

# United States Senate

WASHINGTON, DC 20510

March 31, 2023

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Ave., NW  
Washington, DC 20500

Dear President Biden:

International Transgender Day of Visibility is a celebration of transgender people across the globe.<sup>1</sup> It is meant to give transgender communities hope and support in the face of continued violence against them and their health care providers, as well as a growing movement to pass laws that discriminate against LGBTQ+ individuals. As elected officials, it is our responsibility to guarantee that transgender people are supported and live free from violence and discrimination. We write to urge your Administration to build on the steps it has already taken to achieve this important goal, and champion a robust, whole-of-government response to violence and discrimination against transgender people; ensure access to gender-affirming care; and engage in a public campaign to educate the transgender community about their legal rights and available support.

The nation is experiencing a flood of anti-LGBTQ+ legislation. In 2022, state legislators introduced 315 anti-LGBTQ+ bills and passed 29 into law, including legislation to erase and criminalize transgender people and ban transitions.<sup>2</sup> This trend only accelerated this year. Since January, state legislators have filed more than 400 anti-LGBTQ+ bills,<sup>3</sup> and six states have enacted nine bills that restrict access to gender-affirming care for minors, target drag performances, interfere with students' right to privacy, and make it easier to discriminate against LGBTQ+ people.<sup>4</sup>

Much of the anti-LGBTQ+ legislation focuses on health care, making it less accessible to those who often need it the most. In 2021, Arkansas blocked gender-affirming care for transgender youth and six states followed suit.<sup>5</sup> Currently, six states are considering restrictions on access to gender-affirming care for adults.<sup>6</sup> Several states are also facilitating lawsuits or the

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<sup>1</sup> Kate Sosin, *The History behind International Transgender Day of Visibility*, The 19<sup>th</sup> News (Mar. 31, 2021), <https://19thnews.org/2021/03/history-behind-transgender-day-of-visibility/>.

<sup>2</sup> Under Fire: The War on LGBTQ People in America, Movement Advancement Project (Feb. 2023), <https://www.mapresearch.org/under-fire-report>.

<sup>3</sup> Mapping Attacks on LGBTQ Rights in U.S. State Legislatures, ACLU <https://www.aclu.org/legislative-attacks-on-lgbtq-rights>.

<sup>4</sup> *Id.*

<sup>5</sup> Nicole Narea and Fabiola Cineas, *The GOP's Coordinated National Campaign Against Trans Rights, Explained*, Vox (Mar. 10, 2023), <https://www.vox.com/politics/23631262/trans-bills-republican-state-legislatures>.

<sup>6</sup> Maham Javaid, *New State Bills Restrict Transgender Health Care – For Adults*, Washington Post (Mar. 1, 2023), <https://www.washingtonpost.com/nation/2023/02/28/anti-trans-bills-gender-affirming-care-adults/>; C Mandler, *Texas Bill Would Ban Nearly All Gender-Affirming Care, Including for Trans Adults*, CBS News (Feb. 22, 2023), <https://www.cbsnews.com/news/texas-bill-ban-gender-affirming-care-transgender-adults/>.

imposition of penalties on health care providers and facilities for providing gender-affirming care, and are advancing bills that restrict access to gender-identity-conforming bathrooms and impose barriers to changing one's gender identification.<sup>7</sup>

This discriminatory legislation, frequently paired with disparaging and vile rhetoric, serves to spread extremism and normalize attacks against the transgender community. It has inspired physical violence by far-right extremists against LGBTQ+ communities and health care providers. In 2022, at least 34 transgender people were killed in the United States and there were 141 documented anti-drag attacks,<sup>8</sup> many against trans women of color.<sup>9</sup> On November 22, 2022, individuals associated with extremist groups opened fire at the weekly drag show at the Colorado Springs, Colorado nightclub Club Q.<sup>10</sup> Other extremists have engaged in violent demonstrations and interrupted family art nights and drag story events.<sup>11</sup> And social media disinformation campaigns have facilitated bomb threats against hospitals and threats of violence against medical providers.<sup>12</sup>

The impact of this violence is substantial. Health care providers are canceling in-person services and removing information on gender-affirming care from their websites.<sup>13</sup> A vast majority of transgender and nonbinary youth are worried about accessing gender-affirming care and denial of access to bathrooms.<sup>14</sup> In 2022, nearly one in five trans and nonbinary youth attempted suicide, and a majority of LGBTQ+ youth who wanted mental health care did not receive it. Their reasons included fear of discussing mental health, concerns about parent or

<sup>7</sup> Nicole Narea and Fabiola Cineas, *The GOP's Coordinated National Campaign Against Trans Rights, Explained*, Vox (Mar. 10, 2023), <https://www.vox.com/politics/23631262/trans-bills-republican-state-legislatures>.

<sup>8</sup> Mary Emily O'Hara, *Updated GLAAD Report: Drag Events Faced at Least 141 Protests and Significant Threats in 2022*, GLAAD (upd. Dec. 16, 2022), <https://www.glaad.org/blog/glaad-report-drag-events-faced-least-124-protests-and-significant-threats-2022>; *Report: An Epidemic of Violence in 2022*, Human Rights Campaign (upd. Dec. 5, 2022), <https://reports.hrc.org/an-epidemic-of-violence-2022>.

<sup>9</sup> *Report: An Epidemic of Violence in 2022*, Human Rights Campaign (upd. Dec. 5, 2022), <https://reports.hrc.org/an-epidemic-of-violence-2022>.

<sup>10</sup> James Factora, *How Anti-Trans Rhetoric Set the Stage for the Club Q Shooting*, Them (Nov. 23, 2022), <https://www.them.us/story/club-q-shooting-anti-trans-rhetoric-tucker-carlson-libs-of-tiktok>.

<sup>11</sup> Harriet Williamson, *Neo-Nazis and White Supremacists Join Right-Wing Protest Against Drag Queen Story Event*, Pink News (Mar. 14, 2023), <https://www.thepinknews.com/2023/03/14/drag-story-hour-ohio-protest-neo-nazi/>; Ginny Bixby, *Protest at Drag Story Hour in Silver Spring Turns Violent, Witnesses Say*, MoCo360 (Feb. 19, 2023), <https://moco360.media/2023/02/19/protest-at-drag-story-hour-in-silver-spring-turns-violent-witnesses-say/>; Daniel Kool, *After Dec. Protest, Fall River Pride Leader Says Drag Story Hours are in Town to Stay*, Boston Globe (Dec. 31, 2022), <https://www.bostonglobe.com/2022/12/31/metro/after-dec-protest-fall-river-pride-leader-says-drag-story-hours-are-town-stay/?event=event12>; Billie Anania, *Alt-Right Protesters Brandish Nazi Flag at Florida Drag Event*, Hyperallergic (Dec. 7, 2022), <https://hyperallergic.com/785647/alt-right-protesters-brandish-nazi-flag-at-florida-drag-event/>.

<sup>12</sup> Letter from the American Academy of Pediatrics, American Medical Association and Children's Hospital Association to Attorney General Merrick Garland (Oct. 3, 2022), <https://downloads.aap.org/DOFA/DOJ%20Letter%20Final.pdf>.

<sup>13</sup> Sri Ravipati, *Medical Groups Urge DOJ to Investigate Threats over Gender-Affirming Care*, Axios (Oct. 3, 2022), <https://www.axios.com/2022/10/04/medical-groups-gender-affirming-care-trans-youth-threats>; Tara Bannow and Kate Sheridan, *Harassment Prompts Children's Hospital to Strip Websites, Threatening Access to Gender-Affirming Care*, STAT (Oct. 3, 2022), <https://www.statnews.com/2022/10/03/childrens-hospitals-strip-websites-gender-affirming-care/>.

<sup>14</sup> 2022 National Survey on LGBTQ Youth Mental Health, The Trevor Project, <https://www.thetrevorproject.org/survey-2022/#suicide-by-age>.

caregiver permissions, and worries over being outed or having their identity misunderstood.<sup>15</sup> Often, transgender people and their families in need of gender-affirming care are being forced to travel out of state for fear of punishment or lack of access.<sup>16</sup>

By contrast, allowing people to live as themselves without fear of retribution gives them the freedom to survive and thrive. Social supports and access to gender-affirming care are associated with improved mental health outcomes.<sup>17</sup> For one girl in Texas, access to care made her feel who [she] truly [is].<sup>18</sup> For a woman in Arkansas, living as herself empowered her. In her words: “Before, it was easier to hide away and to cope day by day. Now I try to take each day by storm and help everyone I can!”<sup>19</sup> Unsurprisingly, several health care organizations have issued statements in support of gender-affirming care, including the World Health Organization, the American Academy of Pediatrics, the American Medical Association and the American Psychiatric Association.<sup>20</sup>

We are grateful for the many steps your Administration has already taken to protect transgender people—including issuing executive orders to enforce prohibitions on gender-identity-based sex discrimination,<sup>21</sup> rescinding discriminatory bans on transgender service members,<sup>22</sup> and reminding states of their nondiscrimination obligations.<sup>23</sup> But in this acute crisis, with transgender people and their communities and health care providers living in fear of what will come next, we must do more. As we work in Congress to pass legislation to protect transgender people, we call on you to take the following immediate steps through executive action:

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<sup>15</sup> *Id.*

<sup>16</sup> Orion Rummier, *Trans Youth in Florida Can No Longer Start Gender-Affirming Care, Pushing Families Towards Difficult Decisions*, 19<sup>th</sup> News (March 16, 2023), <https://19thnews.org/2023/03/florida-transgender-youth-gender-affirming-care-ban/>; Marc Ramirez, *As State Laws Target Transgender Children, Families Flee and Become ‘Political Refugees,’* USA Today (Oct. 29, 2022), <https://www.usatoday.com/story/news/nation/2022/10/29/transgender-children-families-flee-states-restricting-rights/10547110002/>.

<sup>17</sup> 2022 Nat’l Survey, *supra* n. 14, Anthony N. Almanzan and Alex S. Keuroghlian, *Association Between Gender Affirming Surgeries and Mental Health Outcomes*, JAMA Surgery (April 21, 2021),

<sup>18</sup> Sneha Dey and Karen Brooks Harper, *Transgender Texas Kids are Terrified After Governor Orders that Parents be Investigated for Child Abuse*, The Texas Tribune (Feb. 28, 2022), <https://www.texastribune.org/2022/02/28/texas-transgender-child-abuse/>.

<sup>19</sup> Gabriel Arkles, *Transgender and Non-Binary Leaders Tell Federal Court Trans People Deserve Joy at Any Age*, ACLU (Feb. 8, 2022), <https://www.aclu.org/news/lgbtq-rights/transgender-and-non-binary-leaders-tell-federal-court-trans-people-deserve-joy-at-any-age>.

<sup>20</sup> Barbara Simon, *Medical Association Statements Supporting Trans Youth Healthcare and Against Discriminatory Bills*, GLAAD (Apr. 19, 2021), <https://www.glaad.org/blog/medical-association-statements-supporting-trans-youth-healthcare-and-against-discriminatory>.

<sup>21</sup> Exec. Order No. 14,075, 87 Fed. Reg. 37,189 (June 15, 2022), <https://www.federalregister.gov/documents/2022/06/21/2022-13391/advancing-equality-for-lesbian-gay-bisexual-transgender-queer-and-intersex-individuals>; Exec. Order No. 13,988, 86 Fed. Reg. 7023 (Jan. 20, 2021), <https://www.federalregister.gov/documents/2021/01/25/2021-01761/preventing-and-combating-discrimination-on-the-basis-of-gender-identity-or-sexual-orientation>.

<sup>22</sup> Exec. Order No. 14,004, 86 Fed. Reg. 7471 (Jan. 25, 2021), <https://www.federalregister.gov/documents/2021/01/28/2021-02034/enabling-all-qualified-americans-to-serve-their-country-in-uniform>.

<sup>23</sup> Press Release: Justice Dep’t. Reinforced Federal Nondiscrimination Obligations in Letter to State Officials Regarding Transgender Youth, Dep’t of Justice (Mar. 31, 2022), <https://www.justice.gov/opa/pr/justice-department-reinforces-federal-nondiscrimination-obligations-letter-state-officials>.

### **1. Ensure access to gender-affirming care.**

Following the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* overturning *Roe v. Wade* and taking away the right to abortion, you issued an executive order directing the HHS Secretary to consider Medicaid coverage for patients traveling across state lines for reproductive health care services; provide technical assistance to providers who may be unsure of their obligations; and promote research and data collection on maternal health outcomes.<sup>24</sup> Similarly, we ask that HHS consider Medicaid coverage for patients traveling—or moving—to obtain gender-affirming care; provide technical assistance to providers on their obligations to provide care and protect patient privacy; and promote research and data collection on the impact of impeding or promoting access to gender-affirming care. We also urge HHS to robustly enforce the Affordable Care Act’s anti-discrimination provision, Section 1557, against health insurers and healthcare providers who discriminate against transgender people on the basis of sex.<sup>25</sup>

### **2. Provide resources and assistance to health care providers and facilities caring for transgender people.**

Relevant federal entities such as the Department of Health and Human Services (HHS), Department of Justice, and the White House Gender Policy Council, to coordinate and drive efforts across the government should allocate resources dedicated to protecting health care providers and hospitals offering gender-affirming care from threats of violence. By taking and urgent and vigorous, whole-of-government action to address threats to health care providers and facilities, the Biden Administration will reinforce the message that your Administration is committed to defending the rights and dignity of *all* Americans, including those who are most vulnerable to violence and discrimination.

### **3. Launch outreach and public education efforts and convene volunteer lawyers.**

For those trans individuals who travel out-of-state for health care, the array of state laws, proposed state legislation, and existing federal laws and regulations may create confusion about health care coverage and availability, privacy rights in receiving care, and protections against discrimination. We ask that the Administration engage in, or support state and local efforts to engage in, public outreach and education on trans legal rights, available support options, and ways to access care. We also ask for the federal government to convene volunteer lawyers who can collaborate to secure legal protections for transgender people and health care providers lawfully seeking or offering gender-affirming care, respectively.

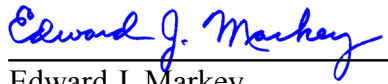
We are disappointed that the campaign of hate and discrimination against transgender people and their communities has resulted in violence and discriminatory legislation. And while we are encouraged by the work that your Administration has done, this problem calls for more action across the federal government. On this Transgender Day of Visibility, we are committed

<sup>24</sup> Exec. Order No. 14,076, 87 Fed. Reg. 42,053 (July 8, 2022), <https://www.federalregister.gov/documents/2022/07/13/2022-15138/protecting-access-to-reproductive-healthcare-services>.

<sup>25</sup> 42 U.S.C. § 18116.

to fighting for this community's freedom to survive and thrive. We ask for your continued support.

Sincerely,



Edward J. Markey  
United States Senator



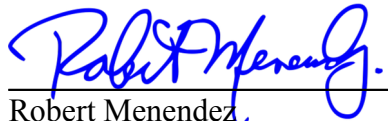
Sherrod Brown  
United States Senator



Elizabeth Warren  
United States Senator



Cory A. Booker  
United States Senator



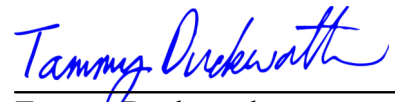
Robert Menendez  
United States Senator



Tina Smith  
United States Senator



Mazie K. Hirono  
United States Senator



Tammy Duckworth  
United States Senator



Peter Welch  
United States Senator