

IN THE
Supreme Court of the United States

WEST VIRGINIA, *et al.*,

Petitioners,

v.

B. P. J., BY HER NEXT FRIEND
AND MOTHER, HEATHER JACKSON,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

**BRIEF OF *AMICUS CURIAE* ANDREW
FLORES IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS CURIAE¹

Amicus Andrew R. Flores, Ph.D., respectfully submits this brief in support of Respondents. Amicus is a Distinguished Visiting Scholar at the Williams Institute at UCLA School of Law and Associate Professor of Government at American University in Washington, D.C.

Dr. Flores is a political scientist who has particular expertise in public opinion about LGBTQ people and rights, the demographics and experiences of LGBTQ people, political and social factors that relate to LGBTQ people's wellbeing, and LGBTQ statistics and political analysis. Much of his research and writing is focused on attitude formation, attitude change, and public policies affecting LGBTQ populations.

Dr. Flores has published over forty peer-reviewed articles, and his research has appeared in the *Proceedings of the National Academy of Sciences*, *Science Advances*, the *American Journal of Public Health*, *Journal of Politics*, *Public Opinion Quarterly*, and *Political Psychology*, among other peer-reviewed journals. He was a member of the National Academies of Sciences, Engineering, and Medicine Consensus Committee on Sexual and Gender Diversity.

¹ Pursuant to Supreme Court Rule 37.6, counsel for Amicus certify that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of the brief; and no person other than amici, their members, or their counsel contributed money intended to fund the preparation or submission of the brief.

Dr. Flores’ research on transgender populations was cited by Chief Justice Roberts in the majority opinion in *United States v. Skrametti*, 605 U.S. 495, 501–02 (2025). He has previously published research on the political powerlessness of the transgender community.²

SUMMARY OF ARGUMENT

That certain groups require “extraordinary protection from the majoritarian political process” is a well-established feature of Equal Protection jurisprudence. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Key to determining whether a group warrants protection through heightened scrutiny is an evaluation of the group’s political power. If the group is politically powerful, no such protection is needed because the group can advance societal change at the ballot box through their vote, and in Congress and state legislatures through their elected representatives.

But change can be uncertain or even negative when a group is politically powerless. The broader community resists change and ignores or attacks the group’s members; their ballots make no difference; and elective bodies do not listen. When a group’s rights ebb and flow depending on the caprice of popular opinion and political expediency, the group cannot exert meaningful political power. It is this absence of political power which most strongly calls for a heightened

² Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-discrimination Policies: The Democratic Deficit and Political Powerlessness*, 2 Rsch. & Pol. 1 (2015).

standard of review under the Court’s equal protection jurisprudence.

In this Brief, Amicus endeavors to assist the Court in its evaluation of the transgender community’s political power. Using objective, empirical evidence, Amicus demonstrates that transgender individuals are a small population; have experienced discrimination across all aspects of their lives; are economically vulnerable; and are excluded from the political process at the state and federal level—despite having distinct policy goals. Taken as a whole, this evidence demonstrates that under any articulation of “political powerlessness,” transgender people lack the strength and ability as a group to protect themselves through political processes. This dearth of political power is a substantial factor in necessitating heightened standards of judicial review under equal protection principles.

ARGUMENT

For over five decades, this Court has recognized “political powerlessness” as one of four factors in determining whether to recognize a new “suspect” or “quasi-suspect” class: (1) whether the class has historically “been subjected to discrimination,” *Lyng v. Castillo*, 477 U.S. 635, 638 (1986); (2) whether the class has a defining characteristic that “frequently bears no relation to [the] ability to perform or contribute to society,” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985); (3) whether members of the class “exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group,” *Lyng*, 477 U.S. at 638; and (4) whether a class is a “minority or politically powerless,” *Bowen v. Gilliard*, 483

U.S. 587, 602 (1987); *see also Grimm v. Gloucester County Sch. Bd.*, 972 F.3d 586, 610–13 (4th Cir. 2020).

Over the years, different courts have defined political powerlessness in different ways—including justices of this Court several months ago in *United States v. Skrametti*, 605 U.S. 495 (2025). But there should be no doubt that when a particular group’s ability to serve in the military, use a bathroom, play school sports, obtain passports and driver’s licenses, and make healthcare decisions is subject to the whims of majoritarian rule, that group requires heightened protection in the political process—particularly where members of that group represent about one percent of the national population.

The transgender community has made strides in the past twenty years. These include enactment of protective laws in a number of states, such as those that protect medical treatments for gender dysphoria, *see L.W. v. Skrametti*, 83 F.4th 460, 487 (6th Cir. 2023), *aff’d sub nom.*, *Skrametti*, 605 U.S. at 526, and of policies permitting changes to government identification documents to match a person’s gender identity, *see Gore v. Lee*, 107 F.4th 548, 558–59 (6th Cir. 2024). The transgender community has received the support of “major medical organizations” and “large law firms.” *L.W.*, 83 F.4th at 487. The Sixth Circuit in *L.W.* and *Gore* viewed these gains as evidence that the transgender community was not politically powerless, and thus that heightened equal protection scrutiny was unnecessary. *L.W.*, 83 F.4th at 487; *Gore*, 107 F.4th at 558–59.

But a patchwork of moderate and inconsistent success is far from compelling evidence to disprove political powerlessness. A comparison with gender discrimination is telling. Before the Court first recognized that sex-based classifications warrant heightened scrutiny, women had made substantial advances in the political process, including through passage of the 19th Amendment and multiple federal statutes forbidding sex discrimination, and election of women to legislative bodies and appointment as government officials. *Frontiero v. Richardson*, 411 U.S. 677, 688 (1973). Yet in *Frontiero*, the Court found heightened scrutiny of gender classifications necessary.

The political power of transgender people is in many ways weaker than that of women at the time of *Frontiero*. For example, although states have passed laws protecting certain treatments for gender dysphoria, see *L.W.*, 83 F.4th at 487, that success is attenuated, as 27 states now ban gender-affirming care for minors.³

Other examples show the limits of the transgender community’s patchwork of success, particularly under the Trump administration. For example, while *Gore* relied on the fact that “[t]he U.S. State Department . . . allows transgender individuals to obtain passports and consular reports of birth abroad that match their gender identity,” 107 F.4th at 558, just a year later, in January 2025, the State Department revoked “the option for Americans to obtain a passport

³ *Bans on Best Practice Medical Care for Transgender Youth*, Movement Advancement Project, <https://perma.cc/T793-S3HC>.

reflective of either their gender identity or their sex assigned at birth, and instead required all passports to reflect only applicants' sex assigned at birth," *Orr v. Trump*, 778 F. Supp. 3d 394, 400 (D. Mass. 2025) (citing President Trump's Executive Order 14168). Moreover, the State Department "removed the option for intersex, non-binary, and gender non-conforming applicants to select 'X' as the sex marker on their passports." *Orr*, 778 F. Supp. 3d at 400.

The precarity of the transgender community's rights in recent decades, particularly in the last few years, demonstrates this group's unique vulnerability to the whims of political change. Although it may gain protection—at least temporarily—in some circumstances, the transgender community is unable to prevent enactment of hostile laws and policies, or to blunt societal discrimination, through the political process.

The Trump Administration's recent policies targeting transgender people make vivid what the empirical data in this brief show: Whatever recent gains transgender people have made can be wiped out in a matter of weeks. *See infra* pp. 28-34. Rights that once depended on careful administrative study and bipartisan support now turn on the outcome of a single election cycle. A community whose legal status can be transformed so quickly and completely by a change in administration cannot plausibly be described as holding political power. Rather, these reversals are real-time evidence that transgender people lack the political strength to secure and maintain their rights without heightened judicial scrutiny. As one district court aptly observed: "Being kicked around like a football by whatever team has possession is the opposite of

meaningful political power.” *Talbott v. United States*, 775 F. Supp. 3d 283, 322 (D.D.C. 2025) .

I. THE EQUAL PROTECTION FRAME- WORK FOR EVALUATING POLITICAL POWERLESSNESS

Analysis of political powerlessness is an important element of equal protection jurisprudence. In June 2025, three members of the Court discussed the significance of political powerlessness as a probative factor in determining whether a particular group qualifies as a “suspect” or “quasi-suspect” class under equal protection jurisprudence. *See Skrmetti*, 605 U.S. at 556 (Barrett, J., concurring), 576 (Alito, J., concurring), 602–03 (Sotomayor, J., dissenting). Although a majority of the Court did not address criteria for assessing political powerlessness, the factors identified by Justices Barrett, Alito, and Sotomayor are relevant to an analytical framework. Ultimately, as the discussion in this Brief illustrates, a multifactor analysis is necessary to understand the full scope of political powerlessness.

In Justice Barrett’s concurring opinion, she recognized that lower courts have considered evidence of “whether the group has drawn the support of powerful interest groups, achieved equal representation in government, or obtained affirmative statutory protection from discrimination in the private sector” when

evaluating political powerlessness. *Id.* at 556 (Barrett, J., concurring).⁴

Justice Alito opined that both “a history of widespread and conspicuous discrimination” and “*de facto* or *de jure* exclusion from equal participation in the political process” were among the relevant criteria for determining whether a particular group qualified as a “suspect” or “quasi-suspect class.” *Id.* at 575 (Alito, J., concurring).

Justice Sotomayor noted that political powerlessness is manifest when a particular group is unable “to vindicate its interests before the very legislatures and executive agents actively singling them out for discriminatory treatment.” *Id.* at 602–03 (Sotomayor, J., dissenting). She noted the “recent rise in discriminatory state and federal policies” and “the fact that transgender people are underrepresented in every branch of government” as evidence of political powerlessness. *Id.* at 602.⁵

The factors which the individual Justices discussed as indicia of political powerlessness of the transgender community are reflected in lower court

⁴ Amicus believes that Justice Barrett’s conclusion that a “legacy of *de jure* discrimination,” particularly laws burdening the right to vote, “more precisely (and objectively) captures the interests that lie at the heart of the Equal Protection Clause,” 605 U.S. at 556, does not adequately account for the reality of the many ways in which the political power of the transgender community is, and has been, sharply limited.

⁵ Throughout this brief, unless otherwise noted, all internal citations and quotation marks are omitted in quotations, and all emphases are added.

decisions. In *Grimm*, 972 F.3d at 612–13, for example, the Fourth Circuit focused on (1) the small size of the adult transgender population; (2) the “dearth of openly transgender persons serving in the executive and legislative branches” and the judiciary; and (3) the enactment of discriminatory state and federal policies targeting transgender people. District courts have considered, for example, the ability of transgender people to participate in civic life by serving in the military, see *Talbott*, 775 F. Supp. 3d at 322; *Adkins v. City of New York*, 143 F. Supp. 3d 134, 140 (S.D.N.Y. 2015); or using bathrooms that correspond with their gender identity, see *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 721 (D. Md. 2018); *Bd. of Educ. of the Highland Loc. Sch. Dist. v. United States Dep’t of Educ.*, 208 F. Supp. 3d 850, 874 (S.D. Ohio 2016).

The foregoing factors, and the discussion below, describe aspects of political powerlessness that should be considered in a holistic equal protection analysis. Given the unique and ever-changing political landscape in which transgender individuals live, Amicus presents in this brief empirical data demonstrating that transgender individuals are politically powerless under any definition of the phrase. These data, unlike vacillating laws and policies, provide a more complete and objective measure of political powerlessness.⁶

⁶ See Nicholas O. Stephanopoulos, *Political Powerlessness*, 90 N.Y.U. L. Rev. 1527, 1556 (2015).

II. THE TRANSGENDER COMMUNITY IS POLITICALLY POWERLESS WHEN MEASURED AGAINST RELEVANT EQUAL PROTECTION FACTORS

A. Transgender People Are a Small Part of the U.S. Population

As a threshold matter, transgender people are a small part of the population relative to the non-transgender majority. It is axiomatic that a community’s “very small size” can impact whether it “wields much political clout.” *Skrmetti*, 605 U.S. at 576 (Alito, J., concurring); see *Grimm*, 972 F.3d at 613.

Using federal data sources, Amicus and the Williams Institute estimate that there are approximately 2.1 million adults and 724,000 youth aged 13-17 in the United States who identify as transgender.⁷ That compares to 260 million adults and 21 million youth aged 13-17 who do not identify as transgender.⁸ In other words, only 0.8% of the adult population and 3.3% of youth aged 13-17 identify as transgender.⁹ Thus, in

⁷ Jody L. Herman & Andrew R. Flores, Williams Inst., *How Many Adults and Youth Identify as Transgender in the United States?* 6 (2025), <https://perma.cc/5ZQH-5E8K>, (“How Many Adults”).

⁸ These estimates come from two data sources from the Centers for Disease Control and Prevention: for adults, the Behavior Risk Factor Surveillance System (BRFSS) and for youth (13-17 years old), the Youth Risk Behavior Surveillance System (YRBSS). These data are probability-based samples designed to be representative of the target population. Both surveys asked respondents whether they identified as transgender. See also Herman & Flores, *supra* note 7 at 22-26 (methodology).

⁹ Herman & Flores, *supra* note 7 at 6.

total only about 1% of Americans aged 13 and older identify as transgender.

Compared to racial and ethnic groups, the size of the transgender population among adults is far smaller than Hispanics or Latinos (19.5%), Black non-Hispanics (11.6%), Asians (5.9%), and multiracial adults (5.0%). Other groups are smaller, such as American Indian and Alaskan Natives (0.5%) and Native Hawaiians and Pacific Islanders (0.2%).¹⁰ Yet all of these groups are generally protected by federal and state anti-discrimination laws, for example. Even within the broader LGBT community, the transgender population is small, with transgender people comprising only about 12% of the total LGBT population.¹¹

Of particular significance in assessing political power, and unlike many other minority groups, transgender people are not concentrated in particular locations or geographic areas. Rather, they are broadly spread out across the country: approximately 18% of transgender people live in the Northeast; 35% live in the South; 21% live in the Midwest; and 25% live in the West.¹²

¹⁰ Racial and ethnic group percentages are based on the Census Bureau's 2023 American Communities Survey. *Population Distribution by Race/Ethnicity*, Kaiser Fam. Found., <https://perma.cc/PQX9-FVXS>.

¹¹ Jody L. Herman & Andrew R. Flores, Williams Inst., *How Many Adults?* (forthcoming 2025).

¹² Herman & Flores, *supra* note 7 at 13-14. Additional analyses on file with amicus.

B. Transgender People Experience Discrimination Across All Aspects of Their Lives

Transgender people face pervasive discrimination in living their day-to-day lives.¹³ Nearly one third (30%) of respondents to the 2022 U.S. Transgender Survey (“USTS”), the largest purposive national sample of transgender adults, reported being verbally harassed due to their gender identity or expression in the past year.¹⁴ Pervasive discrimination is well

¹³ See, e.g., Written Testimony of Jody L. Herman, Ph.D., Scholar of Public Policy, The Williams Institute at UCLA School of Law to the U.S. Senate Judiciary Comm. (March 17, 2021), <https://perma.cc/XW4U-VCG2>.

¹⁴ Sandy E. James, et al., Nat’l Ctr. For Trans Equality, *Early Insights: A Report of the 2022 U.S. Transgender Survey* 21 (2024), <https://perma.cc/T445-3JCK>.

documented in employment,¹⁵ in housing,¹⁶ in education,¹⁷ in police interactions,¹⁸ while incarcerated,¹⁹ and in public accommodations.²⁰

¹⁵ Brad Sears, Christy Mallory, Andrew R. Flores, & Kerith J. Conron, Williams Inst., *LGBT People’s Experiences of Workplace Discrimination and Harassment* 12 (2021) (43.8% of transgender employees report experiencing workplace verbal harassment), <https://perma.cc/Q4P7-RUNT>; see Brad Sears, et al., Williams Inst., *LGBTQ People’s Experiences of Workplace Discrimination and Harassment* 3 (2024) (“More than half of [non-cisgender] employees (57%) reported at least one form of harassment”), <https://perma.cc/4DJ8-PXCG>; Brad Sears, et al., *Workplace Experiences of Transgender Employees* 3 (2024) (82% of transgender employees report experiencing employment discrimination or harassment), <https://perma.cc/W86H-B98A>.

¹⁶ Adam P. Romero, Shoshana K. Goldberg & Luis A. Vasquez, Williams Inst., *LGBT People and Housing Affordability, Discrimination, and Homelessness* 20 (2020) (citing USTS), <https://perma.cc/GGE4-5TR4>.

¹⁷ Kerith J. Conron, Kathryn K. O’Neill & Luis A. Vasquez, Williams Inst., *Educational Experiences of Transgender People* 9 (2022) (“Nearly a third (32.1%) of transgender people reported any unfair treatment by teachers, staff, or school administrators across the higher education institutions that they had attended.”), <https://perma.cc/LEX3-RHCT>; Written Testimony of Kerith Jane Conron, ScD, MPH, Blachford-Cooper Research Director and Distinguished Scholar, Williams Institute at UCLA School of Law to the U.S. Senate Judiciary Comm. (March 17, 2021) (“Several studies find higher rates of bullying in high school, and sexual and other physical violence victimization in college, among LGBT compared to heterosexual peers.”), <https://perma.cc/4H5V-NSZ7>.

¹⁸ Christy Mallory, Brad Sears & Amira Hasenbush, Williams Inst., *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community* 8 (2015) (“22% of transgender

Transgender people also experience a high rate of violent victimization compared to other groups.²¹ Using data from the National Crime Victimization Survey, Amicus and co-authors have estimated that the rate of violent victimization among transgender people is 86.2 per 1,000 persons, which means that the likelihood of victimization for transgender people is over four times greater than non-transgender people²² and

respondents reported that they had been harassed by law enforcement.”), <https://perma.cc/5U3F-MGVS>.

¹⁹ Jody L. Herman, Taylor N.T. Brown, Bianca D.M. Wilson, Ilan H. Meyer & Andrew R. Flores, *Prevalence, Characteristics, and Sexual Victimization of Incarcerated Transgender People in the United States: Results from the National Inmate Survey (NIS-3)* (2016) (transgender people more likely to “[e]xperience sexual victimization ... while incarcerated”), <https://perma.cc/2JGG-2QLR>.

²⁰ Christy Mallory & Brad Sears, Williams Inst., *Evidence of Discrimination in Public Accommodations Based on Sexual Orientation and Gender Identity* 6 (2016) (“Sexual orientation and gender identity discrimination complaints are filed at nearly the same rate as race complaints.”), <https://perma.cc/MZN6-HC2Z>.

²¹ Andrew R. Flores, et al., *Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017-2018*, 111 Am. J. of Public Health 726, 727 (2021), doi.org/10.2105/ajph.2020.306099; see also Andrew R. Flores, et al., *Violent Victimization at the Intersections of Sexual Orientation, Gender Identity, and Race: National Crime Victimization Survey, 2017-2019*, 18 PLoS ONE e0281641 (2023), <https://perma.cc/KB2U-3WNF>; Andrew R. Flores, et al., *Hate Crimes Against LGBT People*, 17 PLoS ONE e027936 (2022), <https://perma.cc/F2Y9-DC35>.

²² Flores, et al., *Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017-2018*, *supra* note 21 at 727 (odds ratio of 4.24).

far exceeds the rates of violent victimization for other minority groups.²³

This societal discrimination mirrors the fact that transgender people have faced *de jure* discrimination for decades. Although other amici discuss this long history in depth, we note there is a robust historical record of discriminatory laws and actions directed at transgender communities, including by the federal government,²⁴ state and local governments,²⁵ and by courts.²⁶ Prominent examples include various states’

²³ See Alexandra Thompson & Susannah N. Tapp, Bureau of Just. Statistics, *Just the Stats Violent Victimization by Race or Hispanic Origin, 2008–2021* (2023), <https://perma.cc/6XLE-24WL>.

²⁴ *E.g.*, Security Requirements for Government Employment, Exec. Order No. 10450, 18 Fed. Reg. 2489 (Apr. 27, 1953), *revoked* by Exec. Order No. 13764, 82 Fed. Reg. 8115 (Jan. 17, 2017) (barring federal government employment for anyone who was determined to have a record of “disgraceful conduct... [or] sexual perversion”); Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988) (excluding transvestites); Americans with Disabilities Act, 42 U.S.C. § 12211(b) (exempting “transvestism,” “transsexualism,” and “gender identity disorders not resulting from physical impairments” as protected conditions); The Rehabilitation Act, 29 U.S.C. § 705(20)(F)(i) (same).

²⁵ Written Testimony of Williams Institute Scholars to the U.S. Senate Judiciary Comm. (March 21, 2021) (documenting discrimination by state and local governments), <https://perma.cc/GBK2-NQFE>.

²⁶ “For example, there are many judicial decisions espousing offensive stereotypes, including labeling a transgender woman as “impersonating” to “disguise himself.” *Oiler v. Winn-Dixie Louisiana, Inc.*, 2002 U.S. Dist. LEXIS 17417, at *28 (2002). Another court likened a transgender litigant to a man trying to change himself “into a donkey.” *Ashlie v. Chester-Upland School District*,

enactment of anti-cross-dressing laws beginning in 1848 and adoption by cities and states of criminal vagrancy laws targeting transgender people.²⁷ Indeed, “other than certain races, one would be hard pressed to identify a class of people more discriminated against historically” than transgender people. *Flack v. Wis. Dept. of Health Servs.*, 328 F. Supp. 3d 931, 953 n.29 (W.D. Wis. 2018).

C. Transgender People Are Economically Vulnerable

Courts have long considered economic vulnerability when evaluating political powerlessness. *See, e.g., Grimm*, 972 F.3d at 611 (addressing “high rates of employment discrimination, economic instability, and homelessness” in analyzing political powerlessness). Research has demonstrated a direct relationship between economic inequality and political influence, with wealthy individuals having a greater impact on the political process.²⁸ Longstanding evidence further

1979 U.S. Dist. LEXIS 12516, at *14 (1979). A discrimination claim was dismissed despite a public employer’s asking “where [the employee] was in the sex change process” and “whether she still had male genitalia.” *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1218-19 (10th Cir. 2007). *See* Brief of Scholars Who Study the Transgender Population as Amicus Curiae in Support of Petitioners at 17, *Fulcher v. Sec’y of Veteran Aff.*, No. 17-01460 (Fed. Cir. June 28, 2017), <https://perma.cc/H2BB-HCLP>; Written Testimony of Todd Bower, Judicial Education Director, Williams Institute at UCLA School of Law to the U.S. Senate Judiciary Comm. (March 17, 2021), <https://perma.cc/FB2Y-VRE4>.

²⁷ Susan Stryker, *Transgender History* 32, 61 (1st ed., 2008).

²⁸ Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America* 234-252 (2012).

confirms that people with lower incomes are less likely to have their unique policy preferences vindicated through the political process.²⁹ It is in part because of this economic disadvantage that the transgender community is unable to “attract the attention of lawmakers” to address their needs. *City of Cleburne*, 473 U.S. at 445.

Empirical analyses indicate transgender people face unique and varied economic hardships.³⁰ For example, the unemployment rate of transgender people in the 2022 USTS was 18%,³¹ or nearly five times greater than the Labor Department’s reported general unemployment rate at the time of 3.7%.³² Research also has found that transgender people, on average, earn less than their non-transgender peers.³³ Consistent with these findings, research shows that transgender people are substantially less affluent relative to the non-transgender majority, including other

²⁹ Elizabeth Rigby & Gerald C. Wright, *Political Parties and Representation of the Poor in American States*, 57 Am. J. of Pol. Sci. 552, 563 (2013).

³⁰ E.g., Karen I. Fredriksen Goldsen, et al., *Health, Economic and Social Disparities among Transgender Women, Transgender Men and Transgender Nonbinary Adults: Results from a Population-Based Study*, 156 Preventative Medicine 106988, 1-7 (2022), <https://pubmed.ncbi.nlm.nih.gov/35150748/>.

³¹ Sandy E. James, et al., Nat’l Ctr. For Trans Equality, *Early Insights: A Report of the 2022 U.S. Transgender Survey* 21 (2024), <https://perma.cc/T445-3JCK>.

³² *Unemployment rate 3.7 percent in November 2022*, TED: *The Economics Daily*, U.S. Bureau of Labor Statistics (Dec. 6, 2022), <https://perma.cc/97CQ-86CZ>.

³³ Fredriksen Goldsen, et al., *supra* note 30 at 12 (transgender people report a 22% higher likelihood than non-transgender people of income at or below 200% the federal poverty level).

members of the LGBT community. One analysis of Behavioral Risk Factor Surveillance System (“BRFSS”) data from 2021 by Williams Institute scholars found that transgender people had the highest rate of poverty (21.2%) compared to non-transgender straight men (9.4%), straight women (13.6%), gay men (10.3%), and bisexual men (12.9%).³⁴

Transgender people are also more likely to rely on Medicaid and experience delays or gaps in health care due to cost. An analysis of 2021-2023 BRFSS data found that transgender people were nearly twice as likely as non-transgender people to rely on Medicaid (12% vs. 7%).³⁵ The 2022 USTS found that 28% of transgender respondents had not seen a healthcare provider in the prior year because of cost.³⁶ Data from the 2021-2023 BRFSS show that transgender people were 2.5 times more likely than non-transgender people to say they avoided visiting a doctor in the past year because of cost (26% vs. 10%).³⁷

Additionally, transgender people are more likely to face food insecurity and rely on food assistance. An analysis of cross-sectional data from the 2021 United

³⁴ Bianca D.M. Wilson, et al., Williams Inst., *LGBT Poverty in the United States* 1, 7 (Feb. 2023), <https://perma.cc/K2CG-6926>.

³⁵ Brad Sears, Andrew R. Flores & Jet Harbeck, Williams Inst., *LGBT Adults with Medicaid as Their Primary Source of Health Insurance* 4 (2025), <https://perma.cc/45BT-RFL5>.

³⁶ Ankit Rastogi, et al., Advocates for Transgender Equality, *Health and Wellbeing: A Report of the 2022 U.S. Transgender Survey* 8, 28 (2025), <https://perma.cc/MJ7T-WMP5>.

³⁷ Analyses are original and on file with Amicus. *See infra* note 46 concerning testing for statistical significance.

States Household Pulse Survey found that transgender people were nearly 2.5 times more likely (19.9%) than non-transgender people (8.3%) to experience food insecurity.³⁸ Similarly, a Williams Institute analysis of 2021-2023 BRFSS data found that transgender people were substantially more likely (17% vs. 11%) than non-transgender adults to receive Supplemental Nutrition Assistance Program (SNAP) benefits.³⁹

Moreover, transgender people disproportionately experience homelessness. For example, a 2020 Williams Institute report using national survey data found that 8.3% of transgender people, versus 1.4% of non-transgender heterosexual individuals, experienced homelessness in the prior year.⁴⁰ Additionally, research suggests that transgender youth are over-represented among homeless youth in the United States, with service providers reporting that “90% of their transgender clients have experienced family rejection and harassment or bullying.”⁴¹

³⁸ Kerith J. Conron & Kathryn K. O'Neill, Williams Inst., *Food Insecurity Among Transgender Adults During the COVID-19 Pandemic* 5 (2022), <https://perma.cc/JQC4-GA4T>.

³⁹ Brad Sears, Andrew R. Flores & Jet Harbeck, Williams Inst., *Food Insecurity and Reliance on SNAP Among LGBT Adults* 9 (2025), <https://perma.cc/97H9-ELSJ>; *see infra* note 51.

⁴⁰ Bianca D.M. Wilson, et al., Williams Inst., *Homelessness Among LGBT Adults in the US*, 3 (2020), <https://perma.cc/F9EA-Y7GF>.

⁴¹ Soon Kyu Choi, et al., Williams Inst. & True Colors Fund, *Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness* 4 (2015), <https://perma.cc/G7L7-QY5U>; Les

D. Transgender People Face Exclusion from the Political Process

Essential to analysis of political powerlessness is whether groups have been “relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *San Antonio*, 411 U.S. at 28. In *The Federalist*, James Madison explained that political equality tends to exist in a diverse society when groups have relatively balanced ability to influence government policy and implement their interests.⁴² In Madison’s view, tyranny of the majority is avoided through political equality—though later studies have shown⁴³ that if certain groups are systematically disadvantaged on policy issues, that deficit may be so prejudicial as to render the group politically powerless.⁴⁴ In this regard, no matter where one looks, the data are clear: Transgender people have insufficient political power, both at the state and federal level, to consistently advance their

Whitbeck, et al., Admin. For Children & Families Family & Youth Serv. Bureau Street Outreach Program, *Data Collection Study Final Report 2* (2016), <https://perma.cc/QY6R-6H7B>; Romero, Goldberg, & Vasquez, *supra* note 16 at 14-15.

⁴² The Federalist No. 10 (James Madison).

⁴³ See Flores, Herman & Mallory, *supra* note 2 at 5; Jeffrey R. Lax & Justin H. Phillips, *The Democratic Deficit in the States*, 56 Am. J. of Pol. Sci. 148, 154 (2011); Robert A. Dahl, *Pluralism Revisited*, 10 Compar. Pol. 191 (1978); see also Robert A. Dahl, *A Preface to Democratic Theory: Expanded Edition* 133-134 (2006).

⁴⁴ See, e.g., Nicholas O. Stephanopoulos, Political Powerlessness, 90 NYU Law Review 1528, 1528-1608 (2015) (examining legal concepts of political powerlessness); Ely, John Hart, *Democracy and Distrust: A Theory of Judicial Review* (1980).

community's policy goals or consistently protect their own interests.

1. Transgender People Have Policy Goals Distinct from Non-Transgender People

Transgender people have identifiable policy goals that are distinct from the non-transgender majority's preferences. According to the 2024 American National Election Studies (ANES), which is a nationally representative survey of adults in the United States documenting their political attitudes and behaviors,⁴⁵ the approximately 1% who identify as transgender hold attitudes about transgender rights that are distinct from non-transgender people.⁴⁶ Findings from the survey show that 72% of transgender people favor accessing bathrooms based on a person's current gender identity compared to about half of the non-transgender majority (49%). Transgender people support allowing transgender people to serve in the military (66%), whereas non-transgender adults largely had no opinion on the topic (41%). Although non-transgender people are evenly divided in their

⁴⁵ See Am. Nat'l Election Stud., *FAQ What is the difference between Time Series, Pilot, and Special Studies?*, <https://perma.cc/JJ33-D97C>.

⁴⁶ All analyses are original and incorporate the complex survey design of the 2024 ANES. Am. Nat'l Election Stud., *2024 Time Series Study*, (August 8, 2025), <https://perma.cc/LQM7-WK2Q>. Application of Rao-Scott F-tests indicate, with respect to all conclusions discussed here, that there are statistically significant differences, at a 95% confidence interval, between transgender and non-transgender respondents.

support of laws banning transgender people in K-12 sports (50%), 75% of transgender people oppose such bans.

Additionally, the 2022 USTS sheds light on “the most important policy priorities for transgender people in the U.S.”⁴⁷ Respondents selected the top priorities facing the transgender community. Among the priorities listed were: “violence against transgender people (46%), coverage for trans-related health care (34%), poverty/income (28%), housing and homelessness (27%), youth access to trans-related health care (23%), lack of health providers who know how to serve transgender people (13%), discrimination by health providers (11%), changing name and gender on identity documents and records (11%), and employment (10%).”⁴⁸ Because the USTS has a large sample size,⁴⁹ these data suggest that a substantial portion of the transgender community finds each of these matters to be a top priority.

Amicus’ analysis of data from ANES also shows substantial differences in how the non-transgender majority perceives the discrimination that is faced by transgender people. Of non-transgender adults, 32% thought transgender people faced “a great deal” of

⁴⁷ Advocates for Transgender Equality, et al., *Civic Engagement in the 2022 U.S. Transgender Survey* 9 (2024), <https://perma.cc/5XBH-24KM>.

⁴⁸ *Id.*

⁴⁹ Brief of Amici Curiae of Williams Institute Scholars in Support of Petitioner and Respondents in Support of Petitioner, *United States v. Skrmetti*, 605 U.S. 495 (2025) (No. 23-477), at 11, <https://perma.cc/LE9Q-LRUL>.

discrimination, as compared to 59% of transgender people. Thus, the policy preferences of transgender people are distinct and diverge from the non-transgender majority.

2. Transgender People Are Politically Powerless at the State Level

At the state level, transgender people have had inconsistent success in effecting political change in line with their policy preferences. Many transgender people live in states which have adopted policies that directly contravene transgender policy goals. The Movement Advancement Project (“MAP”) tracks municipal, state, and federal policies on issues related to LGBTQ community members.⁵⁰ MAP ranked 27 states as having a policy environment that is “low” to “negative” for transgender people, meaning the policy preferences described above are unprotected or contravened by applicable law.⁵¹ Some 29 states have laws or regulations that ban transgender youth from participating in sports based on their current gender identity.⁵² Gender-affirming care for minors is banned in 27 states.⁵³ And 20 states have restrictions on bathroom use by transgender people, with an additional 4 states defining “sex” in ways that can limit transgender people’s

⁵⁰ *See Our Work and Mission*, Movement Advancement Project, <https://perma.cc/3ZKX-ZSDY>.

⁵¹ *Snapshot: LGBTQ Equality By State*, Movement Advancement Project, <https://perma.cc/KVL2-U3CW>.

⁵² *Bans on Transgender Participation in Youth Sports*, Movement Advancement Project, <https://perma.cc/78MF-MMAC>.

⁵³ *Bans on Best Practice Medical Care for Transgender Youth*, Movement Advancement Project, <https://perma.cc/T793-S3HC>.

access to public restrooms associated with their gender identity.⁵⁴ Eight states prohibit or severely restrict amending sex markers on birth certificates, and four states have similar restrictions on driver's licenses.⁵⁵

Such laws are on the rise: The number of anti-transgender bills has increased every year since 2020.⁵⁶ In 2025, one source found that over 1,000 anti-transgender bills were introduced across 49 states.⁵⁷ Of those, 124 were enacted into law across 28 states.⁵⁸ Notably, some states have repealed laws that were previously enacted to protect transgender people. For example, Iowa recently removed gender identity from the list of protected characteristics under the state's Civil Rights Act⁵⁹—a protection that had been included since 2007.⁶⁰

An analysis by Amicus indicates that the transgender community's inability to move the

⁵⁴ *Bans on Transgender People Using Public Bathrooms and Facilities According To Their Gender Identity*, Movement Advancement Project, <https://perma.cc/BT6R-KFVN>.

⁵⁵ *Identity Document Laws and Policies*, Movement Advancement Project, <https://perma.cc/JQ3T-299V>.

⁵⁶ *Tracking the Rise of Anti-Trans Bills in the U.S.*, Trans Legislation Tracker, <https://perma.cc/2DDK-V8SE>.

⁵⁷ *2025 Anti-Trans Bills Tracker*, Trans Legislation Tracker, <https://perma.cc/65CY-WP77>.

⁵⁸ *What Anti-Trans Bills Passed in 2025?*, Trans Legislation Tracker, <https://perma.cc/NYN6-YEQ7>.

⁵⁹ See 2025 Iowa Senate File 418; Jo Yurcaba, *Iowa Governor Signs Bill Removing Gender Identity From State Civil Rights Protections*, NBC News (Feb. 28, 2025), <https://perma.cc/2X4W-LNC5>.

⁶⁰ 2007 Iowa Legis. Serv. Ch. 191 (S.F. 427).

legislative process in favored directions may stem from negative public attitudes specifically concerning transgender people. Amicus analyzed polling data from the Public Religion Research Institute to ascertain what level of public support on a particular issue was necessary to make it likely that the legislature would pass a bill on that issue. Amicus found that with respect to legislation protecting workers from employment discrimination based on gender identity, the legislature was unlikely to enact it unless a *large supermajority* (81%) of residents favored the bill.⁶¹ In contrast, other research has shown that legislation restricting abortion or immigration likely could be enacted even if supported by *less than a majority* of the state's residents.⁶²

Critically, the political challenges facing transgender people extend to ballot access, *i.e.*, the ability of transgender people to vote and thus exercise “political clout simply by casting their votes.” *Skrmetti*, 605 U.S. at 576 (Alito, J., concurring). Since 2012, scholars from the Williams Institute have published a biennial report on transgender people’s access to voting and voter identification laws. The most recent report found that 21 states that conduct elections primarily by in-person voting require voters to present photo identification, while 12 states that primarily conduct

⁶¹ Flores, Herman & Mallory, *supra* note 2 at 5.

⁶² Lax & Phillips, *supra* note 43 at 154; David E. Broockman & Christopher Skovron, *Bias in Perceptions of Public Opinion Among Political Elites*, 112 Am. Pol. Sci. Rev. 542, 559-561 (2018).

elections in-person require non-photo identification.⁶³ The ID requirement is problematic because an estimated 210,800 transgender people do not have an identification document that correctly reflects their name or gender.⁶⁴ As a result, voting may be embarrassing, difficult, or even impossible because the sex markers or photo on their identification documents do not match their observable gender identity or expression. In a study published in the *Journal of Politics*, Amicus and coauthors concluded that transgender people were over five times more likely to experience problems when attempting to vote than non-transgender people (10.8% vs. 2.1%).⁶⁵ This evidence demonstrates a unique and substantial burden on transgender people's exercise of their already-limited voting power.

Since one of the issues that the transgender community faces is widespread bias, it is significant that research indicates that intergroup contact (for example, knowing someone who is transgender) can play an important role in reducing bias.⁶⁶ However, due to the small size of the transgender community and its wide geographic dispersion, *see supra* pp. 10-11, the

⁶³ Jody L. Herman, et al., Williams Inst., *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2024 General Election* 2-3, 17-19 (2024), <https://perma.cc/SGL4-46K2>.

⁶⁴ *Id.* at 2, 16.

⁶⁵ Dakota Strode, Tenaya Storm & Andrew R. Flores, Transgender and Gender-Diverse People Disproportionately Report Problems While Trying to Vote Compared to Cisgender People, 87 J. of Pol. 1199, 1201 (2025).

⁶⁶ Barry L. Tadlock, Andrew R. Flores, Donald P. Haider-Markel, Daniel C. Lewis, Patrick R. Miller & Jami K. Taylor, *Testing Contact Theory and Attitudes on Transgender Rights*, 81 Pub. Op. Q. 956, 962, 965-66 (2017).

frequency and substance of interactions between transgender people and the non-transgender majority are limited. Thus, the likelihood of bias reduction by means of intergroup contact is reduced for the transgender community.⁶⁷ In short, the small size of the transgender community, together with its dispersion, further contributes to its political powerlessness. Transgender people are not numerous enough or geographically concentrated enough to exert material influence on the political branches, and are unable to directly oppose majoritarian policies contrary to their interests. See *City of Cleburne*, 473 U.S. at 445 (increased political power can only “survive[] with[] public support”).

Relatedly, very few openly transgender people serve in elected office across the country. Amicus is aware of ten current state legislators who are transgender,⁶⁸ comprising 0.00135% of approximately 7,386 total state legislators.⁶⁹ This is less than one-sixth of the number of state representatives (approximately 59) that would be necessary to achieve proportionate representation of transgender adults

⁶⁷ Mark Romeo Hoffarth & Gordon Hodson, *When Intergroup Contact is Uncommon and Bias is Strong: The Case of Anti-Transgender Bias*, 8 *Psychology & Sexuality* 237, 246-247 (2018).

⁶⁸ In addition to the nine who identify as transgender according to the Victory Institute’s Out for America report, Amicus is aware of one additional state representative. See *Out For America*, LGBTQ+ Victory Institute, <https://perma.cc/5WFA-62TC>; Williams Skipworth, *Democrat Billie Butler wins special election to represent Somersworth and Rollinsford in NH House*, N.H. Bulletin, (June 25, 2025), <https://perma.cc/UBM2-ZT7C>.

⁶⁹ See *State Partisan Composition*, Nat’l Conference of State Leg. (Aug. 29, 2025), <https://perma.cc/27LM-Q3FH>.

nationally (0.8%).⁷⁰ Even when transgender people are elected to office, evidence shows they may not be able to effectively prevent legislatures (which are overwhelmingly non-transgender) from enacting laws that conflict with transgender policy preferences. For example, legislatures in Montana and Kansas passed anti-transgender measures despite strong opposition from transgender-identified legislators.⁷¹

Ultimately—whether through legislation opposing their interests, barriers to voting, or underrepresentation—the transgender population at the state level “lacks the political power to vindicate its interests before the very legislatures and executive agents actively singling them out for discriminatory treatment.” *Skrmetti*, 605 U.S. at 602–03 (Sotomayor, J., dissenting).

3. Transgender People Are Politically Powerless at the Federal Level

The political powerlessness of transgender people at the state level is exacerbated at the federal level, where transgender people are “underrepresented in every branch of government” and almost entirely “excluded from participation in the political process.” *See*

⁷⁰ Herman & Flores, *supra* note 7 at 2.

⁷¹ *See, e.g.*, Amy Beth Hanson, *After Removing Trans Lawmaker, Montana Becomes Latest State to Ban Gender-Affirming Care for Minors*, PBS (Apr. 28, 2023), <https://perma.cc/2R6B-5QGC>; Bek Shackelford-Nwanganga & Nomin Ujiyediin, *Kansas’ First Transgender Lawmaker Reflects on ‘Emotionally Charged’ Legislative Session*, KCUR (May 7, 2022), <https://perma.cc/RJR8-BMAH>.

Skrmetti, 605 U.S. at 602 (Sotomayor, J., dissenting), 576 (Alito, J., concurring).

Consider the makeup of the federal branches. There has never been an openly transgender Article III judge.⁷² There has only been one Senate-confirmed executive branch official, Rachel Levine, who served as Assistant Health Secretary under President Biden.⁷³ In the entire history of Congress, only one member has ever been openly transgender.⁷⁴ That currently-serving member—Congresswoman Sarah McBride—has been singled out for discriminatory treatment by her colleagues,⁷⁵ including enactment by the House of Representatives of its first-ever rule restricting bathroom access based on biological sex as assigned at birth.⁷⁶ She has been repeatedly criticized by fellow House members because of her transgender identity.⁷⁷ This

⁷² Article III Judges, LGBTQ+ Bar Ass’n, <https://perma.cc/BNK2-L7BJ>.

⁷³ Dan Diamond & Samantha Schmidt, *Rachel Levine, Historic Transgender Nominee, Confirmed as Assistant Health Secretary*, Wash. Post (Mar. 24, 2021), <https://perma.cc/47JN-GZ7K>.

⁷⁴ Jo Yurcaba, *Sarah McBride becomes the first out transgender person elected to Congress*, NBC News (Nov. 5, 2024), <https://perma.cc/85JX-8VAZ>.

⁷⁵ Christopher Wiggins, *Sarah McBride Opens Up About Her Darkest Day in Congress (exclusive)*, Advocate (Nov. 3, 2025), <https://perma.cc/4Q89-6D2P>.

⁷⁶171 Cong. Rec. H26 (Jan. 3, 2025), <https://perma.cc/T4JM-ZBSR>; Anthony Adragna, *Johnson Announces Policy Barring Transgender Women From Capitol Women’s Bathrooms*, Politico (Nov. 20, 2024), <https://perma.cc/9E3V-S5WW>.

⁷⁷ See, e.g., Julianna McShane, *Nancy Mace Is Already Harassing Her New Co-Worker with Transphobia*, Nov. 19, 2024, Mother Jones, <https://perma.cc/8MFK-AYRG>.

marginalization of the only transgender member of Congress in our nation’s history—by members of Congress, including through official actions—is a textbook example of the group’s political powerlessness.

The stigma faced by Congresswoman McBride is reflected in federal elections more broadly.⁷⁸ For example, a forthcoming study drawing from multiple data collection efforts by the Victory Institute found that negative coverage of LGBTQ candidates, including transgender candidates, thwarts the ambitions of would-be candidates, and that LGBTQ and transgender candidates tend to avoid discussing their identity or lean into other issues to gain more positive coverage.⁷⁹ As would be expected, if the personal and political costs are too great, then members from historically underrepresented groups may opt to avoid electoral politics altogether.⁸⁰ These findings suggest that even transgender people who have won elections may need to de-emphasize that aspect of their identities in order to effectively carry out their jobs.⁸¹

With virtually no representation in Congress, the transgender population has been powerless to effectively lobby for policy change. Almost no

⁷⁸ See generally Gabriele Magni & Elliot Imse, LGBTQ+ Victory Inst., *When We Run* (2023), <https://perma.cc/X7RB-97WT>.

⁷⁹ Dakota Strode, *Covering the Lavender Candidate: LGBT Candidates, Campaigns, and the Media* 94-101, 201-207 (July 25, 2025) (Ph.D. dissertation, American University) (on file with Amicus); see also Magni & Imse, *supra* note 78 at 19.

⁸⁰ Richard L. Fox & Jennifer L. Lawless, 49 Am. J. of Pol. Sci. 642, 643 (2005).

⁸¹ Strode, *supra* note 79 at 94-101.

transgender policy preferences have been enacted into law, with the limited exception of violence prevention.⁸² Legislative efforts to prohibit transgender discrimination in employment, housing, public accommodations, and education have all failed.⁸³ Conversely, laws have been enacted that are directly contrary to transgender policy preferences. These include the 1988 Fair Housing Amendments Act, which expressly excludes “transvestites” from nondiscrimination protections,⁸⁴ and the Americans with Disabilities Act, which excludes “gender identity disorder” from covered disabilities.⁸⁵ More recently, the 2024 National

⁸² See, e.g., Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 111 Pub. L. 84, Div. E, 123 Stat. 2190 (2009) (including gender identity as a protected status under federal hate crime laws); Violence Against Women Reauthorization Act of 2013, 113 Pub. L. 4, 127 Stat. 54 (2013) (incorporating same definition).

⁸³ See, e.g., Employment Nondiscrimination Act (ENDA), S. 815, 113th Cong. (2013), H.R. 1755, 113th Cong. (2013) (failed in House); Equality Act, S. 393, 117th Cong. (2022), H.R. 5, 117th Cong. (2022) (failed in Senate); Fair and Equal Housing Act, H.R. 4286, 117th Cong. (2022) (did not advance). See also Nat’l Gay & Lesbian Task Force, *History of Nondiscrimination Bills in Congress*, <https://bit.ly/3M4Fq23> (describing unsuccessful demands for transgender nondiscrimination legislation beginning in 1995).

⁸⁴ The Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619, 1622 (1988) (excluding “transvestites”); see also Kevin M. Barry et al., *A Bare Desire to Harm: Transgender People and the Equal Protection Clause*, 57 B.C.L. Rev. 507, 527-29 (2016).

⁸⁵ The Americans with Disabilities Act, 42 U.S.C. § 12211(b) (exempting “transvestism,” “transsexualism,” and “gender identity disorders not resulting from physical impairments” as protected conditions).

Defense Authorization Act prohibited access to gender-affirming care for minor children of servicemembers.⁸⁶

For the past year, with no protection from Congressionally enacted laws, the transgender community has been at the whims of actions by the Executive Branch. President Trump has proclaimed that his second administration will no longer recognize gender identity for any purpose, and the administration requires categorization by binary sex as determined “at conception.”⁸⁷ The President’s opposition to legal recognition of transgender people has led the State Department to reverse its policy allowing gender-affirming passports;⁸⁸ to announcements restricting the inclusion of transgender women in sports, bathrooms, and homeless shelters;⁸⁹ to the discontinuation of millions of dollars in grant funding;⁹⁰ and to federal investigations of providers of gender-affirming care for minors⁹¹ and of jurisdictions that allow transgender

⁸⁶ National Defense Authorization Act for Fiscal Year 2026, S. 2296, § 706, 119th Cong. (2025).

⁸⁷ Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, Exec. Order 14168, 90 Fed. Reg. 8615 (January 30, 2025).

⁸⁸ *Id.* at § 3(d).

⁸⁹ *Id.* at §§ 3(f), 4; Keeping Men Out of Women’s Sports, Exec. Order 14201, 90 Fed. Reg. 9279 (Feb. 11, 2025).

⁹⁰ Benjamin Mueller, *Trump Administration Slashes Research Into L.G.B.T.Q. Health*, N.Y. Times, (May 4, 2025), <https://perma.cc/TKC4-NXZR>.

⁹¹ *See, e.g.*, Chris Cameron, *Trump Official Demanded Confidential Data About Transgender Children Seeking Care*, N.Y. Times, (Aug. 20, 2025), <https://perma.cc/7SYE-TBWL>.

female athletes to compete in girls and women's sports.⁹² As of this filing, the federal government's opposition to transgender policy preferences is so pervasive that merely identifying as transgender is no longer possible in many federal surveys,⁹³ and the administration is considering legal avenues to characterize transgender identification itself as fraudulent and illicit.⁹⁴ Reports suggest the administration may seek to ban transgender people from owning guns, which could abridge their Second Amendment rights.⁹⁵

Executive actions such as these directly conflict with the preferences of transgender people. The inability to prevent or protect themselves from such actions highlights the relative political powerlessness of the transgender community.

Across the federal landscape, as with the states, years of objective evidence demonstrate that transgender people "are politically powerless in the sense that they have no ability to attract the attention of the lawmakers" to address their needs. *City of Cleburne*, 473 U.S. at 445.

⁹² See, e.g., Jo Yurcaba, *Trump Administration Says California Violated Title IX By Letting Trans Athletes Compete*, NBC News (June 25, 2025), <https://perma.cc/JP98-DACE>.

⁹³ See Ilan H. Meyer & Lauren J. Bouton, Williams Inst., *Impact of Executive Orders on Access to Federal Data*, 6 (2025), <https://perma.cc/7P99-AENB>.

⁹⁴ See, e.g., Keeping Men Out of Women's Sports, Exec. Order 14201, 90 Fed. Reg. 9279 (Feb. 11, 2025); Brooke Migdon, *International Trans Athletes To Be Investigated for 'Fraud' Under Trump Executive Order*, The Hill (Feb. 5, 2025), <https://perma.cc/47AS-WW54>.

⁹⁵ Evan Perez & Hannah Rabinowitz, *Trump DOJ Is Looking At Ways To Ban Transgender Americans From Owning Guns, Sources Say*, CNN (Sept. 4, 2025), <https://perma.cc/R7XU-ZGFP>.

CONCLUSION

Objective, empirical evidence demonstrates the transgender community's profound lack of political power due to a de facto and *de jure* history of discrimination, economic vulnerability, and exclusion from the political process. Consequently, the rights of the transgender community rise and fall with the shifting will of the political majority. Such circumstances have historically been recognized by the Court as important factors necessitating heightened judicial scrutiny.

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