020); *MPCA and Environmental Justice*, MINN. POLLUTION CONTROL AGENCY, <https://www.pca.state.mn.us/about-mpca/mpca-and-environmental-justice> (last visited July 14, 2020).

397. Some states have simplified the definition; Illinois’ and Massachusetts’ definitions refer to “all people,” and New Mexico’s refers to “all New Mexicans.” *See* ILL. ENV’T PROT. AGENCY: ENV’T JUSTICE (EJ) POL’Y, <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/ej-policy.aspx> (last visited July 14, 2020); MASS.GOV: ENV’T JUSTICE, <https://mass.gov/environmental-justice> (last visited July 14, 2020); *Equity*, N.M. ENV’T DEP’T, <https://env.nm.gov/general/environmental-justice-in-new-mexico/> (last visited July 14, 2020). Others have expanded the definition: the California Government Code adds “cultures” to the definition, and Oregon adds “culture” and “education.” *See* CAL. GOV’T CODE § 65040.12(c) (2020); *What Is Environmental Justice?*, OREGON.GOV: ABOUT DEQ, <https://oregon.gov/deq/about-us/Pages/Environmental-Justice.aspx> (last visited July 14, 2020). The Virginia Council on Environmental Justice, misquoting the EPA’s definition, adds “faith.” *Virginia Council on Environmental Justice*, SEC’Y OF NAT. & HISTORIC RES., <https://naturalresources.virginia.gov/initiatives/environmental-justice/> (last visited July 28, 2020).

398. But these absences are almost unexpected; in an apparent display of collective false memories, multiple environmental activists and at least one university have incorrectly included “sex” in quoting the EPA’s definition of environmental justice. *See, e.g., What is Environmental Justice?*, MADISON ENV’T JUSTICE, <https://mejo.us/> (last visited Dec. 12, 2021); *Environmental Justice/Racism*, HEIDI HUNTER, <https://heidihunter.com/environmental-justiceracism> (last visited July 25, 2020); *Graduate Certificate in Environmental Justice*, UNIV. OF KAN., <https://catalog.ku.edu/archives/2018-19/liberal-arts-sciences/environmental-studies/environmental-justice-gradcert/> (last visited July 25, 2020).

399. *See* U.S. ENVTL. PROT. AGENCY REGION 2, *supra* note 32, at 12.

In 1994, President Clinton issued Executive Order No. 12,898, directing each federal agency to address adverse environmental effects on “minority populations and low-income populations.”⁴⁰⁰ By 2000, the EPA’s Office of Environmental Justice explicitly defined “minority” as *excluding* “religion[,] . . . sex, age, culture, sexual orientation, or any type of handicap.”⁴⁰¹ At the same time, the definition of fair treatment articulated that “no group of people, including a racial, ethnic, or socioeconomic group” should experience disproportionate impacts of environmental consequences. However, the definition of meaningful involvement was not given the same expansion.⁴⁰²

Today, the EPA’s definition of “minority” simply incorporates the definition used by the U.S. Census Bureau, which addresses only ethnicity and race.⁴⁰³ Gender and gender identity remain absent from the definition of environmental justice, which sends an important message about which populations the EPA deems worthy for meaningful involvement. The practical consequences of this message are considerable.

B. No Policies around Transgender Involvement

The EPA has no policies that meaningfully involve transgender people. No literature search uncovered any such policies, nor is there evidence of such policies in the EPA’s publicly available environmental justice plans or documents.⁴⁰⁴ In particular, there was no evidence of the EPA ever pursuing public outreach with transgender people in mind. No community involvement plan or document addressing public outreach, publicly shared by the EPA, mentions transgender people even once. Even the seminal environmental justice plans, *Plan EJ 2014* and *EJ 2020 Action Agenda*, never once mention LGBTQ people.⁴⁰⁵

To verify whether any policies do exist, a Freedom of Information Act (FOIA) request was filed with the EPA, requesting all “policies, procedures, processes, standards, guidelines and similar instructive documents” with respect

400. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12,898, 59 Fed. Reg. 7629, 7629 (Feb. 16, 1994).

401. U.S. ENVTL. PROT. AGENCY REGION 2, *supra* note 32, at 12.

402. *Id.* at 7.

403. EPA, EJ 2020 ACTION AGENDA: THE U.S. EPA’S ENVIRONMENTAL JUSTICE STRATEGIC PLAN FOR 2016-2020, at 55 (2016), https://epa.gov/sites/production/files/2016-05/documents/052216_ej_2020_strategic_plan_final_0.pdf.

404. I made multiple manual searches to uncover literature. In the EPA Web Archive (archive.epa.gov), I searched the key terms “transgender,” “trans,” “LGBT,” “nonbinary,” “genderqueer,” and “gender identity,” and permutations of these (e.g. “non-binary”), and consulted results. I repeated these efforts in the National Service Center for Environmental Publications (nepis.epa.gov). On Google, I utilized the “site:epa.gov” search command in tandem with the key terms listed. Finally, I conducted a search on Westlaw utilizing “advanced: (EPA & transgender)” with the other key terms as well.

405. See generally EPA, *supra* note 403; OFF. OF ENV’T JUSTICE, EPA, PLAN EJ 2014 (2011), <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100DFCQ.PDF?Dockey=P100DFCQ.PDF>.

to the meaningful involvement of transgender people.⁴⁰⁶ The only records provided were two of the EPA's employment policies prohibiting discrimination and harassment.⁴⁰⁷ A second FOIA request with the EPA sought "reviews, impact reports, accomplishments reports, results reports, and similar reflective documents" since 2018 that discussed the meaningful involvement of transgender people.⁴⁰⁸ No records were found.⁴⁰⁹

C. *Hosting Public Events in Religious Spaces*

Public meetings and events, especially ones with public participation, are crucial avenues of public engagement with the EPA.⁴¹⁰ Community attendance and participation are vehicles for public insight, which steers how the EPA pursues its purposes; Superfund cleanups are an example, although numerous other important environmental decisions involve the public's feedback.⁴¹¹ But many of these events are held in religiously affiliated spaces⁴¹² where

406. In full, the request made was "[A]ll Environmental Protection Agency policies, procedures, processes, standards, guidelines, and similar instructive documents that explicitly discuss or direct the fair treatment and meaningful involvement, with respect to the development, implementation and enforcement of environmental laws, regulations and policies, of persons who identify as transgender, nonbinary, genderqueer or any other gender identity or expression under the umbrella of 'transgender.'" *EPA-2020-003309 Request Details*, FOIAONLINE, <https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=EPA-2020-003309&type=request> (last visited Jan. 3, 2022).

407. *Id.*

408. In full, the request made was "[A]ll Environmental Protection Agency reviews, impact reports, accomplishments reports, results reports, and similar reflective documents, created or finalized on or after January 1, 2018, that explicitly discuss the fair treatment and meaningful involvement, with respect to the development, implementation and enforcement of environmental laws, regulations and policies, of persons who identify as transgender, nonbinary, genderqueer or any other gender identity or expression under the umbrella of 'transgender.'" *EPA-2020-003312 Request Details*, FOIAONLINE, <https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=EPA-2020-003312&type=request> (last visited Jan. 3, 2022).

409. *Id.*

410. EPA REGION 2, *supra* note 32, at 4-3 to 4-6.

411. EPA, *supra* note 269, at 9-11; EPA, SUPERFUND COMMUNITY INVOLVEMENT HANDBOOK 1-2, 12 (2016), <https://semspub.epa.gov/work/HQ/100000070.pdf>.

412. See, e.g., *EPA Public Meeting September 12*, GLYNN ENV'T COAL., <https://web.archive.org/web/20220206011347/https://www.glynnenvironmental.org/events-1/epa-public-meeting-september-12> (last visited July 14, 2020); Amanda Roberts, *Air of Uncertainty LDEQ, EPA to Hold Public Meeting, Rep. Richmond Weighs In*, FOX8 (Feb. 11, 2020, 6:53 AM), <https://fox8live.com/2020/02/11/air-uncertainty-ldeq-epa-hold-public-meeting-rep-richmond-weighs/>; *EPA Begins Public Comment Period on Proposed Soil Cleanup Plan for North Alcoa Superfund Site, East St. Louis, Illinois*, EPA (Dec. 9, 2019), <https://epa.gov/newsreleases/epa-begins-public-comment-period-proposed-soil-cleanup-plan-north-alcoa-superfund-site>; Sean Lisitza, *EPA Director of Environmental Justice Hears Local Complaints in Peoria*, CIPROUD.COM (Nov. 12, 2019, 1:17 AM), <https://centralillinoisproud.com/digital-originals/epa-director-of-environmental-justice-hears-local-complaints-in-peoria/>; *EPA Announces Proposal to Improve Cleanup at Tutu Wellfield Superfund Site on St. Thomas, U.S. Virgin Islands*, EPA to Hold Public Meeting August 23, 2018, EPA WEB ARCHIVE (Aug. 8, 2018), <https://archive.epa.gov/epa/newsreleases/epa-announces-proposal-improve-cleanup-tutu-wellfield-superfund-site-st-thomas-us.html>; Mike McCullough, *Minden Resident "I Just Don't Feel Safe Here", EPA to Conduct More Tests*, METRONNEWS (June 8, 2018, 2:20 PM), <https://wvmetronews.com/2018/06/08/minden-resident-i-just-dont-feel-safe-here-epa-to-conduct-more-tests/>.

transgender people have often been discriminated.⁴¹³ Indeed, about 40 percent of transgender individuals report leaving a faith community from fear of rejection, while about 20 percent have actually been rejected.⁴¹⁴

So, while the EPA's failures to engage the transgender community are demonstrably evident, the agency's decisions to rely on certain religious spaces exhibits active exclusion. Through a series of examples of when public meetings were hosted in such spaces hostile to the transgender community, this Subpart explores the agency's more exclusionary practices.

In September 2018, the EPA held a public meeting at the St. Paul Lutheran Church in Trenton, Missouri.⁴¹⁵ The church was overseen by the Missouri Synod,⁴¹⁶ which in 2014, declared transgender identity "gender identity confusion."⁴¹⁷ The religious council also proclaimed that gender confirmation surgeries were "not God-pleasing," and that transgender individuals who do pursue transitioning require "admonition and the call to repentance."⁴¹⁸ In 2015, Pew Research Center described the Missouri Synod as promulgating "stated barriers to inclusion" of transgender people.⁴¹⁹

On June 25, 2019, the EPA convened a meeting at Bethany Church in Greenland, New Hampshire.⁴²⁰ But just a year earlier, the church released a newsletter decrying transgender youth to be a "social contagion" and the result of a "cultural gender narrative."⁴²¹ And like many churches, Bethany Church publicly declares the "marriage relationship" to be reserved between "a man and a woman"⁴²²—a restriction often applied against marriages with transgender partners.⁴²³

413. Lang, *supra* note 348.

414. SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUAL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 77 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

415. Oralandar Brand-Williams, *EPA Offers Updates on Former McLouth Cleanup Agreement*, DETROIT NEWS, <https://detroitnews.com/story/news/local/wayne-county/2018/09/05/settlement-agreement-mclouth-steel-riverview-trenton/1148671002/> (Sept. 7, 2018, 4:37 PM).

416. See COMM'N ON THEOLOGY & CHURCH RELS., LUTHERAN CHURCH—MO. SYNOD, GENDER IDENTITY DISORDER OR GENDER DYSPHORIA IN CHRISTIAN PERSPECTIVE 1, 9 (May 17, 2014), <https://lcms.org/document.fdoc?src=lcm&id=3012>.

417. *Id.* at 8.

418. *Id.* at 9.

419. Aleksandra Sandstrom, *Religious Groups' Policies on Transgender Members Vary Widely*, PEW RSCH. CTR. (Dec. 2, 2015), <https://pewresearch.org/fact-tank/2015/12/02/religious-groups-policies-on-transgender-members-vary-widely/>.

420. Jeff McMenemy, *EPA Hosting Public Meeting to Discuss Coakley Landfill*, SEACOASTONLINE (June 24, 2019, 8:04 PM), <https://amp.seacoastonline.com/amp/4838145007>.

421. Ctr. for Parent/Youth Understanding, *Latest Research Rapid Onset Gender Dysphoria*, CPYU PARENT PAGE, Oct. 2018, at 3, <https://bethanychurch.com/home/wp-content/uploads/2018/10/CPYU-Parent-Page-October-2018-Corrected.pdf>.

422. *Statement of Faith*, BETHANY CHURCH, <https://web.archive.org/web/20200919001641/https://bethanychurch.com/welcome/statement-of-faith> (last visited Jan. 3, 2022).

423. Shawn Markus Crincoli, *Religious Sex Status and the Implications for Transgender and Gender Nonconforming People*, 11 FIU L. REV. 137, 139–41 (2015); *Transgenderism, Transsexuality, and Gender Identity*, ASSEMBS. OF GOD (Aug. 7, 2017), <https://ag.org/Beliefs/Position-Papers/>

In July 2019, the EPA held a community meeting about local medical plant pollution in Atlanta’s suburbs. The gathering was held at Covington’s Calvary Baptist Church,⁴²⁴ a place responsible for a slew of homophobic social media activity. In one post, the church proclaims that societies accepting homosexuality as anything but a “perversion” eventually collapse.⁴²⁵ It also declared that the “effeminate”—a term regularly applied to transgender and gender-nonconforming people⁴²⁶—will not “inherit the Kingdom of God.”⁴²⁷ Another post claims how homosexuality is the end of a long, downward spiral of sin.⁴²⁸ And yet another post describes homosexuality as one of the “major offenses” and an “abomination of the Lord.”⁴²⁹

On December 10, 2019, the EPA held an open house at the West Campus of the Christ Chapel Bible Church in Willow Park, Texas.⁴³⁰ The church has an extensive online presence, including a blog post discussing how the victims of the 2016 Orlando Pulse Nightclub shooting were “sinners in need of a Savior.”⁴³¹ In describing the victims as “male prostitutes”—yet another term spitefully applied to transgender and gender-nonconforming people⁴³²—the church insists that they will not “inherit the Kingdom of God.”⁴³³

Of last note are meetings in Roman Catholic churches, like one public hearing the EPA held on May 11, 2017 at St. James Catholic Church in

Transgenderism-Transsexuality-and-Gender-Identity. Opposite-sex relationships with a transgender partner are considered “homosexuality” when only sex assigned at birth is recognized; *see also* Oliver O’Donovan, *Transsexualism and Christian Marriage*, 11 J. RELIGIOUS ETHICS 135, 140, 143, 145–46, 151–52, 155–57 (1983). The conflation of transgender identity with gay and lesbian identity has also been seen in the legal sphere of marriage, *see* Andrew Sharpe, *Transgender Jurisprudence and the Spectre of Homosexuality*, 14 AUSTL. FEMINIST L.J. 23, 24–29 (2000), and in the sphere of incarceration, where transgender inmates have been classified as gay or lesbian and housed in “homosexual areas,” *see* Phyllis Randolph Frye & Katrina C. Rose, *Responsible Representation of Your First Transgendered Client*, 66 TEX. BAR J. 558, 561 (2003).

424. Nicole Carr, *Governor Steps into Plant Toxins Controversy; EPA Requested in Covington*, WSB-TV2: ATLANTA (Aug. 1, 2019, 8:09 PM), <https://wsbtv.com/news/local/governor-steps-into-plant-toxins-controversy-epa-requested-in-covington/972063886/>.

425. Covington’s Calvary (@CovingtonCalvary), FACEBOOK (Nov. 29, 2019, 10:35 AM), <https://web.archive.org/web/20220206014504/https://www.facebook.com/login/?next=https%3A%2F%2Fwww.facebook.com%2FCovingtonCalvary%2Fposts%2F2661765267178449>.

426. John H. Elliott, *No Kingdom of God for Softies? Or, What Was Paul Really Saying? 1 Corinthians 6 9-10 in Context*, 34 BIBLICAL THEOLOGY BULL.: J. BIBLE & CULTURE 17, 25–27, 32, 34 (2004).

427. Covington’s Calvary, *supra* note 425.

428. Covington’s Calvary (@CovingtonCalvary), FACEBOOK (Jan. 2, 2020), <https://facebook.com/CovingtonCalvary/posts/2766962093325432>.

429. Covington’s Calvary (@CovingtonCalvary), FACEBOOK (Sept. 4, 2020), <https://facebook.com/CovingtonCalvary/posts/3370385876316381>.

430. *Circle Court Ground Water Plume Willow Park, TX*, EPA: SUPERFUND SITE, <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.stayup&id=0606965> (last visited July 28, 2020).

431. *When Extremism Produces Extremely Wrong Reactions*, CHRIST CHAPEL BIBLE CHURCH, <https://ccbfamily.org/extremism-produces-extremely-wrong-reactions/> (last visited July 25, 2020).

432. *See* Elliott, *supra* note 426, at 27, 29; COMM’N ON THEOLOGY & CHURCH RELATIONS, *supra* note 416, at 7.

433. *See* *When Extremism Produces Extremely Wrong Reactions*, *supra* note 431.

Edgemont, South Dakota.⁴³⁴ The Holy See issued opinions that derided transgender identity as “a move away from *nature*,” which represents “a confused concept of freedom in the realm of feelings and wants.”⁴³⁵ In 2016, after explaining that Jesus Christ would not turn away faithful transgender individuals, Pope Francis asked reporters, “[D]on’t write, ‘The pope will bless [transgender people].’”⁴³⁶ St. James Catholic Church is overseen by the Diocese of Rapid City of the South Dakota Catholic Conference.⁴³⁷ The conference proclaims transgender identity as a “gender ideology,”⁴³⁸ and supported the restriction of bathrooms based on assigned sex at birth.⁴³⁹

Hosting public events in religious spaces, such as churches, is, on its own, understandable. Churches can be centers of the community, and religious leaders may be crucial partners for public outreach and engagement.⁴⁴⁰ But as the foregoing examples show, the EPA and other community groups repeatedly seek attendance in religiously affiliated spaces that publicly discriminate against and dehumanize transgender people. And as observed in communities of color, latent vilification that propels insecurity and discomfort results in intentional avoidance

434. *EPA Dewey-Burdock Class III and Class V Injection Well Draft Area Permits*, U.S. ENVT. PROT. AGENCY REGION 8 (Aug. 2, 2017), <https://web.archive.org/web/20210329201836/https://epa.gov/uic/epa-dewey-burdock-class-iii-and-class-v-injection-well-draft-area-permits>; see also EPA, U.S. EPA TO CLEAN UP LEAD IN DEPUE, HOLD PUBLIC MEETING 1 (2019), <https://semspub.epa.gov/work/05/951688.pdf>; EPA, LOWER DUWAMISH WATERWAY SUPERFUND SITE COMMUNITY INVOLVEMENT PLAN 61, 64 (2016), <https://semspub.epa.gov/work/10/100033896.pdf>; Constanza Montana, *Abandoned Shop Has Toxic Chemicals*, CHI. TRIBUNE (Nov. 13, 1987), <https://chicagotribune.com/news/ct-xpm-1987-11-13-8703250748-story.html>.

435. GIUSEPPE VERSALDI & ANGELO VINCENZO ZANI, CONGREGATION FOR CATH. EDUC., “MALE AND FEMALE HE CREATED THEM”: TOWARDS A PATH OF DIALOGUE ON THE QUESTION OF GENDER THEORY IN EDUCATION 11 (2019), http://www.educatio.va/content/dam/cec/Documenti/19_0997_INGLESE.pdf; see also Jason Horowitz & Elisabetta Povoledo, *Vatican Rejects Notion that Gender Identity Can Be Fluid*, N.Y. TIMES (June 10, 2019), <https://nytimes.com/2019/06/10/world/europe/vatican-francis-gender-identity-sexuality.html>; see also Benavente, *supra* note 119, at 7–8.

436. Nicole Winfield, *Pope Francis Urges Pastoral Care for Transgender People, Draws Line Between Ministry and Indoctrination*, WASH. POST (Oct. 2, 2016), <https://washingtonpost.com/news/acts-of-faith/wp/2016/10/02/pope-francis-urges-pastoral-care-for-gay-transgender-people-draws-line-between-ministry-and-indoctrination/>; Cindy Wooden, *Pope Sees ‘Global War’ Against Marriage, Urges Church Help for Couples*, CATH. SUN (Oct. 3, 2016), <https://catholicsun.org/2016/10/03/pope-on-gender-theory-video/>.

437. Jacques Daniel, *Edgemont – St. James* (Aug. 28, 2014), <https://www.rapidcitydiocese.org/location/edgemont-st-james/>.

438. See *Gender Ideology*, S.D. CATH. CONF., <https://sd catholicconference.org/issues/marriage-and-family/gender-ideology/> (last visited July 28, 2020); ROBERT D. GRUSS & PAUL J. SWAIN, RAPID CITY DIOCESE, STATEMENT FROM THE ROMAN CATHOLIC BISHOPS OF SOUTH DAKOTA REGARDING PROPOSED LEGISLATION ON ACCOMMODATION BASED UPON GENDER (Jan. 25, 2016), https://rapidcitydiocese.org/wp-content/uploads/2015/07/Joint-Statement-on-HB-1008_January-20163.pdf.

439. GRUSS & SWAIN, *supra* note 439. Because of the Holy See’s well-publicized, hostile stance opposing transgender identity, all Roman Catholic Churches become questionable spaces to seek the attendance of the transgender community.

440. See U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 41.

of particular spaces.⁴⁴¹ Were the EPA holding meetings at a church known for white supremacy, the discourse would be rightfully overridden by the disrespect for the communities of color that the meeting should have served. Yet, churches are as capable of violently excluding gender minorities as any other class of people,⁴⁴² but the EPA's casual use of some churches goes unnoticed.

Spaces that are manifestly transphobic inherently deter transgender individuals' involvement.⁴⁴³ And while religious spaces may draw attendance of some transgender individuals, widespread use of these spaces will not achieve meaningful involvement of *all* transgender people.

D. Practices During Disaster Response

Beyond hindering community involvement, trans-exclusionary planning also starves transgender people of emergency services around environmental disasters. Transgender communities are rarely included in environmental disaster planning and programming,⁴⁴⁴ while they are frequently left out of recovery and response efforts.⁴⁴⁵ And transgender women in particular confront roadblocks to essential shelter and relief services due to discriminatory gender stereotypes.⁴⁴⁶

This discrimination fuels the transgender community's existing mistrust of healthcare systems, which further contributes to their underuse of social services amid a natural disaster.⁴⁴⁷ Meanwhile, transgender access to primary and gender-affirming medical care during emergencies is already limited. In the midst of a disaster, emergency medical providers routinely undervalue hormone medications and treatments for HIV and AIDS, resulting in limited supply that makes access nearly impossible.⁴⁴⁸ Consequently, transgender individuals may turn to survival sex work in order to afford medicine.⁴⁴⁹

441. See Rhonda Itaoui et al., *Anti-Racism Muslim Mobilities in the San Francisco Bay Area*, 16 MOBILITIES 88, 1, 2–4, 11, 14 (2021); Michele Lobo, *Gestures of Judgement and Welcome in Public Spaces: Hypervisible Migrant Newcomers in Darwin, Australia*, 32 J. CULTURAL GEOGRAPHY 54, 55, 57–58, 65 (2015); Greg Noble & Scott Poynting, *White Lines: The Intercultural Politics of Everyday Movement in Social Spaces*, 31 J. INTERCULTURAL STUD. 489, 490, 492, 495–97, 499 (2010).

442. Louis F. Graham, *Navigating Community Institutions: Black Transgender Women's Experiences in Schools, the Criminal Justice System, and Churches*, 11 SEXUALITY RSCH. & SOC. POL'Y 274, 6, 8–9 (2014), doi:10.1007/s13178-014-0144-y.

443. See generally Ayden Scheim et al., *Avoidance of Public Spaces by Trans Ontarians: The Impact of Transphobia on Daily Life*, TRANS PULSE E-BULL., Jan. 16, 2014, <https://transpulseproject.ca/wp-content/uploads/2014/01/Trans-PULSE-E-Bulletin-8-English.pdf>.

444. PRIYANKA BHALLA ET AL., INT'L FED'N OF RED CROSS & RED CRESCENT SOC'YS, THE RESPONSIBILITY TO PREVENT AND RESPOND TO SEXUAL AND GENDER-BASED VIOLENCE IN DISASTERS AND CRISES 22 (2018), <https://apo.org.au/sites/default/files/resource-files/2018-07/apo-nid184271.pdf>.

445. Zoe Tabary, *Women, LGBT People 'Invisible' Victims of Disasters – Experts*, THOMSON REUTERS FOUND. NEWS (March 8, 2018), <https://news.trust.org/item/20180308114259-otaio/>; Thuringer, *supra* note 178.

446. Thuringer, *supra* note 178.

447. *LGBTQ+ Communities and Disasters*, *supra* note 362.

448. *Id.*

449. *Id.*

Worse still, the relatively few emergency shelters that do serve the needs of transgender survivors are often underfunded.⁴⁵⁰ Disaster shelters can also be dangerous places for transgender people, particularly ones that fail to affirm their gender or protect them from physical harassment.⁴⁵¹ Often, shelters force transgender people into gendered housing that does not match their gender identity.⁴⁵² And when transgender individuals use congregate showers, their bodily exposure to other shelter survivors invites verbal and physical attacks if their perceived genitals do not match their gender identity.⁴⁵³ Unsurprisingly, some transgender individuals simply avoid shelters altogether.⁴⁵⁴

E. *The Flint Water Crisis*

The water crisis in Flint, Michigan is another case example of nonexistent meaningful involvement of transgender people during disaster response.⁴⁵⁵ It began in April 2014 and was the result of lead leaching into the City of Flint's water supply.⁴⁵⁶ Flint had recently switched the municipal water source from the City of Detroit to the Flint River, whose more caustic waters resulted in lead from the pipes leaching into the city's water supply.⁴⁵⁷ At the height of the crisis, lead levels in the municipal water registered almost twice the EPA's action level of fifteen parts per billion.⁴⁵⁸ As a result, the number of Flint children with blood lead levels of over five $\mu\text{g}/\text{dL}$ jumped 3.5 times.⁴⁵⁹ At least twelve deaths are attributed to these events.⁴⁶⁰

For transgender people and those living with HIV and AIDS, the Flint Water Crisis fell especially hard.⁴⁶¹ Because of their health vulnerabilities, the water quality in Flint was particularly dangerous.⁴⁶² When authorities first made potable water available, it was often distributed in firehouses where police presence and ID requirements made many transgender women of color feel

450. Goodwin, *supra* note 387.

451. *See id.*; *LGBTQ+ Communities and Disasters*, *supra* note 362.

452. *See* Velte, *supra* note 162, at 97, 100, 106; *LGBTQ+ Communities and Disasters*, *supra* note 362.

453. *LGBTQ+ Communities and Disasters*, *supra* note 362; *see Equal Access Self Assessment Tool – Library of Steps*, GLBTQ LEGAL ADVOCATES & DEFENDERS (Sept. 2019), <http://glad.org/wp-content/uploads/2019/09/Equal-Access-Self-Assessment-Tool-Library-of-Steps.pdf>.

454. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 39, 43.

455. *See* CLARK, *supra* note 391, ch. 12, § II.

456. Lang, *supra* note 348.

457. *Id.*

458. Kelsey J. Pieper et al., *Evaluating Water Lead Levels During the Flint Water Crisis*, 52 ENV'T SCI. & TECH. 8124, 8126 (2018).

459. Sammy Zahran et al., *Four Phases of the Flint Water Crisis: Evidence from Blood Lead Levels in Children*, 157 ENV'T RSCH. 160, 169 (2017).

460. Sarah Childress, *We Found Dozens of Uncounted Deaths During the Flint Water Crisis. Here's How*, PBS (Sept. 10, 2019), <https://pbs.org/wgbh/pages/frontline/interactive/how-we-found-dozens-of-uncounted-deaths-during-flint-water-crisis/>; Lang, *supra* note 348; *see* CLARK, *supra* note 391, ch. 10, § III.

461. NAT'L LGBTQ TASK FORCE, *supra* note 185, at 14.

462. Lang, *supra* note 348; *see also* discussion *supra* Subpart III.F.

unsafe,⁴⁶³ to the point of choosing not to collect water at all.⁴⁶⁴ These distribution sites were also not located in every community, forcing some residents to walk miles a day just for drinkable water.⁴⁶⁵ When the city relocated some of the distribution sites, many were placed in churches, where transgender residents still did not feel safe.⁴⁶⁶ Wellness AIDS Services, an LGBTQ+ nonprofit assisting people living with HIV and AIDS, distributed over 1,000 cases of bottled water to those who felt unsafe obtaining water due to fears of discrimination.⁴⁶⁷

V. RECOMMENDATIONS TO PROMOTE MEANINGFUL INVOLVEMENT

“The opportunity for meaningful public involvement is the most important consideration in an environmental justice review.”⁴⁶⁸

Environmental justice demands community and social acceptance.⁴⁶⁹ And for the transgender community, it is inextricably linked with the pursuit of equity and equality.⁴⁷⁰ Because environmental decision making rarely involves transgender people, advancing these goals must begin with steps to increase direct outreach and meaningful involvement. Unlike other proposals for transgender outreach that are often vague,⁴⁷¹ this Part provides concrete ideas ripe for implementation. But these recommendations are by no means exhaustive, and must be tailored to the needs of the community being served.

Many practices proposed in this Part involve methods already used by stakeholders.⁴⁷² The EPA already passes out flyers, meets with community organizations, and conducts door-to-door outreach.⁴⁷³ It already tailors communications to specific communities’ preferences and needs.⁴⁷⁴ As stated in one community involvement plan, “The EPA aims to use the most appropriate communication methods and tools for each segment of the public because one

463. NAT’L LGBTQ TASK FORCE, *supra* note 185, at 14.

464. Lang, *supra* note 348.

465. CLARK, *supra* note 391, ch. 10, § I.

466. Lang, *supra* note 348; NAT’L LGBTQ TASK FORCE, *supra* note 185, at 14.

467. Lang, *supra* note 348.

468. Hinds County. v. Miss. Comm’n on Env’t Quality, 61 So. 3d 877, ¶ 33 (Miss. 2011).

469. See PATRICK HAZELTON ET AL., IRGT: A GLOB. NETWORK OF TRANS WOMEN & HIV, MOST IMPACTED, LEAST SERVED: ENSURING THE MEANINGFUL ENGAGEMENT OF TRANSGENDER PEOPLE IN GLOBAL FUND PROCESSES 5, 7–8, 13 (2015), <https://mpactglobal.org/wp-content/uploads/2016/02/Transgender-Engagement-in-Global-Fund-Process.pdf>.

470. See NAT’L TRANSGENDER YOUTH COUNCIL, GSA DAY 4 GENDER JUSTICE 2019: DISCUSSION GUIDE 6–7 (2018), <https://ourtranstruth.org/wp-content/uploads/2019/10/GSADay4GJ-2019-Discussion-Guide.pdf>.

471. Bell, *supra* note 268, at 1016.

472. See EPA, *supra* note 269.

473. See *id.* at 7.

474. EPA, COVE AREA ABANDONED URANIUM MINES COMMUNITY INVOLVEMENT PLAN 1, 10–11 (2016), https://epa.gov/sites/production/files/2018-02/documents/cove_area_abandoned_uranium_mines_community_involvement_plan_2016.pdf.

size does not fit all.”⁴⁷⁵ Currently missing, yet essential for meaningful involvement, is the transgender community’s direct input on these pre-existing methods.

But direct and meaningful input from marginalized communities cannot coexist with discriminatory practices that block their involvement. Thus, policies and procedures should be redesigned to be trans-inclusionary, not trans-exclusionary. And while promoting transgender involvement may be maligned as political posturing on a social controversy,⁴⁷⁶ antidiscrimination does not waver in the face of opposition. Spite from a few detractors should not justify the wholesale neglect of an entire gender minority.

A. Establishing Formal Inclusion Policies

Formal transgender-inclusive policies, such as those that address public communications, community consultations, and organizational partnerships, are a critical step towards the meaningful involvement of the transgender community. The EPA’s guidelines and procedures for public engagement should explicitly acknowledge and address the unique conditions transgender community members experience.⁴⁷⁷ Formalizing the transgender population as a gender minority deserving the same respect and attention as other minorities decreases stigma⁴⁷⁸ and elevates the community as worthy of meaningful involvement.⁴⁷⁹ Policies should incorporate antiharassment provisions that protect transgender individuals, which must be enforced to create public forums free from intimidation and other limits on participation.⁴⁸⁰

Adopting outreach and involvement policies that specifically address the transgender community is not radical.⁴⁸¹ The Office for Victims of Crime at the Department of Justice publishes guidance on connecting with the transgender community.⁴⁸² The Saint Paul Police Department in Minnesota adopted draft policies in 2018 for interacting with transgender and gender-nonconforming individuals in the community.⁴⁸³ Even the EPA has equal employment

475. LOUIS BERGER, EPA, COMMUNITY INVOLVEMENT PLAN FOR THE LOWER PASSAIC RIVER 31 (2017), <https://semspub.epa.gov/work/02/538469.pdf>.

476. Clarke, *supra* note 45, at 961.

477. Bell, *supra* note 268, at 1012.

478. Hughto et al., *supra* note 110, at 226.

479. Thuringer, *supra* note 178; *LGBTQ+ Communities and Disasters*, *supra* note 362.

480. Cobb & McKenzie-Harris, *supra* note 76, at 107.

481. See Ian F. Tapu & Rebecca A. Copeland, *Cultural Competency in Hawai’i Affirming Gender Identity and Expression*, HAW. BAR J., Oct. 2019, at 20, 22.

482. *Outreach Connecting to the Transgender Community*, *supra* note 174.

483. *Saint Paul Police Department to Hold Community Meeting About Draft Interactions with Transgender and Gender Non-Conforming Individuals’ Policy*, SAINT PAUL MINN., <https://stpaul.gov/news/saint-paul-police-department-hold-community-meeting-about-draft-%E2%80%98interactions-with-transgender> (last updated July 17, 2018).

opportunity and workplace antiharassment policies that protect transgender employees.⁴⁸⁴

The National Environmental Justice Advisory Council highlighted five pillars of public involvement,⁴⁸⁵ each of which should be incorporated into any transgender involvement policy: (1) foster public participation in all aspects of environmental decision making, (2) encourage active community participation, (3) institutionalize public participation, (4) recognize community knowledge, and (5) utilize cross-cultural exchanges.⁴⁸⁶ A comprehensive policy will also include a plan for coordinating with transgender organizations and a method for evaluation and accountability.⁴⁸⁷ Ideally, the EPA would have a designated individual to manage policy and outreach with the transgender community.⁴⁸⁸

Stakeholders from the transgender community must play a role in creating a formal, transgender-inclusive policy for the EPA's public engagement. Witnessing the failures of meaningful involvement, transgender community members are well-positioned to recognize the pitfalls of public engagement and design a more successful transgender involvement policy.⁴⁸⁹ The policy should be shared widely and be implemented in all outreach activities.⁴⁹⁰

B. Community Involvement Plans

Community involvement plans (CIPs) are another formal plan where transgender people should be explicitly included. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires the EPA to use CIPs⁴⁹¹ to determine site-specific strategies for community outreach and involvement during certain Superfund remedial actions and removals lasting more than 120 days.⁴⁹² Each CIP must draw on interviews with community residents, public interest groups, and other interested or affected

484. See *EEO Policy*, EPA, <https://epa.gov/ocr/eoo-policy> (last visited July 27, 2020); Email from Andrew Wheeler, Adm'r, EPA, to EPA Employees (Sept. 30, 2019, 9:21 AM), https://epa.gov/sites/production/files/2019-10/documents/anti-harassment_policy.pdf.

485. *Vocabulary Catalog Environmental Justice Key Terms*, EPA, https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=Env%20Justice%20Key%20Terms (last updated June 10, 2010).

486. *Id.*

487. See R.I. LEGAL SERVS., *supra* note 21, at 42.

488. See *id.* at 42–43.

489. See generally NAT'L LGBT HEALTH EDUC. CTR., EMERGENCY PREPAREDNESS AND LESBIAN, GAY, BISEXUAL & TRANSGENDER (LGBT) PEOPLE: WHAT HEALTH CENTERS NEED TO KNOW, <https://lgbthealtheducation.org/wp-content/uploads/Emergency-Preparedness-for-LGBT-People-Final.pdf> (last visited Jan. 6, 2022).

490. Cobb & McKenzie-Harris, *supra* note 76, at 107.

491. 40 C.F.R. §§ 300.415(n)(3), 300.430(c) (2020); see also Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

492. EPA, COMMUNITY INVOLVEMENT PLANS I, <https://semspub.epa.gov/work/11/174739.pdf> (last visited July 17, 2020).

parties.⁴⁹³ These interviews are aimed at collecting information and learning how best to involve the public in responding to their concerns.⁴⁹⁴

CIPs should require that interviews involve transgender residents and interest groups so that EPA can learn the specific needs of the transgender community. CIPs are already created to reach specific racial and ethnic communities; transgender people should be no different.⁴⁹⁵ Developing each CIP should also involve demographic analyses that include transgender people. As living documents throughout the Superfund process, CIPs should be updated and revised to best address the needs of all affected parties, especially the transgender community.⁴⁹⁶

C. Messaging and Communications

Public communications are a primary means by which transgender individuals learn of an environmental concern or organization. Because transgender individuals often assess inclusiveness—and, by extension, their likelihood of engagement—through behavioral and messaging cues, communication on matters of public environmental concern should be as inclusive as possible.⁴⁹⁷ Specifically, public notices and information should be tailored to address the feedback of the transgender community implicated.⁴⁹⁸ Specific environmental justice resources, like factsheets, written guidance, and toolkits, should also be created for transgender members of the community.⁴⁹⁹ For example, the Office of Patient Care Services at the Department of Veterans Affairs provides fact sheets specific to transgender veteran health outcomes.⁵⁰⁰ Likewise, the EPA should offer resources that provide transgender people with guidance on their environmental justice rights.

An inclusive communication strategy also demands that transgender individuals are reached in the spaces where they frequent and feel most comfortable. Larger cities and urban areas may have specific events or facilities that provide transgender or LGBTQ resources.⁵⁰¹ But because transgender people lead multidimensional lives, they can also be found in community spaces that are not queer- and transgender-centric.⁵⁰² These spaces include community fairs, churches, colleges, and parent-teacher associations.⁵⁰³ Inclusive churches

493. 40 C.F.R. §§ 300.415(n)(3), 300.430(c)(2) (2020).

494. *See id.*

495. *See, e.g., EPA Dewey-Burdock Class III and Class V Injection Well Draft Area Permits, supra* note 434, at 61–65.

496. *See EPA, supra* note 492, at 1.

497. *See Outreach Connecting to the Transgender Community, supra* note 174.

498. NAT'L LGBT CANCER NETWORK ET AL., *supra* note 279, at 2.

499. *See Outreach Connecting to the Transgender Community, supra* note 174.

500. VA LGBTQ+ Outreach, U.S. DEP'T OF VETERANS AFFS.: PATIENT CARE SERVS., https://patientcare.va.gov/LGBT/VA_LGBT_Outreach.asp (last visited July 15, 2020).

501. *Outreach Connecting to the Transgender Community, supra* note 174.

502. *Id.*

503. ZENO ET AL., *supra* note 305, at 3.

may have LGBTQ-specific events, and there may be bars, bookstores, and other business that cater to LGBTQ patrons.⁵⁰⁴ Community centers for LGBTQ people may have bulletin boards and literature racks available to house informational materials.⁵⁰⁵ Staffing informational booths at Pride events in June, when many LGBTQ people feel is safest to attend public events, can also reach transgender audiences.⁵⁰⁶

Finding LGBTQ organizations with insight into communicating effectively with transgender communities is also critical.⁵⁰⁷ These include LGBTQ-specific media sources and healthcare providers who specialize in serving transgender patients.⁵⁰⁸ Local colleges and universities may have organizations dedicated to LGBTQ and transgender resources, and large employers in the community may have dedicated LGBTQ groups.⁵⁰⁹

Meaningful access to information, on their own terms, is important to meaningfully involve transgender people. Digital communication, particularly social media, enables anonymously accessible information online, where transgender individuals who are still exploring their identity or who feel unsafe in public spaces can safely navigate.⁵¹⁰ The EPA already communicates public notices and public service announcements through listservs, hotlines, and digital newsletters, which also offer safe formats to receive information; using social media will help broaden the scope of safe and meaningful access to information.⁵¹¹ Traditional avenues, such as television and radio, can also reach transgender audiences broadly.⁵¹²

Finally, public communication should be as diverse as the communities who receive it, including the transgender community. Not all transgender individuals speak English or use English as a first language, so information should be shared in all languages necessary,⁵¹³ especially Spanish. Inclusion for transgender individuals goes hand-in-hand with the inclusion of all communities. Messaging that overtly or subliminally casts all white, cisgender, and heterosexual-appearing people also does not convey inclusivity.⁵¹⁴

504. *Outreach Connecting to the Transgender Community*, *supra* note 174.

505. *Id.*

506. *Id.*; ZENO ET AL., *supra* note 305.

507. *Outreach Connecting to the Transgender Community*, *supra* note 174.

508. *Id.*

509. *Id.*

510. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 51, 55; R.I. LEGAL SERVS., *supra* note 21, at 53.

511. See BERGER, *supra* note 475, at 32–33; EPA REGION 2, *supra* note 32, at 4-4 to 4-5.

512. See EPA, COMMUNITY INVOLVEMENT PLAN: BJAT, LLC SUPERFUND SITE FRANKLIN, MA 14 (2017), <https://semspub.epa.gov/work/01/621179.pdf>.

513. See U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 55; KAHIIHIKOLO, *supra* note 23, at 6–9; R.I. LEGAL SERVS., *supra* note 21, at 53–54.

514. *Outreach Connecting to the Transgender Community*, *supra* note 174.

D. Building Relationships with Transgender Organizations

Many recommendations in this Article involve transgender stakeholders because they are naturally the best experts on their needs and the conditions that affect them. To meaningfully involve the transgender community, relationships must then be established with organizations and people who serve and represent that community.⁵¹⁵ These relationships must be partnerships for environmental justice, not tokens for advertising community involvement.⁵¹⁶ And because no single organization could capture every transgender interest and perspective, the EPA should diversify its connections with transgender stakeholders.⁵¹⁷

Establishing relationships with transgender organizations is a proactive process. The EPA and other groups should obtain a baseline understanding of transgender issues and learn about the organizations that serve transgender populations,⁵¹⁸ and ensure that contact is ongoing.⁵¹⁹ These relationships should also be cultivated with the knowledge that transgender organizations usually operate with limited resources.⁵²⁰

Once these relationships are made, the EPA should involve transgender stakeholders at all important stages of decision making.⁵²¹ For instance, transgender organizations should be afforded the same information about environmental impacts of proposed projects as provided to the general community, and they should be consulted for transgender-specific outreach when developing a CIP.⁵²² Decisionmakers must incorporate the feedback into their ultimate decisions, reflecting a process that meaningfully involves the transgender community.⁵²³

E. Holding Safe and Accessible Meetings

Because public meetings are essential to the EPA's engagement with community members, they must also be safe for transgender residents. Public forums, hearings, or other events, when held, should give "all residents an opportunity to attend."⁵²⁴ Forums should thus be held at locations that are affirming of—or at least, not hostile to—an individual's gender identity.⁵²⁵

515. *Id.*; HAZELTON ET AL., *supra* note 469, at 13.

516. *See* Tapu & Copeland, *supra* note 481, at 22; HAZELTON ET AL., *supra* note 469, at 13.

517. *Id.*

518. *Outreach: Connecting to the Transgender Community*, *supra* note 174.

519. R.I. LEGAL SERVS., *supra* note 21, at 46, 50, 61–62.

520. *Id.* Many transgender- and intersex-focused organizations operate on budgets less than \$10,000 a year. HAZELTON ET AL., *supra* note 469, at 13. While resources may be limited, the involvement of these organizations is nonetheless critical.

521. *See* R.I. LEGAL SERVS., *supra* note 21, at iii, 52–53.

522. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 50.

523. R.I. LEGAL SERVS., *supra* note 21, at 55–56.

524. EPA, *supra* note 269, at 6.

525. Lang, *supra* note 348.

Access to gender-affirming bathrooms helps provide a safe and welcoming environment for transgender people to attend.

Given the hostility some churches have exhibited toward the transgender community, religious spaces may deserve more scrutiny.⁵²⁶ Attention should be given to statements of faith, social media presence, and past pronouncements and practices around transgender people. Special attention should also be given to LGBTQ prejudice in general, as transgender individuals may not be delineated from prejudice against queer people more broadly.⁵²⁷

While forum safety is key for accessibility, alternatives to in-person attendance can further provide transgender individuals an opportunity for safe and meaningful involvement.⁵²⁸ Because many transgender people do not own personal vehicles, public transit can be the only option to reach distant public forums. By riding public transit, however, transgender individuals must often risk their physical safety.⁵²⁹ Online access, on the other hand, offers the transgender community a safe alternative to meaningfully participate in public meetings. Live online feeds of meetings with interactive capabilities are ideal because they enable a dialogue and empower transgender participants to voice their concerns in real time. The California EPA already provides live feeds of its public meetings.⁵³⁰ Similarly, the Ohio EPA used virtual meetings since at least July 2020 until June 2021 due to COVID-19, providing a model for lasting online accessibility.⁵³¹

F. Affirming Access to Bathrooms

One of the most critical yet controversial components of meaningful involvement for transgender Americans is bathroom access. Throughout the history of U.S. civil rights movements, bathrooms have been a pivotal battleground for minority access to public spaces.⁵³² Today, “[b]athroom inequality [remains] one of the greatest barriers to full integration of transgender people in American life.”⁵³³ Whether in EPA public forums, in shelters housing disaster survivors, or simply in offices of outreach organizations, fears of confrontation in gender non-affirming bathrooms lead transgender individuals to

526. EPA REGION 2, *supra* note 401, at 16; *see also* discussion *supra* Subpart IV.C.

527. Sandstrom, *supra* note 419.

528. U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 55.

529. Lang, *supra* note 348; CHUNG ET AL., *supra* note 164, at 19; U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 53.

530. *See Public Meeting Live Webcasts*, CAL. ENV'T PROT. AGENCY, <https://video.calepa.ca.gov/> (last visited Jan. 3, 2022).

531. *See Public Meeting Calendar*, OHIO ENV'T PROT. AGENCY, <https://web.archive.org/web/20200813205803/epa.ohio.gov/calendar> (last visited July 25, 2020); *Public Meeting Calendar*, OHIO ENVTL. PROT. AGENCY, <https://web.archive.org/web/20200813205803/epa.ohio.gov/calendar> (last visited June 4, 2021).

532. McCabe & Kinney, *supra* note 61, at 442–43.

533. Velte, *supra* note 40, at 29.

avoid these public spaces.⁵³⁴ Ensuring bathroom access, while not a complete solution, is thus vital for reducing the anxieties that inhibit meaningful involvement.⁵³⁵

No identification or proof of sex should ever be required of an individual trying to use a restroom;⁵³⁶ a person's self-identified gender should be absolute.⁵³⁷ The EPA, a community group hosting an event, or a disaster response organization sheltering survivors must ensure gender-affirming bathrooms are accessible.⁵³⁸ Availability of gender-neutral bathrooms are also important,⁵³⁹ especially in facilities with single-stall bathrooms.⁵⁴⁰ In shelters, stall doors and shower curtains must be available as a safeguard to harassment or violence from others who might observe transgender individuals' genitals and physical features.⁵⁴¹

G. Disaster Response Practices

The need for safe and accessible spaces is only multiplied in the disaster context.⁵⁴² Although most survivors of natural disasters become houseless and reliant on shelters, survivors who are transgender are likelier to have been homeless and carrying few resources from the start,⁵⁴³ so they are more reliant on the support shelters provide. Therefore, disaster shelters must be welcoming and safe for transgender individuals, who are more vulnerable and have fewer survival resources if forced out.⁵⁴⁴

Shelters should follow the same practices that meaningfully involve transgender individuals in all domains, even in the fraught aftermath of natural disasters. Identification with affirming gender markers should not be required of survivors in shelter housing because IDs may not be up to date.⁵⁴⁵ All facilities should have access to gender-affirming facilities, and transgender individuals should not be segregated into separate spaces.⁵⁴⁶ Taking steps to reduce

534. See Clarke, *supra* note 45, at 981; McCabe & Kinney, *supra* note 61, at 442–44.

535. Outreach *Connecting to the Transgender Community*, *supra* note 174.

536. NAT'L AERONAUTICS & SPACE ADMIN., *supra* note 91, at 7.

537. NAT'L CTR. FOR TRANSGENDER EQUAL., MAKING SHELTERS SAFE FOR TRANSGENDER EVACUEES, <https://transequality.org/issues/resources/making-shelters-safe-transgender-evacuees> (last updated Sept. 2013).

538. See *Saint Paul Police Department to Hold Community Meeting*, *supra* note 483.

539. NAT'L CTR. FOR TRANSGENDER EQUAL., *supra* note 537.

540. Tapu & Copeland, *supra* note 481, at 23; Clarke, *supra* note 45, at 981–83.

541. NAT'L CTR. FOR TRANSGENDER EQUAL., *supra* note 537.

542. Thuringer, *supra* note 178.

543. NAT'L CTR. FOR TRANSGENDER EQUAL., *supra* note 537.

544. *Id.*

545. *Id.*; see generally LA. TRANS ADVOC., MEETING THE NEEDS OF TRANSGENDER PEOPLE IN DISASTER SITUATIONS, <https://transequality.org/sites/default/files/docs/blog/Meeting%20the%20Needs%20of%20Trans%20People%20in%20Disaster%20Situations-2.pdf> (last visited Jan. 3, 2022).

546. See generally LA. TRANS ADVOCATES, *supra* note 545.

unnecessary attention to transgender survivors,⁵⁴⁷ such as offering private clothing areas,⁵⁴⁸ can minimize their endangerment.

The medical and mental health care shelters provide are crucial, especially hormones and HIV and AIDS medication transgender individuals depend on.⁵⁴⁹ Survivors who rely on gender-affirming hormones and life-saving medicine should never have their prescribed medication confiscated at shelters, which can happen for trivial or even discriminatory reasons.⁵⁵⁰ Shelters should also be sensitive to and offer counseling services for the uniquely traumatic and violent disaster experiences of transgender individuals.⁵⁵¹

But even before a disaster strikes, transgender stakeholders should be involved in the planning for response, rescue, relief, and recovery. Disaster response organizations, in turn, must buy in to stakeholders' concerns.⁵⁵² Planning should also include specific efforts to reduce disaster risks that disparately affect transgender people, such as the breakdown in available health and psychological services.⁵⁵³ Implementing these plans prior to disasters will save transgender lives.⁵⁵⁴

H. Using Inclusive Language

While larger policy reforms are critical for meaningful involvement in the long term, modest behavioral steps are as important in fostering transgender acceptance and inclusivity.⁵⁵⁵ The EPA and other groups should use inclusive language to promote safe and engaging forums that invite transgender participation.⁵⁵⁶ Simply replacing cis-heteronormative expressions with trans-inclusive language can make strides in meaningfully involving the transgender community.⁵⁵⁷ These actions can reduce the stigma around transgender participants in environmental outreach and activism.⁵⁵⁸

547. *Id.*

548. *See generally* LA. TRANS ADVOCATES, *supra* note 545.

549. *See* NAT'L LGBT HEALTH EDUC. CTR., *supra* note 489, at 2.

550. *See generally* LA. TRANS ADVOCATES, *supra* note 545.

551. NAT'L LGBT HEALTH EDUC. CTR., *supra* note 489, at 2.

552. *See id.*; BHALLA ET AL., *supra* note 444, at 22, 53.

553. Tabary, *supra* note 445.

554. *See* LAVERACK ET AL., *supra* note 179, at 9.

555. Tapu & Copeland, *supra* note 481, at 22; *LGBTQ+ Communities and Disasters*, *supra* note 362.

556. *See* Tapu & Copeland, *supra* note 481, at 21; Hall & Suddick, *supra* note 47, at 22.

557. Tapu & Copeland, *supra* note 481, at 22; *Outreach Connecting to the Transgender Community*, *supra* note 174; NAT'L LGBT HEALTH EDUC. CTR., *supra* note 489, at 1–2; LA. TRANS ADVOC., *supra* note 545, at 1–2; ORG. FOR REFUGE, ASYLUM & MIGRATION, *supra* note 58, at 9.

558. Lisa Neel, *IHS Hosts Third Public Meeting to Address LGBT2-S Health Issues*, INDIAN HEALTH SERV. (May 9, 2016), <https://ihs.gov/newsroom/ihs-blog/may2016/ihs-hosts-third-public-meeting-to-address-lgbt2-s-health-issues/>.

Routinely using and asking for the pronouns of stakeholders and members of the public is beneficial in creating inclusive forums.⁵⁵⁹ Normalizing the inclusion of pronouns in email signatures and verbal introductions promotes awareness of transgender involvement.⁵⁶⁰ Forms and applications should provide an option for people who identify outside either binary gender, or a box for diverse gender identity collection.⁵⁶¹ Presently, all federal agencies, including the EPA, use the FOIAonline system that offers only male and female gendered salutations.⁵⁶² An option should be provided for the Mx. salutation, the common gender-neutral alternative to Mr., Ms., and Mrs.

Inclusive language also avoids inappropriate questions or offensive terminology. Questions should not be asked about one's biological sex,⁵⁶³ nor gender identity. Pointing out that someone's appearance differs from the stereotypical expectations of gender expression should not be accepted.⁵⁶⁴ These questions are deeply personal and invasive, and go beyond information necessary to respect how a person identifies. Staying informed of terminology that becomes outdated is important, especially as voices in the transgender community become better acknowledged.⁵⁶⁵

I. Training and Cultural Competency

Beyond formal guidelines and written policy, the EPA should also train their publicly interfacing employees to be competent in transgender issues.⁵⁶⁶ Training can instill cultural and intersectional competency,⁵⁶⁷ dispel myths and

559. See Hall & Suddick, *supra* note 47, at 23; Tapu & Copeland, *supra* note 481, at 22; Neel, *supra* note 558; *Saint Paul Police Department to Hold Community Meeting*, *supra* note 483; NAT'L CTR. FOR TRANSGENDER EQUAL., *supra* note 537; *Outreach Connecting to the Transgender Community*, *supra* note 174; NAT'L LGBT HEALTH EDUC. CTR., *supra* note 489, at 1–2; LA. TRANS ADVOC., *supra* note 545, at 1–2; NAT'L AERONAUTICS & SPACE ADMIN., *supra* note 91, at 6–7; ORG. FOR REFUGEE, ASYLUM & MIGRATION, *supra* note 58, at 9.

560. Hall & Suddick, *supra* note 47, at 23; Tapu & Copeland, *supra* note 481, at 23; *LGBTQ+ Communities and Disasters*, *supra* note 362.

561. Tapu & Copeland, *supra* note 481, at 22; *LGBTQ+ Communities and Disasters*, *supra* note 362; *Outreach Connecting to the Transgender Community*, *supra* note 174.

562. *New Request*, FOIAONLINE, <https://foiaonline.gov/foiaonline/action/public/request> (last visited July 28, 2020).

563. See generally LA. TRANS ADVOC., *supra* note 545.

564. *Id.*; NAT'L CTR. FOR TRANSGENDER EQUAL., *supra* note 537. It should go unsaid, slurs or offensive language about transgender people, including “tranny,” “hermaphrodite,” “shemale,” “transsexual,” “transvestite,” or “it” must be avoided. Tapu & Copeland, *supra* note 481, at 22–23. Some transgender individuals may identify with terms listed here, and movements to reclaim slurs do exist. However, these terms are still considered outdated, derogatory, or offensive by many, if not almost all, members of the transgender community. Mayer Nissim, *Transvestite, Transsexual, Transgender Here's What You Should Actually Call Trans People*, PINKNEWS (March 19, 2018), <https://pinknews.co.uk/2018/03/19/transsexual-transgender-transvestite-what-should-you-call-trans-people/>.

565. Tapu & Copeland, *supra* note 481, at 22–23.

566. See McCabe & Kinney, *supra* note 61, at 440–41; U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 37, 39, 42–43, 46, 53.

567. Cobb & McKenzie-Harris, *supra* note 76, at 110–11; McCabe & Kinney, *supra* note 61 at 440–41; *Outreach Connecting to the Transgender Community*, *supra* note 174; CHUNG ET AL., *supra* note

stereotypes,⁵⁶⁸ and ultimately improve the engagement with and participation of transgender people. Because a single prejudicial remark can cause transgender individuals to withdraw entirely from environmental community planning, staff training is critical to generating meaningful involvement.⁵⁶⁹ Training in environmental justice can aid in fostering cultural competency. As recently as 2018, the EPA proposed training staff on its affirmative action program around transgender employment.⁵⁷⁰

CONCLUSION

“One of the ideals of environmental justice—that people should have a meaningful voice in the decisions that affect them—isn’t intended just as a respectful courtesy; it also leads to better decisions.”⁵⁷¹

This Article has discussed the many avenues in which transgender people face discrimination and health and environmental disparities. Because the EPA and many community groups have not committed themselves to providing for the meaningful involvement of gender minorities in their outreach, transgender people are discouraged and excluded from many avenues in which procedural environmental justice can be pursued. These influences combine to silence the voices of the transgender community.

However, the noticeable lack of study around the environmental health outcomes for transgender people is a tremendous barrier to appreciating the extent of environmental disparities, and thus, to bringing environmental justice to the transgender community. To bridge this gap, gender identity should be sought in routine data collection in all studies of health and environmental impacts.⁵⁷² Transgender engagement in outreach should be tracked as part of regular statistics and metrics.⁵⁷³ Research that includes the transgender community should be expanded,⁵⁷⁴ as should research that exclusively studies transgender communities’ experiences.⁵⁷⁵ Conducting such research at the EPA is also not unheard of, as a program to collect data on sexual orientation and

164, at 21; U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 50, 52; NAT’L CTR. FOR TRANSGENDER EQUAL., *supra* note 537, at 1-2; NAT’L AERONAUTICS & SPACE ADMIN., *supra* note 91, at 6.

568. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 31.

569. *Outreach Connecting to the Transgender Community*, *supra* note 174.

570. EPA, EPA-190-K-17-002, FISCAL YEAR 2018: JUSTIFICATION OF APPROPRIATION ESTIMATES FOR THE COMMITTEE ON APPROPRIATIONS 214 (2017), <https://epa.gov/sites/production/files/2017-06/documents/fy18-cj-04-environmental-programs.pdf>.

571. CLARK, *supra* note 391, ch. 12, § III.

572. SCHEIM ET AL., *supra* note 52, at 22–24; ZENO ET AL., *supra* note 305, at 5; HUM. RIGHTS CAMPAIGN, *supra* note 113, at 27.

573. *LGBTQ+ Communities and Disasters*, *supra* note 362; ZENO ET AL., *supra* note 305, at 5; U.N. DEV. PROGRAMME ET AL., *supra* note 78, at 60.

574. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 55, at 29–30.

575. SCHEIM ET AL., *supra* note 52, at 24.

gender identity among employees was proposed in 2016.⁵⁷⁶ Transgender people of color, in particular, should be studied to investigate the important confluence of people of multiple minorities.

The environmental law and environmental justice literature should be expanded to include the voices, impacts, and experiences of environmental injustices on transgender people. Although scholarly articles increasingly address issues of transgender rights and liberation, the discussion of a queer ecology has, before now, been mostly absent from the academic discussions of environmental justice. Even LGBTQ people overall remain mostly absent from research and discourse, with only a few articles addressing lesbian, gay, or bisexual individuals' experiences in environmental injustice. What also cannot remain left out are the experiences of two-spirit and First Nations, American Indian, Native Hawaiian, and Alaskan Native LGBTQ people, whose concurrent experiences of environmental racism multiply the injustices experienced.⁵⁷⁷

Because of the cis-heteronormative lens that environmental justice and protection have adopted since their inception, a queerer vision of environmental justice will aid the meaningful involvement of transgender individuals. By pursuing the suggestions outlined in this Article and listening to the voices of transgender people who experience environmental injustices, meaningful involvement may become a promise that extends to all Americans, regardless of their gender identity or expression. Time, however, is short, as the lives of transgender people hang in the balance.

576. See MAHRI MONSON & KEVIN MINOLI, EPA, THE IMPORTANCE OF BEING COUNTED: COLLECTING SEXUAL ORIENTATION AND GENDER IDENTITY (SOGI) DATA IN FEDERAL GOVERNMENT (2016), <https://outandequal.org/wp-content/uploads/2016/10/GENERAL-EPA-SOGI-Data-Pilot-Out-and-Equal-Presentation-10.6.16.pdf>.

577. See Jamie Vickery & Lori M. Hunter, *Native Americans Where in Environmental Justice Research?*, 29 SOC'Y & NAT. RES. 36, 36 (2016).

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