

**IS DIGNITY POSSIBLE HERE?
A COMPREHENSIVE SURVEY OF STATE COURTS’
IMPACT ON TRANS LIVES, 2022 – 2024**

Morgan Munroe *

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The past decade has seen a steady rise in both the visibility of and prejudice against transgender (trans) people across the nation. Much of the political and legal conversation about trans people during this time has focused on the remarkable spread of anti-trans legislation and executive actions over the past ten years and the subsequent federal litigation over the constitutionality of those laws and of trans rights in general. In many ways, this focus is understandable, especially given the intensely transphobic rhetoric from the politicians behind those laws that lays bare the fact that they are solely intended to eradicate trans people from existence.

However, such high-profile cases are just the tip of the iceberg when it comes to how trans people's daily lives are impacted by the country's legal system. Indeed, ninety-eight percent of court cases take place in state courts. Thus, if we want to understand how the law shapes trans people's lives day-to-day, state courts are the place to look.

How are trans people treated when they are charged with a crime? How is justice served when a trans person is the victim of a crime? What happens to trans children when their parents split up? How can trans people fight back against the discrimination they face in their daily lives—at work, at bakeries, at sports competitions? When and how can trans people legally change their name and gender to affirm their identity?

All these questions and more are addressed by state courts across the country every day. Yet, scholarship in this area is lacking. This Article seeks to fill that hole by conducting a comprehensive survey of the impact state courts have on trans people's lives, focusing on the three years from 2022 through 2024. This survey goes beyond litigation over the constitutional rights of trans people, expanding much more broadly into all areas of law.

This Article is meant to be primarily descriptive; its goal is to paint a picture of the current state of play of state courts' impact on trans lives and to lay a foundation that can serve as a jumping off point for more directed and targeted scholarship and activism. After an Introduction to the intent, scope, and focus of the survey, Part I describes my methodology in conducting the survey. Part II delves into the substance of the cases that comprise my survey results and discusses how state courts treat the trans litigants appearing before them as well as how their rulings affect those litigants' lives. Finally, Part III analyzes overall trends within the survey dataset and highlights some of the substantive issues and questions that remain unresolved before a brief Conclusion offers some final thoughts.

INTRODUCTION

The past decade has seen a steady rise in both the visibility of and prejudice against transgender¹ people across the nation.² Much of the political and legal conversation about trans people during this time has focused on the remarkable spread of anti-trans legislation over the past ten years³ and the subsequent litigation over the constitutionality of those laws and of trans rights in general.⁴ Most prominently, the United States Supreme Court recently ruled in *United States v. Skrametti* that a Tennessee law banning gender-affirming healthcare for trans youth does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.⁵ While the majority's ruling was narrower than it could have been,⁶ the Court's opinion and concurrences (alongside the Court's opinion in *Mahmoud v. Taylor*⁷) signal, at minimum, a profound

¹ A quick note on terminology: Throughout this piece, I will use the term "transgender" and its shorthand "trans" to refer to anyone "whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth," including people who identify as non-binary, gender non-conforming, intersex, genderqueer, or any number of other identifications. I acknowledge, however, that there are many people whose gender identity or expression does not match their sex as assigned at birth who do not self-identify as transgender. See *Understanding Transgender People, Gender Identity and Gender Expression*, AM. PSYCH. ASS'N (July 8, 2024), <https://www.apa.org/topics/lgbtq/transgender-people-gender-identity-gender-expression>.

² See Katy Steinmetz, *The Transgender Tipping Point*, TIME (May 29, 2014, 6:08 AM), <https://time.com/135480/transgender-tipping-point/> ("Almost one year after the Supreme Court ruled that Americans were free to marry the person they loved, no matter their sex, another civil rights movement is poised to challenge long-held cultural norms and beliefs. Transgender people—those who identify with a gender other than the sex they were 'assigned at birth,' to use the preferred phrase among trans activists—are emerging from the margins to fight for an equal place in society."); Jack M. Balkin, *Part I: Obergefell v. Hodges: A Critical Introduction*, in WHAT OBERGEFELL V. HODGES SHOULD HAVE SAID: THE NATION'S TOP LEGAL EXPERTS REWRITE AMERICA'S SAME-SEX MARRIAGE DECISION 1, 49 (Jack M. Balkin ed., 2020) ("In addition, by the time *Obergefell* was decided, the culture wars had already mutated, as they had so many times before, moving to a new set of issues. These included, among others, the rights of transgender persons and the rights of religious objectors to the expansion of gay and transgender rights.").

³ See *Tracking the Rise of Anti-Trans Bills in the U.S.*, TRANS LEGIS. TRACKER, <https://translegislation.com/learn> (last visited Mar. 25, 2025); see also *infra* Part I.

⁴ See, e.g., Katie Eyer, *Transgender Constitutional Law*, 171 U. PA. L. REV. 1405 (2023).

⁵ *United States v. Skrametti*, 605 U.S. 495 (2025).

⁶ See Press Release, ACLU, ACLU, Lambda Legal Respond to Supreme Court Ruling in *U.S. v. Skrametti* (June 18, 2025), <https://www.aclu.org/press-releases/aclu-lambda-legal-respond-to-supreme-court-ruling-in-u-s-v-skrametti> ("Notably, however, the decision is based on the record in and context of the Tennessee case and therefore does not extend to other cases concerning discrimination based on transgender status.").

⁷ 606 U.S. 522 (2025) (holding on religious freedom grounds that a school district in Maryland had to allow parents to opt their children out of lessons involving books with LGBTQ+ characters).

misunderstanding of⁸—and, at worst, a deep hostility towards⁹—transgender individuals. Three justices explicitly stated that they would go further than the majority and find that laws that discriminate based on transgender status, in any context, do not trigger heightened scrutiny and are subject only to rational basis review.¹⁰

Furthermore, in the 2024 election, Republicans claimed across the board victories, including the election of Donald Trump as President, after many Republican candidates ran campaigns largely centered on anti-trans grandstanding.¹¹ Now in office, President Trump has wasted no time in

⁸ See *Skrametti*, 605 U.S. at 514–15 (emphasis in original) (finding that Tennessee’s law does not discriminate based on sex or transgender status because “no minor may be administered puberty blockers or hormones to treat gender dysphoria, gender identity disorder, or gender incongruence; minors of any sex may be administered puberty blockers or hormones for other purposes,” ignoring the fact that, by definition, only trans minors will be seeking hormone treatment for “gender dysphoria, gender identity disorder, or gender incongruence”); *id.* at 551 (Barrett, J., concurring) (stating that transgender status is not based on an “immutable . . . characteristic,” nor do transgender people represent a “discrete group,” so trans people “are not defined by an easily ascertainable characteristic that is fixed and consistent across the group,” despite the fact that, no matter where on the gender spectrum someone falls, how they self-identify, when they embrace their gender identity, or if their gender identity changes over time, at root, all trans people share a feeling that their gender identity does not match their sex, and its societally associated gender, as assigned at birth); see also Ian Millhiser, *The Supreme Court’s Incoherent New Attack on Trans Rights, Explained*, VOX (June 18, 2025, 1:30 PM), <https://www.vox.com/scotus/417281/supreme-court-skramett-transgender-tennessee-health> (“Gender dysphoria, gender identity disorder, or gender incongruence are among the defining traits that make someone transgender. Roberts might as well have argued that Jim Crow laws do not discriminate on the basis of race, but instead discriminate based on the color of a person’s skin.”).

⁹ See *Skrametti*, 605 U.S. at 575 (Alito, J., concurring in part and concurring in the judgment) (contending, against all evidence, that “the plaintiffs and their many *amici* have not been able to show a history of widespread and conspicuous discrimination” against trans people); *Mahmoud*, 606 U.S. at 553 (emphasis in original) (characterizing a children’s book in which a mother responds to her son’s statement that his sibling “can’t become a boy” by saying, “Not everything *needs* to make sense. *This is about love*” as “carry[ing] with [it] ‘a very real threat of undermining’ the religious beliefs that the parents wish to instill in their children”).

¹⁰ See *Skrametti*, 605 U.S. at 557 (Barrett, J., concurring) (“The Equal Protection Clause does not demand heightened judicial scrutiny of laws that classify based on transgender status. Rational-basis review applies, which means that courts must give legislatures flexibility to make policy in this area.”); *id.* at 577 (Alito, J., concurring in part and concurring in the judgment) (“I am unwilling to conclude that transgender status, like race, national origin, and sex, is entitled to a higher level of scrutiny than ordinary rational basis review.”).

¹¹ See Susan Davis, *GOP Ads on Transgender Rights Are Dominating Airwaves in the Election’s Closing Days*, NPR (Oct. 19, 2024, 5:00 AM), <https://www.npr.org/2024/10/19/g-s1-28932/donald-trump-transgender-ads-kamala-harris>; Zane McNeill, *Republicans Spent Nearly \$215M on TV Ads Attacking Trans Rights This Election*, TRUTHOUT (Nov. 5, 2024), <https://truthout.org/articles/republicans-spent-nearly-215m-on-tv-ads-attacking-trans-rights-this-election/> (“Republicans are relying on anti-trans rhetoric to rally their base. In fact, according to transgender journalist Erin Reed, Donald Trump has spent more money on anti-trans ads than on ads concerning housing, immigration, and the economy combined.”).

turning his transphobic talk into federal action. Within hours of his inauguration, President Trump signed an executive order declaring that the federal government will recognize only two immutable sexes, male and female.¹² And within the first few weeks of the administration, anti-trans policies quickly proliferated across the executive branch, restricting access to gender-affirming healthcare for trans youth, prohibiting trans youths' participation on sports teams matching their gender identity, banning trans people from serving in the military, and more.¹³ In response, many lawsuits challenging the constitutionality of these executive actions have been filed; fortunately, lower federal courts are largely granting those suits' requests for preliminarily injunctions.¹⁴

In many ways, this focus on anti-trans legislation and executive actions, and the related federal litigation, is understandable, especially given the intensely transphobic rhetoric from the politicians behind these laws that lays bare the fact that they are solely intended to eradicate trans people from existence.¹⁵ However, such high-profile cases are just the tip of the iceberg when it comes to how trans people's daily lives are impacted by the country's legal system. Indeed, "[m]ore than 98 percent of court cases filed in the United States are in state courts, and state courts play an out-sized role in certain areas of the law, including the rights of criminal defendants and families."¹⁶ Thus, if we want to understand how the law shapes trans people's lives day-to-day, state courts are the place to look. How are trans people treated when they are charged with a crime? How is justice served when a trans person is the victim of a crime? What happens

¹² See Gillian Branstetter, *Trump's Executive Orders Promoting Sex Discrimination, Explained*, ACLU (Jan. 22, 2025), <https://www.aclu.org/news/lgbtq-rights/trumps-executive-orders-promoting-sex-discrimination-explained>.

¹³ See Orion Rummler & Kate Sosin, *All the Ways Trump Wants to Exclude Trans People from Public Life*, 19TH (Mar. 5, 2025, 12:28 PM), <https://19thnews.org/2025/03/trump-anti-trans-executive-orders/>.

¹⁴ See Scott Skinner-Thompson, *Courts Are Pumping the Brakes on Trump's Anti-Trans Crusade*, AM. CONST. SOC'Y (Mar. 20, 2025), <https://www.acslaw.org/expert-forum/courts-are-pumping-the-brakes-on-trumps-anti-trans-crusade/>. The Supreme Court, on the other hand, continues to issue anti-trans rulings, recently halting a preliminary injunction against the Trump Administration's anti-trans policy of requiring passports to identify individuals by their sex assigned at birth, thus allowing the policy to go into effect. See Press Release, ACLU of Mass., Supreme Court Allows Trump Administration to Enforce Discriminatory Passport Policy (Nov. 6, 2025), <https://www.aclu.org/press-releases/supreme-court-allows-trump-administration-to-enforce-discriminatory-passport-policy>.

¹⁵ See, e.g., Matt Lavietes, *RNC Speakers Lean into Homophobic and Transphobic Rhetoric*, NBC NEWS (July 18, 2024, 5:26 PM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/rnc-speakers-lean-homophobic-transphobic-rhetoric-rcna162505> ("[T]he speed and breadth of the anti-LGBTQ remarks at this year's [Republican National Convention], and the lack of condemnation the rhetoric has received, underscore how the once-extreme language targeting the community — particularly trans people — has become widely embraced by today's Republican Party.").

¹⁶ Julie Murray & Bridget Lavender, *We Need to Know More About State Supreme Court Cases*, STATE CT. REP. (Dec. 16, 2024), <https://statecourtreport.org/our-work/analysis-opinion/we-need-know-more-about-state-supreme-court-cases>.

to trans children when their parents split up? How can trans people fight back against the discrimination they face in their daily lives—at work, at bakeries, at sports competitions? When and how can trans people legally change their name and gender to affirm their identity?

These questions and more are addressed by state courts across the country every day. Yet, scholarship in this area is lacking. As trans people come increasingly under attack from all sides, and with the anti-trans actions of state legislatures and of all three branches of the federal government already widely discussed and analyzed, more scholarship and activism related to this quotidian relationship between state courts and trans people is needed. After all, state courts might be trans people's last refuge in a world that seems to be turning against them. This Article, therefore, seeks to conduct a comprehensive survey of the impact state courts have on trans people's lives, focusing on the three years from 2022 through 2024. While this survey does include litigation in state courts over the constitutional rights of trans people, it also expands much more broadly into all areas of law. If a trans person walked through the doors of a state courthouse for any reason during the three-year period studied, this survey addresses it.

This Article is meant to be primarily descriptive; its goal is to paint a picture of the current state of play of state courts' impact on trans lives and to lay a foundation that can serve as a jumping off point for more directed and targeted scholarship and activism by trans rights advocates. However, as I proceed in this descriptive project, my own perspective, reflections, and analyses will, of course, come through at times. I will also make a point at the end of this comprehensive overview to emphasize some of the questions, issues, and themes raised by the survey that I believe merit further inquiry. But the point of this survey is to be expansive, to open the door for future work that can create a better understanding of how trans people's lives change after they've come into contact with a state court—and hopefully find ways to ensure that that change is for the better as often as possible. Thus, readers are encouraged to find their own inspiration within the cases I discuss. There is a lot of work that needs to be done in this space, and any endeavor that creates a fuller picture of state courts' relationship with trans people is worthwhile.

This Article proceeds in three main parts. Part I describes my methodology in conducting this survey of state court cases. Part II is the meat of the Article, delving into the substance of the cases that comprise my survey results and discussing how state courts treat the trans litigants appearing before them as well as how their rulings affect those litigants' lives. This Part is organized by the subject matter of the cases, addressing cases in the areas of criminal law, family law, gender-affirming healthcare, private discrimination, name and gender changes, and schools and education. Part III analyzes some overall trends within the survey dataset and highlights some of the substantive issues and questions that remain unresolved before a brief Conclusion offers some final thoughts.

I. SURVEY METHODOLOGY

In conducting this survey, I cast a wide net in order to capture as many state court cases that touched the lives of trans people as possible. Thus, using Westlaw, I searched for state court Cases, Trial Court Orders, and Jury Verdicts & Settlements that contained any one of the following words or phrases: “transgender,” “transgenderism,” “gender dysphoria,” “gender identit!,” “non-binary,” “non binary,” “nonbinary,” “transsex!,” “gender fluid,” “genderfluid,” “transvest!,” “intersex!,” “genderqueer,” or “gender queer.” I limited my results to the three years from 2022 through 2024 because those years coincided with a massive escalation in the anti-trans movement. This is best seen in the data from the Trans Legislation Tracker.¹⁷ In 2022, 174 anti-trans bills were introduced across the country; twenty-six passed.¹⁸ In 2023, those numbers skyrocketed to 615 bills introduced, with eighty-seven passing, representing an over three-fold increase in anti-trans legislation both introduced and passed.¹⁹ The numbers stayed similarly high in 2024, with 701 pieces of legislation introduced and fifty-one passed.²⁰ Additionally, 2022 was the first year the Trans Legislation Tracker published an annual report, despite their data going back to 2015, marking the dramatic growth in anti-trans legislation that was starting to get underway.²¹ And of course, the success of Republican candidates in the 2024 election, discussed above, demonstrates how pervasive this anti-trans movement has become.²² Thus, the years from 2022 through 2024 represent a turning point in the public and legal discourse around trans people.²³

¹⁷ *2025 Anti-Trans Bills Tracker*, TRANS LEGIS. TRACKER, <https://translegislation.com/> (last visited July 31, 2025).

¹⁸ *2022 Anti-Trans Legislation*, TRANS LEGIS. TRACKER, <https://translegislation.com/bills/2022> (last visited Nov. 21, 2025).

¹⁹ *2023 Anti-Trans Legislation*, TRANS LEGIS. TRACKER, <https://translegislation.com/bills/2023> (last visited Nov. 21, 2025). For comparison, the previous largest increase in introduced legislation was a roughly 180 percent increase from eighty-five in 2020 to 155 in 2021. *Tracking the Rise of Anti-Trans Bills in the U.S.*, *supra* note 3.

²⁰ *2024 Anti-Trans Bills Tracker*, TRANS LEGIS. TRACKER, <https://translegislation.com/bills/2024> (last visited Nov. 21, 2025).

²¹ See *Tracking the Rise of Anti-Trans Bills in the U.S.*, *supra* note 3.

²² See Lavietes, *supra* note 15; cf. Abby Monteil, *Find Something You Love as Much as Gavin Newsom Loves Having Anti-Trans Pundits on His Podcast*, THEM (Mar. 11, 2025), <https://www.them.us/story/gavin-newsom-podcast-anti-trans-pundits-charlie-kirk-michael-savage> (“Newsom attempted to bring up his advocacy for the LGBTQ+ community during his interview with [Charlie] Kirk . . . Still, his refusal as a high-profile Democrat to dispute or even disagree with right-wing politicians’ misinformation about the trans community sets a dangerous precedent at a time when trans people are being targeted at the federal level.”).

²³ The rise in anti-trans legal developments during this period is also reflected in Professor Katie Eyer’s study of litigation over the constitutional rights of trans people from 2017 through 2021. Her study found near universal success for pro-trans rights claims in federal courts (and some state courts), leading her to conclude, “[a]cross dozens of cases, in every part of the country, judges in the study consistently ruled in favor of transgender constitutional rights.” However, she continued, “transgender constitutional law decisions from January 2022 to January 2023 also raised potential signs of concern from the

From the results of these Westlaw searches, I compiled my set of cases. In the spirit of being as inclusive as possible, I included cases ranging from ones where trans identity was central to the case in some way to ones where there were no (identified) trans parties but where the court's ruling still had implications for the lives of trans people. The result was a set of 264 cases spanning all court levels in states across the country, from California to New Hampshire. I will dig into the details of these cases, what they say about trans people's involvement with state legal systems, and important trends and takeaways in the following Parts. For now, I will turn to how I sorted and analyzed these cases.

I started by creating a coded spreadsheet of all my cases. I coded cases in two main ways. First, I labeled cases in accordance with the basic facts about them, tagging each case with its **State** of origin, its **Year** of decision, its **Court Level** (**Trial**, **Appellate**, or **Supreme**), and, for Appellate and Supreme court cases, whether it **Affirmed** or **Reversed** the lower court's opinion. I also created and defined the following three metrics to capture how trans identity figured into each case:

1) **Outcome**: I noted whether each case had a **Good** or **Bad** outcome *from the perspective of the trans litigant*. In other words, did the trans person involved in the case come out of the litigation in a better or worse position than they were in before? Thus, my definition of Good or Bad did not always align with the soundness of the court's legal reasoning. This was most obvious in Criminal Law cases where, even if a trans defendant was clearly guilty on the evidence, if they were convicted or their conviction was affirmed on appeal, I counted that as a Bad outcome.²⁴ There were, of course, some cases where the outcome was murkier, whether because the case involved multiple issues that the court resolved in opposite directions, because it was unclear what the ultimate effect of the ruling would be on the trans person involved, or because of some other reason. Such cases were represented by a third, **Neutral** category.

2) **Centrality of Trans Identity to the Facts**: I labeled each case based on whether the trans party's identity was of **High**, **Medium**, or **Low** relevance to the facts of the case. A case had a High Centrality of Trans Identity if the trans litigant's identity was at the center of the events that precipitated the case, such as in a challenge to the constitutionality of an anti-trans law or a trans person's petition to change their name or gender. A case had a Low Centrality of Trans Identity either if the trans litigant's identity was only tangentially related to the events of the case (such as if

perspective of transgender rights," highlighting a number of cases in that post-study period that rejected trans litigants' constitutional claims and noting that those cases "color the study's otherwise optimistic assessment of the future prospects for transgender constitutional rights." Eyer, *supra* note 4, at 1497–1500.

²⁴ I acknowledge that this definition of "Good" versus "Bad" outcomes is not the most obvious, nor the best for assessing the logic and analysis courts apply to issues involving trans people. However, the focus of this survey is the *effect* courts' opinions have on trans lives, not the soundness of the legal reasoning behind that effect.

a trans person was convicted of a crime entirely unrelated to their identity) or if there was no trans person directly involved in the case but trans people were referenced generally or a non-party discussed in the case was trans. I classified cases falling between these two poles as having a Medium Centrality of Trans Identity.

3) **Centrality of Trans Identity to the Law**: I labeled each case based on whether the trans party's identity was of **High**, **Medium**, or **Low** relevance to the court's legal analysis and resolution of the issue(s) presented by the case. The same general principles that guided the designation of High, Medium, or Low Centrality of Trans Identity to the Facts guided the designation of High, Medium, or Low Centrality of Trans Identity to the Law, only with reference to the legal issues at stake and the court's reasoning in addressing those issues, rather than in relation to the factual circumstances of the case. For example, even if a case had a High Centrality of Trans Identity to the Facts because the defendant had been convicted of an anti-trans hate crime, the case could have a Low Centrality of Trans Identity to the Law if the only legal issue at stake was a claim of ineffective assistance of counsel or something else unrelated to the victim's trans identity.

The second method I used to code cases was tagging each case with simple **Yes/No** labels according to 1) the type of claim(s) it involved and 2) the issue(s) it addressed. The basic issue areas I used were: **Criminal Law** (subdivided by whether the trans person was the **Defendant**, the **Victim**, or involved in the case in some **Other** way), **Family Law**, **Name and Gender Changes**, **Healthcare**, **Restroom Usage**, **Discrimination**, **Education**, and **Sports**. When it came to the type of claim in each case, I tagged cases based on whether they dealt with a piece of anti-trans **Legislation**, an anti-trans **Executive Action**, a **Constitutional** issue, a **Tort** claim, or a **Procedural** issue. In assigning cases the Procedural tag, I focused on whether the court addressed the merits of the central issue(s) in the case. For example, a case granting a preliminary injunction against an anti-trans bill, while arguably procedural, was not Procedural under my definition because part of the preliminary injunction analysis touched on the likelihood of the plaintiffs' success on the merits. On the other hand, I did label as Procedural cases where a defendant was appealing their conviction on grounds unrelated to the question of whether or not they committed the crime—such as for ineffective assistance of counsel or for jury voir dire issues—while an appeal that questioned the sufficiency of the evidence against the defendant was not Procedural. When a case implicated more than one of my Yes/No categories, such as a child custody case (Family Law) that also involved a domestic violence restraining order (Criminal Law) or an equal protection challenge (Constitutional) to a law (Legislation) that banned trans girls from participating on girls' sports teams (Sports) in their schools (Education), I tagged the case with every relevant category.

Finally, while coding the cases by which State they were from, I also noted whether that state was a Republican, Democratic, or Swing state,²⁵ so I could do some analysis of my results according to the politics of the states. I sorted the states into these political categories based on their statewide political leanings, as determined by a holistic consideration of the political party of the state's governor, the political party in control of the state legislature, and the political party of the presidential candidates who have won the state's electoral votes, especially in the last three elections. The latter category also incorporated how the state was covered by political news media during the presidential elections, particularly coverage about which states were the battlegrounds to watch. Thus, these political designations do not account for any local variances that may exist within a given state. For example, my analysis is not able to capture whether courts in more liberal areas of a Republican state are producing proportionally more of that state's Good outcomes than are courts in more conservative areas of the state, or vice versa in Democratic states.

Having labeled each and every case, I could then group and re-group them in various ways to study any commonalities, distinctions, or other trends. It was this sorting and analysis that produced the results discussed in the rest of this Article. Before diving into that discussion, however, it is important to note some limitations and caveats on my results and analysis. First, my results were largely limited to those cases that appeared in Westlaw's database. As others have noted, Westlaw's database is incomplete, especially when it comes to cases in state trial courts.²⁶ I tried to make up for this by including cases from other sources such as news articles and the case databases on the websites of several prominent LGBTQ+ rights organizations: American Civil Liberties Union, Lambda Legal, Advocates for Trans Equality, Transgender Law Center, GLAD Law, and National Center for Lesbian Rights. These additional sources yielded only a small handful of cases outside of what my Westlaw searches produced, suggesting that my Westlaw searches were about as inclusive as they could be. Relatedly, my Westlaw search results were necessarily limited to cases that explicitly used one of the terms mentioned above at least once, hence why I tried to include as many possible variations on how a court might reference or discuss a trans party as I could.

²⁵ Of the states included in my data, *see infra* Part II, the political breakdown of the states was as follows—Republican states: Florida, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, Ohio, Oklahoma, Texas, Utah, West Virginia, Wyoming; Democratic states: California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Washington; Swing states: Arizona, Michigan, Nevada, New Hampshire, North Carolina, Pennsylvania, Virginia, Wisconsin.

²⁶ *See, e.g.,* Eyer, *supra* note 4, at 1510–11 (“[D]ecisions made by state trial-level courts . . . are poorly represented in the Westlaw databases.”).

II. STATE COURTS' IMPACT ON TRANS LIVES, 2022 – 2024

This Part will engage in a substantive description of my survey results. Discussions of my analysis of these results, and the trends and takeaways that emerge from them, will largely be reserved for Part III. However, it is worth taking a brief moment to lay out some of the big-picture trends in my data before diving into the substance of the case law. Most noteworthy, among the fifty states and the District of Columbia included in my searches, sixteen states had no relevant cases.²⁷ Of the remaining thirty-four states and D.C., only nine had ten or more responsive cases.²⁸ It is important to remember that these totals represent three years of activity in state courts, which makes these numbers surprisingly low.²⁹

An analysis of why there were so few results is beyond the scope of this Article, but I offer a few initial thoughts. One possibility could be that courts may not always know or deem relevant that a case in front of them involves a trans party, so they do not reference that identity in their ruling. Additionally, some of the most common ways trans people interact with state courts might not be likely to produce written opinions that are published in Westlaw. For example, when a court grants (or denies) a routine name or gender change petition without issue or comment, it may not issue a written opinion on the decision, especially when the records of that proceeding are subsequently sealed. Another explanation might be the fact that trans people represent only about one to two percent of the population in the United States.³⁰ Indeed, ten of the sixteen states with no results are in the bottom third of states by population size.³¹ The remaining six states (Alabama, Arkansas, Georgia, Kentucky, South Carolina, and Tennessee) are among the most hostile states for trans people,³² and thus litigation

²⁷ These states were Alabama, Alaska, Arkansas, Georgia, Hawaii, Idaho, Kentucky, Maine, Mississippi, New Mexico, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, and Vermont.

²⁸ In order from most cases to least: California (32), Texas (24), Ohio (22), New York (18), Pennsylvania (15), Indiana (11), Colorado (10), Minnesota (10), Montana (10).

²⁹ Cf. Eyer, *supra* note 4, at 1492 (footnotes omitted) (“One of the surprising findings of this study was the relative paucity of state court cases bringing transgender constitutional rights claims. In total, there were only six state court cases identified that met the study criteria during the whole of the five-year period, and only a few more that raised state constitutional claims in federal court. Given the long and successful history of the LGBTQ rights movement in raising state constitutional claims in state court, it was surprising to find so few state constitutional claims.”).

³⁰ According to a 2024 survey by the U.S. Census Bureau, 0.95 percent of the U.S. population identifies as transgender, with an additional 1.70 percent identifying as neither cisgender nor transgender. USAFacts Team, *What Percentage of the US Population is Transgender?*, USAFACTS (Feb. 12, 2025), <https://usafacts.org/articles/what-percentage-of-the-us-population-is-transgender/>.

³¹ In order of rank: Mississippi (35th), New Mexico (36th), Idaho (38th), Hawaii (40th), Maine (42nd), Rhode Island (44th), South Dakota (46th), North Dakota (47th), Alaska (48th), Vermont (49th). Amy Tikkanen, *List of U.S. States by Population*, BRITANNICA (Jan. 17, 2024), <https://www.britannica.com/topic/largest-U-S-state-by-population>.

³² See *Snapshot: LGBTQ Equality by State*, MOVEMENT ADVANCEMENT PROJECT, <https://www.lgbtmap.org/equality-maps> (last visited Oct. 3, 2025) (including all six

over trans issues might more likely be focused at the federal level. Indeed, the anti-trans laws at issue in *United States v. Skrametti*, the first case on trans rights to reach the U.S. Supreme Court, were from Kentucky and Tennessee. It also cannot be discounted that this seemingly low number of cases is at least partly due to limitations in Westlaw's database, especially when it comes to state trial courts,³³ which, as the entry point to a state's court system, are likely where trans people most commonly interact with state courts.

Some additional statistics about my survey results are worth noting at the outset. First, the number of cases per year is relatively consistent, with eighty-six in 2022, seventy-nine in 2023, and ninety-nine in 2024. Second, decisions at the appellate level were the most common, representing 155 of the 264 cases in my results. State supreme court decisions were the smallest proportion, with only thirty cases, while trial court orders made up the remaining seventy-nine. This distribution of cases is likely largely a result of limitations in Westlaw's database, particularly when it comes to state-level trial court decisions.³⁴ For example, a significant portion of the appellate cases in my results did not have corresponding trial court decisions in Westlaw. Even for appellate cases where Westlaw did have a corresponding trial court decision, that decision was often issued prior to 2022 and thus outside the scope of my survey.

With those preliminaries in mind, this Part proceeds to discuss the substance of the cases that comprise my results, organized by subject matter. It is ordered from the issue area with the highest number of cases to the lowest: Criminal Law (111 cases), Family Law (73 cases), Healthcare (60 cases), Private Discrimination (45 cases), Name and Gender Changes (40 cases), and Schools and Education (21 cases).³⁵ While some trends and themes within each subject area will be discussed throughout this Part, a more in-depth analysis of the trends and takeaways revealed by my survey is reserved for Part III.

A. Criminal Law

Trans people, like anyone else, come into contact with the criminal justice system in a variety of ways, most prominently as inmates, defendants, or victims. While criminal cases are, according to this survey, the most common way for trans people and state courts to cross paths, courts' rulings in these cases are the least likely to deal directly with questions of trans identity. There are, of course, many cases where the trans person's identity played a role in the conditions they faced in prison, the crime they committed, or the reason they were victimized, but cases can just as often

states in the category of states with the most negative policies relating specifically to gender identity, as shown in the map under the "Gender Identity" tab on the webpage).

³³ See *supra* Part I.

³⁴ *Id.*

³⁵ As mentioned *supra* Part I, if a case touched on multiple subject areas, I labeled it with every relevant category, so such cases are counted more than once in the subject area totals listed here.

be unrelated to the trans person's identity. For the purposes of this Article, I will focus solely on those cases that implicate trans identity in a meaningful way.

1. Constitutional Criminal Law

The majority of constitutional claims related to criminal law involved cruel and unusual punishment claims brought by trans inmates, alleging that some aspect of their imprisonment is cruel and unusual *because of* their trans identity. Two cases specifically involved trans women who were housed in men's prisons. In the case *Dosreis v. Commissioner of Correction* from Connecticut, a trans woman filed a habeas corpus petition asking the court to place her on "permanent single cell status" so she could never possibly be housed in a double cell with a male inmate.³⁶ The court denied her request for a temporary restraining order granting such relief because "she is currently housed in a single cell in protective custody Because DOC [the Department of Correction] is not currently housing the petitioner with another inmate, the petitioner cannot demonstrate that irreparable harm is currently occurring or will occur if the injunction is not granted."³⁷ On the actual constitutional claim regarding the prison's policies and treatment of her, the court denied summary judgment because there was an insufficient factual record at this stage in the proceedings to make a determination.³⁸ In *D.G.-M. v. New Jersey Department of Correction*, a trans woman appealed an administrative decision to move her from a women's prison to a "vulnerable housing unit" in a men's prison.³⁹ Interestingly, the inmate initially requested to be moved back to a men's facility due to safety concerns she had in the women's facility, but she later rescinded that request.⁴⁰ However, when the decision was eventually made to transfer her a few months later, her initial request was one of the pieces of evidence the court used to uphold the decision, in addition to "management and security concerns" the women's prison had.⁴¹ After affirming the administrative decision, the court ruled that the decision was constitutional because the men's prison "took reasonable steps to prevent her from harm," including placing her in the vulnerable housing unit where she still had access gender-affirming care.⁴² Additionally, the court explained that she "is not precluded from requesting future transfers based on new

³⁶ No. CV 23-5001608-S, 2024 WL 939215, at *1 (Conn. Super. Ct. Mar. 1, 2024).

³⁷ *Id.* at *3.

³⁸ *Id.* at *2.

³⁹ No. A-0398-22, 2024 WL 4615447, at *1 (N.J. Super. Ct. Oct. 30, 2024).

⁴⁰ *Id.*

⁴¹ *Id.* at *3 (There was "substantial evidence of Dory [the inmate] expressing safety concerns regarding her housing at EMCF [the women's facility], as well as causing management and security concerns at EMCF. According to the [prison administrative committee], Dory had the highest number of orders to be kept separate from other inmates at EMCF, including two for . . . engaging in sexual activity with others, which resulted in two EMCF inmates becoming impregnated.").

⁴² *Id.* at *4.

circumstances if she feels her current placement at a men's correctional facility is not suitable. In fact, the DOC agreed to continue to periodically review her housing.”⁴³ However, the court did not limit itself to case-specific language in making its constitutional ruling. Rather, they stated that, as a general matter, “[a] correctional facility's decision to house a transgender inmate who identifies as female in a men's facility does not automatically violate the duty to prevent harm.”⁴⁴

Two other cruel and unusual punishment cases dealt with different issues. In *Carter v. State*, a trans female inmate in Iowa who was statutorily barred from legally changing her name asked a court to resentence her under her chosen name, alleging that, while her chosen name was used “in daily interactions and . . . [on] name tags,” the prison’s use of her legal name in “all written documentation and the DOC computer system” constituted cruel and unusual punishment.⁴⁵ An appellate court upheld the denial of her resentencing request because she did not provide evidence that would be “sufficient . . . to find the DOC's use of her legal name resulted in depriving [her] of the ‘minimal civilized measure of life's necessities.’”⁴⁶ Additionally, the court said that the lack of evidence made it “difficult to discern if the distress is particular to the DOC's use of her legal name in its records or is more generally an effect from gender dysphoria.”⁴⁷ Of course, not being referred to by one’s chosen name is often inextricably linked with feelings of gender dysphoria, *see infra* Part II.E, so the fact that the court thought it had to try to separate the two displays a concerning lack of understanding of the trans experience. However, even if the court had found the use of her legal name rose to the level of harm required for a cruel and unusual punishment claim, the court found no deliberate indifference because she “d[id] not allege the DOC is using her legal name with the purpose of causing her pain. . . . In short, the record does not support a finding of a culpable mind in the use of [her] legal name in official records.”^{48, 49}

In *Burch v. Dzurenda*, a trans female inmate in Nevada alleged cruel and unusual punishment on the basis that the prison “delayed, interfered with, and denied [her] requests to obtain female hormones as treatment for

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 977 N.W.2d 517, 2022 WL 951077, at *1 (Iowa Ct. App. 2022).

⁴⁶ *Id.* at *4 (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ A number of other cases in the survey also dealt with the ability of incarcerated or convicted individuals to use their preferred name, most of which did not involve constitutional criminal law issues; these cases are discussed *infra* Part II.E. One case worth noting here, however, similarly rejected a cruel and unusual punishment challenge to a statutory bar on the trans plaintiff’s ability to change her legal name but in the context of the plaintiff’s registration as a sex offender. *In re C.G.*, 976 N.W.2d 318, 334 (Wis. 2022) (“Ella’s temporary inability to change her legal name is unlike anything that has ever been recognized as cruel, and no other aspect of sex offender registration approaches cruelty either.”).

gender dysphoria.”⁵⁰ The trial court dismissed some claims on the pleadings, including a cruel and unusual punishment claim under the Nevada Constitution, but the cruel and unusual punishment claim under the U.S. Constitution was not dismissed until summary judgment.⁵¹ The appellate court affirmed that dismissal on procedural grounds because the inmate failed to “properly challenge all of the grounds on which the [lower court’s] ruling is based.”⁵² Specifically, she hadn’t challenged “the district court’s determination that summary judgment was warranted because respondents were entitled to discretionary act and qualified immunity.”⁵³ One bright spot in this domain of the constitutionality of prison conditions for trans inmates comes from Oregon. There, at least two trans plaintiffs have won habeas relief under the Oregon Constitution’s “unnecessary rigor” clause,⁵⁴ with the trial court in each case ordering that the prisons provide the trans plaintiffs with proper gender-affirming care.⁵⁵ While only a handful of states have such “unnecessary rigor” clauses,⁵⁶ as opposed to the more common cruel and unusual punishment clauses, these cases offer some hope that courts are willing to ensure trans inmates are treated with dignity and receive the care they need.

In addition to these prison conditions claims, in *Nezperce v. Salmonsen*, a Montanan trans inmate filed a habeas corpus petition claiming her incarceration was illegal because the parole board’s denial of parole violated her due process rights.⁵⁷ The inmate alleged that she was denied parole in retaliation for grievances she had filed against the Montana State Prison for their lack of general policies regarding the treatment of trans inmates, as well as their existing policies governing inmates’ access to certain grooming and canteen products.⁵⁸ The Montana Supreme Court

⁵⁰ 550 P.3d 349, 2024 WL 3093823, at *1 (Nev. Ct. App. 2024).

⁵¹ *Id.*

⁵² *Id.* at *2.

⁵³ *Id.*

⁵⁴ OR. CONST. art. 1, § 13 (“No person arrested, or confined in jail, shall be treated with unnecessary rigor.”).

⁵⁵ See, e.g., *Gaia v. Miller*, No. 22CV41938, slip op. at 10 (Or. Cir. Ct. May 23, 2023) (detailing the care to which plaintiff is entitled, including hair removal and various surgeries); *Zyst v. Miller*, No. 19CV19556, slip op. at 4–6 (Or. Cir. Ct. Dec. 14, 2023) (detailing the care to which plaintiff is entitled, including hair removal, counseling, and various surgeries); see also Sage Van Wing, *Recent Cases Highlight Situation for Transgender Prisoners in Oregon*, OR. PUB. BROAD. (Nov. 6, 2023, 1:39 PM), <https://www.opb.org/article/2023/11/06/recent-cases-highlight-situation-for-transgender-prisoners-in-oregon/> (in an interview after the May 23, 2023, case, the lawyer for the trans plaintiff mentioned that she had secured similar wins for “three other trans clients in the last few months,” including the client in the Dec. 14, 2023, case).

⁵⁶ See Kathrina Szymborski Wolfkot, *Using State Constitutional Protections to Improve Life Behind Bars*, STATE CT. REP. (last updated Jan. 4, 2025), <https://state-courtreport.org/our-work/analysis-opinion/using-state-constitutional-protections-improve-life-behind-bars/> (“Five state constitutions guarantee that ‘no person arrested or confined in jail shall be treated with unnecessary rigor’: Oregon, Utah, Indiana, Tennessee, and Wyoming.”).

⁵⁷ No. OP 22-0619, 2022 WL 17164303 (Mont. Nov. 22, 2022).

⁵⁸ *Id.* at *1.

found the parole board had a legitimate reason to deny parole because the inmate did not “have 120 days free of major disciplinary violations.”⁵⁹ Moreover, her “claims concerning discrimination, retaliation, and civil or human rights violations cannot be reached through this remedy of a writ of habeas corpus,” especially when she “has other available remedies before coming to this Court,” such as administrative grievance procedures and a traditional lawsuit.⁶⁰

Two other criminal law cases involving constitutional claims are worth mentioning, even though they do not directly involve any trans litigants. In *State v. Plancarte*, a Minnesota appeals court ruled that “[a] woman's fully exposed breasts are ‘private parts’ for the purpose of applying the indecent-exposure statute.”⁶¹ The decision involved the conviction of a cisgender woman for exposing her breasts in public, which the appellate majority affirmed and found did not violate the defendant’s equal protection rights.⁶² However, both a concurrence and a dissent expressed concern that the ruling could have negative implications for trans people specifically. As the concurrence explained, “I am concerned that this statute could, on its face, be improperly used to attack non-lewd conduct of transgender women and transgender men,”⁶³ with the dissent specifically asking, “Is a transgender woman who has not physically transitioned her breasts engaged in criminal conduct when going topless?”⁶⁴ In the post-survey period, the Minnesota Supreme Court reversed this decision, with a concurrence again highlighting the potential impact on trans people:

[C]riminalizing the exposure of female—but not male—breasts does not provide Minnesotans with adequate notice as to the conduct the indecent exposure statute prohibits because a binary approach to breasts fails to recognize the more nuanced physical realities of human bodies, whether they are intersex, transgender, nonbinary, or breast cancer survivors. Would a transgender man be prohibited from exposing his chest? What about a transgender woman who has had top surgery? Where do the chests of intersex and nonbinary persons fit within this dichotomy?⁶⁵

The final constitutional criminal law case, *In re Kakowski* from California, involved a cis male inmate asserting an equal protection claim against the prison for banning cis male inmates like him, but not trans female inmates, from “accessing certain hygiene products—specifically,

⁵⁹ *Id.*

⁶⁰ *Id.* at *1–2.

⁶¹ 3 N.W.3d 34, 38 (Minn. Ct. App. 2024).

⁶² *Id.* at 36.

⁶³ *Id.* at 46 (Schmidt, J., concurring specially).

⁶⁴ *Id.* at 50 (Bratvold, J., dissenting).

⁶⁵ *State v. Plancarte*, 20 N.W.3d 30, 47 (Minn. 2025) (Hennesy, J., concurring).

tweezers, emery boards, shower caps, and facial scrub.”⁶⁶ By the time the case reached the appellate court, the prison had changed its policy to allow equal access to all hygiene products, so the case was mooted.

2. Prison Conditions for Trans Inmates

As seen in the previous section, cases involving the conditions trans inmates face in prison make up the lion’s share of constitutional criminal law cases in state courts. However, cases addressing prison conditions can often arise outside the constitutional context. Perhaps one of the most impactful cases regarding prison conditions over the period of the survey is the case *Raven v. Polis* from Colorado. In 2019, a class action lawsuit was filed against the Colorado Department of Corrections (CDOC) and affiliated state officials, alleging violations of the Colorado Anti-Discrimination Act and the Colorado Constitution resulting from state prisons’ treatment of transgender women in their custody.⁶⁷ In March 2024, the case was resolved with a wide-ranging consent decree in which the Department of Corrections agreed to implement many different policies that would improve conditions for trans women.⁶⁸ These policies included hiring “experts to facilitate the implementation of this Consent Decree,”⁶⁹ specifying how the housing and placement of trans inmates should be conducted,⁷⁰ providing standards for trans-related medical and mental health services,⁷¹ outlining what “training regarding the care and treatment of transgender women” should be provided to prison employees,⁷² and making it official “CDOC policy that all CDOC personnel shall refer to Class Members with the pronouns and/or honorific that corresponds with their gender identity.”⁷³ Moreover, the plaintiffs received damages of \$2.15 million for their class.⁷⁴ As one attorney for the plaintiffs told legal news outlet *Law360*, “[i]t’s a landmark consent decree that we hope will fundamentally change how prisons and government facilities treat this community, providing them safe, gender-affirming housing and recognizing that our clients are women, and they need to be treated with dignity and respect.”⁷⁵ Indeed,

⁶⁶ No. D080001, 2024 WL 823675, at *1 (Cal. Ct. App. Feb. 28, 2024).

⁶⁷ First Amended Class Action Complaint, *Raven v. Polis*, No. 19CV34492 (Colo. Dist. Ct. Aug. 11, 2020), <https://transgenderlawcenter.org/wp-content/uploads/2020/01/First-Amended-Complaint.pdf>.

⁶⁸ Consent Decree, *Raven v. Polis*, No. 19CV34492 (Colo. Dist. Ct. Aug. 11, 2020), <https://transgenderlawcenter.org/wp-content/uploads/2024/04/Raven-v.-Polis-Consent-Decree.pdf>.

⁶⁹ *Id.* at 3.

⁷⁰ *Id.* at 5–11.

⁷¹ *Id.* at 12–15.

⁷² *Id.* at 16.

⁷³ *Id.* at 18.

⁷⁴ *Id.* at 20.

⁷⁵ Daniel Ducassi, ‘Landmark’ Trans Women Prison Housing Deal Gets Final OK, *LAW360* (Mar. 26, 2024, 9:16 PM), <https://www.law360.com/articles/1817962> (internal quotes omitted).

the positive resolution of this suit for trans people was an outlier among the cases in my survey.

Only one other case came out well for trans inmates, and it was much narrower than Colorado's consent decree. In *Michigan Corrections Organization SEIU Local 526M v. State*, the Michigan Department of Corrections (MDOC) corrections officers' union had claimed that the MDOC's new policy regarding strip searches of inmates violated their collective bargaining agreement (CBA).⁷⁶ The policy was meant to bring the prisons' policies into compliance with the standards of the federal Prison Rape Elimination Act (PREA), which "require facilities to avoid cross-gender strip and full-body scanner searches of all prisoners and cross-gender pat-down and clothed-body searches of female prisoners unless there are documented exigent circumstances."⁷⁷ It was implemented after an audit of six state prisons "found that MDOC's policy of conducting searches based on the gender of the facility where a prisoner is-housed [sic] did not comply with PREA standards related to transgender inmate searches."⁷⁸ The court found that the policy change did not violate the officers' CBA and accused the union of "pursuing a remedy to which it is not entitled . . ."⁷⁹ Perhaps not coincidentally, the legal claim and analysis in the case were pure contract law, having nothing to do with trans identity despite the treatment of trans inmates being at the heart of the challenged policy.

The remaining cases addressing prison conditions, all of which turned out poorly for the trans litigants, fall into two categories: 1) suits about the conditions trans inmates face inside prison and 2) attempts to use the unique hardships trans inmates face in prison to mitigate a defendant's sentence. In the first category, the case *N.B. v. State* from Indiana was about a trans juvenile who "became 'aggressive' and 'chaotic'" upon her arrival to the counseling center in which she'd been placed, so she was committed to a male juvenile correctional facility for six months.⁸⁰ She "argue[d] that, because she is a transgender female, the male juvenile DOC facility in which she was placed is unequipped to address her individual needs and puts her in danger."⁸¹ The court disagreed, concluding that there was insufficient evidence in the record to support it.⁸² Most notably, she had presented "unsworn opinions" from people like her attorney, social worker, and guardian ad litem explaining why the male facility was "an ill-suited placement" for her, but the court claimed that none of those statements "could point to *specific* reasons why the [male facility] was unequipped to address [her] *individual* needs."⁸³ Apparently, the well-documented fact that trans females in male facilities are at a significantly

⁷⁶ No. 23-000172-MK, 2024 WL 5040340, at *1 (Mich. Ct. Cl. Nov. 12, 2024).

⁷⁷ *Id.* at *2.

⁷⁸ *Id.* at *1.

⁷⁹ *Id.* at *4.

⁸⁰ 241 N.E.3d 608, 2024 WL 3342497, at *1 (Ind. Ct. App. 2024).

⁸¹ *Id.* at *4.

⁸² *Id.*

⁸³ *Id.* (emphasis added).

increased risk of harm⁸⁴ was not enough. In the second and final case in this category, *Bloodstone v. Gootkin*, a trans female inmate filed a mandamus petition with the Montana Supreme Court “request[ing] the appropriate standard of care for her gender dysphoria.”⁸⁵ The court rejected the petition because the petitioner had not taken advantage of other opportunities to remedy her lack of gender-affirming care, such as submitting a grievance to the prison administration or filing a civil rights lawsuit.⁸⁶

The final set of cases regarding prison conditions do not actually involve inmates but, rather, are cases where a trans defendant asks for leniency in sentencing to avoid the unique perils trans people face in prison. In the Indiana case *Williams v. State*, the defendant had their⁸⁷ probation converted to a prison sentence for failing to show up to the community corrections program in which they had been placed.⁸⁸ The defendant appealed, alleging the district court had abused its discretion in part because being transgender meant they would “face ‘adverse treatment’ from other inmates.”⁸⁹ However, the appellate court refused to consider that argument because it saw the appeal as “simply seek[ing] to have this Court reweigh the evidence and substitute our judgment for the trial court’s.”⁹⁰ In two other cases, *Commonwealth v. Anderson* from Pennsylvania and *State v. Hannah* from Ohio, the defendant’s trans identity was raised during sentencing as a mitigating factor.⁹¹ Interestingly, while both defendants (who were both trans women) raised the issue of how trans women are treated

⁸⁴ See JAMIE M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 167 (2011) (“Transgender inmates experienced physical and sexual assault at higher frequencies (19% and 16%) than their gender non-conforming peers (4% and 8%).”); see also Beth Schwartzapfel, *3 Things to Know About Prison Violence Against Transgender People*, MARSHALL PROJECT (Nov. 13, 2024, 6:00 AM), <https://www.themarshallproject.org/2024/11/13/trans-prison-violence-prea-politics> (“In one federal study, 37% of incarcerated transgender people reported having been sexually assaulted in prison, versus 3% of everyone else behind bars.”).

⁸⁵ No. OP 22-0058, 2022 WL 483996, at *1 (Mont. Feb. 15, 2022).

⁸⁶ *Id.* at *2.

⁸⁷ The exact identity of the defendant is not clear from the opinion or the filings, so I will use gender-neutral pronouns.

⁸⁸ *Williams v. State*, 219 N.E.3d 126, 2023 WL 5662980 (Ind. Ct. App. 2023).

⁸⁹ *Id.* at *2.

⁹⁰ *Id.*

⁹¹ *Commonwealth v. Anderson*, 281 A.3d 1067, 2022 WL 2127062, at *2 (Pa. Super. Ct. 2022); *State v. Hannah*, 2024-Ohio-832, 2024 WL 992119, at *5 (Ohio Ct. App. 2024). In two cases related to California’s “Three Strikes” law in which the defendants had asked their respective courts to dismiss some of their prior strikes, the defendants raised their trans identity as a mitigating factor, including noting the heightened risks trans people face in prison, but both courts denied the defendants’ motions without specifically addressing that factor, instead focusing their discussion on other mitigating factors. See *People v. Wilson*, No. F085924, 2024 WL 2208095, at *1 (Cal. Ct. App. May 16, 2024) (Defendant “contended she is a transgendered woman who has ‘suffered severe harassment’ and ‘sexual assaults’ at the hands of other inmates ‘because of her gender dysphoria’ and she ‘suffers unreasonable fear and anxiety because she never knows if she will be forced to have a cellmate.’”); *People v. Bruno*, No. C099699, 2024 WL 5182398, at *3 (Cal. Ct. App. Dec. 20, 2024) (Defendant raised her “hardship as a transgender woman as [a] mitigating factor[.]”).

in prison as part of their mitigation argument, the courts' mitigating factor analyses focused more on considerations of how the defendants' trans identities affected their mental health. While the Pennsylvania court did acknowledge those two factors are distinct,⁹² the Ohio court lumped them together.⁹³ Both courts rejected trans identity as a mitigating factor on the grounds that the struggles the defendants faced as a trans people were "no excuse for the harm that [they] imposed on other people."⁹⁴ However, by putting more emphasis on the mental health component of trans identity as a mitigating factor, the courts elided the very real safety concerns that underly the prison conditions component of trans identity as a mitigating factor. Whether those concerns are valid factors to consider in sentencing is a question deserving of consideration in its own right—on the one hand, sentencing a trans person to prison is more likely to subject them to a harsher degree of punishment than a cis person would face; on the other, mitigating factors are traditionally backwards looking and meant to assess what constitutes a just punishment for the defendant given the context in which they committed the crime and how they reflect on what they did. By glossing over this question, or lumping it together with mental health considerations, these courts are not engaging with the reality of life as a trans prisoner and what that should (or should not) mean for sentencing.

In contrast to those three cases, in *United States v. Morton*, a court in the District of Columbia granted an intersex trans woman's request for compassionate release under a statute passed in the District during the COVID-19 pandemic.⁹⁵ After recounting the long history of violence she faced in the all-male facilities in which she had been housed, the court noted that she "has lived in near-constant fear of being targeted in prison due to her transgender status. The assaults, threats, and abuse she has endured have led her . . . to maintain a constant hyper-awareness of her surroundings. The stress of her circumstances has caused significant anxiety and insomnia."⁹⁶ The court found that these conditions met the statutory requirement for compassionate release for "extraordinary and compelling reasons," further stating that it "fores[aw] no reprieve for [the defendant] within the prison system, as her experiences are not at all unusual among transgender inmates."⁹⁷ In contrast to the aforementioned cases, the D.C. court took the unique conditions trans people face in prison seriously and

⁹² *Anderson*, 2022 WL 2127062, at *5 (quoting the trial court's order in which the judge mentions making "a notation that the state facility was to accommodate your transgender concerns. They have that ability to do so already in play," before separately discussing the "challenges that you have being a transgender person").

⁹³ *Hannah*, 2024-Ohio-832, at ¶ 20 (discussing evidence supporting both factors as "provid[ing] insight into Hannah's life and struggles").

⁹⁴ *Anderson*, 2022 WL 2127062, at *5; see also *Hannah*, 2024-Ohio-832, at ¶ 20 ("Many people struggle with gender identity issues but do not choose to collect child pornography."):

⁹⁵ No. 1995 FEL 002394, 2022 WL 18635354 (D.C. Super. Ct. Nov. 23, 2022).

⁹⁶ *Id.* at *6.

⁹⁷ *Id.* at *7.

used that to afford relief to a trans inmate. Of note, though, this case relied heavily on a long and well-documented history of violence against this specific inmate. In the other cases discussed, the experiences of trans people in prison were invoked in a more general sense.

3. Trans People as Defendants

When it comes to cases where a trans person is charged with a crime, trans identity is much more likely to be central to the facts of the case than to the legal analysis. There are relatively few cases against trans defendants in which the court's legal reasoning significantly grapples with questions of trans identity. The exception are cases where the victim's perception of the defendant's trans identity factors into the crime. One example of this is the Oregon case *State v. Lockhart* in which an equally divided en banc court of appeals left in place the trial court's denial of a judgment of acquittal notwithstanding the verdict after a jury had convicted a trans woman on several sexual abuse charges.⁹⁸ The central issue was whether the defendant's conduct met the "forcible compulsion" element of the crime with which she was charged. The incident involved what started as a consensual encounter between the 28-year-old trans female defendant and a 16-year-old cis male victim. The victim testified that he did not know the defendant was trans and that the encounter became nonconsensual when the defendant "pushed" him down to his knees and he subsequently "froze" when he saw the defendant had a penis.⁹⁹ The main concurrence focused on how much force the defendant used to push the victim to the ground, finding that the defendant used sufficient force to meet the "forcible compulsion" element of the crime.¹⁰⁰ However, the primary dissent found the argument that the push satisfied the definition of "forcible compulsion" "unsettling" because it "seems to imply that a defendant's transgender identity is part of the totality of circumstances that could render a push on a shoulder forcible compulsion."¹⁰¹ As the dissent points out, under Oregon law, "forcible compulsion" has a mens rea element requiring the state to prove that it was "objectively recognizable" that the "defendant knew that the nonconsensual sexual contact was being compelled by force."¹⁰² The dissent believed the state had failed to meet that objective requirement because:

[The state's] argument appears to rely on the unspoken, uncommunicated, subjective perception of K [the victim]

⁹⁸ 508 P.3d 526 (Or. Ct. App. 2022) (mem.).

⁹⁹ *Id.* at 528–29 (DeVore, J., concurring) (internal quotes omitted) (quoting a long excerpt of victim's testimony at trial).

¹⁰⁰ *Id.* at 533 (citation modified) ("K [the victim] did not describe the gesture of a friendly hand on his shoulder, waiting for him to move voluntarily. Instead, K testified that defendant 'pushed me down from my shoulder and *put me* on my knees.' (Emphasis added.) K specified, 'All the way to the ground onto my knees.' K testified that he was not a willing participant when 'pushed down.'").

¹⁰¹ *Id.* at 539 (James, J., dissenting).

¹⁰² *Id.* at 540.

with regard to his initial attraction to defendant. More importantly, it appears to rely on an unspoken, uncommunicated, subjective perception of K's response to seeing defendant's penis. And to the extent the state's argument grounds itself in that unspoken, uncommunicated, subjective perception, it is in tension with the state's need to prove, under Oregon law, the attendant mental state.¹⁰³

Essentially, the dissent believed that the state was relying on the transphobic inference that the victim being caught unaware by the defendant's trans identity is what made the push a "forcible compulsion," without offering any objective evidence that that was the case in this specific circumstance. By relying on that inference to make their "totality of the circumstances" argument, the state necessarily created "the negative proposition that the same act—a push on a shoulder—might not be forcible compulsion for a cisgendered individual," as "[b]y their nature, facts that are part of a totality analysis are facts that, if removed, might alter the outcome."¹⁰⁴ A secondary concurrence responded to the dissent by saying:

[D]efendant's transgender status is no more relevant to the question before us than the race, gender, or sexual orientation of defendant or of K. *It frankly does not matter whether the penis that was presented to K as he was pushed to the ground belonged to a transgender woman or to a cisgender man.* What matters is that K froze when defendant pushed him to the ground and revealed a penis. And K's reaction was a factor for the jury to consider in assessing the amount of force defendant needed to employ at that point.¹⁰⁵

While the victim freezing is certainly a piece of objective evidence that the nonconsensual contact resulted from the push, this concurrence ignores the very real possibility that, in this specific instance, the freezing was more about the victim's surprise at discovering the defendant's trans identity than any impending assault—if the defendant had had a vagina, would the victim still have frozen? If not, then the dissent is right that it becomes impossible to untangle the victim's response from the defendant's identity, and *that* is what makes it so problematic to find that the "push" in these circumstances constituted "forcible compulsion," especially when the state offered very little evidence other than the victim's subjective, in-the-moment response.¹⁰⁶

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 539.

¹⁰⁵ *Id.* at 536 (Mooney, J., concurring) (emphasis in original).

¹⁰⁶ *See id.* at 538 (James, J., dissenting) ("There was no testimony about the force, or power, of the 'push' which, by all accounts, occurred either before, or at the same time that defendant's penis was exposed. Was it gentle, or a shove? Was it a hand on a shoulder to coax movement, or a hand on a shoulder demanding movement? No testimony

In Colorado, the case *People v. Fresquez* similarly turned on the issue of the defendant's identity. The defendant identified as non-binary and was convicted of burglary for an incident in a woman's bathroom on the premise that their presence in the women's restroom was unlawful.¹⁰⁷ The entire appeal centered on the fact that the defendant's "gender identity determines whether [they] unlawfully entered the women's bathroom."¹⁰⁸ The dispute was about what evidence could be used to determine the defendant's gender identity, with the prosecution relying on the fact that the defendant "outwardly presented as male" at the time of the incident.¹⁰⁹ The court upheld the conviction because "[t]here was no evidence even suggesting that [the defendant's] identity was not consistent with . . . their outward gender expression. Absent even a scintilla of evidence indicating anything to the contrary, a reasonable mind could infer beyond a reasonable doubt that [the defendant] identified as male at the time of the crime."¹¹⁰

But the court did not stop there. It went on to state more generally that "the *only* way for the People to prove gender identity is based on reasonable inferences from a person's biological sex, behavior, physical appearance, and dress. . . . [A]bsent any contrary indications, it is *reasonable to infer* from such dress that one so identifies."¹¹¹ While that logic may make sense from an evidentiary perspective,¹¹² it contains very dangerous implications for trans people, especially in the current anti-trans environment. At root, gender identity is about a person's self-perception of their gender, while gender expression is about their outward presentation of their gender, and the two do not always align.¹¹³ By allowing juries and courts to use gender expression to infer gender identity in order to prove a central element of a crime, the court is effectively criminalizing gender non-conformity. The court's logic puts someone who does not outwardly present their gender identity in a way that aligns with society's stereotypes of what male and female look like at risk of being charged with a crime based on their appearance—as this defendant was charged with the

was offered to clarify; there is nothing in this record to answer those questions or allow the factfinder to draw a reasonable inference about the nature of the 'push.'").

¹⁰⁷ *People v. Fresquez*, No. 21CA1496, 2024 WL 3874803 (Colo. App. Feb. 8, 2024).

¹⁰⁸ *Id.* at *3.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (emphasis omitted).

¹¹¹ *Id.* at *4.

¹¹² If courts relied more on a defendant's professed gender identity than their gender expression, bad actors could exploit that and claim a trans identity, even if they didn't actually identify as trans, to mitigate their crime. *Cf.* *People v. Simentel*, No. F079787, 2022 WL 610399, at *1 (Cal. Ct. App. Mar. 2, 2022) (Defendant with unspecified gender identity, but referred to using male pronouns, was convicted of assaulting a security guard with a knife in a woman's restroom after "initially claim[ing] to be a [transgender] woman" from within a closed stall.).

¹¹³ Rachel O'Neill, *Gender Identity vs. Gender Expression: What's the Difference?*, TALKSPACE (Oct. 25, 2021), <https://www.talkspace.com/blog/gender-identity-vs-gender-expression/>.

enhanced crime of burglary simply because the court said it was reasonable for the jury to infer from their gender *expression* that they were unlawfully in the women's restroom. In the context of the raft of laws being passed by legislatures that seek to rigidly define gender (including bathroom bans), this opinion brings courts into the work of raising sex stereotypes to the level of law. With such gender policing¹¹⁴ being fueled by rising anti-trans sentiments,¹¹⁵ this opinion throws another log onto the fire, giving the anti-trans movement another tool they can use to enforce strict gender norms and erase trans people.

In a more extreme version of the previous two cases, a number of cases involved trans people who committed a crime against someone who had victimized them because of their trans identity. In the four cases that fit this pattern, the legal resolution turned largely on issues unrelated to trans identity. In *Copeland v. United States*, a trans woman in D.C. was convicted of assault against a woman who had been harassing her.¹¹⁶ The defendant had been out with her aunt and cousin when a woman started following them "all day."¹¹⁷ The woman then got in their path, refused to move, and started swinging her umbrella at the defendant.¹¹⁸ After the defendant struck back, the woman said, "[T]hat's not a woman, that's a man," and even at trial, the woman used male pronouns to refer to the defendant in her testimony because, as she said, "I know it's a man."¹¹⁹ The trial judge had found reasonable doubt as to whether the defendant had acted in self-defense and convicted her, but the D.C. Court of Appeals vacated the conviction because the defendant had "'sufficiently raised [an] inference of bad faith' by the government in failing to preserve [certain] videos" that could have resolved the reasonable doubt one way or the other.¹²⁰

In the Louisiana case *State v. Clark*, a trans woman in a men's prison was convicted of murdering a male inmate who had been sexually assaulting her.¹²¹ The inmate had told the defendant that "he would have sex with [her] that night because [she] now belonged to [him]."¹²² He then

¹¹⁴ See, e.g., Terris Schneider, *The Lexicon Series: What Does Gender Policing Mean?*, LGBTQ & ALL (June 7, 2021), <https://www.lgbtqandall.com/the-lexicon-series-what-does-gender-policing-mean/> ("Gender policing is the enforcement of normative gender ideals. In most cases, people reward and encourage more normative gender performances, like 'masculinity' or 'femininity.' When gender performances are non-normative, some people may punish them or inflict violence or negative responses.").

¹¹⁵ See Orion Rummler, *Anti-Trans Violence is Coming for Cisgender Women of Color*, *Advocates Say*, 19TH (Aug. 28, 2024, 6:00 AM), <https://19thnews.org/2024/08/cisgender-women-of-color-anti-trans-violence/> ("Anti-trans rhetoric demands adherence to a strict gender binary and anyone whose looks and behavior place them outside that rigid binary becomes a threat to the ideals of patriarchy and white supremacy[.]").

¹¹⁶ 271 A.3d 213 (D.C. 2022).

¹¹⁷ *Id.* at 219.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 219–20.

¹²⁰ *Id.* at 224.

¹²¹ 2023-0756 (La. App. 1 Cir. 3/19/24), 2024 WL 1295663.

¹²² *Id.* at *3.

continued to “mak[e] sexual comments to” and “physically intimidate[]” her throughout the day before sneaking into the defendant’s cell that night, waking her up by saying “[i]t’s that time,” and telling her she “had two choices - to leave the dorm or to have sex with [him].”¹²³ The defendant hit the inmate with a radio and kicked him, and then about three hours later, she hit him again and “stomped” on him several times.¹²⁴ The inmate later died from brain damage, and the appeals court upheld the defendant’s conviction because they found that the prosecution had “establish[ed] beyond a reasonable doubt that [the inmate]’s killing was not committed in self-defense.”¹²⁵ In a similar case from Illinois, *People v. Patterson*, a trans woman pled guilty to murdering her cellmate while seventeen years old and housed in a men’s jail.¹²⁶ She later filed a postconviction petition alleging actual innocence for several reasons, one of which was that she had acted in self-defense because “the victim had attacked her.”¹²⁷ The court’s opinion provides no more detail, and it was on that lack of corroborating evidence, including a rape kit the defendant alleged had been performed but of which no record was found, that the appellate court upheld the denial of her petition.

In the fourth case, *People v. S.S.*, a trial court in New York rescinded a trans woman’s lifetime parole under the state’s Domestic Violence Survivors Justice Act (DVSJA).¹²⁸ Back in the mid-1990s, the defendant had “not [been] doing well psychologically or physically,” so, through family friends, her parents found a male companion to live with her in a one bedroom apartment to “look out for her.”¹²⁹ At the time, she was in the very beginning stages of her transition and “initially . . . felt safe living with” the companion; he complimented her and called her beautiful when she started wearing women’s clothes around the apartment.¹³⁰ However, he soon started to sexually harass and grope her, despite her requests for him to stop, and she started feeling “dirty and humiliated.”¹³¹ His behavior escalated until, one night, while she was knocked out from a “cocktail” of medications she had taken to help deal with her mental health issues, he raped her.¹³² She then forced him to move out, but a few months later, he came back to “get his mail.”¹³³ He pulled out a gun, which she got a hold of, and then she shot him in the head. She later said that “she felt that if she let [him] leave, he would kill her and her family and that she made a split-second decision. She said the rape made her feel like a piece of trash

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at *4.

¹²⁶ 2022 IL App (1st) 201206-U.

¹²⁷ *Id.* ¶ 21.

¹²⁸ 192 N.Y.S.3d 477, 2023 WL 4921324 (Sup. Ct. 2023).

¹²⁹ *Id.* at *1.

¹³⁰ *Id.* at *2.

¹³¹ *Id.* at *3.

¹³² *Id.*

¹³³ *Id.* at *4.

and not a person, as if she had been thrown away.”¹³⁴ The court found she met the statutory criteria for relief under the DVSJA, describing her “circumstance [as] at the heart of the statute's purpose: a case in which a defendant commits a crime against their abuser, and commits that crime by virtue of the abuse which was perpetrated on the Defendant.”¹³⁵ The court also noted that her twenty-six years in prison had been “more onerous [than usual] in significant ways because of the danger, harassment and assault she faced in prison as a transgender woman.”¹³⁶

There is at least one case where it is unclear whether the trans defendant was actually victimized. In the Pennsylvania case *Commonwealth v. Anderson*, a trans woman was charged with assault and other crimes for attacking a man who solicited her for sex online, but when they met in person, he dismissed her when he realized she was trans.¹³⁷ Beyond those basics, there is very little discussion of the crime or why the defendant attacked the man, as the case focused on issues related to sentencing.¹³⁸ Additionally, there are two cases where the trans defendant argued they had been targeted (but not necessarily victimized like in the other cases) because of their identity. In *State v. Carpenter*, an Ohio trans woman convicted of sexually assaulting her daughter speculated in an initial police interview that her daughter might have made up the charges because she “may have resented [her] for ‘not [being] in the picture,’ and for being transgender.”¹³⁹ But at trial, the daughter testified that “she grew up with [defendant] being ‘trans’ and that she loved [her] regardless of the fact that [she] wanted her to call [her] ‘Mom.’”¹⁴⁰ In *Beverly v. Newport Beach Police Department*, a Californian trans woman who did not end up being prosecuted filed a tort suit for false arrest, alleging that the police had “concocted charges based on her gender identity.”¹⁴¹ The suit was dismissed “[b]ecause the allegations of [her] complaint, including the documents she attached, demonstrate that each of [her] arrests was supported by probable cause.”¹⁴²

A number of these cases demonstrate the mistreatment trans people can encounter in their interactions with law enforcement.¹⁴³ For example, in *State v. Clark* (the Louisiana prison sexual assault and murder case

¹³⁴ *Id.*

¹³⁵ *Id.* at *8.

¹³⁶ *Id.* at *9.

¹³⁷ 281 A.3d 1067, 2022 WL 2127062 (Pa. Super. Ct. 2022). This case is also discussed *supra* text accompanying notes 91–94, as the main issue was about the defendant’s use of her trans identity as mitigation during sentencing.

¹³⁸ *Id.*

¹³⁹ No. 21 MO 0002, 2022 WL 833478, at *11 (Ohio Ct. App. Mar 21, 2022).

¹⁴⁰ *Id.* at *2.

¹⁴¹ No. G061261, 2023 WL 354739, at *4 (Cal. Ct. App. Jan. 23, 2023).

¹⁴² *Id.* at *9.

¹⁴³ See Press Release, ACLU, New Report Finds Harassment & Mistreatment Fuels Mistrust Among LGBTQ People Towards Police (Apr. 30, 2024), <https://www.aclu.org/press-releases/new-report-finds-harassment-mistreatment-fuels-mistrust-among-lgbtq-people-towards-police>.

discussed *supra* notes 121–25 and accompanying text), the day before the murder, the defendant had asked a guard if she could be moved because of “problems with someone on the dorm.”¹⁴⁴ The guard said she would be moved, and a “cadet” was placed in the dorm as a temporary solution until the move could be accomplished.¹⁴⁵ But at the time of the sexual assault and subsequent murder, “the cadet had left the dorm.”¹⁴⁶ The guards had been alerted there was an issue, and had promised to address it, but had then failed to adequately protect the defendant in the meantime. Similarly, in *Copeland v. United States* (the D.C. case featuring an assault with an umbrella discussed *supra* notes 116–20 and accompanying text), the trans defendant had left the scene of the assault before police arrived because, as she testified, “I know from previous times where I have encountered the police and . . . where I’ve seen other transgender woman [sic] encounter situations with the police, . . . it hasn’t worked in my favor or I’ve never seen it work in their favor and ‘[police] always see us as the aggressor when it comes to . . . biological or cisgender females.’”¹⁴⁷ The fact that law enforcement is often a threat to trans people can be exploited by bad-faith actors, such as in the Ohio case *State v. Anderson*, where a trans woman was convicted of obstructing firefighters’ official business by denying them access to her property.¹⁴⁸ On appeal, she argued that “her actions in response to the police presence were reasonable, given that she is a transgender person,” despite the fact that her interactions with the police took place after she had already obstructed the firefighters, before the police had even arrived.¹⁴⁹

There is one final type of case involving trans defendants worth noting: cases discussing the defendant’s diagnosis of gender dysphoria in the context of their mental competency, either to stand trial or to be executed. Most of these cases do not discuss gender dysphoria in depth but rather simply take the problematic approach of lumping it together with a defendant’s other mental health issues (including conditions as serious as post-traumatic stress disorder, psychosis, and bi-polar disorder) in a blanket discussion of the defendant’s competency.¹⁵⁰ The harm that can come

¹⁴⁴ 2023-0756 (La. App. 1 Cir. 3/19/24), 2024 WL 1295663, at *3.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ 271 A.3d 213, 220 (D.C. 2022).

¹⁴⁸ No. 24 BE 0004, 2024 WL 4615637 (Ohio Ct. App. Oct 25, 2024).

¹⁴⁹ *Id.* at *3. Indeed, it was due to the defendant’s threats against the fire chief that he called for police assistance. *Id.* at *1.

¹⁵⁰ See *People v. Young*, No. A165891, 2023 WL 3773454, at *2 (Cal Ct. App. June 2, 2023) (finding defendant incompetent to stand trial while noting that “[d]efendant had been diagnosed initially with gender dysphoria and later with posttraumatic stress disorder, cannabis-use disorder, and psychotic symptoms”); *Brown v. State*, 995 N.W.2d 117, 2023 WL 3090636, at *4 (Iowa Ct. App. 2023) (dismissing defendant’s claim that her attorney provided ineffective assistance of counsel by failing to investigate her mental health issues “including gender dysphoria, post-traumatic stress disorder, depression, bi-polar disorder, and anxiety”); *State v. Drain*, 170 Ohio St. 3d 107, 2022-Ohio-3697, 209 N.E.3d 621, at ¶ 173 (affirming death sentence conviction after considering as a

from this conflation can be seen in a case from Florida about the defendant's mental competency for execution.¹⁵¹ In *State v. Owen*, during a hearing on the defendant's request for stay of execution, their mental health expert testified that they were schizophrenic and that the defendant's "core delusion is the belief that the crimes [they] committed would turn [them] into a female[.] . . . [that] the female hormones and essence of [the] women [they victimized] transferred to [them]. . . . [The defendant] believes [they are] a female inside of a male body[.]"¹⁵² There was a substantial amount of evidence that the defendant was faking their "delusions,"¹⁵³ but even if the defendant was faking, bringing gender dysphoria into criminal mental health evaluations invites courts to question a defendant's gender identity in ways that rely on gender stereotypes and inaccurate assumptions about what being trans and transitioning entail. For example, in this case, the court noted several times that the defendant had not presented themselves in a "feminine" manner, without specifying what that means.¹⁵⁴ The court also pointed to the fact that the defendant had never taken any steps to transition as evidence that they were faking.¹⁵⁵ This type of superficial

mitigating factor the defendant's "history of being diagnosed with severe mental illness and receiving mental-health services," including for "gender dysphoria, posttraumatic stress disorder, borderline personality disorder, and antisocial personality disorder," further noting that "[a] prison doctor described Drain as 'primarily struggling with issues related to the gender dysphoria' and indicated that Drain engages in self-cutting as a way of dealing with gender dysphoria").

¹⁵¹ No. 04-2023-CA-000264, 2023 WL 6544889 (Fla. Cir. Ct. June 4, 2023), *aff'd sub nom.* *Owen v. State*, 363 So. 3d 1035 (Fla. 2023). The defendant's gender identity is unclear, so I will use gender-neutral pronouns to refer to them, but the court opinion used male pronouns.

¹⁵² *Id.* at *3.

¹⁵³ *See, e.g., id.* (Defendant's expert witness "was confronted about his testimony on direct that Mr. Owen's delusion has been fixed and consistent over time. Yet, [the witness] was forced to concede that in approximately 20 hours of police interrogation in 1984, Mr. Owen never once mentioned this delusion."); *id.* at *5 (State's expert witness "testified that if the delusion were true [t]hen you would expect to see it manifest itself in all of Mr. Owen's behaviors, actions, mannerisms, dress, and how he holds himself out overall. This is not the case and has almost never been the case with Mr. Owen."); *id.* at *6 (A different state expert witness testified that "typically when confronting someone with delusions, you can't reason with them. They are incapable of continuing to provide explanations and reasons as to why their delusions are true. Yet during the forensic interview Mr. Owen did just that and when confronted with inconsistencies with his delusions he was repeatedly able to provide additional explanations or information in an effort to explain his delusion to the evaluators.").

¹⁵⁴ *See, e.g., id.* at *5 (noting that one of the state's expert witnesses had said that "there were no indication [sic] of feminine qualities or mannerisms" in the defendant's demeanor during their evaluation); *id.* at *7 (a different state expert witness noting that the defendant "never raised gender dysphoria and demonstrated zero feminine mannerisms or characteristics" during their interview).

¹⁵⁵ *See, e.g., id.* at *4 (noting that a prison psychiatrist who treated the defendant testified that the defendant "never sought services for gender identity issues"); *id.* at *7 (noting that "in 2017 a corrections program was instituted for truly legitimate transgender inmates" but that the defendant "had never attempted to take advantage of this program over the past 6 years").

evaluation of someone's gender identity is simply an attempt to force the square peg that is the diversity of the trans experience into the round hole that is the rigid gender binary. More importantly, the court in this case only engaged in this gender policing because the defendant's gender dysphoria had been conflated with other mental health issues, such as schizophrenia, that the court had to evaluate to determine competency. This conflation poses a risk to trans people, especially when courts are already failing to distinguish gender dysphoria from a defendant's other mental health issues in other contexts, such as sentencing.

To end this section, I will briefly discuss a hodge-podge of three cases that don't fit neatly elsewhere. First are two cases where the defendant's criminal pathology was somehow entwined with trans identity, either theirs or their victim's. In *Tucker v. State*, a Texas trans woman convicted of sexual abuse of a minor said during a police interview that "she 'lusts for the body of children, especially female children,' expressing that 'children are born with bodies that [she] wishes [s]he was born with.'"¹⁵⁶ In *People v. Heath*, a trans woman in Colorado "used escalating psychological pressure to convince" her younger trans male friend—with whom she had formed a "romantic and sexual relationship"—to kill his mom, including by telling him that killing his mom would be "the final step in his gender transition . . . to 'be a man.'"¹⁵⁷ Finally, the third case dealt with issues of trans identity in jury selection. In *State v. Martinez*, a trans woman in Wyoming convicted of sexual abuse of a minor brought a claim of ineffective assistance of counsel based on her attorney's failure to challenge the seating of a juror she claimed was biased against transgender people.¹⁵⁸ The juror had apparently "expressed hesitation in leaving his child with a transgender person," but the court found that further questioning of the juror indicated that they "believed transgender people are afforded the same presumption of innocence, that the State is held to the same burden of proof, and that transgender people are not more likely to commit a sexual crime against a child."¹⁵⁹ Without knowing more about the record in this case, it's hard to know who was correct in assessing the juror's bias, the defendant or the court.

4. Trans People as Victims

Similarly to cases involving trans defendants, when a trans person is the victim of a crime, the court's legal analysis of the defendant's guilt usually isn't significantly infused with questions of trans identity. One exception is the case *People v. Harris* out of California, in which a defendant was convicted of armed robbery of a gas station.¹⁶⁰ The cashier was a trans man who police identified by his legal, feminine name, but who identified

¹⁵⁶ 706 S.W.3d 379, 385 (Tex. Ct. App. 2024).

¹⁵⁷ No. 22CA1996, 2024 WL 4576929, at *1 (Colo. Ct. App. Oct. 24, 2024).

¹⁵⁸ No. 20733-C, 2023 WL 9690482 (Wyo. Dist. Ct. Apr. 25, 2023).

¹⁵⁹ *Id.* at *4.

¹⁶⁰ No. D083425, 2024 WL 2858836 (Cal. Ct. App. June 6, 2024).

himself on his call to 911 by his chosen, masculine name.¹⁶¹ Because of that, and because the cashier was unable to testify at the trial, on appeal, the defendant tried to argue that, “because of the two different first names, ‘the jurors ... could not have known that the 911 call was made by the same person that they saw in the video’” of the robbery.¹⁶² While the court stated that it understood the defendant’s contention, it found that “there was ample evidence for a reasonable juror to resolve that confusion,” as “statements made in the 911 call support a reasonable inference that the person speaking on the 911 call is the same person shown in the video giving [the defendant] the money out of the cash register.”¹⁶³

Another exception is for cases that deal directly with a conviction for a hate crime against a trans person. For example, in *People v. Rogers*, which involved the shooting of a trans person, the Michigan Supreme Court denied leave to appeal the appellate court’s conclusion that the state hate crime statute’s inclusion of “gender” necessarily incorporated gender identity, relying on the logic of the U.S. Supreme Court’s opinion in *Bostock v. Clayton County*.¹⁶⁴ One justice dissented, arguing that the court should have heard the case because the question of whether the hate crime statute incorporated gender identity was one that “require[d] this Court’s close examination.”¹⁶⁵ It is not clear whether the result here is good or bad for trans Michiganders because, on the one hand, the court’s denial of leave to appeal means there is no statewide resolution of this question, potentially leaving anti-trans hate crimes to go unaddressed in parts of the state. On the other hand, the dissenting justice argued that “it is not clear that discrimination against a transgender individual could be said to arise from animus against one gender or the other, i.e., animus or prejudice against men as men or women as women,” meaning how the court might resolve the issue is an open question, especially given that no justices in the majority expressed their thoughts on the issue.¹⁶⁶

Outside of convictions under explicit hate crime statutes, several cases dealt with crimes committed out of anti-trans animus. In *State v. Thomas*, the New Jersey police arrested the defendant on several charges related to her harassment and assault of her transgender neighbor.¹⁶⁷ The trial court had granted pre-trial release, but the appellate court reversed and remanded for reconsideration because “[t]he record shows that defendant

¹⁶¹ *Id.* at *3

¹⁶² *Id.*

¹⁶³ *Id.* at *3–4.

¹⁶⁴ *People v. Rogers*, 982 N.W.2d 181, 182 (Mich. 2022) (Viviano, J., dissenting) (discussing appellate court’s reliance on *Bostock v. Clayton County*, 590 U.S. 644 (2020), to find that “discrimination on the basis of gender identity will always involve discrimination on the basis of ‘gender’”).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* But cf. *Rouch World, LLC v. Dep’t C.R.*, 987 N.W.2d 501 (Mich. 2022) (The same year as the *Rogers* decision, in a case about sexual orientation discrimination, a majority of the Michigan Supreme Court incorporated *Bostock*’s logic into the Michigan civil rights act’s protections against sex discrimination.).

¹⁶⁷ No. A-2006-22, 2023 WL 2781302 (N.J. Super. Ct. App. Div. Apr. 5, 2023).

displayed uncontrollable rage, allegedly based on [the victim]’s transgender status. . . . [G]iven the clear indication of mental health issues, she might not be able to comply with a home detention condition should she experience another fit of sustained and unrelenting rage.”¹⁶⁸ In a similar Pennsylvania case, *Commonwealth v. Balcom*, the defendant was convicted for harassing her neighbors, a gay couple and their trans daughter.¹⁶⁹ The appellate court vacated the conviction on the grounds that the trial court had violated the defendant’s confrontation rights by preventing the defendant from cross-examining one of the victims during trial, so the court did not reach the merits of the harassment conviction.¹⁷⁰ In a final similar case from Massachusetts, while the defendant was largely motivated by racial animus, post-trial litigation over the admissibility of certain text messages and Facebook posts made by the defendant revealed the defendant was also anti-trans.¹⁷¹

In a few other cases, it was less obvious whether the defendant had an anti-trans bias and whether any such bias motivated their crime. The case where anti-trans bias was the most likely is *State v. Hoppe*, in which an Ohio man was convicted on multiple counts related to attacks against his neighbors, a trans woman and her wife.¹⁷² The defendant ran his car into the trans woman’s car, causing it to smash through the couple’s garage, and subsequently fired his gun off several times.¹⁷³ The defendant clearly had animus towards his neighbors—after ramming into their car, he yelled at the wife, “[e]vil must leave this neighborhood,” and a different neighbor’s daughter heard him yelling, “[w]e don’t want your kind in this neighborhood; you’re not welcome here; you’re disgusting.”¹⁷⁴ While such statements could certainly reflect anti-trans animus against the trans woman, they could also stem from anti-gay animus against the trans woman and her wife as a couple, or possibly both.

In three other cases, potential anti-trans animus was even more obscured. First, in *Santana v. State*, a prison corrections officer in Maryland was convicted of assault and official misconduct for his treatment of a trans inmate (a trans woman in a men’s facility).¹⁷⁵ While the officer called the victim the f-slur during the assault, the victim had also been “working with the Intelligence Department at the prison to build a case against the defendant in reference to his bringing in cell phones and drugs and tobacco

¹⁶⁸ *Id.* at *3.

¹⁶⁹ 328 A.3d 523, 2024 WL 4284811 (Pa. Super. Ct. 2024).

¹⁷⁰ *Id.* at *3.

¹⁷¹ *Commonwealth v. Hinds*, 241 N.E.3d 721, 729–32 (Mass. 2024), *rev’g* 219 N.E.3d 252, 103 Mass. App. Ct. 1103 (App. Ct. 2023) (ruling that the messages and posts—which included describing a neighbor, although not one of the victims in the case, as a “half chink and Hispanic transgender punk”—were admissible because they “were probative of the defendant’s animosity toward the victims” and “the risk of unfair prejudice . . . was counterbalanced by the evidence’s probative weight”)

¹⁷² 2023-Ohio-2188, 2023 WL 4267606 (Ohio App. Ct. June 29, 2020).

¹⁷³ *Id.* at ¶¶ 10–22.

¹⁷⁴ *Id.* at ¶¶ 12, 18.

¹⁷⁵ No. 1146, 2024 WL 226590 (Md. App. Ct. Jan. 22, 2024).

to inmates.”¹⁷⁶ Additionally, the assault occurred after the victim had “deliberately disobeyed several orders to return to her cell” because she had been denied her recreation time.¹⁷⁷ Given all of these circumstances, it’s impossible to tell how much of the defendant’s crime may have been motivated by his anti-trans bias. Second, in *Alvarado v. State*, a Texas man was convicted of murdering a trans woman.¹⁷⁸ He had argued the killing was self-defense, but the appellate court found that, “from the evidence presented at trial, the jury could have . . . reasonably believed [the defendant] was an aggressive and violent individual and could have reasonably disbelieved much of [the defendant]’s version of the events.”¹⁷⁹ How and why the defendant and the victim came to interact with each other at the time of the murder and the defendant’s reasons for the murder (other than his narrative of self-defense) are not discussed by the court. Thus, it is unknowable whether the murder was motivated by anti-trans bias. However, it is worth noting that, in his testimony, the defendant consistently misgendered the victim.¹⁸⁰ Finally, in *People v. Lightfoot* from California, a trans woman was “punched . . . in the jaw and stabbed . . . once in the center of her back” by a complete stranger on a bus.¹⁸¹ She survived, and while the defendant was convicted on several counts, there was no discussion of his motive beyond his “introduc[tion of] evidence that he suffers from schizophrenia.”¹⁸² Thus, while it may be unlikely he was motivated by anti-trans bias, the fact that his “random” victim was trans means the possibility can’t be entirely ruled out.

While such anti-trans hate crime cases are certainly common, the majority of cases in which trans people are the victim involve sex, whether consensual or assault. This is not surprising given that “[t]ransgender people are over four times more likely than cisgender people to experience violent victimization, including rape [and] sexual assault.”¹⁸³ All of the survey cases with trans victims that involved consensual sexual encounters occurred when a male defendant learned that the female victim was trans after they had engaged in sexual activity. These crimes are likely an extreme manifestation of the phenomenon that, “when self-identified cisgender, heterosexual men find themselves attracted to transgender women, some may perceive it as a threat to their masculinity and heterosexuality.”¹⁸⁴ For example, in *Commonwealth v. Sargent*, a Pennsylvania

¹⁷⁶ *Id.* at *2 (citation modified).

¹⁷⁷ *Id.* at *3.

¹⁷⁸ No. 05-21-01026-CR, 2023 WL 4446338 (Tex. App. July 11, 2023).

¹⁷⁹ *Id.* at *4.

¹⁸⁰ *Id.* at *2.

¹⁸¹ No. A160138, 2022 WL 15654240, at *1 (Cal. Ct. App. Oct. 28, 2022).

¹⁸² *Id.*

¹⁸³ Press Release, Williams Institute, UCLA Sch. L., Transgender People over Four Times More Likely than Cisgender People to Be Victims of Violent Crime (Mar. 23, 2021), <https://williamsinstitute.law.ucla.edu/press/ncvs-trans-release/>.

¹⁸⁴ Keon West & Martha Lucia Borrás-Guevara, *When Cisgender, Heterosexual Men Feel Attracted to Transgender Women: Sexuality-Norm Violations Lead to Compensatory Anti-Gay Prejudice*, 69 J. HOMOSEXUALITY 2267, 2270 (2022).

man was convicted of first-degree murder after brutally attacking and killing a trans woman after he supposedly discovered she “was male” after they had “engag[ed] in oral and anal sex.”¹⁸⁵ Importantly, the jury convicted on the first-degree murder charge after having been instructed on the possibility of a “heat of passion” voluntary manslaughter conviction if they “believe[d the victim’s] alleged deception of her biological gender constituted a serious provocation.”¹⁸⁶ Many aspects of this case are problematic—such as the court’s repeated references to the victim’s “biological gender” and a police officer’s testimony about the victim’s “masculine appearance”¹⁸⁷—but there is some light in the fact that a jury did not accept the “heat of passion” mitigation argument from the defendant, even if the jury’s decision was based on gender-stereotyped impressions of the victim.

At least three other cases reflect this same dynamic.¹⁸⁸ In *State v. Bogdanov*, a Washington man was convicted of second-degree murder after killing a trans woman during a struggle that ensued after he discovered she was trans during a sexual encounter in his car.¹⁸⁹ Again, the jury rejected an attempt by the defendant to mitigate his conviction to a lesser crime by arguing that he “committed justifiable homicide in actual resistance to [the victim’s] attempt to commit the felony of first degree assault.”¹⁹⁰ Two other cases involved assaults, not murders. In another case from Washington, *State v. Osman*, a man was convicted of assault for beating up a trans woman and her non-binary friend after he and the trans woman had a sexual encounter during which he discovered she was trans.¹⁹¹ Second, in *Kinney v. United States*, a man in D.C. was convicted of robbing two trans female sex workers at gunpoint.¹⁹² The dispute on appeal centered around the admissibility of certain statements the defendant had made (which the appellate court found had been improperly admitted and thus reversed the conviction), but part of his defense was explaining that his “contradictory statements” to the police were the result

¹⁸⁵ 279 A.3d 1286, 2022 WL 1671856, at *1 (Pa. Super. Ct. 2022).

¹⁸⁶ *Id.* at *6.

¹⁸⁷ *Id.*

¹⁸⁸ In a potentially related case, a trans sex worker sued a police officer, alleging that his engaging in, and paying for, sex with her amounted to excessive force, unreasonable seizure, and deprivation of liberty because she felt she was under threat of arrest and had to go along with his requests. *I.D. v. Prince George’s Cnty.*, No. 1577, 2024 WL 2012330 (Md. App. Ct. May 7, 2024). The court noted, however, that “the record is silent as to how this fact [of I.D.’s trans identity] related to Officer Lucas’ interaction with I.D. or the [police department’s] practices and procedures regarding transgender individuals.” *Id.* at *14 n.9. The case was dismissed at summary judgment, and dismissal was affirmed, because “there were no genuine disputes of material facts for a jury to consider as to whether Officer Lucas engaged in conduct within the scope of his employment” at the time of his encounter with I.D. *Id.* at *12.

¹⁸⁹ 532 P.3d 1035 (Wash. Ct. App. 2023).

¹⁹⁰ *Id.* at 1046.

¹⁹¹ 28 Wash. App. 2d 1069, 2023 WL 8372398 (Ct. App. 2023).

¹⁹² 286 A.3d 1027 (D.C. 2022).

of the shame he felt “that he was leading a double life and did not want it to get out that he was picking up transgender women.”¹⁹³

Alongside these consensual sex cases, many more cases from my survey dealt with sexual assaults against trans victims. In one case from Illinois, *People v. Gabriel*, an appellate court affirmed the resentencing of a defendant, who had been fifteen-years-old at the time the crime was committed in 2002, to thirty-nine years (from forty-eight years, as the state supreme court had recently ruled any sentence over forty years was an impermissible de facto life sentence for minors) for six counts of aggravated sexual assault.¹⁹⁴ The defendant and others had forced two victims to perform numerous sex acts; when the defendant discovered one of the victims was trans, that victim was “harassed and threatened, as well as further physically and sexually assaulted.”¹⁹⁵

Although the court in *Gabriel* did not specify the age of the victim, based on the defendant’s age at the time of the crime, it’s likely they were also a minor. Similarly, all the other sexual assault cases in my survey involved trans minors. In one from California, a father was convicted to eighty-two years for sexually assaulting his trans daughter (although she had been pre-transition at the time of the assault).¹⁹⁶ In *Commonwealth v. Howland*, a Pennsylvania man was convicted on several charges related to his kidnapping and sexual assault of a thirteen-year-old trans boy.¹⁹⁷ He had taken the child from the child’s home in Indiana to a hotel in Pennsylvania. A later case related to the civil forfeiture of the defendant’s phone revealed that, during online conversations leading up to the kidnapping, the defendant had told the victim that he “would provide financially for the victim, including by paying for gender-affirming procedures,” in order to earn the victim’s trust.¹⁹⁸ Indeed, during the original trial, the defendant had said he thought he was “doing the child a favor,” to which the trial court judge said, “I’ve been doing this for over 30 years. I’ve never come across somebody like you.”¹⁹⁹

In some cases of sexual assault of a trans minor, the victim’s trans identity became linked to mental health issues, reminiscent of the cases involving the mental health of trans inmates and defendants discussed in the previous two sections. In the Pennsylvania case *Commonwealth v. Biddinger*, a man convicted of sexually assaulting his trans son tried to argue on appeal that the trial court improperly excluded the victim’s mental health records, which supposedly indicated the victim had the following

¹⁹³ *Id.* at 1041.

¹⁹⁴ 2022 IL App (1st) 201170-U (citing *People v. Buffer*, 2019 IL 122327). The defendant had also been sentenced to three years for committing a hate crime, but that sentence was not before the court in this case. *Id.* ¶¶ 5, 8.

¹⁹⁵ *Id.* ¶¶ 4, 11.

¹⁹⁶ *People v. Lemus*, No. E080037, 2023 WL 6055525 (Cal. Ct. App. Sep. 18, 2023).

¹⁹⁷ 289 A.3d 58, 2022 WL 16832489 (Pa. Super. Ct. 2022).

¹⁹⁸ *Commonwealth v. Howland*, 293 A.3d 613, 2023 WL 1981923, at *2 (Pa. Super. Ct. 2023).

¹⁹⁹ *Howland*, 2022 WL 16832489, at *3.

mental health conditions: “personality disorder, multiple personalities, post-traumatic stress disorder and the fact that the victim was transgender.”²⁰⁰ The appellate court affirmed the trial court’s exclusion of the records, noting that the defendant had previously argued *against* inclusion of the records because discussion of mental health issues and gender identity “confuses a very important issue as to whether there’s penetration on this child. It’s a physical case. It should be simple to present the physical evidence.”²⁰¹

In some cases, a unique angle on the relationship between trans identity and mental health was advanced: that a victim’s questioning of their gender identity can be part of their psychological response to the trauma of the assault, particularly for victims assigned female at birth. For example, in the Minnesota case *People v. Fedewa*, a father was convicted of sexually assaulting his non-binary child, and “an expert on the impact of trauma, trauma assessment, child maltreatment, child development, and child sexual abuse” testified that “‘gender identity’ issues can be part of the ‘shame’ response to assault. . . . ‘[I]dentifying and moving in that direction is another way of self-protection and another way to reduce my shame, in terms of if I’m a boy, this won’t happen to me and then I can be in that sense of I’m not her anymore, I’m him.’”²⁰² While that may indeed be true psychologically,²⁰³ it can be problematic for courts to rely heavily on it. A popular anti-trans argument, especially against gender-affirming care for trans youth, is that children are too immature to know who they are.²⁰⁴ Court reliance on the idea that trans identity can be part of a trauma response just creates one more reason for trans skeptics to question the legitimacy of trans minors’ assertions of their identity.

The final category of cases in which trans people were victimized are cases where trans people asked for or received a restraining order.²⁰⁵ The context of and reasons for these restraining orders tend to fall broadly into

²⁰⁰ 331 A.3d 608, 2024 WL 4679049, at *6 (Pa. Super. Ct. 2024).

²⁰¹ *Id.* at *7.

²⁰² No. 362396, 2024 WL 1689106, at *2, *4 (Mich. Ct. App. Apr. 18, 2024).

²⁰³ The expert “disclaim[ed] that the research [in this area] was in its ‘beginning’ stages.” *Id.* at *4; *see also* *Walden v. State*, 216 N.E.3d 1165, 1171 (Ind. Ct. App. 2023) (noting testimony from a minor sexual assault victim, assigned female at birth, and their mother that the victim “wanted to be a male to stop things ‘like this’ from happening again in the future” and that “‘I felt like I needed to be a male because my body and myself felt as if, if I was a male, then this wouldn’t happen to me anymore’”).

²⁰⁴ *See* *United States v. Skrmetti*, 605 U.S. 495, 540 (Thomas, J., concurring) (“States could reasonably conclude that the level of young children’s cognitive and emotional development inhibits their ability to consent to sex-transition treatments.”).

²⁰⁵ There was only one case in my survey in which a restraining order was taken out *against* a trans person, but the issues in that case were unrelated to trans identity. *See* *Romero v. Chen*, No. B333475, 2024 WL 4259497 (Cal. Ct. App. Sep. 20, 2024).

two main categories: stalking/harassment²⁰⁶ and parental abuse.²⁰⁷ These cases largely turn on whether the defendant's behavior satisfies the criteria for a grant of a restraining order against them. The most interesting cases are the three where the court found the defendant's harassing behavior was insufficient to support a restraining order. First, in Ohio, a restraining order was denied to a college-age trans man who had been sexually assaulted during a hook up because "there was nothing in the record to indicate [defendant] posed any threat to [plaintiff]"—the defendant had been fired from his position on campus, the plaintiff had graduated, and the two "did not know each other and had never seen or encountered each other before their" hook up.²⁰⁸ In the second, an Oregon appellate court found an insufficient number of harassing contacts between the defendant and trans plaintiff to justify the restraining order, determining that only one of the three incidents used by the trial court to support the order—the one in which the defendant used transphobic slurs against the plaintiff—actually constituted an harassing contact.²⁰⁹ Finally, in Maryland, a restraining

²⁰⁶ See *L.O. v. Kilrain*, 314 Cal. Rptr. 3d 470 (Ct. App. 2023) (affirming restraining orders requested by a trans woman and her workplace against a co-worker who was harassing her because she is trans); *Tucker v. Uhl*, 2023-Ohio-3680, 2023 WL 6577497 (Ct. App. 2023) (affirming denial of sexually oriented offense protective order requested by trans male college student against an employee at the campus fitness center who had sexually assaulted him during a hook up arranged on Grindr because the court determined they were strangers who were unlikely to interact again); *T.J.T. v. Bean*, 329 Or. App. 242 (Ct. App. 2023) (reversing grant of stalking protective order requested by trans woman against a man who had been harassing her because the court found his conduct did not rise to the level necessary to meet the statutory requirements for such an order); *A.Q. v. M.C.*, No. C095090, 2023 WL 5811351 (Cal. Ct. App. Sep. 8, 2023) (reversing grant of restraining order requested by trans man and his new girlfriend against his ex-girlfriend, but the issues at stake were largely unrelated to trans identity); *M.J.S. v. C.R.A.S.*, No. A-0698-22, 2023 WL 8651001 (N.J. Super. Ct. App. Div. Dec. 14, 2023) (affirming grant of restraining order requested by plaintiff against his ex-wife who was harassing him and his new girlfriend, who appears to be trans, which the ex-wife did not approve of).

²⁰⁷ See *In re A.K.*, No. B313263, 2023 WL 3114009 (Cal. Ct. App. Apr. 27, 2023) (affirming grant of restraining order against father for physical and verbal abuse towards his wife and two children, including calling his trans son slurs and refusing to accept his identity); *In re S.C.-O.*, No. A163066, 2022 WL 854782 (Cal. Ct. App. Mar. 23, 2022) (affirming denial of mother's petition to modify restraining order against her that had been requested by her ex-husband and two children, including a trans son, after she physically and verbally abused them, especially the trans son); *A.A. v. Nita A.*, 2023 IL App (1st) 230011 (affirming restraining order requested by adult non-binary child against their mother who had repeatedly harassed and abused them for being trans); *C.M. v. J.M.*, 295 A.3d 193 (Md. App. Ct. 2023) (reviewing partial grant and partial denial of restraining order requested by mother and her two sons, one gay and one trans, against father, and affirming grant of restraining order as to gay son and denial of restraining order as to mother and trans son because the gay son was severely mentally and emotionally impacted by the father's homophobic and transphobic abuse while trans son was mentally stronger).

²⁰⁸ *Tucker*, 2023-Ohio-3680, at ¶ 19.

²⁰⁹ *T.J.T. v. Bean*, 329 Or. App. at 243–44. The other two contacts involved "respondent asking petitioner 'what the hell' she was doing on a shared easement between their properties and ask[ing] her whether she wanted to go 'back to jail'" and "respondent

order against a father was granted as to his gay son but not as to his trans son, despite his homophobic and transphobic abuse of both sons, because the court said the trans son “is a strong person” who is not “mentally bother[ed]” by his father’s abusive messages so they don’t “impact [him] on a daily basis,” while the court described the gay son as “not as strong” as the trans son, “frightened,” and suffering “a lot of damage” from his father’s abuse.²¹⁰

5. General Treatment of Trans Identity by the Criminal Justice System

Outside of cases where trans people are inmates, defendants, or victims, there are occasionally cases that raise questions of trans identity in other ways. Two cases involved questions about the admissibility of evidence relating to trans people. In the first case, *Carruth v. State* from Texas, a defendant convicted of armed robbery was in a relationship with a trans woman, and he presented a defense that the state’s primary witness against him was motivated by homophobic and transphobic bias.²¹¹ He wanted to introduce a text message exchange between himself and the witness that occurred immediately after the robbery in which the witness used anti-gay and anti-trans slurs in relation to the defendant and his girlfriend. However, the trial court excluded the content of the messages, and the defendant appealed that decision.²¹² The appellate court ruled that, even if the exclusion was in error, it was harmless because the defendant “was able to cross-examine [the witness] on his use of slurs when speaking to [the defendant], and [the witness] admitted that he had used the particular language contained in the messages,” so the defendant had been able to effectively present his bias argument without the content of the messages being admitted.²¹³ Second, in the Michigan case *People v. Shumate*, the defendant was appealing his conviction for sexual assault against his stepson, arguing that “evidence of his sexual orientation and pornography preferences was irrelevant, impermissible character evidence.”²¹⁴ Specifically, at trial, the prosecutor had asked the defendant questions “pertaining to whether defendant watched ‘transsexual’ pornography, as well [as] questions regarding whether he identified as a gay man.”²¹⁵ The appellate court took the prosecutor to task for relying on such evidence, finding that the prosecutor’s “dogged[] pursu[ing]” of these questions was sufficiently prejudicial to warrant a new trial because “the prosecutor improperly attempted to connect the crime committed against the minor victim to societal stereotypes regarding gay or otherwise non-heterosexual men as sexually deviant;” given that “there is no connection between a defendant’s

[coming] to petitioner’s garage where she was playing with her band and [telling] them to stop playing ‘or he would break everything.’” *Id.* at 244.

²¹⁰ *C.M. v. J.M.*, 295 A.3d at 207.

²¹¹ No. 08-22-00240-CR, 2023 WL 4678674 (Tex. App. July 21, 2023).

²¹² *Id.* at *2.

²¹³ *Id.* at *5.

²¹⁴ No. 363195, 2024 WL 1126045, at *1 (Mich. Ct. App. Mar. 14, 2024).

²¹⁵ *Id.* at *2.

sexual orientation and the sexual abuse of children,” the court viewed such questions as “highly inflammatory.”²¹⁶ While not explicitly about trans identity, the case represents a firm rejection of the notion, commonplace in the anti-trans movement, that LGBTQ+ identities are somehow inherently sexual or linked to child abuse.²¹⁷

One case from Washington, *State v. Hogan*, dealt with a question of trans identity in jury selection. Appealing his murder conviction, the defendant argued that the trial court improperly allowed the state to strike a trans juror during voir dire.²¹⁸ However, the appellate court found several things wrong with that argument. Most prominently, it was unclear if the juror actually identified as trans. As the prosecutor explained in response to the defense counsel’s objection to the strike, “I think counsel is making some assumptions . . . based on probably [the juror’s] appearance and [the juror’s selection of] ‘prefer not to answer’ [in response to a question about gender on the juror information form] that this person is transgender. I don’t think you can possibly say that you know if anyone else on this panel is or is not transgender.”²¹⁹ The appellate court explicitly endorsed this view that someone’s gender identity should not be assumed, saying, “[i]t was particularly appropriate for the court to decline to use its governmental authority to assign a gender identity to a juror who chose not to disclose it, and where gender had no apparent relevance to the case.”²²⁰ Second, despite defense counsel objecting to the strike based solely on the juror’s presumed trans identity, on appeal the defendant argued that his counsel’s objection had actually been under a rule prohibiting the exclusion of jurors based on race or ethnicity. As the appellate court noted, however, there is “no actual connection between [the juror’s] gender identity and their view on racial or ethnic bias,” and the defendant’s argument “is based, not on evidence in the record, but on the observation of [the defendant]’s appellate counsel that there is some similarity in the kind of oppression both have suffered historically.”²²¹

There is one final set of cases that deal directly with how courts and other judicial actors treat trans people who appear before them. In one case from California, *People v. Zarazua*, a trans male defendant appealed his conviction alleging prejudicial prosecutorial misconduct because the prosecutor repeatedly misgendered him during the trial.²²² While the appellate court “emphasize[d] that we do not condone the prosecutor’s repeated

²¹⁶ *Id.* at *3.

²¹⁷ See Melissa Block, *Accusations of ‘Grooming’ Are the Latest Political Attack — With Homophobic Origins*, NPR (May 11, 2022, 5:27 AM), <https://www.npr.org/2022/05/11/1096623939/accusations-grooming-political-attack-homophobic-origins> (“‘Grooming’ has become an incendiary buzzword of right-wing rhetoric, weaponized in the fight over anti-LGBTQ legislation.”).

²¹⁸ *State v. Hogan*, 559 P.3d 1033 (Wash. Ct. App. 2024).

²¹⁹ *Id.* at 1038.

²²⁰ *Id.* at 1042.

²²¹ *Id.* at 1042–43.

²²² 301 Cal. Rptr. 3d 434 (Ct. App. 2022).

misgendering” and that “there may be instances when misgendering is so overt, malicious, and calculating that it infects the trial with such unfairness as to make the conviction a denial of due process,” it concluded that “this is not such a case.”²²³ In finding the prosecutor’s misgendering a harmless error, the court first noted that the evidence against the defendant was very strong, but they also relied on the fact that the defendant had only come out as trans shortly before trial. Thus, there had been special attention to prospective jurors’ attitudes about gender identity during voir dire: “During jury selection, defense counsel notified prospective jurors that prosecution witnesses might misgender [the defendant], and counsel for both parties acknowledged his gender identity and exhorted jurors not to ‘punish’ him for the gender transition, or to let gender bias influence their decision.”²²⁴ There was also some debate over whether the prosecutor’s misgendering was intentional, but that was not relevant to the appellate court’s decision.²²⁵ In the Kansas case *State v. Cipra*, during sentencing at the trial court, a defendant “alleged disparate treatment due to being transgender.”²²⁶ When the trial court issued its sentence, the judge responded to that allegation by saying, “I am almost a hundred percent sure the issues of sexual orientation or transgender [sic] were not brought up at the trial and certainly there was no attempt to argue that or include that in any factfinding. Also, it is irrelevant to me, has nothing to do [sic].”²²⁷ Unfortunately, these are the only references to the defendant’s gender identity in this case, so it is hard to assess the veracity of the defendant’s allegations of bias against what the court says.

B. Family Law

The vast majority of family law cases in my survey were about trans children. The most common type of case were custody disputes, but there were a handful of other types of cases such as termination of parental rights, restraining orders, or parental neglect findings. Fortunately, only a small number of these cases came out in a way that left the trans child in a harmful situation. Most courts were willing to recognize the harm being inflicted on a trans child by a parent who was unsupportive of their identity and find that placing the child with a more supportive parent was in the child’s best interests. However, courts were generally less solicitous towards trans parents involved in family law cases, although the number of cases in my survey involving trans parents was admittedly quite small.

1. Constitutional Parental Rights

Most of the cases involving constitutional parental rights arose in contexts not related to traditional family law matters and are thus discussed

²²³ *Id.* at 440 (citation modified).

²²⁴ *Id.* at 438–39.

²²⁵ *Id.* at 439–40.

²²⁶ 535 P.3d 218, 2023 WL 5992501, at *1 (Kan. Ct. App. 2023).

²²⁷ *Id.* at *2 (internal quotes omitted).

in other sections of this Article. Specifically, parental rights are discussed in cases involving bans on gender-affirming care for trans minors (discussed *infra* Part II.C.1) and in cases involving school policies regarding trans students (discussed *infra* Part II.F.1.i). However, there was one family law case in my survey that did implicate parental rights. In *In re A.C.*, a trans child in Indiana developed thoughts of self-harm and a severe eating disorder due to their parents' refusal to accept their trans identity, which included allegations that the parents were "verbally and emotionally abusing then-sixteen-year-old Child by using rude and demeaning language toward Child regarding Child's transgender identity."²²⁸ The lower court issued an order that the child be removed from the home and kept in state custody. The court also told the parents not to discuss the child's trans identity during visitation.²²⁹ The parents appealed, arguing that the order violated their parental rights as well as their free religious exercise and free speech rights. The appellate court found that the lower court's ruling that the child's continued removal from the parents' custody was in the child's best interest was not erroneous because "[t]he court's decision to continue Child's removal was not a response to the Parents' acts or omissions relating to their beliefs regarding transgender individuals Rather, the trial court's focus was clearly on Child's medical and psychological health needs."²³⁰ The appellate court then used that finding to hold that the parents' parental rights hadn't been infringed because the lower court had not "unlawfully substituted its own judgment for that of the Parents."²³¹ Similar logic underpinned the court's finding that the parents' religious rights were not substantially burdened.²³² The court additionally found that, even if the parents' religious rights were burdened, they weren't violated because "the State has a compelling interest in protecting Child's physical and mental health. . . . [and] Child's removal from the home is narrowly tailored."²³³ Finally, the court found that the ban on discussing the child's trans identity during visitation was a permissible prior restraint of the parents' free speech rights because the "order focused solely on private speech rather than speech that was important to 'the marketplace of ideas' . . . [and] reasonably furthered the child's best interests."²³⁴

²²⁸ 198 N.E.3d 1, 7 (Ind. Ct. App. 2022), *transfer denied sub nom.* J.C. v. Ind. Dep't of Child Servs., 208 N.E.3d 1259 (Ind. 2023), and *cert. denied sub nom.* M.C. v. Ind. Dep't of Child Servs., 144 S. Ct. 1084 (2024).

²²⁹ *Id.* at 7–8.

²³⁰ *Id.* at 11.

²³¹ *Id.* at 15.

²³² *Id.* at 16 ("Child's continued removal from the home was not based on the fact that the Parents did not accept Child's transgender identity, and reunification is not contingent on the Parents violating their religious beliefs and affirming Child's transgender identity.").

²³³ *Id.* at 17.

²³⁴ *Id.* at 18 (citation omitted).

2. Custody and Care of Trans Children

Fortunately, when it comes to cases adjudicating the custody and care of trans children, courts overwhelmingly ruled in alignment with the best outcome for the child, regardless of the issue at stake. In what is probably a good sign for trans children, there is not a lot unique to say about each of these cases with good outcomes. Across all the highly varied circumstances of these cases, courts were able to discern what was best for the trans child. Thus, in the following footnotes, I've compiled all the cases with good outcomes in which the child's trans identity is implicated, along with brief descriptions of the context of each case and what was at stake for the trans child, sorted by type of family law issue: custody determinations,²³⁵ modifications of custody,²³⁶ termination of a legal relationship

²³⁵ See *Patail v. Wille*, No. 1841, 2024 WL 3318192 (Md. App. Ct. July 2, 2024) (affirming grant of sole legal and primary physical custody to father largely for reasons related to mother's mental health, but court notes that father supports trans child, including their accessing gender-affirming care, while mother still refers to child by incorrectly gendered terms); *Stevison v. Stevison*, No. A-22-318, 2023 WL 1129720 (Neb. Ct. App. Jan. 31, 2023) (affirming grant of sole legal and physical custody to mother, with limited parenting time to father, in part because father's relationship with two trans children had deteriorated during their transitions to the point they no longer wanted to spend time with him, although other factors, like a traumatic brain injury father suffered, also contributed to that deterioration); *In re Guardianship of K.E.*, 10 N.W.3d 829, 2024 WL 3517877, at *2-3 (Iowa Ct. App. 2024) (affirming grant of guardianship of trans child to parents of child's best friend, with father's support and over mother's objections, in part because friend's family moved to Connecticut, and when child visited, he finally "fe[lt] comfortable and happy," "he 'was excited to be in a place where there were more people like him,'" and the CT school had better resources for trans children).

²³⁶ See *Sepulveda v. Sepulveda*, 201 N.E.3d 635, 2022 WL 17087529 (Ind. Ct. App. 2022) (affirming modification of custody from sole legal and primary physical with mother to joint legal and primary physical with father because mother had violated court orders and interfered with father's parenting time; also, one child was non-binary, and mother was not supportive, questioning the child's choices in clothing, toys, etc., but father was); *Riley v. Graves*, No. 367366, 2024 WL 1472382 (Mich. Ct. App. Apr. 4, 2024) (reversing denial of mother's petition for sole legal custody and to restrict father's parenting time; child's gender identity at center of case, with mother being supportive but father refusing to accept it and use appropriate name and pronouns and forcing child to conform to incorrect gender stereotypes); *Schoenheide v. Shaw*, No. 360568, 2022 WL 12104808 (Mich. Ct. App. Oct. 20, 2022) (affirming grant of sole legal and physical custody to father; trans child was over eighteen, so not subject to order, but part of evidence used to support modifying custody for two younger children was mother's lack of acceptance of trans child's identity and her causing delays in trans child's ability to receive gender-affirming care); *S.P. v. C.B.*, 181 N.Y.S.3d 882, 2023 WL 1458605, at *11 (Sup. Ct. 2023) (granting father sole legal and physical custody, as well as ability to make medical decisions without consulting mother, in part because father respected and supported child's trans identity but mother "refused to refer to the Child by the Child's chosen name and pronouns, and refused to acknowledge the harm this could cause to the Child"); *Laura E. v. John D.*, 188 N.Y.S.3d 794 (App. Div. 2023) (affirming grant of sole legal and primary physical custody to mother in part because father refused to accept child's trans identity and use their chosen name and pronouns); *Carballo v. Carballo*, No. 17-CVD-3108, 2022 WL 21748177 (N.C. Dist. Ct. Dec. 20, 2022) (granting primary physical and legal custody to father and denying visitation to mother primarily because children emphatically did not want a relationship with mother, in part because of her

with a child,²³⁷ and other miscellaneous issues.²³⁸ In most of these cases, the child's trans identity, while relevant to the court's decision, plays a

homophobia and lack of respect for two of the children's trans identities, and they were old enough the court respected their opinions), *aff'd*, 901 S.E.2d 822 (N.C. Ct. App. 2024); *Ahrens v. Ahrens*, 273 A.3d 1041, 2022 WL 390678, at *9 (Pa. Super. Ct. 2022) (affirming grant of sole physical custody of trans child and primary physical custody of gender questioning child to mother in part because "father's prejudice against those who identify as members of the LGBTQIA+ community" made the court "concerned with regard to Father's ability to address and support the physical and mental health of" the children); *In re Marriage of Hannah and McAdams*, 541 P.3d 372 (Wash. Ct. App. 2023) (affirming trial court's denial of father's request for mutual decision-making authority over children with other parent, in which trial court had rejected father's argument that children's discussions with other parent about their new spouse's gender identity, and one child's questioning of their own gender identity, was a change in circumstance warranting modification); *Henry v. Henry*, No. NNH FA19-5045090 S, 2024 WL 3287321, at *2 (Conn. Super. Ct. June 28, 2024) (denying father's petition to modify current arrangement of joint legal custody and primary physical custody with mother for child who "likes to cross-dress," but may or may not be trans, and who "is more comfortable at . . . mother's home" because child experiences teasing from other children at father's house).²³⁷ See *In re E.M.*, No. 1 CA-JV 24-0071, 2024 WL 4294789, at *3 (Ariz. Ct. App. Sep. 26, 2024) (affirming termination of father's parental rights, largely on grounds of abandonment but also because "[f]ather's opinions about [his child's] transitioning affected his ability to develop a normal parental relationship with" child and "'father's refusal to even acknowledge [his child's] feelings . . . is abusive and detrimental to [her] mental health'"); *In re Jack L.*, No. B327024, 2024 WL 1925672, at *2 (Cal. Ct. App. May 2, 2024) (affirming termination of guardianship because the child's "mental health issues—marked by repeated instances of self-harm, suicidal ideation, and psychiatric hospitalization—were exacerbated by [guardian's] inability or refusal to accept and support [child's] sexual orientation and gender identity"); *In re T.C.*, No. E078016, 2022 WL 2841502, at *4 (Cal. Ct. App. July 21, 2022) (affirming termination of reunification services for father of trans child with many mental health and behavioral issues that father was not prepared to, and could not adequately, address, but also noting that "[f]ather was not ready to accept the child's preferences on gender identity and refused to call him by his preferred name"); *People in re K.S.*, No. 23CA0875, 2024 WL 3964060, at *1 (Colo. App. Feb. 15, 2024) (affirming termination of mother's parental rights, whose child was initially removed from her custody because she "was physically and emotionally abusing the child because he was a transgender boy," after she refused to participate in further reunification services after relocating to a different state); *In re Bailey*, 241 N.E.3d 1233, 104 Mass. App. Ct. 1120, 2024 WL 4100521, at *4 n.8 (App. Ct. 2024) (rejecting mother's argument that lower court terminated her parental rights because of "her negative reaction to news of the middle child's exploration of gender identity" because the "judge did not fault the mother for refusing to accept that the middle child may have been engaging in gender identity exploration" and, instead, terminated parental rights for reasons like her inability to empathize with the children, put their needs above hers, and control her aggressive and explosive outbursts).

²³⁸ See *In re A.G.*, No. B326762, 2024 WL 483228, at *1 (Cal. Ct. App. Feb. 8, 2024) (affirming grant of authority to make medical decisions for child, including "arrang[ing] gender affirming medical care," to county over mother's objections); *In re K.M.*, 289 A.3d 1240, 1245 (Conn. App. Ct. 2023) (affirming continued suspension of father's visitation rights with his two children, including one trans child who says father "does not 'understand [them] and has made disparaging comments about [them]'" so does not want to have a relationship with father, until father has complied with certain requirements in original suspension order); *Snowberger v. Sparling*, 207 N.E.3d 1206, 2023 WL 2472977 (Ind. Ct. App. 2023) (affirming trial court's decision not to hold mother in contempt for not forcing trans child to go to parenting time with father during pendency of divorce

relatively minor role in the larger analysis. However, there was one case in which trans identity was at the center of the opinion,²³⁹ and it is worth discussing in more detail than could be provided in a footnote.

In *Riley v. Graves*, an appellate court in Michigan issued a detailed, eighteen-page opinion addressing a custody dispute that “ar[ose] entirely from the parties’ inability to agree on how to approach the child’s gender identity.”²⁴⁰ The child was a twelve-year-old trans girl who “began expressing a female gender identity as a toddler.”²⁴¹ Despite that, her father still “forcibly gave the child a ‘buzz cut,’ restricted the child’s access to feminine toys and activities, refused to let the child wear feminine clothing, and accused plaintiff-mother of ‘making [the child] gay’ by allowing feminine toys and clothing.”²⁴² Her mother, on the other hand, “fully supports [the child’s] transition and is supportive of [the child] initiating puberty blockers.”²⁴³ The situation with her father was so bad that the child became suicidal, to the point that she was hospitalized.²⁴⁴ The trial court had denied the mother’s request for sole legal custody and restrictions on the father’s parenting time “because the child’s gender dysphoria ‘is not a new issue’” and therefore did not represent a change in circumstances warranting a modification of the custody arrangements.²⁴⁵ The appellate court, fortunately, reversed. Noting that custody could also be modified for proper cause, the court stated that “[i]t is undeniable from the record that the current arrangement is not working, and this is proper cause.”²⁴⁶ Moreover, the court explained:

The record makes clear that issues [related to gender identity and gender-affirming care] will inevitably arise on a regular basis until the child attains the age of majority. On

proceedings—despite mother’s efforts to get child to go, child refused because father did not support child taking puberty blockers); *Chester HH v. Angela GG*, 173 N.Y.S.3d 362, 365 (App. Div. 2022) (finding New York lower court had proper jurisdiction over father’s emergency request to modify custody, despite mother and child’s primary residence being in Michigan, for many reasons but one being that “the child’s maternal grandmother was verbally abusive and unsupportive of the child’s gender identity”); *R.S.K. v. D.L.K.*, 307 A.3d 640, 2023 WL 6534182 (Pa. Super. Ct. 2023) (affirming lower court order directing pharmacy to administer puberty blockers to trans child over mother’s objections and restricting mother’s ability to get a second opinion on child’s gender-affirming care).

²³⁹ Three other cases—*A.G.*, 2024 WL 483228; *Snowberger*, 207 N.E.3d 1206; and *R.S.K. v. D.L.K.*, 307 A.3d 640—involved disputes between a trans child and one of their parents that centered almost exclusively on the question of gender-affirming care for the child. However, those disputes were often not the center of the case, and/or they were largely resolved on grounds unrelated to the child’s trans identity and their ability to access gender-affirming care.

²⁴⁰ *Riley*, 2024 WL 1472382, at *1.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.* at *3.

²⁴⁴ *Id.* at *4.

²⁴⁵ *Id.* at *11.

²⁴⁶ *Id.* at *13.

this record, the court's instruction that the parties must simply attempt to find "a middle ground" was indefensible. The court had no choice but to grant sole legal custody to one of the parties and to do so in the best interests of the child. The only conclusion supported by the evidence is that plaintiff-mother was substantially better equipped to make important decisions in the best interests of the child.²⁴⁷

The court was clear-eyed that the parents' dispute over the child's gender identity was not one that could be resolved through compromise given the depth of the father's antipathy towards the child's transition and the immense harm that it caused the child. Thus, the only solution was to remove the child from the care of the father and place her in the care of the mother where she could receive the love and support she needed without the undue interference of, and intense dysphoria caused by, her father's attempts to prevent her transition. There was one dissent that ignored that reality, stating, "[t]he record evidence demonstrates that both parents want to help the child, but they do not agree on the best course of action."²⁴⁸ The dissent accused the majority of improperly "substitute[ing] its judgment for that of the trial court by suggesting that the trial court should have given more deference to the opinions of the expert."²⁴⁹ That language is highly reminiscent of language in the U.S. Supreme Court's *United States v. Skrametti* decision that questioned medical experts' expertise and authority as a way to justify Tennessee's ban on gender-affirming care for minors.²⁵⁰ Yet, as the dissenters in *Skrametti* pointed out, "This Court, famously, rejected the States' invitation in *Loving* to 'defer to the wisdom of the state legislature' based on assertions that 'the scientific evidence is substantially in doubt.'"²⁵¹ When it comes to people's fundamental autonomy and equality, there can be no half measures.

Aside from this case, the child custody cases that are most interesting for the purposes of this survey are the ones that do not reach a good outcome for the trans child. The first such case, *In re Younger*, reached a mixed outcome for the trans child while also raising an interesting issue of interstate relations. A mother with primary physical custody moved

²⁴⁷ *Id.* at *17 (citation omitted).

²⁴⁸ *Id.* at *20 (Jansen, J., dissenting).

²⁴⁹ *Id.*

²⁵⁰ See 605 U.S. 495, 547 (Thomas, J., concurring) ("In politically contentious debates over matters shrouded in scientific uncertainty, courts should not assume that self-described experts are correct."); *id.* at 526 (majority opinion) ("This case carries with it the weight of fierce scientific and policy debates about the safety, efficacy, and propriety of medical treatments in an evolving field. The voices in these debates raise sincere concerns; the implications for all are profound. The Equal Protection Clause does not resolve these disagreements. Nor does it afford us license to decide them as we see best.>").

²⁵¹ *Id.* at 605 (Sotomayor, J., dissenting) (quoting *Loving v. Virginia*, 388 U.S. 1, 8 (1967)).

with her children from Texas to California.²⁵² The father filed a mandamus petition asking the Texas Supreme Court to force the mother and children to move back to Texas because he was concerned that California's "'trans refuge' bill"—which was "designed in part to respond to 'executive and legislative action in Texas'" and which "barr[ed] enforcement in California of 'a law of another state' or 'another state's law' that prohibits 'gender-affirming health care'"—would let the mother provide such care to one of the children, who identified as trans, over his objections.²⁵³ However, as a concurrence to the Texas Supreme Court's denial of the father's mandamus petition explained, that was impossible "because Father is already in possession of a court order prohibiting Mother from doing precisely what he fears she will do," and that "order is binding on both parents and enforceable by contempt, no matter where they reside," as custody orders are not "a law of another state."²⁵⁴ Thus, the mother and children were not forced to move back to Texas, so even if the trans child could not access gender-affirming care, they were still living in a state supportive of trans people, rather than having to return to a state where they are not welcome and where they have a father who clearly refuses to accept them for who they are. This case also shows the limits of laws like California's that attempt to counteract the anti-trans laws being passed by other states like Texas. Because of the Full Faith and Credit Clause of the U.S. Constitution,²⁵⁵ actions by individual states can only go so far.²⁵⁶ While that fact may not have created the best result in this case, it does cut both ways.

Another case that produced a mixed outcome for the trans child involved is the California case *In re I.S.*, which addressed the adequacy of healthcare provided to a trans child, including gender-affirming care, while the child was in state custody awaiting a permanent foster care placement.²⁵⁷ The case centered mostly on the state's efforts to secure applied behavior analysis (ABA) therapy²⁵⁸ for the child's autism but also included efforts to enroll the child in transgender support services. The state had been attempting to secure ABA therapy for the child since at least

²⁵² *In re Younger*, 659 S.W.3d 453, 453 (Tex. 2022) (mem.) (Blacklock, J., concurring).

²⁵³ *Id.* at 453–54.

²⁵⁴ *Id.* at 454 ("A court order allocating the parental rights of divorced parents based on case-specific judicial findings about the best interests of their children is in no way 'a law of another state.' And in the very unlikely event California's courts interpreted their statute in such an odd way, they would of course run head long into the Full Faith and Credit Clause.").

²⁵⁵ U.S. CONST. art. IV, § 1.

²⁵⁶ See *Younger*, 659 S.W.3d at 454 (Blacklock, J., concurring) ("While [California's law] treads close to territory prohibited by the Full Faith and Credit Clause—and ultimately may be found to transgress it in various ways—nowhere does the bill purport to prevent enforcement in California of out-of-state child-custody orders establishing which parents may consent to gender-transition therapy.").

²⁵⁷ No. D083898, 2024 WL 4903157 (Cal. Ct. App. Nov. 27, 2024).

²⁵⁸ It should be noted that there are "historical connections . . . between applied behavior analysis and the design and dissemination of [anti-LGBTQ+] conversion therapy practices." Daniel E. Conine et al., *LGBTQ+ Conversion Therapy and Applied Behavior Analysis: A Call to Action*, 55 J. APPLIED BEHAV. ANALYSIS 6, 6 (2022).

2020 and gender-affirming services since at least 2022 yet had been unable to secure those services as recently as March 2024.²⁵⁹ The appellate court found that “substantial evidence supports the juvenile court’s findings that (1) the Agency was generally providing Minor with adequate and reasonable services, considering the totality of the evidence, but (2) progress on providing ABA services, trauma therapy, and transgender services needed further action and monitoring.”²⁶⁰ The court noted that “the statutory requirement for the court to consider the ‘adequacy of services provided to the child’ [could not be interpreted] to mean the child must receive perfect services” and that “the [juvenile] court expressed serious concern” regarding the lack of movement on obtaining these services for the child, “set[ting] a special hearing within 30 days to receive an update.”²⁶¹ While there had been some support of the child’s trans identity, such as shopping for new clothes and discussing new hairstyles,²⁶² those measures could only go so far; after two years, the child had yet to obtain professional gender-affirming support services, and the court said that was “adequate” under the statute.²⁶³ This case demonstrates how court interpretations of statutes can have the effect of making it harder for trans people (or really anybody) to receive the support and care they need. Indeed, a dissent focused solely on the question of the child’s access to ABA therapy would have found the state-provided care inadequate because “[t]he point is not to grade the Agency’s efforts but to determine whether the child is receiving the services she needs,” which the child was not in this case.²⁶⁴

Two more cases with mixed outcomes involved custody determinations that left the trans child in the full or partial care of a parent who did not support them. In *Mason v. Mason* from Connecticut, sole legal and primary physical custody of a non-binary child was awarded to their mother.²⁶⁵ Despite ample testimony about and evidence of the child’s identity, including their request to go by a different name and use they/them pronouns at school, the wearing of a chest binder, and the guardian ad litem’s testimony that the child was gender fluid, the court noted that the child’s identity was “[c]ontrary to [their mother]’s testimony and belief.”²⁶⁶ However, in this instance, placement with their seemingly unsupportive mother was likely the best outcome for the child given that “[t]here is a full criminal protective order in place against [their father] protecting [them]” because their father had sexually abused them.²⁶⁷ Second, in the North Carolina case *Lusch v. Garman*, divorcing parents were awarded

²⁵⁹ *I.S.*, 2024 WL 4903157, at *2–6.

²⁶⁰ *Id.* at *10.

²⁶¹ *Id.* at *11.

²⁶² *Id.* at *6.

²⁶³ *Id.* at *10.

²⁶⁴ *Id.* at *16 (Buchanan, J., dissenting).

²⁶⁵ No. FA 21-5068903 S, 2023 WL 7489924 (Conn. Super. Ct. July 12, 2023).

²⁶⁶ *Id.* at *6.

²⁶⁷ *Id.* at *7.

joint legal custody, including medical decision-making authority, over a trans child, despite evidence suggesting the father was unsupportive.²⁶⁸ The court noted that the mother “believes [the child] has gender dysphoria,” with no mention of what the father “believes,” and that the mother had “conceal[ed]” her efforts to get gender-affirming care for the child from the father, including “in many instances deliberately dodging his direct requests for information.”²⁶⁹ It is not specified why the mother hid the child’s gender-affirming treatment from the father, so there could be reasons other than the father being unsupportive of the child’s identity, but it is certainly suspicious. And if that’s the case, with joint medical decision-making authority, the father could block continued efforts for the child to obtain gender-affirming care.

In two other cases that were neither clearly good nor clearly bad for the trans child, it was actually unclear whether the child was trans. In *J.B. v. L.B.*, a Maryland court denied the father’s petition to modify the current custody arrangement of joint legal custody and primary physical custody with the mother.²⁷⁰ The father offered many reasons he believed there had been a change in circumstances warranting modification, but one of them raised questions about the child’s gender identity.²⁷¹ However, the court only provided the father’s (and his new wife’s) testimony and perspective on that issue. The child was assigned male at birth, but the court explained, “Father alleged that Mother had ‘forc[ed] the minor child to dress in traditional ‘girls’ clothing’ and ‘forced [the child] to use gender-neutral pronouns.’”²⁷² The father also claimed that, on occasions when he picked up the child from mother’s house and the child was dressed in “feminine clothing,” the child “would ask to change clothes as soon as [they] arrived at Father’s home.”²⁷³ Perhaps the child was not trans, and the mother was forcing a feminine identity on the child. Or perhaps the child was trans but did not feel comfortable presenting that way around the father. Without knowing more, it is impossible to say what the truth is and whether the denial of custody modification was good or bad for the child.

Second, in *Dealey v. Department of Children and Families*, the Massachusetts Department of Children and Families had determined that one parent and her new spouse had neglected her two children.²⁷⁴ On appeal to a Massachusetts trial court, one of the main issues was a dispute over the children’s gender identities, with conflicting testimony that, again, is hard to resolve based solely on what’s reported in the court’s opinion. Similar to the previous case, the allegations were that the parent and her new spouse were forcing the children, both assigned male at birth, to “wear

²⁶⁸ No. 19 CVD 12449, 2022 WL 20356477 (N.C. Dist. Ct. Jan. 14, 2022).

²⁶⁹ *Id.* at *3.

²⁷⁰ No. 1309, 2022 WL 1439578 (Md. Ct. Spec. App. May 6, 2022).

²⁷¹ *Id.* at *4–7.

²⁷² *Id.* at *3 n.2.

²⁷³ *Id.* at *4.

²⁷⁴ No. 23-00058 A, 2024 WL 3164964 (Mass. Super. Ct. June 6, 2024).

dresses” and use “they” pronouns.²⁷⁵ While these allegations were made regarding both children, most of the discussion centered around only one of them. The parent testified that that child “was ‘adamant’ and ‘begged’ to do [a] video telling everyone about using ‘they’ pronouns. [The child] was nervous about coming out and wanted to send a video to tell everyone at the same time.”²⁷⁶ It was additionally stated that the parent and her new spouse “believed [the child]’s confusion originated from [the ex-spouse] transitioning and using they pronouns” and that “[w]itnesses who had interacted with the family told the response worker and/or testified at the hearing that they had observed [the child] using ‘they’ pronouns and voluntarily wearing dresses.”²⁷⁷ The child, on the other hand, in an interview with a social worker, “spontaneously raised the issue of gender identity and said that [the parent and her new spouse] were ‘trying to convince me I am a girl’; [the child] was ‘freaking out’ because [the child] did not ‘know what I am.’”²⁷⁸ Yet, the child also “reported feeling safe with” that parent.²⁷⁹ In the end, the court upheld the neglect finding when it came to this child and the parent, but overturned the neglect finding with respect to this child and the parent’s new spouse and with respect to the second child and both the parent and her new spouse.

To end this section, only three cases had uniformly bad outcomes for the trans child. First, in a case that is also discussed in the next section because it involved a trans parent as well as a trans child, *Anaya-Alvarado v. Anaya-Alvarado*, a Nevada appellate court affirmed the lower court’s transfer of primary physical custody of trans children from one parent to the other.²⁸⁰ The court granted the modification of custody because the original primary custodian had violated previous court orders, including by “vaccinat[ing] and boost[ing] the children against COVID-19” against the other parent’s wishes and by withholding Christmas-time visitation from the other parent because he and his new wife “were both unvaccinated.”²⁸¹ Yet, the parent who received primary physical custody had an “inability to accept the children’s gender fluidity because it conflicts with his values.”²⁸² Thus, it is clear that the children have ended up in the primary custody of a parent who will, at minimum, be unsupportive of the children’s identities and, at worse, be actively antagonistic towards them.

Second, in *In re O.K.*, an Oregon appellate court reversed the trial court’s finding that the Oregon Department of Human Services had made reasonable efforts to repair the relationship between a trans child and their mother, efforts which had been unsuccessful.²⁸³ A big source of tension

²⁷⁵ *Id.* at *2.

²⁷⁶ *Id.* at *2 n.16.

²⁷⁷ *Id.* at *2 n.15.

²⁷⁸ *Id.* at *2.

²⁷⁹ *Id.*

²⁸⁰ 524 P.3d 493, 2023 WL 2033364 (Nev. Ct. App. 2023).

²⁸¹ *Id.* at *1.

²⁸² *Id.* at *6.

²⁸³ 517 P.3d 1044 (Or. Ct. App. 2022).

between the two was the fact that “that mother was ‘[d]ismissive’ regarding [the child]’s gender identity and did not make an effort to use [their] chosen name rather than [their] legal name.”²⁸⁴ The mother also did not support the child changing their legal name and starting hormone therapy, while the Department did.²⁸⁵ Because of these dynamics, the lower court found that the child “continues to refuse reintegration in a family with their mother, refuses contact with mother, and . . . perhaps most significantly has a history of self-injurious and suicidal behavior and ideations when confronted with potential visits with their mother and the possibility of reunification with mother.”²⁸⁶ Despite this, the appellate court found that there had not been enough “in-person family therapy by a skilled, neutral therapist” to justify terminating the reunification efforts.²⁸⁷ Thus, the child would be forced to continue interacting with a parent who has a severe negative impact on their mental health.

The final case, *H.S. v. Department of Children and Families*, demonstrates the far-reaching effects of anti-trans laws. In Florida, a father asked an appellate court to find that he reasonably feared “that he would not receive a fair hearing on the appropriate placement for his child based on remarks the trial judge made suggesting she had predetermined that the father had no right to oppose [the child’s] gender transition . . . based upon his moral and religious beliefs.”²⁸⁸ The court found he did have a reasonable fear because the lower court judge’s “remarks when taken together—referring to the child by female pseudonyms, telling the child that ‘you are one smart, strong[,] [t]ogether, young lady,’ and to ‘[c]hin up, sister’—implied a foregone conclusion.”²⁸⁹ But that was not all. The court also pointed to Florida’s recently passed gender-affirming care ban to justify the father’s “reasonable fear,” noting that “preventing the child from undergoing any form of sex-reassignment treatment is consistent with Florida law, which prohibits minors from undergoing such treatment.”²⁹⁰ There was one dissenter who argued that the “trial judge simply attempted to relate to the child on the child’s terms and to explain the legal process and options available. This was completely appropriate for the trial judge to do.”²⁹¹ The dissent did not address the majority’s reliance on Florida’s anti-trans law. With *United States v. Skrmetti* giving new life to these gender-affirming care bans, there is a distinct possibility that such laws, and other anti-trans laws, could continue to make their way into state court

²⁸⁴ *Id.* at 1050.

²⁸⁵ *Id.* at 1049 (stating that the mother “felt that more permanent changes should not be made until [the child] is older”).

²⁸⁶ *Id.* at 1052.

²⁸⁷ *Id.* at 1053–54.

²⁸⁸ *H.S. v. Dep’t of Child. & Fams.*, 384 So. 3d 280, 282 (Fla. Dist. Ct. App. 2024).

²⁸⁹ *Id.* at 285.

²⁹⁰ *Id.*

²⁹¹ *Id.* at 286 (May, J., dissenting).

opinions, creating something of a circular, anti-trans feedback loop between state legislatures and state courts.

3. Cases Involving Trans Parents

Only three cases in my survey involved trans parents, two of which dealt with allegations of judicial bias against the trans parent. In *In re Marriage of Combs*, a trans non-binary parent (who uses zer/zer/theirs pronouns) appealed a Colorado trial court's order granting zer former spouse's motion for enforcement of child support orders and clarifications on parenting time.²⁹² Among several claims, the parent alleged that the trial court judge had been biased against zer.²⁹³ The appellate court found no bias because, after the former spouse's counsel started asking derogatory questions about the parent's pronouns, "the magistrate stopped the line of questioning, sua sponte, identifying it as unproductive. The magistrate then asked [the parent] what zer would prefer to be called, and . . . accepted [zer] request to be called 'Zer'. The magistrate's written order also indicates that the court used '[r]espondent's pronouns.'"²⁹⁴ In the *Anaya-Alvarado* case from Nevada also discussed in the previous section, a non-binary parent alleged judicial bias in a trial court order modifying primary physical custody from them to their former spouse.²⁹⁵ Again, the appellate court rejected the claim because the parent's evidence primarily consisted of anti-trans statements made by their former spouse during the hearing, and they "fail[ed] to explain how statements made by a party litigant indicate bias on the part of the district court in this case in reaching its decision, particularly where 'judicial rulings alone almost never constitute a valid basis for bias or partiality motion.'"²⁹⁶

In a final case from Pennsylvania, *In re Adoption of A.K.L.*, gender identity played a relatively minor role, but it is still worth noting because it indicates judicial skepticism towards the legitimacy of gender identity. A father was appealing the termination of his parental rights, and while the court found lots of evidence to support that determination, one piece of evidence it specifically noted was that "Father was supposedly going to Utah to live. That did not happen. Rather, Father moved to Canada and then pursued various endeavors in Portugal and in Antigua. He also *pondered his gender identity* and took up with a new paramour. Father focused solely on his personal needs."²⁹⁷ In the larger scheme of all the evidence against the father, this passing reference to gender identity may seem

²⁹² No. 23CA1424, 2024 WL 4471777 (Colo. App. Oct. 10, 2024).

²⁹³ *Id.* at *4.

²⁹⁴ *Id.* (The opposing counsel's questions included asking "if zer's pronouns were the same words as 'a character in Superman who tries to kill all those who destroyed his family' or 'a character in Ghostbusters'").

²⁹⁵ 524 P.3d 493, 2023 WL 2033364 (Nev. Ct. App. 2023).

²⁹⁶ *Id.* at *6 (emphasis omitted) (citing *Whitehead v. Nev. Comm'n on Judicial Discipline*, 110 Nev. 380, 427 (1994)).

²⁹⁷ *In re Adoption of A.K.L.*, 285 A.3d 935, 2022 WL 4283002, at *8 (Pa. Super. Ct. 2022) (emphasis added) (citation modified).

minor, but that actually makes the reference more concerning. The fact that the court felt the need to mention it despite all the other evidence proving the same point of parental neglect is troubling. Especially when his questioning of his gender identity is flippantly described as “pondering” and equated to flighty travels and new “paramours.”

C. Healthcare

The question of gender-affirming healthcare, especially for trans youth, has been central to anti-trans movement.²⁹⁸ It is not a coincidence that the first trans rights case to reach the United States Supreme Court was about a law banning gender-affirming healthcare for trans children.²⁹⁹ At the core of these attacks on trans healthcare is the “assert[ion], against the consensus of the mainstream medical science, that the standard treatments for transgender children are not based in evidence and represent a grave risk to the health and well-being of young people.”³⁰⁰ These arguments were “supercharged” in 2024 by the release of what’s known as the “Cass Review,” a report from the United Kingdom that purported to conduct a “review of the scientific literature that undergirds modern gender-affirming care for children.”³⁰¹ However, the Cass Review has been widely criticized, most comprehensively in thirty-nine-page white paper by a collection of leading pediatricians and other physicians who specialize in providing trans healthcare, which stated:

[T]he Review repeatedly misuses data and violates its own evidentiary standards by resting many conclusions on speculation. Many of its statements . . . reveal profound misunderstandings of the evidence base and the clinical issues at hand. The Review also subverts widely accepted processes for development of clinical recommendations and repeats spurious, debunked claims about transgender identity and gender dysphoria. *These errors conflict with well-established norms of clinical research and evidence-based healthcare. Further, these errors raise serious concern about the scientific integrity of critical elements of the report’s process and recommendations.*³⁰²

²⁹⁸ See, e.g., *Tracking the Rise of Anti-Trans Bills in the U.S.*, *supra* note 3 (tracking the total number of anti-trans healthcare bills over the past ten years in comparison to other categories of anti-trans bills).

²⁹⁹ *United States v. Skrmetti*, 605 U.S. 495 (2025) (upholding a Tennessee law that banned gender-affirming care for minors).

³⁰⁰ Lydia Polgreen, Opinion, *The Strange Report Fueling the War on Trans Kids*, N.Y. TIMES (Aug. 13, 2024), <https://www.nytimes.com/2024/08/13/opinion/cass-report-trans-kids.html>.

³⁰¹ *Id.*

³⁰² Meredith McNamara et al., *An Evidence-Based Critique of the Cass Review*, YALE L. SCH., at 2 (July 1, 2024), https://law.yale.edu/sites/default/files/documents/integrity-project_cass-response.pdf (emphasis in original).

Despite critiques of its validity, the Review has seeped into legal arguments over trans healthcare bans.³⁰³ Indeed, Justice Samuel Alito brought it up repeatedly during oral arguments in *United States v. Skrmetti*,³⁰⁴ and both the majority opinion and Justice Clarence Thomas's concurrence cited it extensively.³⁰⁵ While this growing attempt to create scientific legitimacy for attacks on trans healthcare has appeared in state courts over the period of my survey, it has largely been confined to constitutional cases.

1. Constitutional Treatment of Trans Healthcare

When it comes to cases regarding the constitutionality of trans healthcare, the majority of those in my survey dealt with legislative and executive actions targeting the provision of gender-affirming healthcare to trans children.³⁰⁶ In the action that spawned the most litigation, in early 2022, Texas Attorney General Ken Paxton issued an opinion stating that providing gender-affirming healthcare to children could constitute child abuse. Governor Greg Abbott subsequently instructed the Texas Department of Family and Protective Services to instigate child abuse investigations of parents providing gender-affirming care to their children.³⁰⁷ My survey captured Texas courts' initial responses to this anti-trans action—in thirteen different opinions, Texas courts at all levels enjoined Paxton's and Abbott's orders.³⁰⁸ These opinions involved two temporary restraining

³⁰³ See Polgreen, *supra* note 300 (“The right has made use of Cass’s work for its own ends. Preliminary versions of her team’s findings were cited in amicus briefs [sic] from conservative legal groups like the Alliance Defending Freedom.”).

³⁰⁴ Transcript of Oral Argument at 15–20, 88, *Skrmetti*, 605 U.S. 495 (No. 23-477).

³⁰⁵ *Skrmetti*, 605 U.S. at 524–25; *id.* at 538–40, 544 (Thomas, J., concurring).

³⁰⁶ There were only two cases in my survey that dealt with constitutional questions regarding other aspects of trans healthcare. See *Vasquez v. Iowa Dep’t of Hum. Servs.*, 990 N.W.2d 661 (Iowa 2023) (dismissing as moot the state’s appeal of a district court’s conclusion that an amendment to the Iowa Civil Rights Act prohibiting the use of public funds, e.g., Medicaid, for any gender-affirming surgery violated equal protection, as trans people constituted a quasi-suspect class); *Shaw v. Univ. of the Pac.*, No. CGC 21-592344, 2022 WL 4010011, at *3 (Cal. Super. Ct. Aug. 30, 2022) (during employment discrimination suit, finding defendant’s request for discovery related to plaintiff’s history of gender-affirming care violated plaintiff’s constitutional privacy rights).

³⁰⁷ See Sneha Dey & Karen Brooks Harper, *Transgender Texas Kids Are Terrified After Governor Orders that Parents Be Investigated for Child Abuse*, TEX. TRIB. (updated Feb. 28, 2022, 11:09 AM), <https://www.texastribune.org/2022/02/28/texas-transgender-child-abuse/>.

³⁰⁸ In chronological order: *Doe v. Abbott*, No. D-1-GN-22-000977, 2022 WL 628912 (Tex. Dist. Ct. Mar. 2, 2022) (granting temporary restraining order); *Abbott v. Doe*, No. 03-22-00107-CV, 2022 WL 710093 (Tex. Ct. App. Mar. 9, 2022) (dismissing state’s appeal of Mar. 2, 2022, temporary restraining order on procedural grounds); *Doe v. Abbott*, No. D-1-GN-22-000977, 2022 WL 831383 (Tex. Dist. Ct. Mar. 11, 2022) (granting statewide temporary injunction); *Abbott v. Doe*, No. 03-22-00126-CV, 2022 WL 837956 (Tex. Ct. App. Mar. 21, 2022) (reinstating Mar. 11, 2022, statewide temporary injunction pending appeal); *In re Abbott*, 645 S.W.3d 276 (Tex. 2022) (partially granting state’s mandamus request by reversing Mar. 21, 2022, reinstatement of temporary injunction only as to the statewide nature of the injunction and the injunction’s application to Governor Abbott); *PFLAG, Inc. v. Abbott*, No. D-1-GN-22-002569, 2022 WL 3040297

orders and three temporary injunctions, with the most recent opinions within the survey period being Texas appellate court opinions affirming all three temporary injunctions on the merits. All of these enjoinders were based on the courts finding that the plaintiffs were likely to succeed on the merits of their claim that the Governor's and Department's actions were outside the scope of their executive authority. Some cases relied mainly on a statutory, administrative procedure claim that the Department of Family and Protective Services' new rule implementing Governor Abbott's order did not go through the proper rulemaking process.³⁰⁹ Other cases rested their conclusion chiefly on the theory that the Governor's and Department's orders violated constitutional separation of powers principles because the orders changed the definition of child abuse, effectively enacting a new law.³¹⁰ Constitutional parental rights issues did come up in almost all the cases, but in the context of an analysis of the plaintiffs' harm, whether in the temporary injunction irreparable harm analysis or in a standing analysis.³¹¹ Other constitutional injuries were mentioned less frequently, most prominently in one Texas appellate court's finding of harm not only in the injury to the parent plaintiffs' constitutional rights but also in the injury to the trans minor plaintiffs' constitutional right to equal protection.³¹² While the lower courts were unanimous in their grant of full enjoinder of the child abuse rule, the Texas Supreme Court did limit that enjoinder slightly and temporarily. Specifically, they invalidated the

(Tex. Dist. Ct. June 10, 2022) (granting temporary restraining order); PFLAG, Inc. v. Abbott, No. D-1-GN-22-002569, 2022 WL 4549010 (Tex. Dis. Ct. July 8, 2022) (granting temporary injunction as to some plaintiffs); Abbott v. PFLAG, Inc., No. 03-22-00420-CV, 2022 WL 2836816 (Tex. Ct. App. July 20, 2022) (reinstating July 8, 2022, partial temporary injunction pending appeal); PFLAG, Inc. v. Abbott, No. D-1-GN-22-002569, 2022 WL 4549009 (Tex. Dist. Ct. Sep. 16, 2022) (granting temporary injunction as to remaining plaintiffs left out of July 8, 2022, partial temporary injunction); Masters v. Voe, No. 03-22-00420-CV, 2022 WL 4359561 (Tex. Ct. App. Sep. 20, 2022) (affirming July 20, 2022, reinstatement of July 8, 2022, partial temporary injunction); Masters v. PFLAG, Inc., 703 S.W.3d 797 (Tex. Ct. App. 2022) (reinstating Sep. 16, 2022, partial temporary injunction pending appeal); Abbott v. Doe, 691 S.W.3d 55 (Tex. Ct. App. 2024) (affirming Mar. 11, 2022, temporary injunction, including its statewide application, but dismissing the claims against the governor); Muth v. Voe, 691 S.W.3d 93 (Tex. Ct. App. 2024) (affirming July 8, 2022, and Sep. 16, 2022, partial temporary injunctions).

³⁰⁹ See, e.g., *PFLAG, Inc. v. Abbott*, 2022 WL 4549010, at *1; *PFLAG, Inc. v. Abbott*, 2022 WL 4549009, at *1.

³¹⁰ See, e.g., *Doe v. Abbott*, 2022 WL 831383, at *1.

³¹¹ See, e.g., *Muth v. Voe*, 691 S.W.3d at 119 ("The alleged concrete and particularized and actual or imminent harm is that the parents' fundamental right to direct the medical care of their children is interfered with or impaired (or threatened to be interfered with or impaired) by subjecting them to a Hobson's choice: automatic investigation for providing medical care for gender dysphoria prescribed by their doctors or attempting to avoid investigation by denying their children that medical care, which could seriously harm their children.").

³¹² *Id.* at 117 ("Actually being investigated by the Department only heightens the chilling effect and impairment that the Department's Statement imposes on the Parents' fundamental right to direct their children's medical care and the Minors' right to equal treatment under the law.").

statewide application of one of the temporary injunctions during the pendency of its appeal.³¹³ However, when the appellate court finally did rule on the merits of that temporary injunction (almost two years later), it upheld the injunction's statewide application.³¹⁴

When the Texas Supreme Court reached the full merits of a constitutional claim regarding gender-affirming healthcare for trans children in *State v. Loe*, however, they rejected it. In 2023, the Texas legislature passed a law banning such care.³¹⁵ A state trial court granted a temporary injunction against its enforcement, finding the plaintiffs were likely to succeed on all three of their constitutional claims: 1) that the law violated parents' right to care for their children, 2) that the law unconstitutionally restricted physicians' freedom of occupation, and 3) that the law discriminated against trans children, violating their equal protection rights.³¹⁶ The Texas Supreme Court however, reversed and vacated the temporary injunction, finding the plaintiffs were unlikely to succeed on all three of those claims.³¹⁷ On parental rights, the court subjected the law to rational basis review because "a fit parent's fundamental interest in caring for her child free from government interference extends to choosing from among legally available medical treatments."³¹⁸ Then, describing both the diagnosis of gender dysphoria and its treatment as "relatively new," the court held that "novel treatments for a novel condition are generally within the Legislature's power to regulate without facing heightened scrutiny," especially because the court did not want to remove such a "novel" question from public and legislative debate.³¹⁹ The court quickly dispensed with the physicians' occupational freedom claim, holding that "Texas physicians have no constitutionally protected interest to perform medical practices that the Legislature has rationally determined to be illegal."³²⁰ Finally, the court also waved away the equal protection claim, finding there was no classification at issue because "[t]he mere fact that the statute identifies hormones that are prohibited for males and others that are prohibited for

³¹³ *In re Abbott*, 645 S.W.3d at 280.

³¹⁴ *Abbott v. Doe*, 691 S.W.3d 55 (Tex. Ct. App. 2024).

³¹⁵ *Texas SB14*, TRANS LEGIS. TRACKER, <https://translegislation.com/bills/2023/TX/SB14> (last visited Nov. 21, 2025).

³¹⁶ *Loe v. State*, No. D-1-GN-23-003616, 2023 WL 5519799 (Tex. Dist. Ct. Aug. 25, 2023).

³¹⁷ *State v. Loe*, 692 S.W.3d 215 (Tex. 2024).

³¹⁸ *Id.* at 231.

³¹⁹ *Id.* at 232 (citing *Kansas v. Hendricks*, 521 U.S. 346 (1997)); *see also* *United States v. Skrmetti*, 605 U.S. 495, 536 (2025) (Thomas, J., concurring) (citations omitted) ("The treatments now referred to as 'gender-affirming care' were 'not available for minors until just before the millennium.'"); *id.* at 532 (citations omitted) ("The treatments at issue are subject to a rapidly evolving debate that demonstrates a lack of medical consensus over their risks and benefits. Under these conditions, it is imperative that courts treat state legislation with 'a strong presumption of validity,' and in turn protect States' ability to enact 'high-stakes medical policies, in which compassion for the child points in both directions.'").

³²⁰ *State v. Loe*, 692 S.W.3d at 236.

females does not deny or abridge equal treatment because of sex.”³²¹ One lone dissenter excoriated the majority’s parental rights analysis, calling the majority’s “legal analysis . . . circular at best.”³²² The dissent also highlighted the fact that the majority relied on a demeaning analogy between receiving medically necessary gender-affirming care and getting a tattoo.³²³

Things have not gone well for trans youth’s access to healthcare in three other states. First, in *Noe v. Parson*, a Missouri trial court upheld both a trans youth healthcare ban and a ban on using Medicaid funds for gender-affirming care generally.³²⁴ The court relied heavily on the supposed lack of medical consensus around gender-affirming care, finding that that alone was sufficient to defeat the plaintiffs’ facial challenge to the statutes because they couldn’t prove that the laws were unconstitutional in all circumstances.³²⁵ Moreover, even if the facial challenge were valid, the court found it would fail because the laws could not withstand any level of equal protection scrutiny, as “[r]egardless of the scrutiny level, courts must defer to legislatures where, as here, there, is a medical or scientific dispute.”³²⁶ The court then went a step further, finding that, even under a fulsome equal protection analysis, rational basis review would apply because there was no equal protection classification, as “[t]he Act does not treat males and females differently, much less ‘disadvantage’ one group with respect to the other.”³²⁷

Similarly, in *Planned Parenthood of the Heartland, Inc. v. Hilgers*, the Nebraska Supreme Court upheld a law that banned both gender-affirming care for trans youth and abortion against a challenge that the law violated the state’s constitutional requirement that laws address only a single subject, as “both abortion and gender-altering care are medical procedures

³²¹ *Id.* at 237–38; see also *Skrmetti*, 605 U.S. at 514–15 (majority opinion) (emphasis in original) (“[T]he law does not prohibit conduct for one sex that it permits for the other. Under SB1, no minor may be administered puberty blockers or hormones to treat gender dysphoria, gender identity disorder, or gender incongruence; minors of any sex may be administered puberty blockers or hormones for other purposes.”).

³²² *State v. Loe*, 692 S.W.3d at 266 (Lehrmann, J., dissenting) (“Under the Court’s rationale, the Legislature’s prohibition is subject to only a rational basis review because the treatment is unlawful—but the treatment is unlawful only because the Legislature has prohibited it.”).

³²³ *Id.* at 259 (“[The majority] effectively forecloses all medical treatment options that are currently available to these children. And it does so under the guise that depriving parents of access to these treatments is no different than prohibiting parents from allowing their children to get tattoos. Of course, there is nothing remotely medically necessary about tattooing.”).

³²⁴ No. 23AC-CC04530 (Mo. Cir. Ct. Nov. 25, 2024).

³²⁵ *Id.*, slip op. at 48 (“[B]ecause Missouri can lawfully prohibit these interventions in a number of circumstances (lack of gender dysphoria diagnosis, lack of comprehensive mental health assessment, bicalutamide, surgeries), . . . [t]hat is enough to defeat the facial challenge.”).

³²⁶ *Id.*, slip op. at 50; see also *Skrmetti*, 605 U.S. at 531–32 (Thomas, J., concurring).

³²⁷ *Noe v. Parson*, slip op. at 63 (citation omitted); see also *Skrmetti*, 605 U.S. at 514–15 (majority opinion).

and thus all provisions regulating the same fall within the subject of ‘public health and welfare.’”³²⁸ One justice dissented, arguing, “Unrelated provisions that happen to do similar things at some level of generality do not dispel the criticism that the bill contains more than one subject. It is not the office of this court to scour the bill in hopes of finding one subject that could conceivably explain inclusion of very different acts in one bill.”³²⁹

Finally, in Ohio, a ban on gender-affirming healthcare was passed in tandem with a ban on trans girls’ participation on girls’ sports teams. The full litigation history of this case—*Moe v. Yost*—is discussed in more depth *infra* Part II.F.1.ii., but what’s relevant here is that, in denying a preliminary injunction against the law, the trial court rejected three constitutional challenges that were specific to the healthcare ban portion of the law.³³⁰ These challenges were based on the Ohio Constitution’s Health Care Freedom Amendment,³³¹ equal protection guarantees,³³² and due process parental rights protections.³³³ Taking each in turn, the court found the law did not violate the Health Care Freedom Amendment for the rather circular reason that “[t]he State of Ohio has legislated that a medical provider’s provision of gender affirming care constitutes ‘wrongdoing,’” and the amendment has a provision declaring it has no effect on “any laws calculated to . . . punish wrongdoing.”³³⁴ The ban did not violate equal protection in the court’s view because, relying on the Sixth Circuit ruling that the U.S. Supreme Court later affirmed in *United States v. Skrametti*, the court found that “[t]he Act does not infringe upon the rights of a suspect class” and is rationally related to the state’s interest in protecting the health and safety of its citizens because “the medical care banned carries with it undeniable risk and permanent outcomes.”³³⁵ Finally, the court found the law did not infringe on the parental rights of parents who wanted to provide gender-affirming care for their trans children because it “reasonably limits parents’ rights to make decisions about their children’s medical care consistent with the State’s deeply rooted legitimate interest in the regulation of medical profession and medical treatments.”³³⁶ In a somewhat optimistic coda to this case, in March 2025, after my survey period ended, an Ohio appellate court reversed the trial court’s denial of a preliminary

³²⁸ 9 N.W.3d 604, 616 (Neb. 2024).

³²⁹ *Id.* at 631 (Miller-Lerman, J., concurring in part and dissenting in part).

³³⁰ *Moe v. Yost*, No. 24CVH03-2481, 2024 WL 3723143 (Ohio Ct. Com. Pl. Aug. 6, 2024).

³³¹ OHIO CONST. art. I, § 21.

³³² OHIO CONST. art. I, § 2.

³³³ OHIO CONST. art. I, § 16.

³³⁴ *Moe v. Yost*, 2024 WL 3723143, at *4 (quoting OHIO CONST. art. I, § 21(D)).

³³⁵ *Id.* at *5 (citing *L.W. v. Skrametti*, 83 F.4th 460, 479–81 (6th Cir. 2023), *aff’d sub nom.* *United States v. Skrametti*, 605 U.S. 495 (2025)); *United States v. Skrametti*, 605 U.S. 495, 532–36 (2025) (Thomas, J., concurring) (discussing the supposed “undisputed . . . risks” of various gender-affirming treatments).

³³⁶ *Moe v. Yost*, 2024 WL 3723143, at *6 (also giving deference to the fact that the “General Assembly has determined the care regulated is experimental and its risks ‘far outweigh any benefit at this stage of clinical study’”).

injunction.³³⁷ However, the Ohio Supreme Court, without comment, stayed pending appeal the appellate court's reversal, so the ban is currently in effect.³³⁸

Like the Ohio appellate court, courts in two other states have struck down healthcare bans. First, in Missouri, while the aforementioned trans healthcare ban was being debated in the legislature, the attorney general issued an emergency rule purporting to ban gender-affirming care for all trans Missourians, not just trans minors.³³⁹ However, in *Southampton Community Healthcare v. Bailey*, a trial court issued a temporary restraining order against the rule, finding that it was a “novel use of the Attorney General’s power . . . [that] may impermissibly invade a function reserved to the legislature.”³⁴⁰ Shortly thereafter, the attorney general terminated the rule and dismissed the case.³⁴¹ In Montana, the issue reached the state supreme court in *Cross v. State*. A trial court had found that a law banning gender-affirming healthcare for trans youth likely violated constitutional equal protection and privacy guarantees, and thus the court issued a preliminary injunction against it.³⁴² Regarding the equal protection claim, the court applied strict scrutiny because, since the law “classifies based on transgender status, it inherently classifies based on sex,” and the Montana Constitution’s equal protection clause is more “stringent” than the U.S. Constitution’s.³⁴³ The court found the law did not survive strict scrutiny because it did not serve the state’s compelling interest in protecting “the physical and psychosocial well-being of minors,”³⁴⁴ and the Montana court explicitly rejected many of the pseudo-science arguments accepted

³³⁷ *Moe v. Yost*, 265 N.E.3d 158 (Ohio Ct. App. 2025) (The appellate court only reversed the trial court on the Health Care Freedom Amendment and parental rights claims, finding that those determinations mooted the equal protection claim as well as the single-subject claim that is discussed fully *infra* Part II.F.1.ii.).

³³⁸ *Moe v. Yost*, 178 Ohio St. 3d 1455, 2025-Ohio-1483, 257 N.E.3d 199; *see also* Julie Carr Smyth, *Court Reinstates Enforcement of Ohio's Ban on Gender-Affirming Care for Minors*, ASSOCIATED PRESS (Apr. 30, 2025, 11:19 AM), <https://abcnews.go.com/US/wireStory/high-court-reinstates-enforcement-ohios-ban-gender-affirming-121321825>.

³³⁹ MO. CODE REGS. ANN. tit. 15, § 60-17.010 (2023).

³⁴⁰ No. 23SL-CC01673, slip op. at 9–10 (Mo. Cir. Ct. May 1, 2023).

³⁴¹ Daria Wick, *Case: Southampton Community Healthcare v. Bailey*, C.R. LITIG. CLEARINGHOUSE (Feb. 26, 2025), <https://clearinghouse.net/case/44148/>.

³⁴² *Van Garderen v. State*, No. DV-23-541 (Mont. Dist. Ct. Sep. 27, 2023).

³⁴³ *Id.*, slip op. at 25, 27; *see also* *United States v. Skrmetti*, 605 U.S. 495, 599 (2025) (Sotomayor, J., dissenting) (citation omitted) (“SB1 prohibits Tennessee physicians from offering hormones and puberty blockers to allow a minor to ‘identify with’ a gender identity inconsistent with her sex. Desiring to ‘identify with’ a gender identity inconsistent with sex is, of course, exactly what it means to be transgender. The two are wholly coextensive.”); *id.* at 590–91 (citations omitted) (“*Bostock* [*v. Clayton County*, 590 U.S. 644 (2020)] asked the very same question our equal protection precedents do: whether ‘changing the employee’s sex would have yielded a different choice by the employer.’ The answer was clearly yes, for the simple reason that discrimination against transgender employees necessarily ‘penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth.’”).

³⁴⁴ *Van Garderen*, slip op. at 29 (quotations omitted).

by other courts, like the one in Missouri that upheld the legislatively passed healthcare ban.³⁴⁵ On the privacy claim, the court found that there was no “bona fide health risk” that would justify the state’s intrusion on Montanans’ privacy right “to choose medical treatment and to make necessary and appropriate medical decisions in concert with their parents and healthcare providers.”³⁴⁶ The plaintiffs had successfully proven that “the medical community overwhelmingly agrees that the treatments proscribed by [the law] are the accepted standard of care for treating gender dysphoria in minors,” while the “[d]efendants’ argument [was] detached from the evidence.”³⁴⁷ The Montana Supreme Court unanimously affirmed the trial court’s finding that the plaintiffs were likely to succeed on their privacy claim,³⁴⁸ and two justices would have affirmed the lower court’s equal protection analysis as well.³⁴⁹

2. Trans Healthcare Outside Constitutional Frameworks

Cases about trans people’s healthcare that do not address constitutional questions often deal with a broader range of issues than the constitutional cases. There are, of course, a handful that, like the constitutional cases, do directly address trans people’s access to gender-affirming care. For example, in an employment discrimination case (*Vroegh v. Iowa Department of Corrections*, discussed in more detail *infra* Part II.D.1.i.), a plaintiff brought a wage discrimination claim based on his employer-sponsored healthcare plan’s denial of his gender-affirming surgery.³⁵⁰ The jury found for the plaintiff on this claim, and the trial court denied the state’s request for a new trial, in which the state alleged that the trial court had improperly allowed the claim to go before the jury. The state argued that it “confronted a no-win situation of [plaintiff]’s union’s making: either the State violates [a statute prohibiting post-ratification changes to their collective bargaining agreement with the union] by unilaterally changing plan coverage to include gender reassignment surgery, or it violates the Iowa Civil Rights Act by enforcing a plan that denies coverage and thus discriminates based on gender identity.”³⁵¹ However, the Iowa Supreme Court affirmed the trial court’s denial of a new trial, noting that the

³⁴⁵ *Id.*, slip op. at 30–34 (relying on “leading medical organizations[’]” unanimous endorsement of gender-affirming care, recognizing that “[r]isk is a factor inherent in the field of medicine” and that “these treatments are the accepted standard of care for treating gender dysphoria,” and on top of all that, concluding that the “purported purpose given for [the law] is disingenuous” as “[t]he legislative record is replete with animus toward transgender persons”).

³⁴⁶ *Id.*, slip op. at 36–37.

³⁴⁷ *Id.*, slip op. at 38–39.; see also *Skrmetti*, 605 U.S. at 606 (Sotomayor, J., dissenting) (“Tennessee has offered little evidence, for example, that it is more dangerous to receive puberty blockers to ‘identify with, or live as, a purported identity inconsistent with the minor’s sex’ than to treat other conditions like precocious puberty.”).

³⁴⁸ *Cross ex rel. Cross v. State*, 2024 MT 303, 419 Mont. 290, 560 P.3d 637.

³⁴⁹ *Id.* (McKinnon, J., concurring).

³⁵⁰ *Vroegh v. Iowa Dep’t of Corr.*, 972 N.W.2d 686 (Iowa 2022).

³⁵¹ *Id.* at 699.

collective bargaining statute the state relied on states that a “provision of a proposed collective bargaining agreement negotiated according to this chapter *which conflicts with the Code* shall not become a provision of the final collective bargaining agreement,” and thus, the employee being party to the collective bargaining agreement did not mean that he “forfeited claims against the Department (or any other party) under the Iowa Civil Rights Act.”³⁵² In a similar case, an appellate court in West Virginia affirmed an administrative decision that reversed an insurer’s denial of Medicaid coverage for facial feminization surgery for a trans woman.³⁵³ The court’s opinion was largely procedural, finding that the agency “utterly failed to meaningfully participate in the evidentiary hearing below,” such that its “assertion that the evidence of medical necessity failed to satisfy the preponderance of the evidence standard [was] disingenuous considering the lack of any contrary evidence whatsoever presented by [the agency]”³⁵⁴

In Texas, the Children’s Medical Center of Dallas implemented a policy to halt providing gender-affirming care to any new patients, although care could continue for existing patients.³⁵⁵ A doctor at the hospital who was providing such care sued to enjoin the hospital from enforcing the policy, and a trial court granted a temporary restraining order (TRO), which an appellate court summarily affirmed, denying the hospital’s mandamus request to void the TRO.³⁵⁶ One dissenter would have granted mandamus and found the trial court had abused its discretion because, in their view, courts are not “empowered to supplant a hospital’s policy judgment limiting practitioners’ uses of its facility to approved purposes on the theory that [that policy judgment] constitutes medical practice or amounts to an irreparable harm.”³⁵⁷ The trial court later extended that TRO into a temporary injunction, at which point the state tried to intervene on the side of the hospital. However, the trial court denied the request, finding that “the State failed to show that it had a justiciable interest that was more than contingent or remote.”³⁵⁸ An appellate court rejected the state’s appeal of that finding on grounds that it didn’t have jurisdiction over the appeal.³⁵⁹ In another case about the provision of healthcare, a father in New Jersey twice sued various medical providers for providing gender-affirming care to his child without his consent.³⁶⁰ Both suits were dismissed on

³⁵² *Id.* at 699–700 (emphasis in original).

³⁵³ *W. Va. Dep’t of Health & Hum. Res., Bureau for Med. Servs. v. Forloine*, No. 23-ICA-147, 2024 WL 2381887 (W. Va. Intermediate Ct. App. May 23, 2024).

³⁵⁴ *Id.* at *4.

³⁵⁵ *In re Child. ’s Med. Ctr. of Dall.*, No. 05-22-00459-CV, 2022 WL 1566139, at *1 (Tex. Ct. App. May 18, 2022) (Schenck, J., dissenting).

³⁵⁶ *Id.* at *2.

³⁵⁷ *Id.* at *4.

³⁵⁸ *State v. Lopez*, No. 05-22-00588-CV, 2022 WL 4396162, at *1 (Tex. Ct. App. Sep. 23, 2022).

³⁵⁹ *Id.* at *2.

³⁶⁰ *Betts v. Nichols*, No. A-1378-21, 2023 WL 3990568 (N.J. Super. Ct. App. Div. June 9, 2023).

procedural grounds, the first because the father had failed to comply with a court order and the second under *res judicata*.³⁶¹

Another procedural case implicating gender-affirming care is *Goodall v. Gentry-Cunningham*, in which the Colorado Supreme Court dismissed an appeal of an administrative decision that a proposed ballot measure seeking to limit access to gender-affirming care did not meet the qualifications necessary to be put on the ballot in the 2024 election.³⁶² After a rehearing, the administrative agency found that its initial determination that the measure contained only a single subject was erroneous, so the measure was not actually eligible to be put on the ballot.³⁶³ The state supreme court dismissed the appeal as outside the seven-day window of appealability, so the measure remained off the ballot and Colorado voters did not have the opportunity to approve (or reject) limitations on gender-affirming care.³⁶⁴ As these cases' connection to the actual provision of gender-affirming care becomes more attenuated, it is worth mentioning that two courts in New York have ruled against plaintiffs who alleged defamation or retaliation against them due to comments they had made criticizing gender-affirming healthcare.³⁶⁵

More directly related to the actual receipt of gender-affirming care, two cases have addressed the question of access to records about trans people's medical care, both occurring within the criminal law context. First, the Washington case *State v. Arumugam* concerned the admissibility of statements made by a trans child to a nurse who had conducted a sexual assault examination on him a couple of years after the sexual assault that formed the basis of the charges against the defendant.³⁶⁶ The resolution of that question largely turned on what evidence was statutorily sufficient to permit admission of the statements, but in finding that the trial court had impermissibly admitted the statements, the court noted:

T.M. [the victim] had a very good reason not to want a stranger to probe his genitalia or view his naked body. As mentioned previously, T.M. is a person who has questioned the gender identity that was assigned to T.M. at

³⁶¹ *Id.*

³⁶² 2024 CO 52.

³⁶³ *Id.* ¶¶ 3–4.

³⁶⁴ *Id.*

³⁶⁵ *Miller v. Appadurai*, No. 160329/2020, 2022 WL 337296, at *1 (N.Y. Sup. Ct. Feb. 4, 2022) (citation modified) (dismissing defamation suit by NYU professor against colleagues who sent a private letter to university leaders raising concerns that plaintiff was violating the code of conduct in many ways, two of which were plaintiff's "characterization of transgender surgery as a eugenic form of sterilization [and] direct mockery ridicule of trans individuals"), *aff'd*, 185 N.Y.S.3d 93 (App. Div. 2023), *lv denied*, 217 N.E.3d 709 (N.Y. 2023); *Zywiec v. The Brooklyn Hosp. Ctr.*, No. 537321/2022, 2023 WL 2858707 (N.Y. Sup. Ct. Apr. 6, 2023) (denying preliminary injunction to hospital resident claiming retaliation based in part on his refusal, on religious grounds, to participate in the hospital's gender-affirming care program).

³⁶⁶ 545 P.3d 363, 369 (Wash. 2024) (affirming conviction of trans child's father for sexual assault).

birth. T.M.'s disinclination to subject T.M.'s body to an intrusive examination years after the events at issue is, in the context of T.M.'s life, easily understood.³⁶⁷

Unlike most other courts, the court here took special notice of the unique sensitivities and challenges that go along with trans people's interactions with healthcare professionals and used that to inform its reasoning. In contrast, in *Tyson v. Ohio Department of Rehabilitation and Corrections*, the court partially denied a prisoner's request to seal or redact "any mention of [plaintiff]'s Gender Dysphoria [or] Transgender identification in Court files/documents" related to the prisoner's underlying suit.³⁶⁸ The suit itself was about disclosure of the plaintiff's trans identity by and to various prison officials. After self-identifying as trans, the prisoner was assessed by the prison's Prison Rape Elimination Act Coordinator, and, in a chain of custody too complicated to detail here, documents related to the assessment that referenced the prisoner's trans identity, including a referral for mental health services, were disclosed to other prison officials.³⁶⁹ The prisoner then brought a set of tort claims based on that disclosure, which the court ruled against because "[t]he information at issue, i.e. plaintiff's transgender identification as set forth in the Referral to Mental Health Services form, in this case was not medical information that a physician or hospital learned within a physician-patient relationship," and further, "any disclosure of the Referral to Mental Health Services form was made in a good faith effort to either comply with PREA policy and/or a records request made by plaintiff, not with the intention to do serious emotional harm to plaintiff."³⁷⁰ Yet, despite the plaintiff's clear desire to not have the fact of their trans identity widely spread, the court refused to redact that information in the documents and files of the proceeding.

The final type of non-constitutional cases related to gender-affirming care are those rooted in medical malpractice claims. However, none of the cases dealing with such claims during the period of my survey were resolved on the merits. Rather, they mostly involved secondary procedural issues unrelated to the underlying claims of improperly furnished gender-affirming care.³⁷¹ One case, though, *Aldaco v. Wood* from Texas,

³⁶⁷ *Id.* at 373.

³⁶⁸ No. 2021-00603JD, 2024 WL 3318437, at *1 (Ohio Ct. Cl. Mar. 18, 2024) (only granting request to seal for "progress notes prepared by a clinician from a mental health assessment of plaintiff," but not for other documents that referenced plaintiff's trans identity).

³⁶⁹ *Tyson v. Ohio Dep't of Rehab. & Corr.*, No. 2021-00603JD, 2024 WL 3318436, at *1–2 (Ohio Ct. Cl. Mar. 18, 2024).

³⁷⁰ *Id.* at *2–3. *But cf.* *Shaw v. Univ. of the Pac.*, No. CGC 21-592344, 2022 WL 4010011 (Cal. Super. Ct. Aug. 30, 2022) (during employment discrimination suit, finding defendant's request for discovery related to plaintiff's history of gender-affirming care violated plaintiff's constitutional privacy rights).

³⁷¹ *Ackels v. LSU Plastic Surgery*, 2024-0094 (La. App. 4 Cir. 8/29/24), 398 So. 3d 731 (granting plaintiff's request to dismiss their appeal of trial court's grant of their attorney's request to withdraw from representation in the underlying case in which plaintiff alleged a botched facial feminization surgery); *Hoffman v. MMIC Ins., Inc.*, No. 27-CV-

demonstrates a growing effort by the anti-trans movement to convince courts to endorse medical malpractice claims brought by “detransitioners,” i.e., people who come to regret gender-affirming care that they received.³⁷² While such regret is incredibly rare,³⁷³ a law firm was founded in 2023 specifically to bring such detransition-related medical malpractice suits,³⁷⁴ including the one in my survey results. However, that case never reached the merits because it was dismissed as time-barred by the statute of limitations.³⁷⁵ If these types of suits do start succeeding in court, though, it could open a whole new avenue of attack on gender-affirming care by bogging down providers of such care with costly litigation and potential liability.

D. Private Discrimination

Cases involving private discrimination against transgender individuals are largely rooted in statutory prohibitions on discrimination or in claims for tortious harm resulting from such discrimination, as any constitutional discrimination claim would have to be routed through the equal protection clause, which only applies to state actors.³⁷⁶ The most common type of discrimination case brought against private actors are employment discrimination cases, brought under either Title VII or a state equivalent. But discrimination can, of course, arise in other contexts, and occasionally

23-4970, 2023 WL 12018680 (Minn. Dist. Ct. Dec. 27, 2023) (granting summary judgment for malpractice insurance company because they had no duty to defend doctor from separate suit alleging discrimination due to doctor’s refusal to perform breast augmentation surgery on trans woman), *aff’d*, No. A24-0276, 2024 WL 4481409 (Minn. Ct. App. Oct. 14, 2024).

³⁷² See Samantha Riedel, *A “Detransitioner” Is Suing Planned Parenthood for Providing Gender-Affirming Care*, THEM (Aug. 9, 2024), <https://www.them.us/story/planned-parenthood-lawsuit-gender-affirming-care>.

³⁷³ See Valeria P. Bustos et al., *Regret After Gender-Affirmation Surgery: A Systematic Review and Meta-Analysis of Prevalence*, PLASTIC & RECONSTRUCTIVE SURGERY—GLOB. OPEN, March 2021, at 1, <https://pmc.ncbi.nlm.nih.gov/articles/PMC8099405/pdf/gox-9-e3477.pdf> (“Based on this review, there is an extremely low prevalence of regret in transgender patients after [gender-affirming surgery].”).

³⁷⁴ Riedel, *supra* note 372.

³⁷⁵ *Aldaco v. Wood*, No. 02-24-00217-CV, 2024 WL 4849743 (Tex. Ct. App. Nov. 21, 2024).

³⁷⁶ There is one case from my survey worth noting even though it is only tangentially related to private discrimination (nor does it fit neatly into any of the other categories of cases). The case was a challenge to a Montana law that attempted to define, with general applicability throughout the state code, “male,” “female,” and “sex” based on an individual’s chromosomes and reproductive organs. The court granted the plaintiffs’ motion for summary judgment, finding the law unconstitutional under the Montana Constitution’s single-subject requirement. *See Reagor v. State*, No. DV-23-1245, slip op. at 9 (Mont. Dist. Ct. June 25, 2024) (“The title of SB 458 does not clarify what meaning of ‘sex’ is intended [e.g., “sex” meaning gender or “sex” meaning sexual intercourse] and does not indicate that the words ‘female’ and ‘male’ are defined in the body of the Bill. The title does not give general notice of the character of the legislation in a way that guards against deceptive or misleading titles.”).

those cases reach state courts through various other statutory or tort mechanisms.

1. Employment Discrimination

i. Discrimination Against Trans Employees

Based on the cases in my survey, if an employment discrimination claim can survive summary judgment, the jury is likely to render a verdict in favor of the trans plaintiff. There were three cases in my survey in which a trans plaintiff lost at summary judgment. In one case from Minnesota, *Tschida v. Costco Wholesale Corp.*, the plaintiff's argument was, admittedly, very weak. Tschida, a trans employee at Costco, was fired during his probationary employment period, and as the court noted, "Costco reserves the right to terminate employment with or without cause or notice during this probationary period. Tschida was aware that he was a probationary employee and his employment could be terminated with or without cause or notice."³⁷⁷ Moreover, the court noted that, "[i]n this case, Costco, in addition to being able to terminate a probationary employee without cause, had legitimate, non-discriminatory, non-retaliatory reasons for terminating Tschida," namely, various performance issues that "Tschida admits he had."³⁷⁸

In the two other cases, both from California, the facts were less clear cut against the plaintiff, but what was most interesting about these cases was how the courts treated the trans employees' interactions with their employers. In both cases, these interactions played a significant role in the court ruling against the plaintiffs. First, in *Fishbaugh v. City of Auburn*, Fishbaugh, a trans woman, was denied employment at a police department.³⁷⁹ The primary reason the department provided for not hiring her was "numerous indications that plaintiff had a tendency to challenge authority, including admitted refusals to comply with orders from her superiors, and she refused to acknowledge any responsibility in connection with prior law enforcement disciplin[ary]" actions taken against her in her previous employment at two other police departments.³⁸⁰ The court found that "there can be no factual dispute that Fishbaugh refused to accept responsibility for her conduct that led to discipline imposed in prior law enforcement employment," pointing to facts in the record such as Fishbaugh's statement in a supplemental report to her job application that "'none of the difficulties I encountered in either agency involved any kind of officer misconduct on my part whatsoever.'"³⁸¹ Fishbaugh, however,

³⁷⁷ *Tschida v. Costco Wholesale Corp.*, No. 82-CV-20-4842, 2024 WL 4471225, at *1 (Minn. Dist. Ct. June 20, 2024).

³⁷⁸ *Id.* at *7. The performance issues included tardiness, in violation of the Costco employee handbook, and leaving his post without notifying anyone, even after explicit instructions to do so. *Id.*

³⁷⁹ No. C090863, 2022 WL 1616867 (Cal. Ct. App. May 23, 2022).

³⁸⁰ *Id.* at *6 (internal quotes omitted).

³⁸¹ *Id.* at *8.

maintained that the past incidents of disciplinary action were “‘example[s] of what [she] was running into once [she] revealed that [she] was transgender. They would mischaracterize and try to twist [sic] and then write [her] up.’”³⁸² Fishbaugh argued that she was simply making “‘a consistent, reasonable effort to stand up for [herself] in many of those negative situations [she] encountered.’”³⁸³ She offered a version of events that, to me, could plausibly support her assertions or, at the least, support the view that much of the discipline against her was unwarranted.³⁸⁴ Given that this alternative explanation of the facts, if true, would undermine the asserted primary justification for the department’s decision not to hire Fishbaugh (and given it is the only justification the court analyzed and relied on), it seems questionable that the court did not let the case proceed to trial so a jury could assess the competing interpretations of the record. Admittedly, Fishbaugh did use pretty strong, categorical language to dispute the merits of the previous disciplinary actions against her, but based on her account of the facts, such strong language might be a result of having faced so many previous incidents where she felt she had been unnecessarily disrespected and disbelieved due to being trans.

While Fishbaugh may have been overly assertive with her (potential) employer, in *Wade v. Starbucks*, Wade may have been overly solicitous towards her employer, a fact that the court seemed to believe undermined her suit.³⁸⁵ There were a number of factual allegations in the case, but one of the central ones the court relied on was that, while Wade was beginning her transition, she told her supervisor—the primary employer agent alleged to have discriminated against her—that “‘it would be fine [i]f [he] would just refrain from calling [her by her deadname] and male pronouns.’”³⁸⁶ Additionally, the court noted that Wade continued to use a nametag with her deadname during her early transition.³⁸⁷ The supervisor continued to use her deadname and male pronouns, which Wade alleged was part of the hostile work environment and other harms she faced. The court, however, viewed that set of facts as “‘undisputed evidence [that] indicates that Wade did not provide [her supervisor] with clear guidance on the issue . . . [so the supervisor]’s conduct cannot be characterized as an intentional violation of Wade’s express and exclusive preferences as to appropriate names and pronouns for her.”³⁸⁸ The court’s interpretation of the

³⁸² *Id.* at *5.

³⁸³ *Id.* at *2.

³⁸⁴ There are too many specific instances to detail here, but as one example, “Fishbaugh responded to assist an officer from another jurisdiction who was following [a] suspect’s car. Her sergeant told her not to assist unless the other agency asked for assistance. She radioed the other officer and asked if he needed assistance, which he said he did. Fishbaugh’s sergeant came back on the radio yelling at her to discontinue, which she did.” *Id.* at *3.

³⁸⁵ No. F079838, 2022 WL 389923 (Cal. Ct. App. Feb. 9, 2022).

³⁸⁶ *Id.* at *2.

³⁸⁷ *Id.*

³⁸⁸ *Id.* at *18.

facts here seems to dismiss how scary coming out can be for LGBTQ+ people, and for trans people in particular. Wade may have been legitimately uncertain of how her supervisor would respond, not to mention the fact that coming out to customers via a nametag is vastly different from coming out to co-workers or a supervisor. Indeed, Wade's testimony could support that interpretation of events: "I understood that – you know, it was kind of weird at the time to expect anybody to call me Maddie, but I just [p]referred that they not use male pronouns or call me [by my dead-name]." ³⁸⁹ Wade's testimony additionally showed that she had legitimate concerns about the consequences of her supervisor reacting negatively. Wade testified that losing her employment "took away all of my security for transition. It took away all of my income. . . . I had to put, basically, my life on the sidelines. As well as, you know, I lost all my medical care . . . [including] surgery revisions, because I lost my coverage." ³⁹⁰ By finding that Wade's tentativeness in the initial stages of her transition meant that her supervisor's continued, repeated use of her deadname and male pronouns did not create a hostile work environment, the court seems to be ignoring the realities of what it is like to come out as trans, realities that, in my opinion, would warrant sending a case like this to a jury.

One non-jury case, *Mayo v. Discovery Health Services, Inc.* from California, was decided in favor of the plaintiff, but it was a procedural case about the employer's attempt to force arbitration. A trans employee at an online health services website sued for various discrimination and labor law violations. ³⁹¹ The employer tried to enforce the standard arbitration agreement they had with all employees, but the employee disputed that she had ever signed such an agreement. The court found that the evidence supported the employee's account, ruling under traditional contract law principles that "[w]e cannot and will not create a term of a contract between the parties that the evidence does not show was ever agreed to by the parties." ³⁹²

In contrast to the summary judgment cases, three out of the four employment discrimination cases that were decided by a jury came out in favor of the trans plaintiff, often with significant monetary awards. In the most dramatic case, *Buzzard v. Ratliff* from Ohio, a trans woman, Buzzard, had her job offer rescinded after she had already put in her two-weeks' notice at her previous job, and the employee who had made the initial offer and strenuously objected to rescinding it, Carr, was fired one week after being forced to rescind the offer. ³⁹³ Allegedly, when the CEO of the company found out Buzzard was a trans woman, she referred to Buzzard as

³⁸⁹ *Id.* at *2.

³⁹⁰ *Id.* at *7.

³⁹¹ No. D081113, 2023 WL 9016499 (Cal. Ct. App. Dec. 29, 2023), *aff'g* No. 37-2021-00044001-CU-WT-CTL, 2022 WL 22585779 (Cal. Super. Ct. July 15, 2022). The court does not discuss the details of the employee's claims, but a footnote indicates they appear to be related to the employee's transition. *Id.* at *1 n.1.

³⁹² *Id.* at *8.

³⁹³ No. 20CV-5203, 2023 WL 9417462 (Ohio Ct. Com. Pl. Nov. 9, 2023).

“it” and a “cross-dresser” and, without any discussion of Buzzard’s qualifications, suggested they rescind the company’s offer to Buzzard, as well as their offer to another new hire so that rescinding Buzzard’s offer “would not look like discrimination.”³⁹⁴ (The other person was ultimately later hired.) The jury ruled in favor of Buzzard and Carr, awarding Buzzard \$5,260,880 and Carr \$2,278,333.³⁹⁵ In a simultaneous order, the court said Buzzard was entitled to \$7,510,880 and Carr to \$3,028,333.38, but a statutory cap on non-economic compensatory damages reduced these awards.³⁹⁶ These amounts were largely made up of punitive damages: \$5,000,000 for Buzzard and \$2,000,000 for Carr.³⁹⁷ In awarding the damages to Buzzard, the court (and jury) seemed to significantly credit Buzzard’s testimony that the rescinding of the offer “shattered her confidence, and . . . reinforced a pattern of discrimination she faced in the past as a transgender person,” as well as crediting testimony from Buzzard’s spouse that the rejection “added to Buzzard’s issues about femininity, in that Buzzard was always questioning whether she was good enough as a female,” making her “more self-conscious” to the point that “[d]ressing to go in public became an ordeal. Buzzard would refuse to go out if she did not feel she looked exactly right.”³⁹⁸ The court (and jury) explicitly accepted as valid Buzzard’s account of her experiences with gender dysphoria and the extra burden of harm that trans people can bear in the face of ordinary events like being rejected from a job. Indeed, while the economic compensatory damages for Carr were almost three times more than for Buzzard (who had been able to return to her previous job despite already having given notice), Buzzard’s punitive damages and non-capped non-economic compensatory damages were both two-and-a-half times Carr’s.³⁹⁹

In the District of Columbia case *Medrano v. International Golden Foods LLC*, a jury awarded \$930,000 to a trans woman, Portillo, who was fired after experiencing sustained harassment at work:

Her supervisors and coworkers reportedly subjected her to harassment by joking about her appearance, calling her by her former male name, and referring to her by male pronouns.

. . . Her hours reportedly were cut though the hours of non-transgender employees were not cut.

³⁹⁴ *Id.* at *2–4.

³⁹⁵ *Buzzard v. Ratliff*, No. 2020-CV-005203, 2023 WL 12008465 (Ohio Ct. Com. Pl. Nov. 9, 2023).

³⁹⁶ *Buzzard*, 2023 WL 9417462, at *15–16.

³⁹⁷ *Id.*

³⁹⁸ *Id.* at *5–6.

³⁹⁹ *Id.* at *15–16. Specifically, Buzzard’s economic compensatory damages award was \$10,880, compared to Carr’s \$28,333.38; Buzzard’s punitive damages award was \$5 million, compared to Carr’s \$2 million; and Buzzard’s non-capped non-economic compensatory damages award was \$2.5 million, compared to Carr’s \$1 million. *Id.*

The plaintiff said her supervisor informed her that the defendant had no obligation to refer to her as female or by her preferred name because she had not legally changed her name. A manager reportedly informed the plaintiff that she had to use the men's restroom.⁴⁰⁰

Portillo's employer argued that she was actually fired because they learned she was not legally authorized to work in the U.S., but on the employer's motion for a new trial, the court did not accept this contention because there was "evidence that . . . higher-level supervisory personnel were previously aware that she lacked proper work authorization yet proceeded to hire and employ her for years, and knowingly employed other undocumented workers."⁴⁰¹ The court further noted that the "sweeping protections afforded by the D.C. Human Rights Act . . . 'contain[] no safe harbor for otherwise lawful acts done for an improper retaliatory purpose.'"⁴⁰² Additionally, the court upheld the jury's \$700,000 punitive damages award because the employee "was subjected to persistent misgendering, ridicule, and humiliation for over two years, despite her written and verbal pleas to cease the mistreatment" and because the employer engaged in "reprehensible behavior by . . . knowingly hiring workers— including Ms. Portillo— who lacked proper work authorization, invoking their undocumented status to threaten and control them."⁴⁰³

In *Vroegh v. Iowa Department of Corrections*, a jury awarded a trans employee \$120,000 in "past emotional distress damages" after his employer denied his request to use the men's restroom and his employer-sponsored insurance denied coverage for his gender-affirming surgery.⁴⁰⁴ The part of the case about the employee's surgery is discussed in more detail *supra* Part II.C.2. When it came to the employee's restroom use, the employer argued that the employee's use of the men's restroom would create controversy in the workplace and claimed that the employee had agreed to use a unisex restroom instead.⁴⁰⁵ However, the employee believed this to be only a temporary solution, while the employer thought it was permanent. The Iowa Supreme Court affirmed the award because "[a] claim that an employment decision was intended to pacify other coworkers, or was made with the acquiescence of the employee, doesn't answer whether the [employer]'s motivation was nondiscriminatory."⁴⁰⁶ One interesting wrinkle in this case is that the trial judge instructed the jury to consider both the plaintiff's sex discrimination claim and his gender

⁴⁰⁰ Medrano v. International Golden Foods LLC, No. 2021-CA-000058-B, 2024 WL 5319923 (D.C. Super. Ct. Aug. 15, 2024).

⁴⁰¹ Medrano v. Int'l Golden Foods LLC, No. 2021-CA-000058-B, 2024 WL 5090902, at *2 (D.C. Super. Ct. Nov. 18, 2024).

⁴⁰² *Id.* at *3 (citation omitted).

⁴⁰³ *Id.* at *3–4.

⁴⁰⁴ 972 N.W.2d 686, 694 (Iowa 2022).

⁴⁰⁵ *Id.* at 693–95.

⁴⁰⁶ *Id.* at 696.

identity discrimination claim. On appeal, the employer argued that the jury should have received instructions on only the gender identity discrimination claim, and thus, the award was invalid since it implicitly also included a determination of sex discrimination.⁴⁰⁷ The court agreed that the jury should not have been instructed on the sex discrimination claim because:

When the legislature amended the Iowa Civil Rights Act in 2007, it did not simply insert into the statute a definition of “sex” that included one’s gender identity, as it just as readily could have done. Instead, it added “gender identity” to the list as its own separate characteristic, and provided the term with its own separate definition.⁴⁰⁸

However, the court still upheld the award because, based on the evidence presented at trial and questions asked by the jury during deliberation, it concluded that “the jury based its award on the emotional distress that [the employee] suffered from gender identity discrimination, not sex discrimination,” so the district court’s error did not affect the verdict.⁴⁰⁹

In a remarkably similar case, an administrative proceeding in the Oregon Bureau of Labor and Industries (BOLI) resulted in a trans woman being awarded \$125,000 for emotional distress caused by a hostile work environment.⁴¹⁰ The employer appealed to an Oregon appellate court, which affirmed the award because it found it “must affirm BOLI’s findings if they are supported by substantial evidence, regardless of whether BOLI could have made a different finding on the same record.”⁴¹¹ The court also affirmed the amount of the award because “the evidence in the record was sufficient to support the award,” and the award was roughly equivalent to the awards in similar cases.⁴¹²

Only one jury in my survey found in favor of the employer. In this Washington case, *DeLouise v. SafePlace*, there was no court opinion issued that discussed the evidence, so it is hard to know exactly why the jury ruled the way they did. However, the plaintiff alleged that their supervisor “refused to use the plaintiff’s and other transgender employees’ preferred gender pronouns” and that “they were subjected to discipline without cause and passed over for promotional opportunities for which they were the most qualified[,] . . . [and were] allegedly terminated for continuing to advocate for themselves and other transgender employees.”⁴¹³ The employer, on the other hand, had claimed that the plaintiff was

⁴⁰⁷ *Id.* at 700.

⁴⁰⁸ *Id.* at 702–03.

⁴⁰⁹ *Id.* at 703.

⁴¹⁰ *Sunstone Organics v. Bureau of Lab. & Indus.*, 336 Or. App. 113 (Ct. App. 2024) (The plaintiff had also alleged unlawful termination, but the agency found against the plaintiff on that claim.).

⁴¹¹ *Id.* at 116.

⁴¹² *Id.* at 117.

⁴¹³ *DeLouise v. SafePlace*, No. 2022-2-03063-34, 2024 WL 4491639 (Wash. Super. Ct. June 6, 2024).

“legitimately terminated for performance-related issues.”⁴¹⁴ According to their briefing, the company fired the plaintiff after they had received two disciplinary warnings for ignoring supervisor instructions and violating employee conduct policies, behaviors which the employer attributed in part to the employee’s “negativity and burnout and its detrimental effect on clients and staff.”⁴¹⁵

ii. Vicarious Liability for Harm to Trans Individuals

There are a few other employment discrimination cases that do not involve trans employees that are worth mentioning. These largely deal with the issue of vicarious liability for employers when one of their employees caused harm to a trans person.⁴¹⁶ Only one such case, *Ortega v. Burger King*, involved harm caused by apparent anti-LGBTQ+ animus. At a Burger King in Florida, a trans woman and her gay friend were harassed by a Burger King employee and then harassed and beaten by a security guard employed by an independent contractor of Burger King.⁴¹⁷ Both the employee and the guard called the plaintiffs the f-slur, and the guard “sprayed them with pepper spray, and then punched and struck [the gay friend] multiple times including punching him in the face, nose, and jaw.”⁴¹⁸ The court summarily granted Burger King’s motion for summary judgment.⁴¹⁹ The claims against the independent contractor for the actions of the security guard, however, went to trial, and a jury awarded \$357,700 to the trans plaintiff and \$837,750 to her friend.⁴²⁰

Two other cases involved sexual assaults of trans women. In *R.S. v. State*, a trans woman being housed in a New York men’s prison facility

⁴¹⁴ *Id.*

⁴¹⁵ Defendant’s Trial Brief at 3, *DeLouise*, 2024 WL 4491639 (No. 2022-2-03063-34), 2024 WL 4348350.

⁴¹⁶ There was one other employment discrimination case in my survey that did not fall into this category or the previous one. The case was brought by white employees alleging race discrimination in their termination, but in the appellate court opinion affirming the trial court’s grant of the employer’s motion for summary judgment, it noted that one of the reasons the employer gave for terminating the plaintiffs was that there were complaints against them for “speaking derogatorily about a transgender employee.” *Bittner v. Gen. Motors, LLC*, No. 366160, 2024 WL 3079445, at *1 (Mich. Ct. App. June 20, 2024), *appeal denied*, 12 N.W.3d 421 (Mich. 2024).

⁴¹⁷ Second Amended Complaint, *Ortega v. Burger King (Ortega II)*, No. 2019-CA-006042, 2023 WL 4059138 (Fla. Cir. Ct. Feb. 15, 2023), 2023 WL 4047528.

⁴¹⁸ *Id.* ¶¶ 18–21.

⁴¹⁹ *Ortega v. Burger King (Ortega I)*, No. 2019-006042-CA-01, 2022 WL 20153025 (Fla. Cir. Ct. Oct. 11, 2022), *aff’d*, 394 So.3d 698 (Fla. Dist. Ct. App. 2024). Burger King had argued that they couldn’t be held liable for the guard’s actions because “[t]he general rule in Florida is that an owner or employer will not be held liable for acts of an independent contractor,” and neither could they be held liable for the actions of their employee because the plaintiffs failed to “establish the foreseeability requirement articulated by the Florida Supreme Court sufficient to satisfy the duty element in a claim for negligent hiring or retention.” Defendant’s Motion for Summary Judgment at 13, 18, *Ortega I*, 2022 WL 20153025 (No. 2019- 006042-CA-01), 2021 WL 11505831.

⁴²⁰ *Ortega II*, 2023 WL 4059138, at *1.

was sexually assaulted by another inmate.⁴²¹ A trial court had dismissed the plaintiff's complaint, finding she did not prove the reasonable foreseeability of her assault.⁴²² An appellate court reversed, noting that the prison's dormitories had no doors or locks on people's assigned "cubes" and that the plaintiff had been placed in the cube closest to the guard's station because her status as a trans woman made her especially vulnerable to sexual assault.⁴²³ Additionally, the correction officer assigned to monitor the plaintiff's dormitory was asleep at the time of the assault, and, as the court pointed out, "at a minimum, it is reasonable to expect that in the course of their employment correction officers will be sentient in order to protect those who are vulnerable to sexual victimization."⁴²⁴ In another case from New York, *Wee v. Best Buy Co.*, a trans woman was sexually assaulted by a delivery man who delivered a TV she had purchased from Best Buy.⁴²⁵ A trial court granted Best Buy's motion for summary judgment because the delivery man was employed by a third-party delivery service that contracted with Best Buy, and the court found that "[t]he plain language of the home delivery services contract reflects that Best Buy could not have exercised sufficient control over the delivery and installation of items" to be held liable.⁴²⁶ An appellate court reversed on the procedural grounds that the "contract [between Best Buy and the delivery service] was not attached to the initial moving papers, and therefore could not form the basis for an award of summary judgment[.]" so the trial court had "improperly based its dismissal on documentary evidence that defendant submitted for the first time in its reply papers."⁴²⁷

2. Anti-Trans Discrimination in Other Contexts

Outside of employment, trans people have brought discrimination claims in a variety of other contexts. One of the most high-profile cases in my survey came from Minnesota—*Cooper v. USA Powerlifting*. A trans female weightlifter, Cooper, was denied participation in weightlifting competitions hosted by USA Powerlifting (USAPL), despite being registered with USAPL as a female, because the organization had a blanket policy of not allowing trans women to compete as females.⁴²⁸ Cooper sued for public accommodation and business discrimination on the basis of sex and sexual orientation⁴²⁹ under the Minnesota Human Rights Act

⁴²¹ 222 N.Y.S.3d 188, 189 (App. Div. 2024).

⁴²² *Id.*

⁴²³ *Id.* at 190.

⁴²⁴ *Id.* at 191.

⁴²⁵ No. 101746/2017, 2022 WL 5004381, at *1 (N.Y. Sup. Ct. Oct. 4, 2022).

⁴²⁶ *Id.* at *2.

⁴²⁷ *Wee v. Best Buy Co.*, 222 N.Y.S.3d 429, 430 (App. Div. 2024).

⁴²⁸ *Cooper v. USA Powerlifting*, No. 62-CV-21-211, 2023 WL 11797169, at *2–4 (Minn. Dist. Ct. Feb. 27, 2023).

⁴²⁹ At the time of this case, the Minnesota Human Rights Act defined "sexual orientation" as "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness," which thus included

(MHRA), and in a detailed opinion, the trial court granted summary judgment in her favor.⁴³⁰ The highlight of the opinion was the forcefulness of the court's language. After stating that, when it comes to gender identity, "[t]he evil the MHRA prohibits lies in . . . treating a person as if their self-identity and their self-image is unimportant and less than,"⁴³¹ the court eviscerated USAPL's actions:

USAPL, after denying Cooper's participation, expended considerable effort seeking to justify its actions by seeking out expert opinion that transgender women would have an inherent and immutable strength advantage. The record is completely devoid of any effort USAPL may have made to even understand, much less address, the physical or psychological harms of exclusion or the benefits of inclusion. USAPL attempted to calculate a hypothetical performance advantage, but it refused to even consider the harmful effects of its policy or the potential benefits of a more inclusive policy, to Cooper, to others similarly situated, to its organization, or to the broader community.⁴³²

Moreover, the court said that "USAPL has offered no non-discriminatory reason for its actions" and that "the only basis for the decision in USAPL's policy is sex and sexual orientation. As USAPL's president wrote, '[w]e do not allow male to female transgender athletes at all. Full stop.'"⁴³³ Despite this, an appellate court reversed. That court found that USAPL had a legitimate, non-discriminatory reason for excluding Cooper: her "biological maleness."⁴³⁴ Using tortured logic, the court argued that, while "Cooper's female gender identity co-exists with her male physiology . . . , her male physiology and her transgender status are separate concepts" and explained that, just because "USAPL's reason for its decision is related to and intertwined with Cooper's transgender status[, that] does not make it a discriminatory reason."⁴³⁵ One partial dissenter pointed out the absurdity of the majority's argument: "USAPL's stated rationale cannot be separated from the essence of the protected status of a transgender person because, as the legislature expressly recognized [in the MHRA], biology is necessarily intertwined with a person's transgender

transgender status; the statute was amended in 2023 to separately define "gender identity." See 2023 Minn. Laws ch. 52, art. 19, secs. 47–48, § 363A.03 subds. 44, 50.

⁴³⁰ *Cooper*, 2023 WL 11797169.

⁴³¹ *Id.* at *10.

⁴³² *Id.* at *11.

⁴³³ *Id.* at *12–13.

⁴³⁴ *Cooper v. USA Powerlifting*, 5 N.W.3d 689, 703 (Minn. Ct. App. 2024) (quotations omitted); see also *infra* notes 601–02, 607 and accompanying text (discussing two different opinions from a case about a school prohibiting a trans male student from using male facilities in which both courts similarly tried to separate biology from trans identity).

⁴³⁵ *Cooper*, 5 N.W.3d at 703, 701.

status.”⁴³⁶ To state the obvious, a trans woman like Cooper, by definition, has what the court calls “biological maleness;” that is what makes her a transgender woman, not a cisgender woman. Moreover, USAPL and the majority’s concern about Cooper’s “biological maleness” giving her a competitive edge over cisgender women is not rooted in science.⁴³⁷ After the survey period ended, the Minnesota Supreme Court rejected some of the most egregious parts of the appellate court’s decision by ruling that USAPL’s exclusion of Cooper from competitions was indeed discrimination under the MHRA, but it also left open the possibility that such discrimination could be legally permissible by finding that the question of whether USAPL’s goal of ensuring fair competition satisfied the MHRA’s legitimate business purpose defense presented a genuine issue of material fact precluding summary judgment.⁴³⁸

In Colorado, the same baker who was involved in the same-sex marriage case that reached the United States Supreme Court in 2018 in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*⁴³⁹ denied a request from a trans woman, Scardina, for a birthday cake that doubled as a celebration of her transition.⁴⁴⁰ She requested the cake simply be pink with blue frosting—no words, symbols, or anything else.⁴⁴¹ After an administrative process that ended with a settlement between Masterpiece and the Colorado Civil Rights Commission, to which Scardina was not a party, Scardina sued Masterpiece in court. In 2023,⁴⁴² an appellate court upheld

⁴³⁶ *Id.* at 709 (Frisch, J., concurring in part and dissenting in part) (citations omitted).

⁴³⁷ “Available evidence indicates trans women who have undergone testosterone suppression have no clear biological advantages over cis women in elite sport.” FÉLIX PAVLENKO, CANADIAN CTR. FOR ETHICS IN SPORT, RSCH. HUB FOR GENDER EQUITY IN SPORT E-ALL., TRANSGENDER WOMEN ATHLETES AND ELITE SPORT: A SCIENTIFIC REVIEW 5 (2022), <https://hal.science/hal-04477646/file/transgenderwomenathletesandelitesport-ascientificreview-e-final%20%281%29.pdf>; see also D.J. Oberlin, *Sex Differences and Athletic Performance. Where Do Trans Individuals Fit into Sports and Athletics Based on Current Research?*, FRONTIERS SPORT & ACTIVE LIVING, Oct. 27, 2023, at 8–9 (citations omitted) (“While trans athletes competing in various sports and athletic events raises interesting considerations of how certain morphologic and physiologic factors affect performance, these questions are not exclusive to trans individuals. There are wide variations within cisgender populations, even when excluding individuals with differences in sexual development. . . . There is no concern for restricting individuals who are exceptionally large or small, those who are genetically gifted, or those with differing hormone concentrations or muscle mass, so long as their gender and biologic sex align. The disproportionate focus on the relatively small portion of the population who are trans seems based on the belief that cis men, who cannot succeed in sports among other cis men, would choose to misidentify as trans women to gain an advantage in sports against cis women. However, there are no legitimate cases of this occurring.”).

⁴³⁸ *Cooper v. USA Powerlifting*, 26 N.W.3d 604 (Minn. 2025).

⁴³⁹ 584 U.S. 617 (2018).

⁴⁴⁰ *Scardina v. Masterpiece Cakeshop, Inc.*, 2023 COA 8. In an interesting coincidence, the court notes that Scardina called to order the cake on the same day the U.S. Supreme Court granted certiorari in the same-sex marriage case against the baker. *Id.* ¶ 3.

⁴⁴¹ *Id.* ¶ 5.

⁴⁴² This opinion was issued prior to the U.S. Supreme Court’s ruling in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), which held that a website creator could not be compelled by Colorado’s anti-discrimination statute to create a website for a same-sex marriage

the trial court's ruling that Masterpiece had violated the Colorado Anti-Discrimination Act because the baker "acknowledged that a pink cake with blue frosting 'has no intrinsic meaning and does not express any message.' It was only after Scardina disclosed that she was transgender and intended to use the cake to celebrate . . . her transition that Masterpiece . . . refused to provide the cake."⁴⁴³ Thus, the appellate court found that the trial court's ruling did not violate the baker's rights to free speech⁴⁴⁴ and free religious exercise.⁴⁴⁵ The Colorado Supreme Court later vacated the decision on the procedural ground that Scardina did not meet any of the Colorado Anti-Discrimination Act's "very specific constraints on when a district court can consider a claim of discrimination in a place of public accommodation," and thus, the district court had not had proper jurisdiction to hear the case.⁴⁴⁶

There are three cases out of California dealing with discrimination against trans individuals that do not deal as extensively with the question of trans identity as the previous two cases, so I will only briefly note them here. In the first, a nonbinary individual sued their landlord on several tort and statutory claims, alleging discrimination based on gender identity and disability, and an appellate court upheld the trial court's award of \$60,000 in damages.⁴⁴⁷ In the second, an appellate court upheld the trial court's dismissal of a breach of contract claim and other tort claims brought by a trans musician against a radio station, in which she had alleged the station did not play her music because she is trans.⁴⁴⁸ The third case involved a number of claims, only some of which were related to anti-transgender animus, brought by a trans homeowner who alleged that members of her homeowners association board conspired to prevent her from fulfilling her own duties as an elected member of that board. The opinion issued during the course of my survey dealt with an appellate court review of the trial court's denial of the defendants' anti-SLAPP motion; the appellate court largely upheld the trial court's rulings, only overturning the denial of the anti-SLAPP motion for a few of the claims.⁴⁴⁹

because creating a website was an expressive activity so doing so would violate the creator's free speech rights.

⁴⁴³ *Scardina*, 2023 COA 8, ¶¶ 56–57.

⁴⁴⁴ *Id.* ¶¶ 78–79 ("[I]n this specific context the pink cake with blue frosting may be perceived as conveying information. But the information is not derived from any artistic details or message created by the baker. Rather, . . . [t]he message would be generated by the observer's knowledge and the surrounding circumstances. Thus, the message would not be attributed to the creator . . .").

⁴⁴⁵ *Id.* ¶¶ 87–88 (citations omitted) ("For a neutral law of general applicability to survive a free exercise challenge, it must be rationally related to a legitimate state interest. The Supreme Court has consistently held that the state has a legitimate, indeed compelling, interest in eliminating discrimination from public accommodations.").

⁴⁴⁶ *Masterpiece Cakeshop, Inc. v. Scardina*, 2024 CO 67, ¶ 5 (citations omitted).

⁴⁴⁷ *Dostie v. Marowitz*, No. A168780, 2024 WL 4903290 (Cal. Ct. App. Nov. 22, 2024).

⁴⁴⁸ *Beverly v. KLOS Radio, LLC*, No. B318827, 2023 WL 2202641 (Cal Ct. App. Feb. 24, 2023).

⁴⁴⁹ *Pfeister v. Rogers*, No. A165508, 2024 WL 1614969 (Cal. Ct. App. Apr. 15, 2024).

One final case worth noting, *Commission on Human Rights and Opportunities v. Edge Fitness, LLC*, did not involve a trans plaintiff but rather was a challenge by two cis men against their gym's women-only workout spaces.⁴⁵⁰ The Connecticut Supreme Court held that there is "no implied customer gender privacy exception" to the Connecticut Public Accommodations Act, so the only permissible exceptions to claims of sex discrimination are those specifically listed in the statute, which do not include workouts spaces; thus, the female-only workout areas violated the statute's anti-discrimination provisions.⁴⁵¹ In reaching that decision, the court relied on amici briefs filed by the ACLU of Connecticut and several LGBTQ+ advocacy groups that argued:

[S]uch an [implied gender privacy] exception could be invoked to exclude women based on the privacy interests of men and could justify discrimination against transgender individuals because some customers, "due to modesty, find it uncomfortable" to be around such people. . . . Such a result of potentially limiting the access of women and transgender people . . . to spaces on the basis of the privacy interests of men or the "moral comfort" of customers defeats the purpose of our state's antidiscrimination legislation.⁴⁵²

This case demonstrates some of the complexities of litigating for anti-discrimination protections. At first glance, the idea of allowing female-only workout spaces may seem like a good idea, but hiding under the surface is a risk that creating too many and/or too generic exceptions to anti-discrimination laws might actually enable discrimination against the very minority groups such laws are designed to protect.⁴⁵³

E. Name and Gender Changes

When it comes to cases about the ability of trans people to legally change their name or gender, there are three main categories: 1) cases addressing a name or gender change petition filed by a trans individual, 2) cases addressing a trans individual's request to seal the records of their name or gender change, and 3) cases challenging laws that regulate the

⁴⁵⁰ 268 A.3d 630 (Conn. 2022).

⁴⁵¹ *Id.* at 633.

⁴⁵² *Id.* at 640–41.

⁴⁵³ See Lisa Lucile Owens, *Revisiting Gender in Places of Public Accommodation*, 28 N.Y.U. J. LEGIS. & PUB. POL'Y (forthcoming 2026) (manuscript at 9) (on file with author) (footnotes omitted) ("Even recognizing [women-only spaces'] historical role as sites of empowerment and meaningful political organization that challenged the power status quo, women's spaces have been challenged under public accommodations doctrines, mostly by weaponization of public accommodations laws by cismen. This raises complex questions about both the possible, as well as the permissible, scope of the possibilities of identity-demarcated spaces within anti-discrimination frameworks.").

process and requirements for making such changes.⁴⁵⁴ As might be expected, the majority of cases fall into the first two categories. After all, obtaining a legal name or gender change is often a pivotal moment in a trans person's transition.⁴⁵⁵ Moreover, name and gender changes can minimize trans people's risk of facing harassment and violence, as they allow trans people to not have to fear being outed every time they are asked to present an ID.⁴⁵⁶ Trans people's ability to have the records of their name or gender change sealed serves these same purposes. As some of the cases in my survey show, however, obtaining a name or gender change, or getting those records sealed, can be quite burdensome.⁴⁵⁷ That is why cases challenging the constitutionality of laws that put roadblocks in the way of trans people trying to safely change their name or gender also play a vital role in protecting trans people.

1. Constitutional Questions

Constitutional issues can arise in any of the three categories of cases mentioned above, but, naturally, they are most common in cases that directly challenge laws that regulate the name or gender change process. Even when a constitutional issue arises in a case dealing with a specific trans individual's petition to change their name or gender, or their request to have those records sealed, the constitutional question often relates to some law that is impeding that person's ability to do so.

⁴⁵⁴ There was one case in my survey results that fell outside these three categories. See *People v. Lund-Brown*, 530 P.3d 661 (Colo. Discpl. J. 2023) (disbarring attorney for abandoning his clients, including a trans woman who had hired him to help with her legal name change, among other misconduct).

⁴⁵⁵ See Dan Stahl, *Making a Name for Yourself: For Trans People, It's 'Life-Changing,'* NBC NEWS (Sep. 6, 2019, 9:56 AM), <https://www.nbcnews.com/feature/nbc-out/making-name-yourself-trans-people-it-s-life-changing-n1049721> ("I think it sounds superfluous to people on the outside," she said of changing one's name, but, she added, "that's a big statement to the world about who you are."); *Transgender Adults Holding Gender-Affirming IDs Have Better Mental Health*, DREXEL NEWS (Mar. 16, 2020), <https://drexel.edu/news/archive/2020/march/transgender-adults-ids> ("Having IDs that don't reflect how you see yourself, and how you present yourself to the world, can be upsetting," said lead author Ayden Scheim, PhD, an assistant professor in the Dornsife School of Public Health. "It can also potentially expose people to harassment, violence, and denial of service.").

⁴⁵⁶ See Stahl, *supra* note 455 ("If you sit and think for a second of all the different places that we have to present identification," he said, "it's mind-boggling." . . . Trans individuals whose ID photos and names mismatch their appearance don't have that luxury. Every check is "at a minimum full of anxiety" . . ."); cf. Ashley Kirzinger et al., *KFF/The Washington Post Trans Survey*, KFF (Mar. 24, 2023), <https://www.kff.org/report-section/kff-the-washington-post-trans-survey-trans-in-america/> (finding 63% of trans people "say they feel discriminated against because of their gender identity and expression at least sometimes").

⁴⁵⁷ Cf. Kirzinger et al., *supra* note 456 (finding that only 43% of binary trans individuals and 15% of non-binary or gender non-conforming trans individuals have legally changed their name despite 57% of trans people reporting they use a name different from the one they were given at birth).

The most common constitutional claims made by the trans litigants in these cases are equal protection, due process, and free speech claims, often raised in parallel in the same case. For example, in *Kalarchik v. State*, trans plaintiffs in Montana challenged a law that required a person seeking to change the sex designation on their driver's license to produce a birth certificate that matched the requested sex designation.⁴⁵⁸ In an opinion granting a preliminary injunction against the law, the trial court noted that the “[p]laintiffs’ complaint alleges the challenged state actions violate the Montana Constitution’s equal-protection guarantee, privacy protections, and prohibition against compelled speech.”⁴⁵⁹ However, while assessing the plaintiffs’ likelihood of success on the merits during the preliminary injunction analysis, the court only considered the equal protection claim.⁴⁶⁰ The court found that the “[p]laintiffs have established the challenged state actions affect cisgender and transgender Montanans in an unequal manner.”⁴⁶¹ The court then applied strict scrutiny, treating such discrimination based on transgender status as equivalent to a law that creates a sex-based classification,⁴⁶² and ruled that, while the state may have a compelling interest in “ensuring accurate vital statistics” regarding Montana residents, the law was not narrowly tailored to accomplishing that goal.⁴⁶³

Unfortunately, that is the only case among those surveyed where an equal protection challenge to a name or gender change regulation was successful. In *Indiana Bureau of Motor Vehicles v. Simmons*, an appellate court reversed a grant of summary judgment in favor of trans plaintiffs’ challenge to the Indiana Bureau of Motor Vehicles’ decision to stop offering non-binary “X” gender markers on driver’s licenses merely one year after the Bureau had initially changed its policy to allow “X” markers.⁴⁶⁴ The court concluded that, because “neither the U.S. Supreme Court nor the Indiana Supreme Court has definitively recognized those individuals who identify as non-binary as a protected class,” rational basis review

⁴⁵⁸ No. ADV-2024-261 (Mont. Dist. Ct. Dec. 16, 2024).

⁴⁵⁹ *Id.*, slip op. at 3.

⁴⁶⁰ *Id.*, slip op. at 6–7 (“Plaintiffs only need to demonstrate one of their claims satisfies the requirements of Montana Code Annotated § 27-19-201(1) to obtain a preliminary injunction. Because the Court finds the issue dispositive, it focuses its analysis on Plaintiffs’ equal protection claim.”).

⁴⁶¹ *Id.*, slip op. at 8.

⁴⁶² *Id.*, slip op. at 10 (“If the challenged state actions discriminate against transgender individuals on the basis of their transgender status, they also necessarily discriminate on the basis of sex.”).

⁴⁶³ *Id.*, slip op. at 11–12 (“Prior to the implementation of the challenged state actions, transgender Montanans were able to obtain amended birth certificates and drivers licenses. Plaintiffs argue nothing in the public record supports a finding there were problems maintaining accurate vital statistics before the implementation of the challenged state actions. Thus, the state interest could presumably be effectuated without the challenged state actions. If the challenged state actions are not necessary to effectuate the state interest, they cannot be narrowly tailored.”).

⁴⁶⁴ 233 N.E.3d 1016 (Ind. Ct. App. 2024), *aff’d as modified*, 236 N.E.3d 1159 (Ind. Ct. App. 2024).

should apply.⁴⁶⁵ It then held that the plaintiffs “fail[ed] to clearly demonstrate” that the state’s legitimate interests in maintaining the accuracy and consistency of data across state systems and in administrative efficiency were “arbitrary and irrational.”⁴⁶⁶ Going one step further, in *State v. Harper* a Kansas trial court found that a law that required state agencies to identify people only by their binary sex as assigned at birth “does not create a classification” in the first place.⁴⁶⁷ Thus, the court allowed that law to be enforced.⁴⁶⁸

Both of these cases also included various due process claims, which, like the equal protection claims, the courts rejected. The Indiana court called the plaintiffs’ informational privacy claim “speculative,”⁴⁶⁹ and the Kansas court more directly stated, “Kansas courts have not recognized a right to informational privacy.”⁴⁷⁰ The Kansas court also rejected a personal autonomy claim, saying, “Information recorded on a driver’s license does not interfere with transgender persons’ ability to control their own bodies or assert bodily integrity or self-determination.”⁴⁷¹ In contrast, in *In re M.T.*, while reversing a trial court’s denial of a trans individual’s request to seal the records of their legal name and gender change, a California appeals court “conclude[d that] whether a transgender person’s gender identity conforms with their assigned sex at birth is intimate personal information entitled to protection under the right to privacy. A transgender person thus has a privacy interest in concealing their transgender identity.”⁴⁷²

Courts in this context have also addressed due process claims unrelated to trans identity. For example, in *Marquez v. State*, a Montana trial court found that a law requiring trans people to obtain a court order stating they had undergone sex-reassignment surgery in order to change the gender designation on their birth certificate was unconstitutionally vague,

⁴⁶⁵ *Id.* at 1028.

⁴⁶⁶ *Id.*

⁴⁶⁷ No. SN-2023-CV-422, 2024 WL 2112138, at *13 (Kan. Dist. Ct. Mar. 11, 2024), *rev’d on other grounds sub nom*, *State ex rel. Kobach v. Harper*, 571 P.3d 6 (Kan. Ct. App. 2025).

⁴⁶⁸ This case arose in a unique posture. Unlike the usual case where trans plaintiffs challenge an anti-trans law, here, the state attorney general had asked the court to compel the Kansas Department of Revenue to comply with the law when issuing driver’s licenses and other documents. Five trans individuals then intervened in the case to raise the constitutional questions that the court subsequently addressed. *Id.* at *1–3. In the post-survey period, a Kansas appellate court reversed the trial court’s decision, allowing state agencies to identify people by their correct gender identity, without addressing the constitutional issues raised by the intervenors. *State ex rel. Kobach v. Harper*, 571 P.3d 6, 35 (Kan. Ct. App. 2025), *review denied*, No. 127390 (Kan. Sep. 29, 2025) (“[B]ecause we find at least two prerequisites for an injunction have not been met, independent of any claim regarding the constitutionality of the statute and the theory of constitutional avoidance, there is no need for us to address the claims of the Intervenor.”).

⁴⁶⁹ *Simmons*, 233 N.E.3d at 1029.

⁴⁷⁰ *Harper*, 2024 WL 2112138, at *12.

⁴⁷¹ *Id.*

⁴⁷² 326 Cal. Rptr. 3d 808, 823 (Ct. App. 2024).

both on its face and as applied.⁴⁷³ And in Pennsylvania, three different judges have granted trans people's name change petitions in contravention of a statute that bars name changes for people who have been convicted of certain felonies.⁴⁷⁴ These courts have disregarded this felony bar on name changes because they believe the statute is likely "unconstitutional under the irrebuttable presumption doctrine and fails a traditional means-end review."⁴⁷⁵ As described in the proceedings in one of these three cases, the irrebuttable presumption doctrine stems from the idea that statutes containing "irrebuttable presumptions often run afoul of Pennsylvania's due process guarantee, because they infringe on rights by using a presumption that the existence of one fact, [sic] is statutorily conclusive of the existence of another fact."⁴⁷⁶ With the felony bar statute at issue here, the existence of a felony conviction is presumed to conclusively indicate that the name change is being requested for fraudulent purposes and thus should be denied. Part of why the court found that the felony bar satisfied the irrebuttable presumption doctrine's requirements is that the bar implicates people's "due process interest in controlling their own names," even if that interest does not rise to the level of a fundamental right.⁴⁷⁷

That same Pennsylvania court also accepted an argument that the felony bar violated free speech rights in that it "compels speech because when Pennsylvanian's [sic] cannot change their name, they must present an unwanted name every time they vote for the first time in a precinct, travel overseas, drive, enter a government building and many of the other reasons discussed during the testimony today."⁴⁷⁸ On the other hand, in *In re C.G.*, the Wisconsin Supreme Court said that "identifying one's self is an act, not a mode of expression."⁴⁷⁹ On that logic, the court ruled that requiring a trans woman to register as a sex offender under her deadname did not implicate either the expressive conduct or the compelled speech prongs of First Amendment speech rights.⁴⁸⁰ The court likewise concluded that a statutory bar on her ability to legally change her name due to her

⁴⁷³ No. DV 21-873 (Mont. Dist. Ct. June 26, 2023). On the facial vagueness issue, the court noted that it was in a "highly unusual position" because both parties agreed summary judgment was appropriate. From opposite perspectives, both sides argued that the law was facially void as it "[could] not be enforced because it is premised on a factual impossibility"—i.e., that "no surgical procedure exists that can change an individual's sex." *Id.*, slip op. at 11–12.

⁴⁷⁴ Matthew Santoni, *3rd Pa. County Defies Law Barring Name Changes for Felons*, LAW360 (Aug. 4, 2023, 7:14 PM), <https://www.law360.com/articles/1707864>.

⁴⁷⁵ *In re Change of Name of Hilliard*, No. 640 WDA 2022, slip op. at 2 (Pa. Super. Ct. Apr. 17, 2023) (vacating and remanding the lower court's denial of a name change based on the felony bar statute, although without actually ruling on the constitutional issue).

⁴⁷⁶ Transcript of Proceedings at 38, *In re Porter, Jr.*, No. 21-11804 (Allegheny, Pa. C.P. Dec. 15, 2021) (These proceedings concluded with the court issuing an oral order finding the felony bar unconstitutional on the grounds that had been advanced by petitioner's counsel during the proceedings.).

⁴⁷⁷ *Id.* at 43.

⁴⁷⁸ *Id.* at 47.

⁴⁷⁹ 976 N.W.2d 318, 345 (Wis. 2022).

⁴⁸⁰ *Id.* at 341–46.

sex offender status did not violate her free speech rights, and the state could not be “compel[led] . . . to facilitate a change of her legal name.”⁴⁸¹ There was a dissent that, echoing the Pennsylvania court, vehemently disagreed with the majority’s characterization of the right at stake:

A name can convey a person's family history, cultural heritage, or religious devotion. And a name most certainly can convey one's gender identity. It is a fundamental way a person presents themselves to the world and is essential to a person's identity. Calling a person by that person's chosen name indicates respect for that person's dignity and autonomy.⁴⁸²

The dissent, thus, found the First Amendment was implicated and would have held that the plaintiff cannot be “categorically banned from making that name her legal name.”⁴⁸³

There is one final case among my survey results that raised a unique, and troubling, constitutional issue regarding name changes. In *In re Correction of Birth Record of Adelaide*, the Ohio Supreme Court, addressing for the first time the ability of trans people to change their name or gender, fractured, unable to find a majority for any position.⁴⁸⁴ The court, thus, left in place the lower appellate court’s affirmance of the trial court’s denial of the plaintiff’s name and gender change petitions. The main question was statutory—whether the current statute authorizing amendments to birth certificates allowed trans people to update their gender marker—but three of the court’s seven justices introduced a novel constitutional “concern” about gender change petitions in general:

In Ohio, it has long been understood that judicial power [under the Ohio Constitution] extends only “to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect.” . . .

Adelaide's appeal lacks this necessary adversity. She seeks no protection from the conduct of any other party. And no party claims to have a competing interest as to a change to the sex marker on Adelaide's birth certificate. Put in terms of Blackstone's *Commentaries on the Laws of England*, a decision in favor of Adelaide in this matter

⁴⁸¹ *Id.* at 323.

⁴⁸² *Id.* at 350 (Bradley, J., dissenting) (footnote omitted).

⁴⁸³ *Id.* at 355 (noting, however, that the plaintiff would have to refile her name change petition for the circuit court to determine that there was no reason she should not be allowed to change her name).

⁴⁸⁴ 177 Ohio St. 3d 281, 2024-Ohio-5393, 252 N.E.3d 1.

would not call on any party “to make satisfaction for” the injury to her.⁴⁸⁵

These justices would have found that the appellate court, and the supreme court itself, lacked jurisdiction to hear the plaintiff’s appeal of the trial court’s denial of her gender change petition.⁴⁸⁶ This proposition, if ever adopted, would severely restrict trans people’s ability to legally change their name or gender by thwarting any review of a trial court’s denial of a petition.

2. Treatment of Name and Gender Change Petitions

In my survey results, cases deciding whether to grant or deny a trans individual’s name or gender change petition, without touching on any constitutional issues, came from the following seven states: Indiana,⁴⁸⁷ Louisiana,⁴⁸⁸ Minnesota,⁴⁸⁹ Nevada,⁴⁹⁰ New York,⁴⁹¹ Ohio,⁴⁹² and Oregon.⁴⁹³ The most common theme among these cases is that denials of such petitions are usually based on a court’s determination that it has not been statutorily authorized to grant them.⁴⁹⁴ Similar to the outcome in *In re Correction of Birth Record of Adelaide* above, other Ohio courts have denied petitions after finding that they lacked statutory authority. In the most interesting of these cases, *In re B.C.A.*, the majority, following the same

⁴⁸⁵ *Id.* ¶¶ 101–02 (Deters, J., separate opinion) (citations omitted).

⁴⁸⁶ This case is not the first time such logic has appeared in a state supreme court opinion, although it is the one in which the most justices have endorsed it. Previously, in 2021, one justice on the Utah Supreme Court dissented from a ruling granting two trans petitioners’ legal sex changes. This justice believed that there were no adverse interests at stake in a sex change petition, so no court, not even a trial court, had jurisdiction over such a petition. However, this justice did accept that the historical practice of courts granting name changes represented a unique, narrow exception to the otherwise general requirement that litigation involve adverse interests. *In re Sex Change of Childers-Gray*, 2021 UT 13, 487 P.3d 96 (Lee, J., dissenting).

⁴⁸⁷ *In re K.G.*, 200 N.E.3d 475 (Ind. Ct. App. 2022) (denying); *In re O.J.G.S.*, 187 N.E.3d 324 (Ind. Ct. App. 2022) (denying); *Wallace v. State*, 236 N.E.3d 1133 (Ind. Ct. App. 2024) (denying).

⁴⁸⁸ *Arnaud v. George*, 23-744 (La. App. 3 Cir. 4/24/24), 387 So.3d 818 (denying); *In re Strain*, 24-234 (La. App. 5 Cir. 12/30/24), 410 So. 3d 965 (denying).

⁴⁸⁹ *In re Kollman*, No. A22-1758, 2023 WL 5522183 (Minn. Ct. App. Aug. 28, 2023) (reversing and remanding denial of name change).

⁴⁹⁰ *In re Salazar*, 518 P.3d 873 (Nev. 2022) (reversing and remanding denial of name change).

⁴⁹¹ *In re E.A.C.S.*, 214 N.Y.S.3d 660 (Civ. Ct. 2024) (granting); *In re Mary*, 169 N.Y.S.3d 483 (Sup. Ct. 2022) (granting in part and denying in part); *In re N.K.*, 174 N.Y.S.3d 541 (Civ. Ct. 2022) (granting).

⁴⁹² *In re B.C.A.*, 2023-Ohio-2931, 223 N.E.3d 820 (denying); *In re Carpenter*, 2024-Ohio-810, 238 N.E.3d 872 (denying).

⁴⁹³ *In re Eaton*, 515 P.3d 921 (Or. Ct. App. 2022) (granting); *In re Jondle*, 506 P.3d 480 (Or. Ct. App. 2022) (granting).

⁴⁹⁴ One case denying a name or gender change did not rest on such a statutory question. See *Arnaud v. George*, 23-744 (La. App. 3 Cir. 4/24/24), 387 So.3d 818 (procedurally reversing trial court’s grant of petitioner’s gender change due to alleged violations of the Louisiana Code of Civil Procedure by both the petitioner and the trial court).

logic as the other Ohio courts, found that “the plain language of the statute [authorizing corrections to birth certificates] constrains such a change to one that corrects the birth record to accurately reflect circumstances existing *at the time of birth*.”⁴⁹⁵ A concurrence explained why that interpretation of the statute supposedly required denying the trans petitioner’s requested gender change—the trans petitioner’s sex assigned at birth was “accurate” at that time because testimony from the petitioner’s father indicated that “it was not until the age of two or three that the applicant ‘presented us with *her truth* that she was female.’”⁴⁹⁶ Going beyond this transphobic implication that, simply because an infant is unable to express the truth of their gender identity, their sex assigned at birth must necessarily have been “accurate,” the concurrence states:

The insistence on the accurate designation of the applicant’s sex at birth in the birth record is not a moralistic or esoteric preoccupation with violating “the right to define one’s own concept of existence.” Not only does this insistence respect the state of things as they actually exist, i.e., the truth, but it is necessary for the just application of existing laws.⁴⁹⁷

This concurrence is barely hiding its transphobia, but the opinion ends up tying itself in knots trying to justify that transphobia and deny the reality of the petitioner’s gender identity.

The case also includes a dissent that disagrees with the majority’s statutory interpretation, finding instead that, “at the time the individual files an application for correction, there must be recorded information on the birth certificate that is improper and inaccurate. . . . The statutory language does not address *when* the recorded information [must be] determined to be improper and inaccurate,” noting, then, that the petitioner’s sex marker was inaccurate *at the time she filed her petition*.⁴⁹⁸ The dissent also highlights the fact that, in 2019, a federal district court had “found [the Ohio Department of Health (ODH)]’s policy [of prohibiting trans individuals from changing the sex marker on their birth certificate] violated the plaintiffs’ rights to substantive due process and equal protection, and

⁴⁹⁵ *B.C.A.*, 2023-Ohio-2931, at ¶ 15 (emphasis in original); see also *Carpenter*, 2024-Ohio-810, at ¶ 14 (“We find the plain language of R.C. 3705.15 limits a correction of the birth record pursuant to this statute to a correction that accurately reflects the circumstances existing at the time of birth. This is a snapshot of one particular point in time.”).

⁴⁹⁶ *B.C.A.*, 2023-Ohio-2931, at ¶¶ 25–26 (Lynch, J., concurring) (emphasis in original) (citations omitted) (The opinion engages in similar circular logic around the medical definition of “gender dysphoria,” arguing that “the male applicant herein could not have gender dysphoria unless the applicant demonstrated a ‘strong desire’ or insistence on being ‘the other gender,’ i.e., female. . . . [So t]he applicant’s testimony to having ‘always been a girl’ is necessarily at variance with the medical diagnosis of Gender Dysphoria.”).

⁴⁹⁷ *Id.* ¶ 27 (citation omitted).

⁴⁹⁸ *Id.* ¶ 42 (Trapp, J., dissenting) (emphasis in original).

permanently enjoined ODH from enforcing it.”⁴⁹⁹ While that decision related to a departmental regulation and is not binding on the state court, the dissent criticized the majority for failing to address those constitutional concerns because “the question of the constitutionality of a statute must generally be raised at the first opportunity,” and, since there had been no reason for the petitioner to raise these constitutional issues alongside her initial petition, her first opportunity to raise such questions was in these appellate proceedings.⁵⁰⁰

In Indiana, judges are similarly divided over their statutory authority to grant gender changes. Majorities in Indiana’s courts have aligned on the idea that “the plain language of [the statute authorizing corrections to birth certificates] ‘clearly applies only to the use of DNA testing or other documentary evidence in order to establish paternity for the purpose of including the proper parent’s name on a child’s birth certificate.’”⁵⁰¹ In at least one such case, *In re O.J.G.S.*, a dissent, while not saying whether it disagreed with the majority’s interpretation of the statute, argued the court indeed possessed authority to grant gender change petitions by virtue of its inherent power to provide equitable relief.⁵⁰² The dissent criticized the majority, charging that its “analysis here would require the Indiana judiciary to refrain from acting in the absence of statutory permission. This is the exact opposite of how the Indiana judiciary’s equity power operates.”⁵⁰³ The dissent would have exercised that power to grant the gender change petition because “the uncontradicted medical evidence fully supported Mother’s petition to change Child’s gender marker.”⁵⁰⁴

One other wrinkle in Indiana’s jurisprudence on this issue is that, while the majority in the case above found the statute categorically barred courts from granting gender changes, one court has left open the possibility that courts might retain that power in certain circumstances. Specifically, in *Wallace v. State*, the court found that the statute applied more broadly than solely to DNA tests for paternity, instead interpreting it as authorizing courts to “make both *additions to or corrections in* a birth certificate upon receipt of adequate documentary evidence.”⁵⁰⁵ The court indicated that, in the case of a petition from a trans individual, such

⁴⁹⁹ *Id.* ¶ 48 (citing *Ray v. Himes*, No. 2:18-cv-272, 2019 WL 11791719 (S.D. Ohio Sep. 12, 2019)).

⁵⁰⁰ *Id.* ¶ 67 (citation omitted) (internal quotes omitted) (quoting *State v. Awan*, 22 Ohio St. 3d 120, 489 N.E.2d 277, 279 (1986) (overruled on other grounds)).

⁵⁰¹ 187 N.E.3d 324, 330 (Ind. Ct. App. 2022) (emphasis omitted) (citations omitted) (quoting *In re A.B.*, 164 N.E.3d 167, 172 (Ind. Ct. App. 2021) (Pyle, J., dissenting)); see also *In re K.G.*, 200 N.E.3d 475 (Ind. Ct. App. 2022) (While affirming the denial of a mother’s request for a gender change for her trans child for the same reasons as in *In re O.J.G.S.*, the court reversed and remanded the denial of the requested name change on the grounds that the trial court had not adequately explained its finding that the name change was not in the best interest of the child.).

⁵⁰² *O.J.G.S.*, 187 N.E.3d at 334 (Mathias, J., dissenting).

⁵⁰³ *Id.* at 335 (footnote omitted).

⁵⁰⁴ *Id.* at 340.

⁵⁰⁵ 236 N.E.3d 1133, 1140 (Ind. Ct. App. 2024).

documentary evidence must adequately demonstrate that the “petition was made in good faith and not for a fraudulent or unlawful purpose.”⁵⁰⁶ However, finding that the plaintiff “did not submit any ‘adequate documentary evidence’ or evidence supporting that [her] petition was made in good faith and not for a fraudulent or unlawful purpose,” the court affirmed the denial of the trans plaintiff’s petition.⁵⁰⁷

One final case on legislative authorizations for gender changes, *In re Strain*, comes from Louisiana, regarding a statute that requires a trans petitioner to present proof of sex reassignment surgery before a court can grant their gender change petition. A majority of the appellate court in that case found that it was reasonable for the trial court to have concluded that the petitioner’s submission of the post-operative report from her surgery, alongside a letter from her surgeon, was insufficient to prove that her gender dysphoria “had been **properly diagnosed** . . . [and] that the sex reassignment surgery had been **properly performed**.”⁵⁰⁸ As a dissent points out, this ruling grants vast discretion to trial court judges:

[T]he majority's interpretation of the word “proper” proposes the trial judge may weigh his own subjective evaluation as to the correctness or validity of a medical diagnosis or surgical procedure against the evaluation of credentialed medical professionals. . . . [T]his interpretation is radical and unprecedented. Judges are not medical experts. They do not have the medical training, education, expertise, or experience to make such an evaluation.⁵⁰⁹

The dissent further found that the evidence presented by this petitioner could not reasonably be considered improper proof under the statute, noting that “the majority’s conclusion in light of the evidence presented, particularly the operative notes, requires one to believe that the medical professionals at Tulane University Hospital are performing surgeries and major operations, including genital reassignment surgeries, without prior proper medical diagnoses. This proposition is illogical”⁵¹⁰ Luckily, in the post-survey period, the Louisiana Supreme Court vacated the appellate court’s opinion, although merely on the ground that the court had committed legal error by applying the wrong standard of proof to the petitioner’s evidence, and remanded the case back to the trial court.⁵¹¹

Unlike cases denying name and gender changes, cases granting them do not have a prevalent unifying theme. This is, perhaps, understandable because most grants of such petitions are likely to be routine and issued as simple orders without reasoning. It is only when a case presents a

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ *In re Strain*, 24-234, p. 6 (La. App. 5 Cir. 12/30/24), 410 So. 3d 965, 970 (emphasis in original).

⁵⁰⁹ *Id.* at p. 7, 410 So. 3d at 974 (Marcel, J., dissenting).

⁵¹⁰ *Id.* at p. 11, 410 So. 3d at 976.

⁵¹¹ *In re Strain*, 2025-00198 (La. 4/15/25), 406 So. 3d 415 (per curiam).

unique issue that the court is likely to provide an opinion explaining its decision. The scenario that recurs most frequently is a petition by a trans inmate or convict. For example, in *In re Salazar*, the Nevada Supreme Court ruled that, when a petition from a trans inmate meets the statutory requirements and is unopposed, “while a court must ‘specifically take into consideration’ a petitioner’s criminal history, . . . the district court must provide substantial and principled reasons for denying an adult name-change petition, preferably in writing.”⁵¹² Similarly, an Oregon appeals court ruled in *In re Jondle* that “a court may not deny a petition for change of legal name or sex as inconsistent with the ‘public interest’ based merely on a petitioner’s status as a convicted or incarcerated individual.”⁵¹³ Rather, a petition can only be considered inconsistent with the public interest “where the record contains evidence that change of legal name or sex is sought for some purpose harmful to the wellbeing of the general public.”⁵¹⁴ In *In re Eaton*, another Oregon appeals court has likewise been expansive in the latitude it grants trans people involved in the criminal justice system to be able to change their name or gender. A defendant who was incarcerated while awaiting trial had filed a name and gender change petition in which they had asked that their “name change not take effect until [the pending criminal case] is finished” so as not to cause any delays in their case.⁵¹⁵ The trial court had determined that the petitioner was asking for the name change to take effect in the future, for which there was no statutory provision. The appellate court reversed, noting that it was possible the “petitioner merely was expressing a preference as to the timing of the name change, rather than requesting a name change only if the name change could take effect in the future,” and criticizing the trial court for “failing to liberally construe the pleadings.”⁵¹⁶

Finally, New York courts offer some interesting variations on when and how courts grant gender or name change petitions. For example, in *In re E.A.C.S.*, one court granted an asylum seeker’s name change request despite the petitioner having only an uncertified copy of their birth certificate from their home country, contrary to statutory requirements, because, among other things, the fact that the petitioner was from a country that did not have a consulate in New York was good cause to excuse that deficiency.⁵¹⁷ New York courts have also occasionally been called upon to grant gender changes in relation to birth certificates from other states. In *In re N.K.*, one court determined that Georgia law did not prohibit changing one’s birth certificate gender marker to “X” and therefore authorized

⁵¹² 518 P.3d 873, 875 (Nev. 2022); see also *In re Kollman*, No. A22-1758, 2023 WL 5522183, at *3 (Minn. Ct. App. Aug. 28, 2023) (In the context of a trans minor’s petition, “[t]he district court’s failure to provide findings that indicate its consideration of relevant factors is an abuse of discretion.”).

⁵¹³ 506 P.3d 480, 481–82 (Or. Ct. App. 2022).

⁵¹⁴ *Id.* at 482.

⁵¹⁵ *In re Eaton*, 515 P.3d 921, 923 (Or. Ct. App. 2022) (alteration in original).

⁵¹⁶ *Id.*

⁵¹⁷ 214 N.Y.S.3d 660 (Civ. Ct. 2024).

the petitioner to seek such a change from the Georgia Department of Public Health.⁵¹⁸ Meanwhile, the court in *In re Mary* denied a request to order a gender designation change on the petitioner's Vermont birth certificate, determining that doing so would be inconsistent with Vermont law.⁵¹⁹ The court, however, did grant the petitioner's request for a general legal gender change and for a change to the petitioner's federal social security records.⁵²⁰

3. Treatment of Requests to Seal Records of Name and Gender Changes

In comparison to cases directly addressing whether to grant or deny a name or gender change, there were fewer cases in my survey related to the question of whether to seal the records of such proceedings. These cases revolved around one central theme: what evidence was sufficient to justify the trans petitioner's fear for their personal safety should the records remain open. The good news for this category of cases is that the number of courts that have granted requests to seal (including the California court in *In re M.T.* discussed above in the Constitutional Questions section) is double those that have denied such requests, although half of the granted petitions are from New York. That is partly because, as all the New York courts reference, in 2021, New York passed the Gender Recognition Act that "expanded protections for transgender and non-binary New Yorkers," and included provisions that instruct courts to presumptively seal the records of name and gender change proceedings.⁵²¹ While records of gender change orders are "required to be sealed," the court must conduct a "totality of the circumstances" analysis to determine whether keeping the records of a name change open would jeopardize the trans individual's safety.⁵²² However, the statute makes clear that the general risk of violence or harassment trans people face is part of that totality, and a request to seal cannot be denied simply because the petitioner "lacks specific instances of or a personal history of threat to personal safety."⁵²³ Even when weighing the competing priorities of the Gender Recognition Act against those of the Sexual Offender Registration Act, a New York court granted a trans

⁵¹⁸ 174 N.Y.S.3d 541, 543–44 (Civ. Ct. 2022) ("[T]he Court is unaware of any law or regulation in Georgia expressly addressing, providing for, or prohibiting such option. . . . [P]etitioner has satisfied the requirements under Georgia law to seek and obtain from the Georgia Department of Public Health a discretionary amendment of petitioner's birth certificate . . .").

⁵¹⁹ 169 N.Y.S.3d 483, 488 (Sup. Ct. 2022) ("This Court lacks jurisdiction to order a Vermont executive agency to take an action where the Vermont statute at issue does not explicitly permit action upon such a directive from a court. Were this Court to order Vermont's State Registrar to amend or issue a new birth certificate . . . the Court would run afoul of the Full Faith and Credit Clause.").

⁵²⁰ *Id.* at 489.

⁵²¹ *Cody VV. v. Brandi VV.*, 205 N.Y.S.3d 772, 773 (App. Div. 2024) (quoting Governor's Approval Mem, Bill Jacket, L 2021, ch 158 at 5) (granting request to seal records of trans minor's name and gender change).

⁵²² *Id.* at 774.

⁵²³ *Id.* (quoting 2021 N.Y. Sess. Laws § 64-a (McKinney)).

convicted sex offender's request to seal their name change proceedings, carving out a single, narrow exception for the Division of Criminal Justice Services to be notified and "directed that the order may be used only for the limited purpose of allowing the agency to carry out its regulatory oversight and to maintain an accurate criminal history record for the applicant."⁵²⁴ The reach of the Gender Recognition Act also extends beyond name or gender change petitions, as evidenced by a surrogate's court granting a request to redact a trans individual's deadname in probate proceedings related to their grandfather's will.⁵²⁵

Echoing the reasoning of New York's Gender Recognition Act, a New Jersey appellate court reversed a trial court's denial of a trans individual's request to seal the records of his name change, finding that "the trial court erred in discounting appellant's expressed fear of physical harm and discrimination and requiring that he show evidence of a personal experience with violence or discrimination based upon his being transgender, or study data focused particularly on the State of New Jersey."⁵²⁶ However, not all courts are willing to go that far. In Ohio, an appeals court merely reversed and remanded for further proceedings the trial court's denial of a request to seal the records of the trans petitioner's name change because "the trial court failed to determine if [petitioner] attached satisfactory proof to her application showing that open records or published notices would jeopardize her personal safety."⁵²⁷ The court did not discuss what proof would satisfactorily indicate that open records would jeopardize her safety, but a dissent noted that she "provided the specific reason for [her] safety concerns" and accused the majority of "ignor[ing] the record itself."⁵²⁸ Despite this, the dissent rested its conclusion that the request to seal should be granted largely on procedural grounds and did not discuss the exact evidence the petitioner had provided or what evidence would be sufficient to satisfy the "jeopardizes personal safety" standard.

Courts in other states have been more explicit than the Ohio court in specifying that a showing of an individualized risk of harm is needed to justify sealing the records of a name or gender change. In the most thorough analysis of this issue, a Wisconsin appeals court ruled that a statute that requires a petitioner to demonstrate "by a preponderance of the evidence[] that publication of his or her petition could endanger him or her" means that "the petitioner must prove it is *more likely than not* that the petitioner could be *physically* endangered if the name change petition is

⁵²⁴ *In re JE*, 194 N.Y.S.3d 421, 425–26 (Sup. Ct. 2023).

⁵²⁵ *In re Will of J.W.S.*, 198 N.Y.S.3d 901, 904 (Sur. Ct. 2023) ("[T]his Court finds the evidence of a transgender name change is not information that is presumptively public information.").

⁵²⁶ *In re T.I.C.-C.*, 271 A.3d 350, 359 (N.J. Super. Ct. App. Div. 2022).

⁵²⁷ *In re Change of Name N.C.J. to B.A.J.*, 2024-Ohio-2474, 2024 WL 3220271, ¶ 10 (Ct. App. June 28, 2024).

⁵²⁸ *Id.* ¶¶ 16, 18 (Sutton, J., concurring in part and dissenting in part).

published.”⁵²⁹ In other words, records can only be sealed if the petitioner is able to prove that not doing so would create a more than fifty percent chance of some “future event” where they personally would face a risk of physical harm; mental or emotional harm is not enough.⁵³⁰ Such logic has been replicated by the Montana Supreme Court, which upheld the denial of a trans inmate’s request to seal the records of her name change because “[o]ther than to describe past harassment and abuse generally, [petitioner] does not identify or provide context for specific instances of abuse. . . . [She] has not explained why an open-record proceeding would change her circumstances.”⁵³¹ Likewise, in Virginia, even when a court denied the petitioner’s request to seal the records of her name change on procedural grounds, it went out of its way to note it would have ultimately denied her request on the merits because “she did not cite a single specific or particularized fear that would justify sealing the name change records. She only pointed to generalized and imagined future fears or harms.”⁵³² These strict requirements to show a specific and individualized risk of harm ignore the reality that the potential harassment and discrimination trans people face on a daily basis can seriously negatively affect a trans person’s mental health, even if they have not previously been a target of harassment themselves.⁵³³

F. Schools and Education

The majority of cases in my survey results that involved schools dealt with constitutional questions surrounding the use of students’ preferred pronouns at school. The second most common type of case were those dealing with the constitutionality of laws banning trans children from participating on school sports teams consistent with their gender identity.⁵³⁴ Interestingly, cases involving sports in schools represented six of the seven cases in my survey that dealt with sports bans, emphasizing the fact that it is trans youth who are the primary targets of these laws. Non-

⁵²⁹ *In re R.I.B.*, 986 N.W.2d 325, 331, 335 (Wis. Ct. App. 2023) (emphasis added) (first quoting WIS. STAT. ANN. § 786.37 (West 2022)).

⁵³⁰ *Id.*

⁵³¹ *In re Nichols*, 2024 MT 85N, ¶ 8, 546 P.3d 799.

⁵³² *In re E.B.M.*, 111 Va. Cir. 510 (Cir. Ct. 2023).

⁵³³ See, e.g., Kirzinger et al., *supra* note 456.

⁵³⁴ There were two other cases in my survey results that addressed constitutional issues, but they only involved trans people peripherally. See *Schneider v. Conejo Valley Unified Sch. Dist.*, No. B334090, 2024 WL 4927951 (Cal. Ct. App. Dec. 2, 2024) (affirming dismissal for lack of standing suit by anti-trans plaintiffs against a school district accusing the district of not following a statute requiring schools to teach children about gender identity and the harms of gender stereotypes by creating a curriculum that—wait for it—taught children about gender identity and harms of gender stereotypes, as well as asking the court to declare a related school policy violated their constitutional privacy rights); *YU Pride All. v. Yeshiva Univ.*, 180 N.Y.S.3d 141 (App. Div. 2022) (affirming lower court ruling that Yeshiva University had to recognize the Pride Alliance as a student group because the University was not a religious organization exempt from anti-discrimination laws and doing so did not violate its rights to free speech, free religious exercise, or freedom of association).

constitutional cases involving schools, on the other hand, were few and far between. Surprisingly, though, the only cases dealing directly with trans students' access to restrooms in schools were non-constitutional. (As will be discussed below, there was one constitutional case where restroom usage and sports team participation arose alongside a schools' pronoun policy.) In contrast, at the federal level, Professor Katie Eyer's study identified eight cases—roughly twelve percent of the total cases in that study—that dealt with constitutional questions in the context of trans students' access to restrooms (and locker rooms).⁵³⁵

1. Constitutional Questions

i. Schools' Treatment of Trans Students' Pronouns

Fortunately, the majority of courts assessing the constitutionality of various schools' policies regarding the use of trans students' preferred pronouns have resolved those cases in favor of the trans students. For example, in *Doe v. Manchester School District*, the New Hampshire Supreme Court upheld a trial court's grant of a school district's motion to dismiss a complaint filed by a parent who alleged the district's pro-trans policy regarding students' pronouns violated her parental rights.⁵³⁶ The policy required school staff to use students' preferred pronouns and to keep that information private, even from parents, unless the student consented to disclosure or disclosure was legally required.⁵³⁷ The supreme court found that the trial court had correctly applied rational basis review (and the plaintiff had not contested that the policy survived rational basis) because “[w]e cannot conclude that any interference with parental rights which may result from non-disclosure [of a child's pronouns to their parents] is of constitutional dimension.”⁵³⁸ There was one dissenter who would have held strict scrutiny applied, and then would have reversed and remanded the case to the lower court, “[b]ecause accurate information in response to parents' inquiries about a child's expressed gender identity is imperative to the parents' ability to assist and guide their child,” and the policy allowed school staff to keep a student's identity private even if directly asked about it by a parent.⁵³⁹

In *People v. Chino Valley Unified School District*, a trial court in California likewise ruled in favor of trans students.⁵⁴⁰ However, the posture of the case was very different from the one in New Hampshire. Here, a school district had enacted a policy requiring school staff to notify parents

⁵³⁵ Eyer, *supra* note 4, at 1418.

⁵³⁶ 324 A.3d 921 (N.H. 2024).

⁵³⁷ *Id.* at 923.

⁵³⁸ *Id.* at 926 (“By its terms, the Policy does not directly implicate a parent's ability to raise and care for his or her child. . . . [T]he Policy does not require non-disclosure. . . . Further, the Policy does not restrict a parent's ability to learn information from other sources, including from the child. The Policy does not encourage students to hide information from their parents or prevent students from sharing information.”).

⁵³⁹ *Id.* at 928 (Countway, J., dissenting).

⁵⁴⁰ No. CIVSB2317301, 2024 WL 5442638 (Cal. Super. Ct. Sep. 9, 2024).

whenever any student either requested to be treated as a gender different from their sex as assigned at birth or used restrooms and locker rooms, or joined sports teams, that did not match their sex as assigned at birth.⁵⁴¹ A third part of the policy was gender neutral, simply stating that parents had to be notified when a student “[r]equest[ed] to change any information contained in the student’s official or unofficial records.”⁵⁴² To justify this discriminatory policy, the school district argued that “one of the . . . purposes of the Policy is to prevent or reduce instances of self-harm.”⁵⁴³ The state of California sued the district, asking the court to declare that the policy unconstitutionally infringed on the rights of trans students. In relation to the two gender identity specific parts of the policy, the court addressed parental rights arguments and, similar to the New Hampshire Supreme Court, ruled that there were no constitutional issues with invalidating those parts of the policy because “even in the absence of the [policy] there is no mandated secrecy, . . . so presumably school personnel can still inform parents when appropriate. Parents are also still free to have conversations with their child about gender and gender identity.”⁵⁴⁴ The court also found that the gender identity focused parts of the policy violated the U.S. and California Constitutions’ equal protection guarantees and that the gender-neutral part of the policy partially violated constitutional privacy protections. Regarding the equal protection issue, the court determined the policy created a sex-based classification that was therefore subject to heightened scrutiny, and it was not narrowly tailored to the school’s prevention of self-harm justification because:

[W]hile the District may have a compelling interest, transgender or gender non-conforming students cannot be lumped together simply because the group as a whole is at greater risk for significant social-emotional concerns or suicide. Such overbroad generalizations are simply insufficient to justify a suspect classification because equal protection rights are held by individuals, not groups, and the Policy treats all transgender children the same irrespective of the child’s actual health. The expert evidence submitted also establishes, and State law affirms, there is

⁵⁴¹ Because the policy here was entirely about parental notification, including the section related to restroom usage and sports team participation, the case is much more akin to cases addressing pronoun policies than to cases about bathroom or sports bans. Moreover, the policy did not actually *ban* restroom usage or sports team participation consistent with gender identity, but rather it merely required parents to be notified when their child was “[a]ccessing sex-segregated school programs and activities, including athletic teams and competitions, or using bathroom or changing facilities that do not align with the student’s biological sex or gender listed on the birth certificate or other official records.” *Id.* at *1.

⁵⁴² *Id.*

⁵⁴³ *Id.* at *7.

⁵⁴⁴ *Id.* at *10.

nothing wrong or pathological with being transgender or gender non-conforming in and of itself.⁵⁴⁵

When it came to the third, gender-neutral part of the policy, the court found that it violated adult students' right to informational privacy, but for minor students, they "should not reasonably expect that staff would (or should) keep secrets from their parents It would be unrealistic for society to expect parents to discharge their duties . . . if information relevant to child development is concealed."⁵⁴⁶ Thus, in both New Hampshire and California, courts have found that it is constitutionally permissible for schools to support a student's gender identity even if that includes keeping it from the student's parents.

If those cases represent a "typical" response to schools' policies regarding students' pronouns, then rulings by two different courts in Wisconsin represent the extremes to which courts can go in either direction. On one side, in *Doe v. Madison Metropolitan School District*, a trial court rejected a parental rights challenge to the Madison Metropolitan School District's pro-trans pronoun policy for lack of standing.⁵⁴⁷ Even while "assum[ing] that Jane Doe accurately describes the Trans Policy as a 'grand social experiment' to 'treat[] little boys as if they're girls and little girls as if they're boys,'" the court still found that it had to dismiss the case because Jane Doe "fail[ed] to show why she anticipates that the District's policies will cause even a trifling individual injury."⁵⁴⁸ The court emphasized that Jane Doe presented no evidence that her child had ever given any indication that they were trans or even questioning their gender identity.⁵⁴⁹ Jane Doe also tried to analogize the schools' pronoun policy to a hypothetical policy that allowed the school to use "experimental medical treatments" to treat bee stings without informing a stung child's parents.⁵⁵⁰ The court had no trouble tearing down that argument, calling it "logically unsound" and "unpersuasive because bee stings are not a good comparison to gender identity."⁵⁵¹ Even more to the point in the court's mind, "Jane Doe fail[ed] to produce any analogous evidence on which she anticipates her child will ever get 'stung' by the Trans Policy. In fact, Jane Doe's testimony is that she has no reason to anticipate a harm."⁵⁵²

On the other end of the spectrum, in *T.F. v. Kettle Moraine School District*, a different Wisconsin trial court granted summary judgment in favor of a parental rights challenge to a similar policy in the Kettle Moraine School District.⁵⁵³ In fact, the challenge was not even to a formal

⁵⁴⁵ *Id.* at *7.

⁵⁴⁶ *Id.* at *15.

⁵⁴⁷ No. 2020-CV-000454, 2022 WL 21768939 (Wis. Cir. Ct. Nov. 23, 2022).

⁵⁴⁸ *Id.* at *17, *2 (first quoting oral argument).

⁵⁴⁹ *Id.* at *3.

⁵⁵⁰ *Id.* at *13.

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ No. 2021-CV-1650, 2023 WL 6544917 (Wis. Cir. Ct. Oct. 3, 2023).

policy, but rather to the school district informally telling one set of parents (who were plaintiffs in the case) that they would continue to use the child's preferred pronouns, "even over parental objections."⁵⁵⁴ While these plaintiff parents were directly impacted, another set of plaintiff parents was in a similar position to Jane Doe in Madison, i.e., hypothetically afraid that the school would treat their children the same way without any concrete evidence supporting that fear. Yet, unlike in the Madison case, the court here found that the second set of parents were reasonably at risk of imminent harm because, "if their children decide tomorrow to change their gender identity," the district's treatment of the other plaintiffs' child indicated "the School District *may* go along with that."⁵⁵⁵ To reach that conclusion, the court relied on testimony from the plaintiffs' expert witnesses that "sp[oke] to how fast this type of change [i.e., requesting to use different pronouns] in a child can come about to the point where it may be 'out of the blue' or 'come as a surprise to others' such as parents, family members, or friends."⁵⁵⁶ The transphobia lying just barely below the surface in that standing discussion was even more apparent when the court reached the merits. The court found that the question of which pronouns school officials would use to address a child was somehow "undisputedly a medical and healthcare issue."⁵⁵⁷ The supposed support for this finding was that the plaintiffs' expert witnesses testified that "living a 'double life' where a child's gender roles are different at home and school, is 'inherently psychologically unhealthy' and can undermine existing support structures for that child," with no discussion of the psychological effects of a child not being able to be in control of their identity and choose when and where to present as themselves.⁵⁵⁸ Indeed, the court did not feel obligated to consider any competing evidence because "Defendants seemingly ignore this argument from the Plaintiffs," and thus "[t]he Plaintiffs expert affidavits are undisputed for purposes of summary judgment."⁵⁵⁹ Having framed the right at stake as a parent's right to make medical decisions for their child, the court had no trouble finding the district's unofficial policy did not satisfy strict scrutiny.⁵⁶⁰ Ironically, despite the opinion's intensely transphobic undertones, the court still managed to insist that "[t]his is . . . not a case about the broader societal debate or implications of transgenderism in our youth or the political movement that supports it."⁵⁶¹

⁵⁵⁴ *Id.* at *1.

⁵⁵⁵ *Id.* at *9 (emphasis added).

⁵⁵⁶ *Id.*

⁵⁵⁷ *Id.* at *5.

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.* at *4, *9.

⁵⁶⁰ *Id.* at *8 ("Perhaps the District could introduce clear and convincing evidence in order to supplant a parent's medical judgment, but they certainly cannot do so on a whim in the manner that they did, and they have put forth no evidence – let alone clear and convincing evidence in this case.").

⁵⁶¹ *Id.* at *4.

It is worth noting that the court's opinion here was presaged by a dissenting opinion of the Wisconsin Supreme Court in the Madison Metropolitan School District case. The plaintiffs in that case had brought a procedural appeal to the state supreme court in which they also asked the high court to grant a preliminary injunction against the school district's policy.⁵⁶² While the majority refused to do so because the plaintiffs' original preliminary injunction motion was still pending in the trial court, three dissenters would have jumped ahead of the trial court proceedings and granted the injunction in part because "[t]he lack of a temporary injunction also keeps [the school district] in charge of *enabling healthcare choices without parental consent* for children who have gender-identity issues," violating the plaintiff parents' right to "raise their children as they think best."⁵⁶³

One final, albeit extensive, case involving pronoun usage and constitutional rights is *Vlaming v. West Point School Board* from the Virginia Supreme Court. However, rather than being about the constitutionality of a pronoun policy, it was about a French teacher who had been fired for refusing to use a trans student's preferred pronouns.⁵⁶⁴ The teacher, Mr. Vlaming, sued the school district, claiming that his firing violated his rights to free religious exercise and free speech and that the school's anti-discrimination policies under which he had been fired, and which included gender identity as a protected characteristic, were unconstitutionally vague as applied to his conduct. The case was procedurally at the motion to dismiss stage, but he alleged that the only conduct he was fired for was not using the trans student's preferred third-person pronouns because his "conscience and religious practice . . . prohibits [sic] him from intentionally lying, and he sincerely believes that referring to a [student assigned female at birth] as a male by using an objectively male pronoun is telling a lie."⁵⁶⁵ He alleged, however, that he did call the student by his preferred, masculine name and tried to avoid using any third-person pronouns in reference to the student, as well as in reference to other students "[t]o limit the risk of [the student] feeling singled out."⁵⁶⁶

A majority of the court accepted all of Mr. Vlaming's claims and reversed the trial court's grant of the school's motion to dismiss. On the free exercise claim, the majority applied a standard that said the state could only infringe on Mr. Vlaming's religious rights if his "sincerely held religious beliefs caused him to commit overt acts that 'invariably posed some substantial threat to public safety, peace or order'" and the government's rights-infringing action was the least restrictive means of achieving its "compelling state interest in protecting the public from that threat."⁵⁶⁷

⁵⁶² Doe 1 v. Madison Metro. Sch. Dist., 2022 WI 65, 403 Wis. 2d 369, 976 N.W.2d 584.

⁵⁶³ *Id.* ¶ 89 (Roggensack, J., dissenting) (emphasis added).

⁵⁶⁴ *Vlaming v. W. Point Sch. Bd.*, 895 S.E.2d 705 (Va. 2023).

⁵⁶⁵ *Id.* at 713 (internal quotations omitted) (quoting Mr. Vlaming's complaint).

⁵⁶⁶ *Id.* at 713–14.

⁵⁶⁷ *Id.* at 723 (citations omitted).

Under that standard, the majority found that “[w]hen religious liberty merges with free-speech protections, as it does in this case, mere ‘objectionable’ and ‘hurtful’ religious speech or, as in this case, nonspeech, is not enough to meet this standard.”⁵⁶⁸ On the freedom of speech claim, the majority found that Mr. Vlaming’s nonuse of the student’s preferred pronouns was not curricular speech subject to a lower constitutional standard but instead was compelled speech on the “divisive issue” of gender identity that amounted to the school “declar[ing] by ipse dixit that controversial ideas are now uncontroversial.”⁵⁶⁹ Finally, on the due process vagueness claim, the majority found that “at the time that the School Board fired Vlaming, no clearly established law — whether constitutional, statutory, or regulatory — put a teacher on notice that not using third-person pronouns in addition to preferred names constituted an unlawful act of discrimination against transgender students.”⁵⁷⁰

While three justices concurred in the judgment that the trial court’s grant of the school’s motion to dismiss should be reversed, they sharply disagreed with the majority on their reasoning. Most dramatically, these partial dissenters thought the trial court’s demurrer on Mr. Vlaming’s free speech and due process claims should be sustained. They argued that Mr. Vlaming failed to state a claim that his right to free speech had been violated because 1) his speech was curricular, or pursuant to his official duties, because “Vlaming and [the student]’s communications with one another stemmed entirely from their teacher-student relationship. But for his position as a public school teacher, Vlaming would have no need to ever communicate with [the student],” and 2) he wasn’t speaking on a matter of public concern because he “was not attempting to influence the political, cultural, or social debate around this topic. . . . He, while teaching, was communicating with a student in his class who was transgender.”⁵⁷¹ On the due process claim, the three partial dissenters found Mr. Vlaming’s allegations of vagueness unconvincing because, before firing him, “the School Board clearly and unambiguously informed Vlaming that his conduct was prohibited, undertook a lengthy investigative process, and conducted a public hearing in which Vlaming was represented by counsel and had the opportunity to fully advocate in favor of his position.”⁵⁷²

On the free exercise claim, all the partial dissenters agreed with the majority that the trial court’s dismissal of the claim was erroneous, and, while they all believed that the majority had applied too stringent a standard, they disagreed with each other on what the alternate standard should have been. Two partial dissenters thought the majority’s standard “ha[d] the potential to effectively narrow the state’s cognizable compelling governmental interests to only those that regulate peace and good order,” so

⁵⁶⁸ *Id.* at 724.

⁵⁶⁹ *Id.* at 740.

⁵⁷⁰ *Id.* at 746.

⁵⁷¹ *Id.* at 779–80 (Mann, J., concurring in part and dissenting in part).

⁵⁷² *Id.* at 782.

they would have applied a more “familiar” strict scrutiny test “requiring the government to justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest.”⁵⁷³ The final partial dissenter had much sharper words for the majority. This dissenter accused the majority of:

[Creating a] new test [that] puts Vlaming's right to free exercise in a class by itself. . . . Vlaming's right to be free from policies that allegedly burden his religious exercise would be protected to a higher standard than his right to speak his mind about secular matters, to be free from racial or gender discrimination, to see his children, or to receive due process in our courts.⁵⁷⁴

This justice then applied a neutrality analysis and “accept[ed] that Vlaming alleged facts [that were] sufficient for his claim that the School Board transgressed the as-applied neutrality standard by proceeding ‘in a manner intolerant of religious beliefs ... because of their religious nature.’”⁵⁷⁵ The justice also made the important point that “[t]he potential harm caused [to the student] by Vlaming's actions . . . is central to Vlaming's free exercise claim” and criticized the majority for “appear[ing] indifferent to whether Vlaming's actions in this case caused harm to [the student], seemingly viewing the question as either irrelevant to the legal analysis or so inconsequential as to not warrant a rigorous examination. Like surplusage.”⁵⁷⁶ While only endorsed by one justice, after the lengthy majority opinion focusing on Mr. Vlaming's religious right to deny trans people's existence, it is refreshing to see the trans person at the heart of this case re-centered in the narrative, with their dignity and right to live a life free of harm reaffirmed.

ii. Trans Students' Participation on School Sports Teams

Of the seven cases in my survey that dealt with the constitutionality of trans people's participation on sports teams, six were about school sports.⁵⁷⁷ One of those six was the California case, *People v. Chino Valley*

⁵⁷³ *Id.* at 749, 751 (Powell, J., concurring in part).

⁵⁷⁴ *Id.* at 764 (Mann, J., concurring in part and dissenting in part).

⁵⁷⁵ *Id.* at 766.

⁵⁷⁶ *Id.* at 768.

⁵⁷⁷ The seventh case involved an attempt by the Nassau County, NY, Executive Board to prevent sports teams that allowed trans athletes to compete from being able to use the county's public parks for events and competitions. The court struck down that executive order as violating the County Charter's separation of powers because “there [was] no corresponding legislative enactment providing the County Executive with the authority to issue such an order.” *Long Island Roller Rebels v. Blakeman*, No. 6042541/2024, slip op. at 12 (N.Y. Sup. Ct. May 10, 2024). The Nassau County legislature took a cue from the court's opinion and subsequently enacted a law with text identical to the executive order. In January 2025, after the survey period concluded, a different New York court denied the plaintiffs' request for a preliminary injunction against the law. *Long Island Roller Rebels v. Cnty. of Nassau*, No. 612363/2024 (N.Y. Sup. Ct. Jan. 21, 2025); see

Unified School District, discussed in the previous section. And of the remaining five, only one dealt directly with the rights of the trans students themselves, assessing an equal protection claim. The case, *Roe v. Utah High School Activities Association*, was a challenge by three teenage trans girls to a Utah law that banned minor trans girls from joining their schools' girls' sports teams.⁵⁷⁸ The court found that the law likely violated the Utah Constitution's equal protection guarantees and issued a preliminary injunction against the law.⁵⁷⁹ The court found that "the text, effect, and purpose of the Ban unmistakably support a finding that the statute creates a classification based on transgender status. Thus, the statute classifies based upon sex," so the court applied heightened scrutiny.⁵⁸⁰ Under that standard, the court held that the state had not "offer[ed] persuasive reasons to categorically ban all transgender girls from competing on girls' teams" in order to further its interest in protecting girls' sports,⁵⁸¹ and neither was such a categorical ban the "least restrictive method" of furthering that interest, especially since the law itself contained a less restrictive option—having each trans girl's case individually and confidentially assessed by a commission.⁵⁸²

The other four cases in this category dealt with similar laws in Montana and Ohio. In fact, three of the cases are from different stages of the Ohio proceedings. Starting with the Montana case, *Barrett v. State*, the sports ban at issue was a categorical ban on trans girls' participation on girls' sports teams, like the one in Utah except that it also extended to college students.⁵⁸³ That is important because the law was challenged by

also Abby Monteil, *Judge Denies Long Island Roller Derby League Bid to Block Trans Athlete Ban*, THEM (Jan. 23, 2025), <https://www.them.us/story/judge-denies-long-island-roller-derby-league-bid-block-trans-athlete-ban>.

⁵⁷⁸ No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022).

⁵⁷⁹ Importantly, though, the injunction left in place a section of the law that said whether a trans girl could participate on her school's sports team was to be determined by a confidential commission because the plaintiffs had not challenged that part of the law. Thus, as the court explained, "[T]he effect of this preliminary injunction will *not* mean that transgender girls will automatically be eligible to compete on their school's girls' teams. Rather, it will allow them to compete only upon the commission's determination that their being able to compete is fair under all of the circumstances." *Id.* at *1 (emphasis in original).

⁵⁸⁰ *Id.* at *6.

⁵⁸¹ *Id.* at *7–8 (The court rejected four different explanations for why the ban protected girls' sports: 1) it did not "redress historical discrimination against women and girls in sports;" 2) "unlike boys, transgender girls do not have many opportunities to play school sports;" 3) "excluding transgender girls from girls' teams does not promote equality of athletic opportunity between boys and girls;" and 4) "evidence suggests that there is no basis to assume that transgender girls have an automatic physiological advantage over other girls.").

⁵⁸² *Id.* at *8.

⁵⁸³ 2024 MT 86, 416 Mont. 226, 547 P.3d 630. There were two dissenters in the case, but they dissented on the procedural ground that the plaintiffs did not have standing. *See id.* ¶¶ 87–98 (Rice, J., dissenting). However, one of the dissenters did say that if he had reached the merits, he would have agreed with the majority. *Id.* ¶ 99 (Sandefur, J., dissenting in part).

a large coalition of people and organizations affiliated with Montana's state university system (MUS), alongside other laws that targeted universities in the state.⁵⁸⁴ The plaintiffs alleged that these laws violated the Montana Constitution's vesting of "full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system" in the state Board of Regents.⁵⁸⁵ In regards to the sports ban, the court concluded that, because the Board had a policy of complying with the regulations of the National Collegiate Athletic Association (NCAA) and the National Association of Intercollegiate Athletics (NAIA), and because those regulations contained policies addressing when and how trans college students could participate on sports teams, the Board was already actively "exercising its authority to promulgate policies [related to trans athletes] which ensure MUS students remain eligible to compete" in NCAA and NAIA tournaments, and thus, the legislature was prohibited from infringing on that authority.⁵⁸⁶ Given the limited nature of the constitutional challenge to the sports ban, the court clarified, "[w]e do not reach the question of whether [the ban] violates any other provisions of the Montana Constitution, such as the right to individual dignity and equal protection of the laws when applied to elementary and high school students and/or athletic teams."⁵⁸⁷

In Ohio, the sports ban was enacted in the same bill as the ban on gender-affirming healthcare for trans youth that was discussed *supra* Part II.C.1. When the trial court initially assessed this bill, it granted a temporary restraining order (TRO) against it because it found that the bill likely violated the Ohio Constitution's command that "[n]o bill shall contain more than one subject."⁵⁸⁸ Indeed, the court flagged the fact that "the General Assembly was unable to pass the [healthcare ban] portion of the Act separately, and it was only upon logrolling in the [sports ban] provisions that . . . it was able to pass."⁵⁸⁹ After this ruling, the state decided to challenge the TRO by asking the Ohio Supreme Court to issue a writ of mandamus blocking the TRO because the trial court had not had proper subject-matter jurisdiction.⁵⁹⁰ The court denied this request without issuing an opinion, keeping the TRO in place.⁵⁹¹ When the trial court returned to the matter, it reversed itself, denying the plaintiffs' request for a

⁵⁸⁴ *Id.* ¶ 1 (majority opinion).

⁵⁸⁵ MONT. CONST. art. 10, § 9(2)(a).

⁵⁸⁶ *Barrett*, 2024 MT 86, ¶ 48 (majority opinion).

⁵⁸⁷ *Id.* ¶ 43 n.9 (citation omitted).

⁵⁸⁸ OHIO CONST. art. II, § 15(D).

⁵⁸⁹ *Moe v. Yost*, No. 24CVH03-2481, 2024 WL 1657858, at *7 (Ohio Ct. Com. Pl. Apr. 16, 2024).

⁵⁹⁰ *State ex rel. Yost v. Holbrook*, 174 Ohio St. 3d 1476, 2024-Ohio-1936, 234 N.E.3d 481.

⁵⁹¹ *Id.*

preliminary injunction.⁵⁹² To do so, the court rejected its previous (albeit brief) analysis of the single-subject claim, ruling:

[T]he law compels this Court to conclude that the Act contains a common purpose or relationship; namely, the General Assembly's regulation of transgender individuals. No matter how abhorrent that maybe [sic] to some, it is a "legitimate subject" for purposes of the Single Subject Rule under the laws of the State of Ohio at this time. The recourse for those who object is not within the Court but is instead with their vote.⁵⁹³

The court seems to be deflecting blame for its reversal, claiming that the judicial standard under the single-subject provision—"that there is no discernable practical, rational or legitimate reason for combining the provisions in one Act"—compels a finding that the bill has a single subject.⁵⁹⁴ But that obscures the fact that the court *is* making a substantive determination, namely that the "regulation of transgender individuals" is a "legitimate" single subject for a bill, a legislative purpose that seems dangerously close to outright discriminatory animus against trans people. Thus, if that is truly the only "legitimate reason" for rolling together a healthcare ban and a sports ban that the court could identify, it seems likely that there is no legitimate common purpose that justifies finding the bill has a single subject.⁵⁹⁵

2. Schools' Treatment of Trans Identities Outside Constitutional Frameworks

When it comes to non-constitutional cases involving schools' treatment of trans students, the only cases that directly involved trans students were those related to their use of restrooms.⁵⁹⁶ In Oklahoma, a bathroom

⁵⁹² *Moe v. Yost*, No. 24CVH03-2481, 2024 WL 3723143 (Ohio Ct. Com. Pl. Aug. 6, 2024).

⁵⁹³ *Id.* at *4.

⁵⁹⁴ *Id.* at *3 (internal quotes omitted).

⁵⁹⁵ *Cf.* Eyer, *supra* note 4, at 1443–44 ("[I]n all but one of the study cases applying rational basis review, the courts concluded that the anti-transgender policy under review lacked even a rational basis. As such courts observed, when defendants were pressed to articulate reasons for anti-transgender government discrimination, they were typically unable to meaningfully do so. . . . [G]overnment justifications for anti-transgender policies are often difficult to defend when even a modicum of meaningful scrutiny is applied to them.").

⁵⁹⁶ There were three other non-constitutional, school-related cases in my survey, but they all only referenced trans people peripherally. *See Brookhart v. Reaman*, 2023 COA 93 (affirming trial court's decision to redact identifying information from the records of a request to remove the book *Gender Queer: A Memoir* from a county public library, records to which a journalist had requested access under the Colorado Open Records Act); *Simeone v. Walt Disney Co.*, 302 A.3d 956 (Del. Ch. 2023) (denying a stockholder's request to inspect Disney's books and records, filed in response to Disney's opposition to Florida's "Don't Say Gay" bill, in part because the suit was pretextual, with the plaintiff acting as a proxy for the conservative Thomas More Society); *Evans v. Dir.*, Ohio Dep't

ban law authorized a private right of action against school districts who didn't comply with the law's requirement that "every multiple occupancy restroom or changing area [be] designated . . . [f]or the exclusive use of the male [or female] sex," with "sex" defined as "the physical condition of being male or female based on genetics and physiology, as identified on the individual's original birth certificate."⁵⁹⁷ In the case *Gooden v. Edmond Public Schools*, a cisgender female student sued her school district for \$75,000 under that cause of action, alleging that the school's noncompliance with the law led to her being "attacked and severely beaten" by a transgender female student in the girls' restroom.⁵⁹⁸ The district moved to dismiss the case, but the court denied the motion without issuing an opinion.⁵⁹⁹ However, in response to the district's motion, the plaintiff had argued that "the statute's intent was to simply require each public school (like Defendant) to restrict the use of each bathroom to the birth gender of each student," but that the defendant district had failed to do so because it knew about the student's trans identity but "allowed the . . . transgender student to continue using the girls' bathroom, as opposed to requiring the . . . transgender student to use a bathroom that matched [her] birth certificate - boys' bathroom."⁶⁰⁰ Essentially, at the motion to dismiss stage, the court seemed to accept the argument that the bathroom ban law required school districts to take affirmative steps to police trans students' use of restrooms and prevent them from using bathrooms that match their gender identity.

In Missouri, prior to the start of my survey, a trans male student won a jury trial on a statutory sex discrimination claim he had brought against his school district for denying him use of male restrooms and locker rooms.⁶⁰¹ However, in *R.M.A. v. Blue Springs R-IV School District*, the trial court granted the district's request for a new trial, "finding the verdict to be against the weight of the evidence in that the sole and uncontradicted evidence at trial was the school district made its decisions based on genitalia, not sex."⁶⁰² An appellate court reversed that grant of a new trial, based on an opinion previously issued by the Missouri Supreme Court in this same case that had "held that the term 'sex' . . . is not limited to

of Job & Fam. Servs., 2023-Ohio-4299, 230 N.E.3d 629 (affirming denial of unemployment benefits to a high school "cafeteria/study hall aide" who was fired after being repeatedly disciplined for racist and otherwise problematic comments she made, including two anti-trans Facebook posts that led to the first disciplinary action against her).

⁵⁹⁷ OKLA. STAT. ANN. tit. 70, §§ 1-125(A)(1), (B) (West 2023).

⁵⁹⁸ Petition ¶ 10, *Gooden v. Edmond Pub. Schs.*, No. CJ-2023-2959, 2023 WL 7632932 (Okla. Dist. Ct. Nov. 3, 2023), 2023 WL 8093575.

⁵⁹⁹ *Gooden*, 2023 WL 7632932.

⁶⁰⁰ Plaintiff's Response to Defendant's Motion to Dismiss at 10, *Gooden*, 2023 WL 7632932, 2023 WL 8093577 (citation modified).

⁶⁰¹ See *R.M.A. v. Blue Springs R-IV Sch. Dist.*, No. 1516-CV20874, 2022 WL 22863715 (Mo. Cir. Ct. Sep. 19, 2022).

⁶⁰² *Id.* at *1; see also *supra* text accompanying notes 434–37 (discussing the appellate court decision from the *Cooper v. USA Powerlifting* string of cases in which the court similarly tried to separate biology from trans identity).

biological sex alone, and is not ‘determined [solely] by the genitalia [an individual] displayed at birth.’ . . . [A]n individual’s ‘sex’ . . . could be reflected in amendments to the individual’s birth certificate.”⁶⁰³ Thus, because the plaintiff had changed the sex on his birth certificate, that “alone establishe[d] a sufficient basis for the jury to have concluded that [the student] is male.”⁶⁰⁴ Moreover, the court rejected the school district’s argument that it was discriminating based on genitalia, not sex, as impermissible sex stereotyping.⁶⁰⁵ The court’s ruling here is important because it implicitly acknowledges that gender and sex are not binary concepts, but rather contain multitudes of variations and just because someone does not fit the “typical” image of what one sex or gender looks like does not mean that they are not a member of that sex or gender. In that way, this case could set the stage for an expansive vision of gender rights that can go beyond the binary and embrace the many intersex and gender non-conforming individuals who are often left out of legal conversations about trans rights.⁶⁰⁶ However, that hope may be limited by the fact that, in the post-survey period, the Missouri Supreme Court reversed the appellate court, finding that there was no sex discrimination in this case.⁶⁰⁷

III. TRENDS AND TAKEAWAYS

My hope is that this broad survey of state court cases affecting trans people will serve as a launching off point for future scholarship and activism on some of the specific problems, opportunities, and themes it raises. Thus, in this section, I will briefly discuss some of the issues that stood out to me as I conducted the survey. However, this list is by no means meant to be exhaustive. I encourage readers to draw their own inspirations and conclusions from the survey.

One global trend to note is that, while state courts have an overall positive effect on trans people’s lives, the number of cases with negative effects appears to be increasing. Specifically, 145 cases (almost fifty-five percent) had a Good outcome for the trans person involved, whereas only

⁶⁰³ R.M.A. v. Blue Springs R-IV Sch. Dist., No. WD 85778, 2024 WL 2820583, at *7 (Mo. Ct. App. June 4, 2024).

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.* at *12 (“School District discriminated against R.M.A. because he did not fit their stereotype of what a male should be. This is no different than discriminating against a male because he is not tall enough or not muscular enough. School District discriminated against R.M.A. because his male sex did not fit their preconceived notions of what the male sex should be. This is discrimination based on R.M.A.’s male sex.”).

⁶⁰⁶ Cf. Trevor News, *Intersex: Not Invisible*, TREVOR PROJECT (Oct. 26, 2022), <https://www.thetrevorproject.org/blog/intersex-not-invisible/> (“[I]ntersex individuals are still marginalized within the larger LGBTQ community, ‘pushed aside at the expense of the other letters.’”).

⁶⁰⁷ R.M.A. v. Blue Springs R-IV Sch. Dist., 717 S.W.3d 187, 194–98 (Mo. 2025) (“This definition is premised on ‘sex’ as a biological classification of individuals as male or female. Accordingly, the plain and ordinary meaning of ‘sex’ refers to one’s biological classification as male or female. . . . Because there was no probative evidence the School District denied R.M.A. use of the male-designated restroom and locker room facilities because of R.M.A.’s male sex, [judgment notwithstanding the verdict] was proper.”).

seventy-nine (just over thirty percent) had a Bad outcome. However, there was a sharp uptick in Bad outcomes between 2023 and 2024. 2022 and 2023 each had twenty-three Bad outcomes, but in 2024, that jumped to thirty-three.⁶⁰⁸ This could be a sign that state courts are starting to swing in an anti-trans direction. One possible partial explanation for this swing is the sharp divergence between Republican and Democratic states in terms of the types of outcomes their courts produced. (See Figures 1 and 2.) In Republican states, Good outcomes went from nineteen in 2022 to thirteen in both 2023 and 2024, while Bad outcomes increased from ten to eleven to nineteen across the three years. In Democratic states, on the other hand, Good outcomes consistently increased, going from twenty in 2022 to twenty-eight in 2023 to twenty-nine in 2024. Bad outcomes in Democratic states presented a less clear trend, going from nine to seven to twelve. Despite these partisan trends, the overall jump in Bad outcomes in 2024 is still puzzling because the total number of cases in Democratic states was consistently higher than the total number of cases in Republican states. In 2022, Democratic and Republican states each had thirty-four total cases, but in 2023, Democratic states had forty-one to Republicans' twenty-seven, and in 2024, Democratic states had forty-eight to Republicans' thirty-nine. Thus, while Bad outcomes in Republican states did increase significantly in 2024, it is not immediately clear, at least from a partisan perspective, what accounts for the overall sharp uptick in Bad outcomes in 2024 given that Democratic states, which produced increasing numbers of Good outcomes with only a slight increase in Bad outcomes, consistently outpaced Republican states in their total number of cases.

⁶⁰⁸ Good and Neutral outcomes, on the other hand, were more stable, with forty-nine, forty-six, and fifty Good outcomes and fourteen, ten, and sixteen Neutral outcomes in 2022, 2023, and 2024, respectively.

Good Outcomes in Democratic vs. Republican States

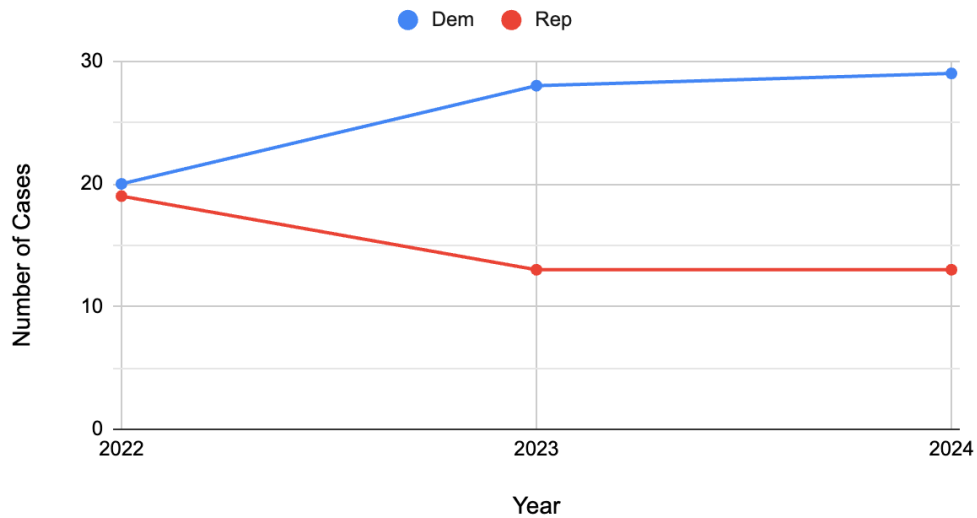


Figure 1. The number of cases that resulted in a Good outcome for the trans person involved in the case diverged sharply in Democratic versus Republican states over the three years of the survey.

Bad Outcomes in Democratic vs. Republican States

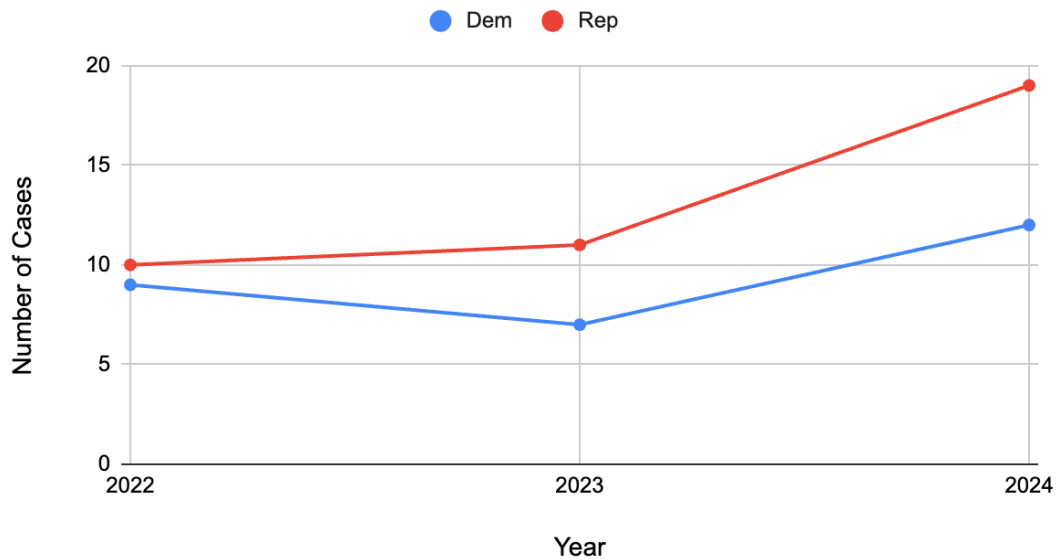


Figure 2. The number of cases that resulted in a Bad outcome for the trans person involved in the case tended to increase over the three years of the survey, but slightly more steeply in Republican states than in Democratic ones.

Another possible explanation for the jump in Bad outcomes between 2023 and 2024 is that it is a follow-on effect from the increase in anti-trans laws being passed and the corollary increase in litigation involving constitutional issues. (See Figure 3.) The number of cases involving a piece of anti-trans legislation more than doubled from six in 2023 to thirteen in 2024. When that increase is broken down by outcome, Good outcomes only increased from four to five, but Bad outcomes increased from one to six. Similarly, the number of cases involving a constitutional question of some sort went from fifteen in 2023 to thirty in 2024, and while Good outcomes in those cases modestly increased from ten to fourteen, Bad outcomes had a dramatic spike from two to thirteen. Of course, many of those cases overlap, so it is worth noting that the combined number of legislation-related and constitutional cases was sixteen in 2023 and thirty-one in 2024—in both years, only one case involving legislation did not also involve a constitutional issue. Substantively, this increase seems most related to cases involving healthcare. The total number of healthcare-related cases went from sixteen in 2023 to twenty-three in 2024. Of those, Good outcomes decreased from thirteen to twelve while Bad outcomes skyrocketed from two to nine.

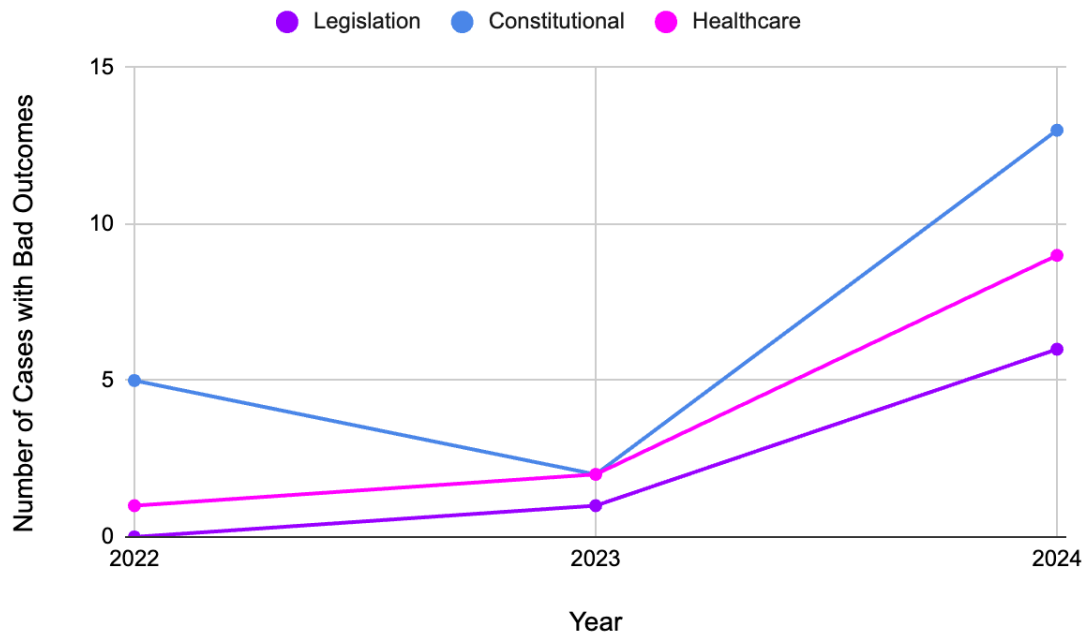


Figure 3. The number of cases involving anti-trans legislation, addressing a constitutional question, and/or relating to trans healthcare that resulted in a Bad outcome for the trans person(s) involved increased dramatically between 2023 and 2024.

Another statistical trend worth mentioning before I delve into the more substantive issues my survey raises is that appellate court intervention usually led to better outcomes for trans people. (See Figure 4.)

Looking only at case outcomes at the appellate and supreme court levels, sixty-three cases had a Bad outcome before they were appealed, and eighty-two had a Good outcome. After an appellate court got involved and either affirmed or reversed the lower court, Good outcomes rose to ninety-one while Bad outcomes fell to fifty-four. This trend did not hold uniformly true, though—the politics of the state heavily influenced it. In Democratic states, appellate intervention increased Good outcomes (and correspondingly decreased Bad outcomes) by eight, going from forty-two to fifty (twenty-nine to twenty-one for Bad outcomes). Appellate courts in swing states had slightly less of a positive effect, with a net change of only three cases (fourteen to seventeen for Good outcomes and ten to seven for Bad outcomes). In Republican states, on the other hand, the trend was reversed, with appellate courts creating a net negative change of two cases—Good outcomes fell from twenty-six to twenty-four while Bad outcomes rose from twenty-four to twenty-six. One possible interpretation of these data is that how the law is applied to trans people is heavily influenced by ideology. The conventional wisdom is that lower courts resolve more factual disputes, so by the time cases reach appellate courts, the issues left to be resolved are more heavily skewed towards legal questions. It would make sense, then, that the way appellate courts answer those legal questions would be more susceptible to variation based on ideological differences between judges than the fact-centric decisions made by lower courts, resulting in the divergence in outcomes these data reflect.

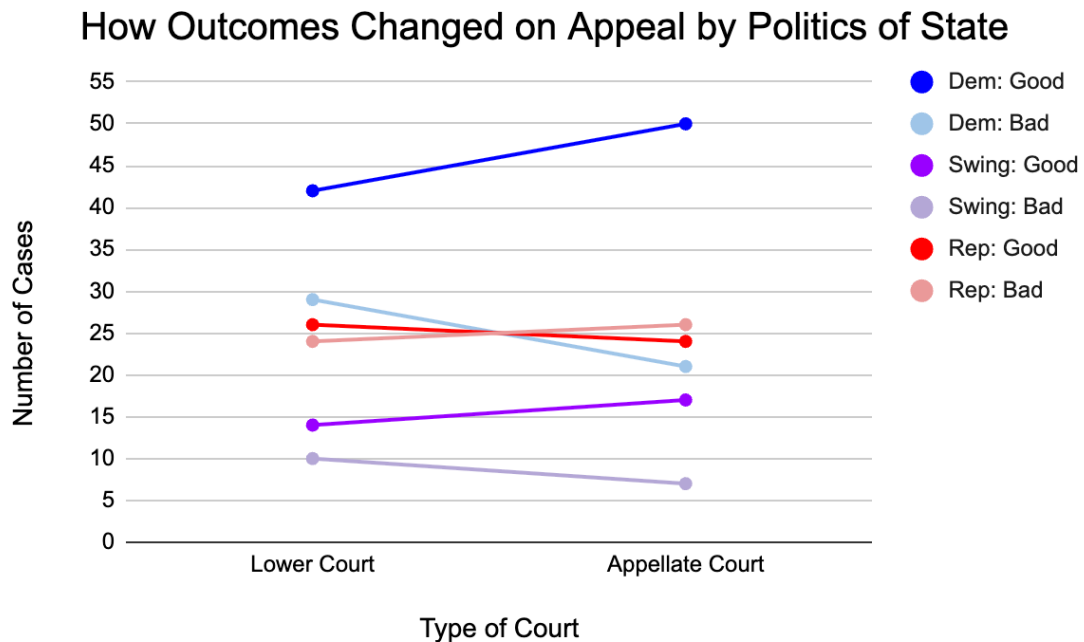


Figure 4. In Democratic and swing states, appellate court intervention tended to shift outcomes to be more favorable for trans people, while in Republican states, the opposite held true to a slight degree.

Of course, while these trends in my survey data help paint a picture of the overall landscape of how trans lives are affected by state courts,⁶⁰⁹ the cases that comprise that data also raise substantive issues that deserve further exploration by future scholars and activists. Many of these were flagged throughout my discussion of the cases in the previous Part, so my goal here is to simply highlight and compile in one place the substantive issues that stood out to me the most. However, as I mentioned at the beginning of this Part, these are by no means the only issues raised by my survey that merit further attention.

To go through the issues in the same order as the previous Part, I will start with the substantive concerns raised by criminal law cases. First is the prevalence of cruel and unusual punishment claims in the context of constitutional criminal law claims brought by trans people. Opinions from the U.S. Supreme Court over the last several decades have led at least one scholar to declare, “The Eighth Amendment is on the road to extinction.”⁶¹⁰ Yet, trans inmates seem to be attempting to revive it by focusing on ways in which prison conditions are uniquely harsh for trans people.⁶¹¹ It is true that none of the four cases discussed in my survey came out in favor of the inmate, but it is possible there is an opening here to use the growing awareness of trans identities and how trans people are treated in prison to get a toe in the door before it shuts completely on the Eighth Amendment. One of these cases is particularly instructive. A trans female inmate in Nevada brought claims under both the Eighth Amendment and the Nevada Constitution’s analogue for delays in her receipt of gender-affirming care.⁶¹² Interestingly, contrary to the recent trend of state courts “announc[ing] their punishment clauses are more protective than the Eighth Amendment,”⁶¹³ the trial court dismissed the Nevada constitutional claim at the motion to dismiss stage, but the Eighth Amendment claim survived until summary judgment.⁶¹⁴ Even then, the court only dismissed the Eighth Amendment claim on procedural grounds like the lack of

⁶⁰⁹ For those readers interested in viewing the whole set of raw data, sorted and coded as described *supra* Part I, it can be found here: https://docs.google.com/spreadsheets/d/1oqUA4NhBUPHFyaWMsy1hg7XuZDUQYcsW_X5HAItz0ts/edit?usp=sharing. Readers are welcome to conduct their own analyses of this data to identify other trends that can inform future scholarship and activism.

⁶¹⁰ Meghan J. Ryan, *The Death of the Evolving Standards of Decency*, 51 FLA. ST. UNIV. L. REV. 255, 304 (2024); see also Kyle C. Barry & Maria E. Hawilo, *How States Can Undo One of This Supreme Court Term’s Most Egregious Decisions*, SLATE (July 9, 2024, 1:19 PM), <https://slate.com/news-and-politics/2024/07/supreme-court-term-egregious-decisions-grants-pass.html> (“Over decades, the Supreme Court has gutted the Eighth Amendment’s protections against excessive punishment to the point that a life sentence for stealing a few hundred dollars gets rubber-stamped.”).

⁶¹¹ See *supra* Part II.A.1.

⁶¹² *Burch v. Dzurenda*, 550 P.3d 349, 2024 WL 3093823 (Nev. Ct. App. 2024).

⁶¹³ William W. Berry III, *How Courts and Litigators Can Help Redefine “Cruel” and “Unusual” Punishments*, STATE CT. REP. (July 10, 2025), <https://state-courtreport.org/our-work/analysis-opinion/how-courts-and-litigators-can-help-redefine-cruel-and-unusual-punishments>.

⁶¹⁴ *Burch*, 2024 WL 3093823, at *1.

“evidence that the respondents personally participated in the constitutional violations alleged” or “that respondents were ‘deliberately indifferent to [the inmate]’s alleged serious medical needs.”⁶¹⁵ Similarly, the court relied on the defendants’ “entitle[ment] to discretionary act immunity . . . and qualified immunity” as an independent reason for dismissing the claim.⁶¹⁶ Even on appeal, the inmate lost simply because she had “waived any challenge to this determination” by failing to challenge the lower court’s immunity ruling.⁶¹⁷ Thus, the merits of this Eighth Amendment claim were never actually addressed, and it is possible that, in a different case, a court could be persuaded to rule in a trans inmate’s favor on a similar claim. Additionally, because, as mentioned, state courts are starting to interpret their Eighth Amendment analogues more leniently than the U.S. Supreme Court has interpreted the Eighth Amendment (the above case notwithstanding), bringing these claims under state constitutions could be another way to address the problem of conditions for trans prisoners and potentially build a punishment clause jurisprudence that could impact federal courts’ interpretation of the Eighth Amendment. Indeed, the case discussed above is the only one of the four Eighth Amendment cases in my survey that included a parallel state constitutional claim, so state constitutions currently seem to be underutilized in this space. Moreover, the success of trans plaintiffs in securing access to proper gender-affirming care while in prison under the “unnecessary rigor” clause of the Oregon Constitution highlights another way in which state constitutions can play a role in protecting trans inmates.⁶¹⁸

A second trend in criminal law cases that warrants closer scrutiny is the way in which gender dysphoria and trans identity are often conflated with serious mental health disorders, for both trans defendants and trans victims.⁶¹⁹ Trans identity has a long history of being pathologized as a “disorder” and something requiring correction.⁶²⁰ It was only in 2019 that the World Health Organization’s *International Classification of Diseases* moved “diagnoses related to gender identity and sexual orientation . . . from the chapter titled ‘Mental and Behavioural Disorders’ to the chapter titled ‘Conditions Related to Sexual Health,’ . . . in an effort to further

⁶¹⁵ *Id.*

⁶¹⁶ *Id.*

⁶¹⁷ *Id.* at *2.

⁶¹⁸ See *supra* notes 54–56 and accompanying text.

⁶¹⁹ See *supra* Parts II.A.2, II.A.3, and II.A.4.

⁶²⁰ See Jack Turban, *The Disturbing History of Research into Transgender Identity*, SCI. AM. (Oct. 23, 2020), <https://www.scientificamerican.com/article/the-disturbing-history-of-research-into-transgender-identity/> (“Reading through this literature, we need to ask ourselves some questions: What is the reason for this research? What does it hope to accomplish? The tireless search reveals a thinly veiled dogma: that being transgender is a pathology to be fixed.”); Kelsey Mumford et al., *What the Past Suggests About When a Diagnostic Label Is Oppressive*, 25 AMER. MED. ASS’N J. ETHICS 446, 447 (2023) (emphasis in original) (“The word *disorder* being in the official diagnosis is telling of the attitude toward gender identity at the time, with gender identity incongruent with sex generally being considered a psychiatric condition that needed treatment.”).

depathologize gender diversity.”⁶²¹ As many have noted, the creation of psychological diagnoses for trans identities was “double-edged, allocating both help [in the form of easier access to gender-affirming treatments] and pathological labelling to the person.”⁶²² In recent years, though, “the field of transgender health care has transitioned from pathologizing patients to a gender-affirming and patient-centered model.”⁶²³ Yet, “acceptance of gender diversity has not yet become sufficiently widespread that these associations [of gender identity with diseases and disorders] can be overlooked.”⁶²⁴ Thus, when courts lump gender dysphoria and trans identity in with serious psychological illnesses like post-traumatic stress disorder, bipolar disorder, and schizophrenia, it perpetuates the pathologizing stigma society associates with gender non-conformance—a stigma that “is not likely to fade away in the near future.”⁶²⁵

Of course, it is also true that “[r]ates of mental health concerns tend to be higher among transgender people than in the general population.”⁶²⁶ And questions of mental health and mental competency, of either a defendant or a victim, can often arise in criminal cases, so it can be impossible to avoid the question of how gender dysphoria fits into someone’s larger mental health picture. Thus, when such issues do arise, more careful attention should be paid to helping courts understand the nuances of gender identity and mental health. Yes, experiencing gender dysphoria can be mentally distressing and interact with and exacerbate other mental health issues, but being trans is not *itself* a mental health issue.⁶²⁷ And gender dysphoria is not always co-extensive with being trans,⁶²⁸ nor is gender dysphoria always distressing to a trans person experiencing it.⁶²⁹ The impulse for a lawyer to lean on gender dysphoria as a mental health issue when it can help their client is understandable,⁶³⁰ but doing so does not

⁶²¹ Mumford et al., *supra* note 620, at 447.

⁶²² Marc-Antoine Crocq, *How Gender Dysphoria and Incongruence Became Medical Diagnoses—A Historical Review*, 23 *DIALOGUES CLINICAL NEUROSCIENCE* 44, 50 (2021).

⁶²³ Mumford et al., *supra* note 620, at 446; *see also* Crocq, *supra* note 622, at 50 (“The concern for depathologization guides the most recent classifications [of trans identity].”).

⁶²⁴ Mumford et al., *supra* note 620, at 448.

⁶²⁵ *Id.*

⁶²⁶ Lore M. Dickey, *History of Gender Identity and Mental Health*, in *THE OXFORD HANDBOOK OF SEXUAL AND GENDER MINORITY MENTAL HEALTH* 25, 29 (Esther D. Rothblum ed., 2020).

⁶²⁷ *See, e.g.,* People v. Chino Valley Unified Sch. Dist., No. CIVSB2317301, 2024 WL 5442638, at *7 (Cal. Super. Ct. Sep. 9, 2024) (“The expert evidence submitted also establishes, and State law affirms, there is nothing wrong or pathological with being transgender or gender non-conforming in and of itself.”).

⁶²⁸ *See* GenderGP, *Not All Transgender People Experience Gender Dysphoria*, GENDERGP (May 14, 2025), <https://www.gendergp.com/not-all-trans-people-experience-gender-dysphoria/>.

⁶²⁹ *See* *What Does Gender Dysphoria Feel Like?*, MAIN LINE HEALTH (Aug. 20, 2021), <https://www.mainlinehealth.org/blog/what-does-gender-dysphoria-feel-like>.

⁶³⁰ *Cf., e.g., In re S.A.B.*, 531 P.3d 718, 720, 722 (Or. Ct. App. 2023) (emphasis added) (While not a criminal law case, in an opinion ordering a father to return his trans child’s emotional support dog to the child, the court noted that “child is diagnosed with ‘reactive

also have to perpetuate negative stereotypes and stigma associated with trans identity. When it comes to trans children who are victims of sexual assault, the trend revealed in my survey of viewing gender dysphoria and trans identity as part of a trauma response deserves particular care and attention to avoid that logic becoming another barrier to trans children—indeed, ones who have already suffered a major trauma—from getting the care that they need and that will help them feel better about themselves.

One final concern raised by the criminal law cases in my survey that I will note is the way courts treat a defendant's trans identity when it becomes a central element of the crime with which they are charged. In the two cases in my survey where this was an issue,⁶³¹ the courts resolved the disputes in ways that could be harmful to future trans defendants charged with similar crimes. One case was more narrowly focused on the circumstances surrounding the trans defendant's alleged sexual assault, but the logic of the state's arguments, which ended up carrying the day, created the inference that a victim being caught unaware by the defendant's trans identity can be part of the "totality of the circumstances" that transforms a consensual sexual encounter into a criminal sexual assault.⁶³² The second case swept much more broadly and could, thus, end up impacting the lives of trans people just going about their daily business. In that case, the court essentially held that, when gender identity is determinative of an element of a crime, it is acceptable for the fact-finder to infer the defendant's gender *identity* from their gender *expression*.⁶³³ In the facts of this case, a non-binary defendant was convicted of burglary on the grounds that their gender *expression* at the time of the crime made it reasonable to infer that they *identified* as male and thus that their presence in a women's restroom had been unlawful. As discussed above, allowing this type of inference to be determinative of someone's guilt essentially lends criminal weight to the increasingly common phenomenon of gender policing, putting trans people, especially those who do not conform to gender stereotypes, at risk of being excessively criminalized for simply existing. This on top of the fact that many of the anti-trans laws currently being passed, including bathroom bans, already do the same. Together, these two cases raise the specter of full criminalization of trans identity. While there were only two such cases in my survey, the lack of any similar cases coming out positively for a trans defendant, as well as the number of cases in which trans people were convicted of crimes they committed while defending themselves from anti-trans attacks, lend credence to this concern. More fundamentally, though, *any* criminalization of trans identity is deeply troubling, so it is important to remain on guard against these types

attachment disorder of childhood; posttraumatic stress disorder, complex; major depressive disorder, recurrent; and *gender identity disorder*"" and thus "giving child his emotional support dog is consistent with the State of Oregon's policy to 'safeguard and promote each child's right to safety, stability and well-being.'").

⁶³¹ See *supra* notes 98–115 and accompanying text.

⁶³² *State v. Lockhart*, 508 P.3d 526, 319 Or. App. 89 (Ct. App. 2022) (mem.).

⁶³³ *People v. Fresquez*, No. 21CA1496, 2024 WL 3874803 (Colo. App. Feb. 8, 2024).

of decisions.

When it comes to family law, the top priority is ensuring courts stay the course on protecting trans children during custody disputes. However, two cases raised red flags. It is likely too soon to say if these will become larger issues in the future, but they still deserve attention, if only to make sure they *do not* become larger issues. The first concern is the interaction between anti-trans laws being passed by state legislatures, especially laws directed at trans children, and courts' consideration of trans identity in child custody cases.⁶³⁴ So far, it has only happened once that a court pointed to a law banning gender-affirming care for trans minors as support for giving a transphobic father another shot at maintaining custody of his trans child, but these anti-trans laws are already bad enough without them also being used to prop up anti-trans court rulings. The second concern is the differing ways courts treat gender exploration when it is a child doing the exploring⁶³⁵ versus when it is an adult.⁶³⁶ There were very few cases in my survey with children or parents who were actively *questioning* their gender identity, rather than already identifying a certain way. Thus, the differences between these cases could be idiosyncratic based on their respective facts or the judge making the decision. But it would be concerning if these cases were reflective or indicative of courts being less respectful of trans adults than they are of trans children in child custody cases.

For cases dealing with trans healthcare, the elephant in the room is obviously the U.S. Supreme Court's decision in *United States v. Skrametti*. My survey was conducted entirely in a pre-*Skrametti* world, so one thing to pay attention to moving forward is how state courts will react to the ruling.⁶³⁷ Will state courts follow the Court's lead in interpreting their own state's constitution, or will they resist the allure of "lockstepping"?⁶³⁸ If

⁶³⁴ See *supra* notes 288–91 and accompanying text.

⁶³⁵ See, e.g., *Ahrens v. Ahrens*, 273 A.3d 1041, 2022 WL 390678, at *9 (Pa. Super. Ct. 2022) (citation modified) ("The trial court is especially concerned about Father's prejudice against those who identify as members of the LGBTQIA+ community given that W.A. identifies as male and R.A. is gender questioning. The trial court is, therefore, especially concerned with regard to Father's ability to address and support the physical and mental health of W.A. and R.A.").

⁶³⁶ See, e.g., *In re Adoption of A.K.L.*, 285 A.3d 935, 2022 WL 4283002, at *8 (Pa. Super. Ct. 2022) (citation modified) ("After his separation from Mother, Father was supposedly going to Utah to live. That did not happen. Rather, Father moved to Canada and then pursued various endeavors in Portugal and in Antigua. He also pondered his gender identity and took up with a new paramour. Father focused solely on his personal needs while he neglected Child.").

⁶³⁷ In the post-survey period, at least one state court—a trial court in North Dakota—has relied on *Skrametti* to uphold a ban on gender-affirming healthcare for trans minors, finding that it does not violate the North Dakota Constitution's equal protection guarantees. *T.D. v. Wrigley*, No. 08-2023-CV-2189 (N.D. Dist. Ct. Oct. 8, 2025); see also Morgan Munroe, *The U.S. Supreme Court's Decision on Trans Healthcare Is Rippling Through State Courts*, STATE CT. REP. (Oct. 30, 2025), <https://statecourtreport.org/our-work/analysis-opinion/us-supreme-courts-decision-trans-healthcare-rippling-through-state-courts>.

⁶³⁸ See Kevin Frazier, *A Rallying Cry Against Lockstepping*, STATE CT. REP. (Oct. 22, 2024), <https://statecourtreport.org/our-work/analysis-opinion/rallying-cry-against->

trans rights post-*Skremetti* follow a similar trajectory as abortion rights post-*Dobbs*, state courts and state constitutions might become the new battleground.⁶³⁹ Especially for cases involving trans healthcare, it seems likely that will be the case—while *Skremetti* left federal courts’ doors cracked for trans rights claims unrelated to healthcare, it pretty effectively shut the door on healthcare-related claims. In light of this, the dramatic increase in Bad outcomes in healthcare-related cases between 2023 and 2024 discussed above is even more troubling. Another concern in trans healthcare cases is malpractice suits brought by detransitioners.⁶⁴⁰ While there was only one such case in my survey, the context of that case and the groups behind it suggest that such cases are likely to be part of the next phase of attacks on trans healthcare.⁶⁴¹

When it comes to private discrimination against trans people, one big question raised by the survey cases is why the employment discrimination cases that went before a jury almost universally came out in the trans person’s favor while cases decided by a judge at an earlier stage of litigation did not. The explanation could be entirely innocuous, for instance, judges performing their function as “gatekeepers” and only letting cases where there are truly debatable factual questions reach a jury. However, while there were only nine employment discrimination cases in my survey, the near total divide between judge-decided and jury-decided cases is still striking. Only one jury (admittedly of only four total) went against the trans plaintiff.⁶⁴² And the two judge-decided cases in favor of the trans plaintiff were not necessarily total victories. One was a purely procedural decision to allow a suit to go forward despite the employer’s attempts to enforce an arbitration clause.⁶⁴³ The other was a court affirming an award granted by an administrative agency, emphasizing the judicial deference owed to the agency’s decision.⁶⁴⁴ Thus, further investigation into what is going on in these employment discrimination cases seems warranted.

Another trend in discrimination cases to quickly note is one that I did not discuss in the previous Part because trans people were only very obliquely implicated by these cases, but the trend is still one worth exploring. My survey unearthed four sexual orientation discrimination cases in which a state court was deciding whether or not to adopt the logic of the

lockstepping. *But see T.D. v. Wrigley*, slip op. at 34 (describing how, since the 1970s, the North Dakota Supreme Court has increasingly “align[ed] its equal protection analysis with that of the United States Supreme Court”).

⁶³⁹ See Alicia Bannon, *Three Years After Dobbs, State Courts Are Defining the Future of Abortion*, STATE CT. REP. (June 5, 2025), <https://statecourtreport.org/our-work/analysis-opinion/three-years-after-dobbs-state-courts-are-defining-future-abortion>.

⁶⁴⁰ See, e.g., *Aldaco v. Wood*, No. 02-24-00217-CV, 2024 WL 4849743 (Tex. Ct. App. Nov. 21, 2024).

⁶⁴¹ See *supra* notes 372–75 and accompanying text.

⁶⁴² *DeLouise v. SafePlace*, No. 2022-2-03063-34, 2024 WL 4491639 (Wash. Super. Ct. June 6, 2024).

⁶⁴³ *Mayo v. Discovery Health Servs., Inc.*, No. D081113, 2023 WL 9016499 (Cal. Ct. App. Dec. 29, 2023).

⁶⁴⁴ *Sunstone Organics v. Bureau of Lab. & Indus.*, 336 Or. App. 113 (Ct. App. 2024).

U.S. Supreme Court's ruling in *Bostock v. Clayton County*,⁶⁴⁵ which found sex discrimination under Title VII included discrimination based on sexual orientation and gender identity. Of these four cases, only one, decided by the Michigan Supreme Court, embraced *Bostock*.⁶⁴⁶ Courts of appeal in Louisiana⁶⁴⁷ and West Virginia,⁶⁴⁸ as well as the Maryland Supreme Court,⁶⁴⁹ on the other hand, declined to import *Bostock* into their state jurisprudence. Especially after *Skrmetti* dismissed *Bostock* as irrelevant to the issue of a trans healthcare ban,⁶⁵⁰ how state courts treat *Bostock* moving forward is worth keeping an eye on.

One peculiarity of the cases involving name and gender change petitions is that, in run-of-the-mill cases that did not raise constitutional issues, whether the case had a Good or Bad outcome for the plaintiff mapped almost perfectly onto the politics of the state, with Democratic states producing almost uniformly Good outcomes, while the opposite was true in Republican states. (See Figure 5.) The one exception was a case from Ohio about whether to seal the records of a name change in which the appellate court reversed and remanded for further proceedings the trial court's denial of that request because "the trial court failed to determine if

⁶⁴⁵ 590 U.S. 644 (2020).

⁶⁴⁶ *Rouch World, LLC v. Dep't C.R.*, 987 N.W.2d 501, 513 (Mich. 2022) (citation omitted) ("While we are encouraged but not bound to consider persuasive Title VII federal caselaw, we find that *Bostock* offers a straightforward analysis of the plain meaning of analogous statutory language and we agree with its reasoning."); cf. *People v. Rogers*, 982 N.W.2d 181, 182 (Mich. 2022) (Viviano, J., dissenting) (discussing a Michigan appellate court's reliance on *Bostock*'s logic to find a hate crime statute's inclusion of "gender" as a protected characteristic necessarily encompassed gender identity as well).

⁶⁴⁷ *Gauthreaux v. City of Gretna*, 22-424, pp. 7–8 (La. App. 5 Cir. 3/29/23), 360 So. 3d 930, 935–36 (footnote omitted) ("As there is no binding federal or state law or jurisprudence on point, and because the legislature has not seen fit to amend La. R.S. 23:332 to specifically include protection from employment discrimination because of a person's sexual orientation, we decline to extend *Bostock*'s reasoning to La. R.S. 23:332 to find that it allows for protection from employment discrimination because of a person's sexual orientation.").

⁶⁴⁸ *Jones v. Town of Lumberport*, No. 23-ICA-540, 2024 WL 5201657, at *5 (W. Va. Intermediate Ct. App. Dec. 23, 2024) ("Here, even if we consider *Bostock* and its progeny, our conclusion that the word 'sex' in the WVHRA plainly does not encompass 'sexual orientation' is a compelling reason to justify a different result than that reached in *Bostock*.").

⁶⁴⁹ *Doe v. Cath. Relief Servs.*, 300 A.3d 116, 128 (Md. 2023) ("It remains to be seen if, in light of our holding today, the General Assembly will amend MFEPA in some fashion to harmonize it with the holding of *Bostock*. Regardless, we are convinced that the General Assembly that initially enacted MFEPA in 1965, and the General Assembly that amended MFEPA in 2001 to add sexual orientation as a protected class, did not believe that sexual orientation discrimination was prohibited as a result of the ban on sex discrimination.").

⁶⁵⁰ *United States v. Skrmetti*, 605 U.S. 495, 520 (2025) ("We have not yet considered whether *Bostock*'s reasoning reaches beyond the Title VII context, and we need not do so here."); see also *id.* at 527 (Thomas, J., concurring) ("I see in any event no reason to import *Bostock*'s Title VII analysis into the Equal Protection Clause."); *id.* at 564 (Alito, J., concurring in part and concurring in the judgment) ("[T]here is no reason to apply *Bostock*'s methodology here.").

[petitioner] attached satisfactory proof to her application showing that open records or published notices would jeopardize her personal safety.”⁶⁵¹ Thus, the door is still open on remand that the request to seal could be denied again, so the case may represent only a temporary victory. It is unclear why name and gender change petition cases would be so starkly partisanly divided, especially when all the other categories of cases discussed do not line up so neatly. Perhaps it has to do with the scope and language of the state statutes that govern such changes, or how courts interpret those statutes, or a combination of both. In any event, taking a deeper look into this phenomenon may be revealing.

Outcomes in Name/Gender Change Cases by State

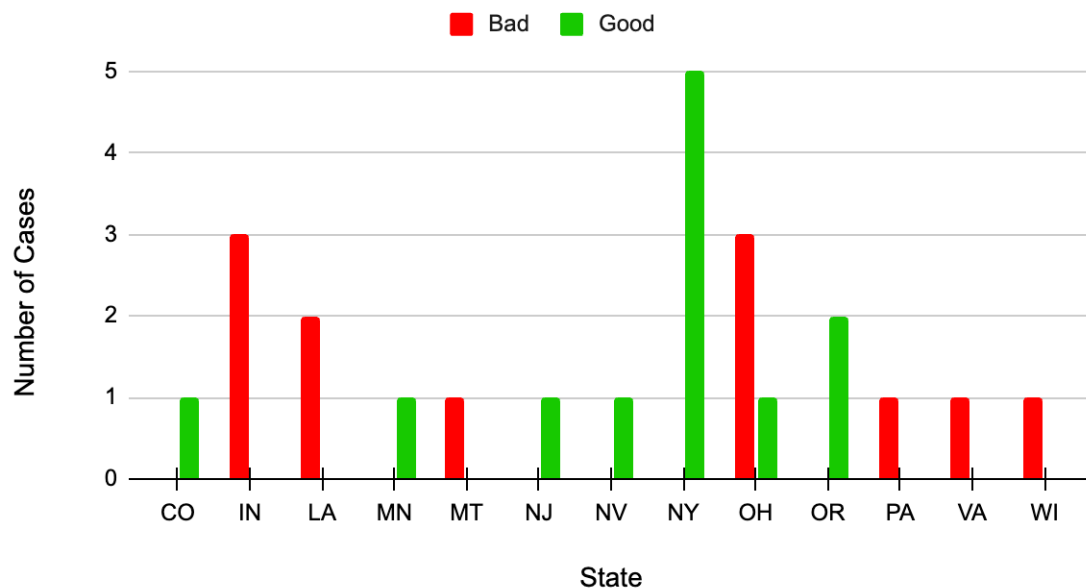


Figure 5. For cases involving a trans person’s petition to change their name or gender, or request to seal the records of such proceedings, courts in Democratic states (CO, MN, NJ, NY, and OR) unanimously granted those petitions, while Republican states (IN, LA, MT, OH, and VA) unanimously denied them, with one exception out of Ohio that, in reality, was only a partial victory.

However, as mentioned in the preceding Part, the most concerning issue to come out of the name and gender change cases—perhaps out of this entire survey—is the opinion from the Ohio Supreme Court in which three justices argued that denials of gender change petitions should not be appealable because they “lack[] th[e] necessary adversity.”⁶⁵² As discussed above, the prospect of this argument being applied more broadly,

⁶⁵¹ *In re Change of Name N.C.J. to B.A.J.*, 2024-Ohio-2474, 2024 WL 3220271, at ¶ 10.

⁶⁵² *In re Corr. of Birth Rec. of Adelaide*, 177 Ohio St. 3d 281, 2024-Ohio-5393, 252 N.E.3d 1, at ¶ 102 (Deters, J., separate opinion).

including potentially to name change petitions⁶⁵³ or to requests to seal records of name or gender change petitions, would be devastating for trans people. It would mean that trans people only get one shot at having their name or gender change petition granted or sealed. For example, if the logic of this ruling had been adopted in Ohio, the petitioner in the case previously discussed, who had their request to seal the records of their name change denied by the trial court, would not have been able to appeal that ruling and get it reversed and remanded for another chance to convince the trial court to seal the records. The initial denial would have been final—one and done. Although the logical contortions in this opinion are so extreme it borders on ridiculous, the fact that three justices signed onto it is deeply unnerving. Everyone who cares about trans rights should be on high alert for this type of logic popping up elsewhere.

To round out this discussion of substantive issues, the most glaring question about the cases related to education and schools is the relative lack of cases about restrooms and sports. Given the fact that bathroom bans and sports bans, especially in schools, are some of the most common, and most discussed, anti-trans laws being enacted,⁶⁵⁴ there were shockingly few cases in my survey about those issues. There were only five cases involving trans students' use of restrooms in schools and only six cases involving trans students' participation on school sports teams. Even then, four of the five restroom-related cases did not involve a constitutional challenge to a bathroom ban. Three cases were actually three different opinions in the same case about whether denying a trans male student access to male facilities was sex discrimination under state statutes.⁶⁵⁵ And the fourth was a tort claim by a cis female student alleging she had been assaulted by a trans female student in the girls' restroom.⁶⁵⁶ By comparison, between 2017 and 2021, when there were many fewer bathroom bans on the books than there were during the period of my survey, there were eight cases in federal courts that brought constitutional claims related to

⁶⁵³ Cf. *In re Sex Change of Childers-Gray*, 2021 UT 13, ¶ 59, 487 P.3d 96 (“[S]ex-change petitions . . . are petitions to change one's legal status or identification, just like name-change petitions.”).

⁶⁵⁴ See Jo Yurcaba, *More than 1 in 4 Trans People Live in States with 'Bathroom Bans,'* NBC News (July 27, 2025, 7:00 AM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/trans-bathroom-ban-19-states-lgbtq-rights-rcna220503>; Press Release, ACLU, Supreme Court Will Hear Challenges to Bans on Athletic Participation by Transgender Students (July 3, 2025), <https://www.aclu.org/press-releases/supreme-court-will-hear-challenges-to-bans-on-athletic-participation-by-transgender-students>.

⁶⁵⁵ See *R.M.A. v. Blue Springs R-IV Sch. Dist.*, No. 1516-CV20874, 2022 WL 22863715 (Mo. Cir. Ct. Sep. 19, 2022) (trial court opinion discussed *supra* notes 601–02 and accompanying text); *R.M.A. v. Blue Springs R-IV Sch. Dist.*, No. WD 85778, 2024 WL 2820583 (Mo. Ct. App. June 4, 2024) (appellate court opinion discussed *supra* notes 603–05 and accompanying text); *R.M.A. v. Blue Springs R-IV Sch. Dist.*, No. 1516-CV20874, 2022 WL 22863716 (Mo. Cir. Ct. May 27, 2022) (ruling on plaintiff's request for attorney's fees and costs).

⁶⁵⁶ *Gooden v. Edmond Pub. Schs.*, No. CJ-2023-2959, 2023 WL 7632932 (Okla. Dist. Ct. Nov. 3, 2023).

bathroom access.⁶⁵⁷ And in terms of the six sports ban cases, only one addressed a constitutional question substantively related to trans identity.⁶⁵⁸ Why there is so little litigation over bathroom bans and sports bans in schools in state courts is a question that needs to be addressed, especially as federal courts are likely to become more hostile to trans litigants after *Skrametti*.

One last thing to keep an eye out for in cases involving trans people is the language courts use to describe trans people and their identities. Gender equality movements have long recognized that “[l]anguage is often . . . a tool capable of promoting gender equity through inclusionary messaging that counters societal norms.”⁶⁵⁹ While the vast majority of courts in my survey correctly gendered trans litigants and discussed trans identity in an understanding way,⁶⁶⁰ there were, of course, courts that were less sensitive. For example, several courts placed emphasis on the trans party’s biology.⁶⁶¹ However, what is most interesting for the purposes of this survey are those cases where courts just completely missed the mark on understanding trans identity, even if they were trying to be respectful. Perhaps the most egregious example of this was when an appellate court in Indiana (presumably) mistakenly referred to gender dysphoria as “gender dystrophy.”⁶⁶² It is clear from the language around this incredible misstatement that the court was trying to be understanding,⁶⁶³ but it was just completely oblivious to its actual lack of understanding. Two other cases worth mentioning displayed more subtle misunderstandings of gender

⁶⁵⁷ Eyer, *supra* note 4, at 1418.

⁶⁵⁸ *Roe v. Utah High Sch. Activities Ass’n*, No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022).

⁶⁵⁹ Juliette Rhinow, Mapping Trends in Gender-Inclusive Legal Language Between Circuit Courts in the United States 4 (Spring 2025) (Women, Gender, and Sexuality Studies Capstone Project, Gettysburg College), https://cupola.gettysburg.edu/cgi/viewcontent.cgi?article=2232&context=student_scholarship.

⁶⁶⁰ *Cf. People v. Gobrick*, 981 N.W.2d 59, 510 Mich. 1029, 1029–30 (2022) (Welch, J., concurring) (“Our vocabulary and the ways that we refer to each other has changed through the decades. . . . As society evolves so does its language. . . . The Court of Appeals’ simple use of a footnote and gender-neutral pronoun demonstrates that words matter and that a small change to an opinion, even if unrelated to the merits, can go a long way toward ensuring our courts are viewed as open and fair to all who appear before them.”).

⁶⁶¹ *See, e.g., Tucker v. Uhl*, 2023-Ohio-3680, 2023 WL 6577497, at ¶ 2 (“Tucker is a biological female who the record indicates is currently taking medication to help the transition to be a male. However, although transitioning, Tucker’s body is still equipped with female anatomy. This includes Tucker’s body having breasts, a vagina, and a clitoris. Tucker uses a ‘binder’ to flatten the breasts to the body to minimize their appearance.”).

⁶⁶² *Wallace v. State*, 236 N.E.3d 1133, 1140 (Ind. Ct. App. 2024).

⁶⁶³ *Id.* (“[T]he traditional method of determining gender does not always result in an accurate record, and, complicated with the issues of surgical alteration, sexual identity, and same-sex marriage, the answer has become more convoluted in recent years. Therefore, interpreting the statute as applicable to paternity cases only . . . is effectively shutting the gate to any legal recourse for individuals who realize their gender dystrophy [sic] later in life or who for various personal reasons were not willing to out themselves or accept their dystrophy [sic] until after the age of emancipation.”).

identity, with one court referring to transgender identity as a “sexual identity”⁶⁶⁴ and another discussing a parent being “supportive of [their child’s] gender dysphoria.”⁶⁶⁵

CONCLUSION

Because the work of state courts is so ubiquitous and quotidian, state courts have an outsized impact on the daily lives of trans people. Any given trans person is unlikely to find themselves involved in a high-profile constitutional challenge to an anti-trans law, winding its way through the federal courts. But any given trans person may want to change their name or could become the unfortunate victim of an anti-trans hate crime or be charged with a crime themselves. In any of these scenarios, the trans person is likely to come into contact with a state court. As trans people become more and more visible and are forced into the center of political battles across the country, it is essential to understand how trans people’s lives are shaped by the legal institution they are most likely to come into contact with—state courts. State courts are not immune from the political winds, so it is important to stay vigilant and make state courts as much of a refuge from the anti-trans forces of other branches of government as they can be. If state courts start hopping on the anti-trans band wagon, the negative effects for trans people could be dire and far-reaching. With this Article, I hope to help us take the first step towards preventing that outcome and shaping state courts into a force for good in trans people’s lives.

⁶⁶⁴ *Stevison v. Stevison*, No. A-22-318, 2023 WL 1129720, at *1 (Neb. Ct. App. Jan. 31, 2023).

⁶⁶⁵ *Lusch v. Garman*, No. 19 CVD 12449, 2022 WL 20356477, at *4 (N.C. Dist. Ct. Jan. 14, 2022).