

"TRANS PEOPLE ARE HUMANS TOO AND DESERVE TO LIVE IN THIS COUNTRY"

*Violations of the
Fundamental Human Rights
of Florida's Trans Community*



(Ricardo Ramirez Buxeda/ Orlando Sentinel file)

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JUSTICE PROJECT

Acknowledgments

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I. Glossary of Key Terms and Abbreviations

AHCA	Agency for Health Care Administration
BOM	Board of Medicine
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee Against Torture, monitoring implementation of CAT
CESCR	Committee on Economic, Social and Cultural Rights, monitoring implementation of ICESCR
Cisgender	Relating to a person whose gender identity matches their sex assigned at birth
CIDT	Cruel, Inhuman, and Degrading Treatment
Conversion Therapy	Practice of attempting to change an individual’s sexual orientation, gender identity, or gender expression to align with heterosexual and cisgender norms
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
De-Transition	To stop or reverse gender transition
FHJP	Florida Health Justice Project
Gender-Affirming Care	Care which includes a spectrum of social, psychological, behavioral, or medical interventions designed to support and affirm an individual’s gender identity
Gender Diverse	Encompassing a range of gender identities beyond a gender binary
Gender Dysphoria	Severe distress due to a discrepancy between a person’s gender identity and that person’s sex assigned at birth
Gender Expression	The way in which a person expresses a gender identity
Gender Identity	One’s internal sense of being male, female, some combination, or another gender
Hormone Therapy	Gender-affirming care treatment that removes, blocks, or adds specific hormones to the body
Human Rights Committee	Monitors implementation of ICCPR
House Bill 211	Youth Gender and Sexual Identity Act

House Bill 41	Prohibits practitioners from practicing or performing conversion therapy on an individual who is under the age of 18
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTQ+	Lesbian, Gay, Bisexual, Transgender, Queer plus
OHCHR	Office of the High Commissioner of Human Rights
Puberty Blockers	Gender-affirming care treatment that prevents puberty from happening
SOGI	Sexual Orientation and Gender Identity
SR	Special Rapporteur
Transgender	Relating to a person whose gender identity does not correspond with their sex assigned at birth
UDHR	Universal Declaration of Human Rights
UN	United Nations
U.S.	United States
WHO	World Health Organization
WPATH	World Association of Transgender Health
Yogyakarta Principles & Yogyakarta Principles Plus Ten	Authoritative interpretations of international human rights law as applied to sexual orientation and gender identity

II. Introduction

Florida has a long history of discrimination against the LGBT+ community and has recently become a hotspot for attacks against transgender individuals with a spate of anti-trans legislation. In February of 2022, Florida passed the Parental Rights in Education Act, which silences educators from speaking about any topics involving gender identity.¹ Later that same year in August, the Florida Agency for Healthcare Administration banned Medicaid coverage for gender-affirming care.² Then in February of 2023, the Florida Board of Medicine effectively banned gender-affirming care for minors.³ The Florida Legislature further passed SB 254, criminalizing gender-affirming care for minors, providing the state with emergency jurisdiction over children receiving this care, and vastly limiting the options for trans adults seeking care.⁴

This report consists of three main sections. The first section provides a historical overview of key events impacting the trans community in Florida. The second section analyzes the human rights ramifications of Florida's web of laws and policies impacting the trans community, focusing on the denial of gender-affirming care and restrictions on gender inclusive speech. The final section then closes with recommendations for the State of Florida and resources for concerned Floridians to address current violations.

¹ Parental Rights in Education Act, CS/CS/HB 1557, FLA. STAT. § 1001.42 (8)(c)1.

² Florida Boards of Medicine and Osteopathic Medicine, *Practice Standards for the Treatment of Gender Dysphoria*, Rules 64B8-9.019 & 64B15-14.014, F.A.C. (Nov. 4, 2022).

³ Associated Press, *Florida boards of medicine confirm ban on gender-affirming care for transgender youth*, WUSF PUBLIC MEDIA, (Feb. 10, 2023).

⁴ Florida SB 254 – Treatments for Sex Reassignment (filed Mar. 3, 2023).

III. A Brief History of Events Impacting the Trans Community in Florida

This section chronicles events impacting the trans community in Florida. While not exhaustive, it aims to give a broad overview of the journey for trans rights in Florida.

1822

The United States (U.S.) purchases Florida from Spain. Florida then passes the Florida Territorial Acts,⁵ which adopts the common laws of England where sodomy is a capital offense.⁶ In describing this offense in his famous *Commentaries of the Laws of England*, Justice Blackstone remarks: “I will not act so disagreeable a part, to my readers as well as myself, as to dwell any longer upon a subject, the very mention of which is a disgrace to human nature.”⁷



Albert Cashier, ~1862-1915.
Photograph date unknown.⁹

~1862

Union Soldier Albert Cashier is born. Cashier was assigned female at birth but lived life as a man for fifty-three years until his death in 1915. While the term transgender did not exist at the time, many historians believe him to be a transgender man.⁸

1868

Florida drastically revises its criminal code, making sodomy and any other “crime against nature” punishable by a maximum of twenty years in prison rather than a capital offense.¹⁰

1917

Florida amends the previous law to include any “unnatural or lascivious” act.¹¹

[5] *Florida Territorial Acts* 1822, page 50, enacted Sep. 2, 1822.

[6] Sodomy is traditionally defined as a “crime against nature.” In practice however, the legal definition ends up being more narrowly tailored specifically to what legislators believed was “unnatural sexual connection.” More specifically, any sexual activity performed absent the possibility of procreation. *Sodomy*, *Black’s Law Dictionary*. (2nd Ed. 1910).

[7] 4 William Blackstone, *Commentaries* *218.

[8] National Park Service, <https://www.nps.gov/people/albert-cashier.htm> (last visited Nov. 26 2022); Michael Bronski, *A Queer History of the United States* 69-70 (Beacon Press 2011); Nicholas Teich, *The History of Transgenderism and its Evolution over Time* 76-77 (Columbia University Press 2012).

[9] National Park Services, *Albert Cashier*, (last accessed Aug. 17, 2023) <https://www.nps.gov/articles/000/albert-cashier.htm>.

[10] *Laws of Florida* 1868, ch. 1637, Act 13, enacted Aug. 6, 1868.

[11] *Laws of Florida* 1917, ch. 7361, enacted May 28, 1917.

1933

Nazi youths occupy and burn books at the institute for Sexual Research in Germany. The Institute was considered to be one of the first transgender clinics, and its founder, Dr. Magnus Hirschfeld, one of the first LGBTQ+ advocates.¹²



Photograph of the book burning at the Institute for Sexual Research.¹³



Image of club-goers fighting with police taken during the Stonewall riots of 1969.¹⁵

1969

The Stonewall Riots occur in New York City. Tensions erupted into several days of protests after police officers raid and arrest individuals at local gay bars.¹⁴

May 1971

“You know what happened to the Greeks? Homosexuality destroyed them. Sure, Aristotle was a homo, we all know that, so was Socrates... Do you know what happened to the Romans? The last six Roman emperors were fags.” - President Richard Nixon, May 13th, 1971¹⁶

December 1971

In *Franklin v. State*, the Florida Supreme Court strikes down the felony punishment for sodomy, finding the statute “void on its face as unconstitutional for vagueness and uncertainty in its language, violating constitutional due process to the defendants.” However, sodomy could still be punished as a misdemeanor.¹⁷

[12] Brandy Schillace, *The Forgotten History of the World’s First Trans Clinic*, Scientific American, (May 10, 2021)

<https://www.scientificamerican.com/article/the-forgotten-history-of-the-worlds-first-trans-clinic/>.

[13] Holocaust Memorial Day Trust, 6 May 1933: *Looting of the Institute of Sexology*, (last accessed 03/17/2023) <https://www.hmd.org.uk/resource/6-may-1933-looting-of-the-institute-of-sexology/>.

[14] Colleen Walsh, *Stonewall then and now*, The Harvard Gazette, (Jun. 27, 2019) <https://news.harvard.edu/gazette/story/2019/06/harvard-scholars-reflect-on-the-history-and-legacy-of-the-stonewall-riots/>.

[15] David Carter, *Stonewall: The Riots that Sparked the Gay Revolution* (St. Martin’s Press 2004) photograph taken by freelance photographer Joseph Ambrosini. The Stonewall riots were protests sparked by police raiding gay bars, a common practice in the 1960’s.

[16] Richard Nixon, Conversation 498-005, White House Tapes (Recorded in the Oval Office on May 13, 1971, 10:32 AM to 12:20 PM).

[17] *Franklin v. State*, 257 So. 2d 21, 24 (Fla. 1971).

June 1977

Florida bans gay marriage and adoption by same-sex partners when Governor Reubin Askew (D) signs a bill into law creating Fla. Stat. § 741.212(3), which defines marriage only as a “union between one man and one woman.”¹⁸ Though unenforceable, the law remains in Florida today.¹⁹

September 1979

“I would have no difficulty if I were a citizen of Dade County, as I now am, in voting to repeal the ordinance because I would not want a known homosexual teaching my child.”
*Florida Governor Reubin Askew, 1979*²⁰

March 1986

Bowers v. Hardwick upholds the legality of sodomy laws across the country, allowing states to criminalize the act as they see fit.²¹ In his concurring opinion, Chief Justice Warren Burger stated: “[T]he proscriptions against sodomy have very “ancient roots.” Decisions of individuals relating to homosexual conduct have been subject to state intervention throughout the history of Western civilization. Condemnation of those practices is firmly rooted in Judeo-Christian moral and ethical standards... To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching.”²²

January 1991



Still image of transwoman, model, and performer Venus Xtravaganza in 1986. Xtravaganza was murdered in a likely hate crime in 1988, just two years after this image was taken.²³

The documentary *Paris Is Burning* premieres at the Sundance Film Festival. The film follows several performers in New York City’s drag-ball scene. One of the performers is transwoman Venus Xtravaganza. One year after filming, Venus was murdered in a hate-crime likely after a romantic partner discovered she was trans.

[19] FLA. STAT. § 741.212(3) (2022).

[20] *Nomination of Reubin O’D. Askew: Hearing Before the Committee on Finance of the United States Senate*, 96th Cong. 32 (1979) (statement of Reubin Askew). The “ordinance” referred to in this quote allowed openly gay and lesbian people to teach in public schools.

[21] *Bowers v. Hardwick*, 478 U.S. 186 (1986).

[22] *Id.* at 196-97.

[23] *Paris Is Burning* (Jennie Livingstone 1990). A documentary film chronicling the LGBTQ+ scene of New York in the 80’s. The image depicts Venus Xtravaganza, a transwoman who the documentary follows.

June 2003

Lawrence v. Texas nullifies Florida sodomy laws when the Supreme Court rules that punishment for consensual non-procreative adult activities is unconstitutional under the 8th Amendment. The court stated in the majority opinion “[t]he petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime.”²⁴

December 2011

In *Glenn v. Brumby*, the 11th Circuit rules that employment discrimination against a transgender woman violates the Civil Rights Act.²⁵ The Supreme Court later affirms this in 2020 with the *Bostock v. Clayton County* decision, the majority stating “[i]n Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee’s sex when deciding to fire that employee. We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law.”²⁶

August 2014

In *Brenner v. Scott*, the Northern District of Florida Court rules Florida’s same-sex marriage ban unconstitutional, stating in the majority “The institution of marriage survived when bans on interracial marriage were struck down, and the institution will survive when bans on same-sex marriage are struck down. Liberty, tolerance, and respect are not zero-sum concepts.”²⁷

June 2015

*“If, even as the price to be paid for a fifth vote, I ever joined an opinion for the Court that began: ‘The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity,’ I would hide my head in a bag. The Supreme Court of the United States has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie.” – Justice Antonin Scalia, Dissenting in Obergefell v. Hodges*²⁸

[24] *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

[25] *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011).

[26] *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020).

[27] *Brenner v. Scott*, 999 F.Supp.2d 1278, 1291 (N.D. Fla. 2015).

[28] *Obergefell v. Hodges*, 576 U.S. 644, 719 (2015).

In *Obergefell v. Hodges*, the Supreme Court holds that a ban on same-sex marriage by the States is unconstitutional. In response to critics saying same-sex marriage offends the institution itself, the majority states “[t]heir plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.”²⁹

June 2016

A mass shooting occurs at the Pulse LGBTQ+ nightclub in Orlando, Florida. It is the single deadliest act of violence against the LGBTQ+ community in the history of the U.S.³⁰



Image of visitors at the Pulse Nightclub Memorial in Orlando.³¹

March 2016

State Representative David Richardson (D) files HB 137, which would have banned conversion therapy on minors. The bill dies in the Health Quality Subcommittee.³²

September 2017

State Representative David Richardson (D) files HB 273, which would ban conversion therapy on minors. The bill dies in the Health Quality Subcommittee.³³

[29] *Id.*

[30] Michael Ray, *Orlando Shooting of 2016*, Encyclopedia Britannica (Jun. 5, 2022).

[31] Dan Avery, *Congress votes to make Pulse nightclub a national memorial*, NBC News (Jun. 10, 2021), <https://www.nbcnews.com/nbc-out/congress-votes-make-pulse-nightclub-national-memorial-rcna1170>.

[32] “Conversion Therapy” according to the Gay and Lesbian Alliance Against Defamation (GLAAD) is “any attempt to change a person’s sexual orientation, gender identity, or gender expression.” Conversion therapy has routinely shown massive increases in rates of suicide among LGBTQ+ individuals, especially children who receive this treatment. A super-majority of existing U.S professional medical organizations have denounced conversion therapy, and many states have passed laws protecting children from the practice. Gay and Lesbian Alliance Against Defamation, *Conversion Therapy*, GLAAD (Oct. 27th, 2022), <https://www.glaad.org/conversiontherapy>; *Conversion Therapy*, HB 137, (died in committee Mar. 11, 2016).

[33] *Conversion Therapy*, HB 273, (died in committee May. 5, 2017).

November 2020

*“The chorus of voices will grow each year, revealing decades of pain, decades lost, families torn apart, relationships ruined because people outside the ex-gay world can never understand what we patients went through” – Garrard Conley, *Boy Erased**³⁴

In *Otto v. Boca Raton*, the 11th Circuit rules that bans on conversion therapy violate the First Amendment of the U.S Constitution.³⁵ This ruling nullifies local laws across the state that ban the practice; these laws are now unenforceable, and states can still practice conversion therapy. The majority recognizes the cruelty of the decision, but justifies it: “People have intense moral, religious, and spiritual views about these matters—on all sides. And that is exactly why the First Amendment does not allow communities to determine how their neighbors may be counseled about matters of sexual orientation or gender.”³⁶

January 2021

The White House issues Executive Order 13988, requiring federal agencies to review all policies that protect against sex-based discrimination and extend them to include protections against discrimination based on sexual orientation and gender identity.³⁷

June 2021

Florida Governor Ron DeSantis signs a bill into law banning transwomen and girls from participating in sports designed for those assigned female at birth. The law even provides a cause of action to sue the school for any student who is “deprived of an athletic opportunity” by a transgender student, allowing the student to sue for “psychological, emotional, or physical harm suffered.”³⁸



“Protect Trans Youth” rally in Orlando, Florida following the sports ban. The rally was organized by Equality Florida.³⁹

[34] Garrard Conley, *Boy Erased: A Memoir* (Riverhead Books May 10, 2016). Conley’s memoir focuses on his experience growing up in a fundamentalist household. When his family discovered his sexuality, they enrolled him into conversion therapy when he was 19 years old.

[35] *Otto v. City of Boca Raton*, 981 F.3d 854 (11th Cir. 2020).

[36] *Id.*

[37] Exec. Order No. 13988, 86 C.F.R. 7023 (2021).

[38] Fairness in Women’s Sports Act, FLA. STAT. § 1006.205 (Jul. 1, 2021).

[39] Emilee Speck, *Activists rally in support of transgender youth in response to Florida transgender athlete law*, Click Orlando (Jun. 1, 2021). Photograph by Alex Cook.

State Representative Anna Eskamani introduces bill HB 249, which would provide a nonbinary gender option on Florida State Identification cards. The bill dies in the Tourism, Infrastructure, and Energy Subcommittee in March 2022.⁴⁰

March 2022

*“If you’re against the Anti-Grooming Bill, you are probably a groomer or at least you don’t denounce the grooming of 4-8 year old children.” – Christina Pushaw, Rapid Response Director for Gov. Ron DeSantis*⁴¹

*“Parents have every right to be informed about services offered to their child at school, and should be protected from schools using classroom instruction to sexualize their kids as young as 5 years old.” Governor Ron DeSantis*⁴²

Florida Legislature passes the Parental Rights in Education Act, commonly referred to as the “Don’t Say LGBTQ+” Act.⁴³ This law states that classroom instruction “on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate” for students in any grade.⁴⁴ The law also gives parents a right of action to sue any school district they believe may be in violation. Further, the law prevents schools from withholding information students give to school officials confidentially unless there is a reasonable belief that giving the information to a parent would reasonably result in abuse, neglect, or abandonment of the child.⁴⁵

Many lawsuits, such as *M.A v. Florida State Board of Education*, have been filed⁴⁶ challenging the law for vagueness and unconstitutionality. Judges however continue to dismiss these lawsuits because the plaintiffs fail to state how the law has caused harm or will likely cause harm.⁴⁷

[40] Driver License and Identification Card Gender Designation, HB 249, (2021)

[41] Christina Pushaw (@ChristinaPushaw), Twitter (Mar. 4, 2022, 6:33 PM), <https://twitter.com/christinapushaw/status/1499890719691051008?lang=en>.

[42] *Governor Ron DeSantis Signs Historic Bill to Protect Parental Rights in Education*, FLGov.com (Mar. 28, 2022), <https://flgov.com/2022/03/28/governor-ron-desantis-signs-historic-bill-to-protect-parental-rights-in-education/#:~:text=%E2%80%9CParents%20have%20every%20right%20to,young%20as%205%20years%20old.%E2%80%9D>.

[43] Parental Rights in Education Act, HB 1557, (*died in committee* Mar. 14, 2022),

[44] *Id.* at 4-5.

[45] *Id.* at 3-4.

[46] Jo Yurcaba, *Florida families and advocacy groups file lawsuit over ‘Don’t Say Gay’ law* NBC News, 2022 <https://www.nbcnews.com/nbc-out/out-politics-and-policy/florida-families-advocacy-groups-file-lawsuit-dont-say-gay-law-rcna40053>.

[47] Mike Schneider, *Judge again tosses challenge to Florida’s ‘Don’t Say Gay’ bill*, Associated Press (Oct. 21, 2022).



Photos following passage of the “Don’t Say Gay” bill during a pride parade in Tampa, Florida.⁴⁸



April 2022

The Florida Department of Health publishes a memo stating that medical care for transgender youth should not include puberty blockers, hormone replacement, surgery, or social transitioning.⁴⁹ The Board said that research concerning such treatments “is insufficient to demonstrate efficacy and safety,” and that they are “experimental.”⁵⁰ This memo conflicts with the guidelines of the American Medical Association,⁵¹ the American Psychological Association,⁵² and the American Academy of Child and Adolescent Psychiatry.⁵³

Meanwhile, the Secretary of State announces that U.S citizens can now select an ‘X’ gender marker on their passports.⁵⁴

[48] Andrew Atterbury, *Florida’s fight over ‘Don’t Say Gay’ is getting more heated. And it hasn’t even gone into effect yet.* Politico (May 17, 2022). Photograph by Octavio Jones.

[49] Florida Department of Health, *Treatment of Gender Dysphoria for Children and Adolescents*, (Apr. 20, 2022)

[50] Florida Department Agency for Healthcare Administration, *Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria*, pg. 3 (Jun. 2022).

[51] American Medical Association, *AMA reinforces opposition to restrictions on transgender medical care (2021)*, <https://www.ama-assn.org/press-center/press-releases/ama-reinforces-opposition-restrictions-transgender-medical-care>; American Medical Association, *March 26, 2021: State Advocacy Update (2021)*, <https://www.ama-assn.org/health-care-advocacy/advocacy-update/march-26-2021-state-advocacy-update>.

[52] American Psychological Association, *APA President condemns Texas governor’s directive to report parents of transgender minors (2022)*, <https://www.apa.org/news/press/releases/2022/02/report-parents-transgender-children>; American Psychological Association, *Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools (2020)*, <https://www.apa.org/pi/lgbt/resources/policy/gender-diverse-children>.

[53] American Academy of Child and Adolescent Psychiatry, *AACAP Statement Responding to Efforts to ban Evidence-Based Care for Transgender and Gender Diverse Youth (2019)*, https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx.

[54] Press Release from U.S. Department of State, Secretary of State Antony Blinken, *X Gender Marker Available on U.S. Passports Starting April 11th*, (Mar. 31, 2022).

“The June 2 Report appears to be a scientific report, but its veneer hides a flawed analysis that ignores the scientific evidence and relies instead on pseudo-science. The report heavily relies on five purported “expert” documents that are biased, inexpert, and full of errors.” – Dr, Hussein Abdul-Latif, et al.⁵⁵

The Florida Agency for Healthcare Administration (AHCA), which oversees the Florida Medicaid program, releases a report that characterizes gender-affirming care as “experimental and investigational.”⁵⁶ A review of the report by faculty of the Yale School of Medicine and Yale Law School criticizes the report for “false statements” and “glaring errors regarding science, statistical methods, and medicine.”⁵⁷ The Yale review points to “robust clinical research studies,” which the report disregards⁵⁸ and “cherry-pick[ed] quotes” from studies out of context.⁵⁹

The Supreme Court overturns *Roe v. Wade*, no longer protecting a person’s right to have an abortion⁶⁰ and leading to the potential closure of clinics that are critical sources of gender affirming care.⁶¹

Meanwhile, The White House issues Executive Order 14075, which focuses on further action to protect LGBTQI+ individuals against discrimination including efforts to end “conversion therapy,” provide counseling for families, and the establishment of a working group to address LGBTQI+ discrimination in schools.⁶²



[55] Hussein Abdul-Latif, et. al., A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria, Yale School of Medicine (2022) https://medicine.yale.edu/lgbtqi/research/gender-affirming-care/florida%20report%20final%20july%208%202022%20accessible_443048_284_55174_v3.pdf. (The report consists of the independent work of eight different professionals. Four doctors, three psychologists, and a lawyer. This team systematically picked apart each claim in the AHCA report and were not prospected or commissioned to do so).

[56] Agency for Health Care Administration, *Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria*, at 3 (June 2022).

[57] Hussein Abdul-Latif, *supra* note 46, at 2.

[58] *Id.* at 16.

[59] *Id.* at 18.

[60] *Dobbs v. Jackson Women’s Health Organization*, 597 U.S n.d, (2022).

[61] *Brief for LGBTQ Organizations as Amici Curae*, p. 2-6, *June Meical Services L.L.C. v. Russo*, 140 S.Ct. 2103 (2020).

[62] Exec. Order No. 14075, 87 C.F.R. 37189 (2022).

The AHCA removes Medicaid coverage for gender-affirming therapy, halting treatment of dysphoria for hundreds of patients across the state.⁶³ Several organizations, including Florida Health Justice Project, Lambda Legal, and Southern Legal Counsel, as well as individual plaintiffs file a lawsuit in response, *Dekker v. Weida*, claiming violations of the Equal Protections Clause.⁶⁴ In October, Federal Judge Robert Hinkle denies an injunction that would enable patients to continue care while the multi-year lawsuit plays out.⁶⁵

October 2022

*“The Board of medicine has never been so restrictive in other realms of surgery and gender-affirming care should be not be treated differently. This will leave us incapable of treating a large number of patients. It never occurred to me when I became a doctor that I would ever, in this country, be forced to withhold care of a treatable condition.” – Dr. Sara Danker*⁶⁶

The Florida Board of Education adopts a rule that prevents trans youth from using the bathroom reflected on their gender identity unless the school first notifies all parents with children at the school.⁶⁷ The notification must include how the individual trans student will be supervised when they use a restroom not of their “biological sex at birth” to make sure the non-trans students are kept safe.⁶⁸

- A lawsuit went up to the 11th Circuit where the court upheld the law, stating that “[w]hether Title IX should be amended to equate ‘gender identity’ and ‘transgender status’ with ‘sex’ should be left to Congress—not the courts.”⁶⁹

Federal Judge Allen Winsor dismisses a lawsuit filed in response to the “Don’t Say LGBTQ+” Act, claiming no harm can be tied to the passage of the bill.⁷⁰ In his decision, Judge Winsor states that the “Don’t Say LGBTQ+” Act could not be purported to cause a chilling effect that prevents teachers, students, or parents from authentically presenting as themselves. The decision makes no determination on what amounts to teaching under the Act, but Judge Winsor indicates that simply mentioning and briefly explaining gender identity if it comes up from an individual’s expression would still be permissible.⁷¹

[63] Florida Administrative Code, 59G-1.010(7), (Aug. 21, 2022).

[64] Kathryn Varn, *Transgender advocates sue Florida over Medicaid coverage ban of gender-affirming care*, USA Today, (Sep. 7, 2022) <https://www.tallahassee.com/story/news/2022/09/07/florida-sued-over-trans-health-care-medicare-ban/8009857001/>.

[65] Ares Sarkissian, *Federal judge upholds Florida Medicaid ban on covering gender-affirming care*, Politico (Oct. 12, 2022) <https://www.politico.com/news/2022/10/12/florida-medicare-ban-transgender-treatments-00061500>.

[66] Interview with Doctor Sara Danker, Assistant Professor, Division of Plastic Surgery, University of Miami Miller School of Medicine (Oct. 21, 2022).

[67] Florida Administrative Code, 6A-10.086 (Oct. 19, 2022).

[68] *Id.*

[69] *Adams by and through Kasper v. School Board of St. John’s County Florida*, 57 F.4th 791 (11th Cir. 2022).

[70] Debra Cassens Weiss, *Weekly Briefs: Judge tosses challenge to ‘Don’t Say Gay’ law; gun-makers win dismissal of Mexico suit*, (Oct. 7, 2022).

[71] ORDER ON MOTION TO DISMISS, 11, *Equality Florida v. Florida State Board of Education*, No. 4:22-cv-134-AW-MJF (N.D. Fla).

The Florida Board of Medicine and Board of Osteopathic Medicine propose new standards of care for the treatment of gender dysphoria. The Boards new rules states “The following therapies and procedures performed for the treatment of gender dysphoria in minors are prohibited.

- (a) Sex reassignment surgeries, or any other surgical procedures, that alter primary or secondary sexual characteristics.
- (b) Puberty blocking, hormone, and hormone antagonist therapies.”⁷²



Protesters stage a “die-in” outside the Board of Medicine hearing in the Orlando International Airport.⁷³

February 2023

The Florida Board of Medicine and Board of Osteopathic Medicine adopt the proposed standards of care, effectively banning gender-affirming care for minors in Florida.⁷⁴

March 2023

Florida House republicans bring forth HB 1421. One of the harshest anti-trans bills proposed in the country, it would forcibly detransition trans youth, ban private insurances from covering gender-affirming care in Florida for all ages, and make it a felony for doctors to provide this care to minors.⁷⁵

[72] Florida Boards of Medicine and Osteopathic Medicine, *Practice Standards for the Treatment of Gender Dysphoria*, Rules 64B8-9.019 & 64B15-14.014, F.A.C. (Nov. 4, 2022).

[73] Jo Yurcaba, *Florida medical board votes to ban gender-affirming care for transgender minors*, NBC News (Oct. 29, 2022). Photograph by Kat Duesterhaus.

[74] Equality Florida, *Florida Boards of Medicine and Osteopathy Align, Advance Rule to Ban Gender Affirming Care for Trans Youth*, (Feb. 10, 2023) <https://www.eqfl.org/florida-boards-medicine-and-osteopathy-align-advance-rule-ban-gender-affirming-care-trans-youth>.

[75] Gender Clinical Interventions, HB 1421 (Mar. 22, 2023).

May 2023

The Florida Legislature passes SB 254, not only banning gender-affirming care for minors, but also giving the state temporary emergency jurisdiction over any child in the state who is receiving gender-affirming care regardless of their state of residence.⁷⁶

The Florida Legislature expands “Don’t Say LGBTQ+” to prevent educators from sharing preferred pronouns other than those that match their sex at birth or asking students about their preferred pronouns.⁷⁷ The law provides that educators who do not comply can have their education certificate revoked, and Florida’s attorney general can file a civil lawsuit against schools not in compliance for damages up to \$10,000.⁷⁸

June 2023

U.S. judge blocks Florida ban on care for trans minors in narrow ruling, says ‘gender identity is real’

The lawsuit challenges a law Republican Gov. Ron DeSantis signed shortly before he announced a run for president.



Image from protest organized by Equality Florida, and headline from lawsuit challenging gender-affirming care ban for minors.⁸²

“If ever a pot called a kettle black, it is here. The statute and the rules were an exercise in politics, not good medicine.”⁷⁹

The federal district court of northern Florida issues a preliminary injunction in a lawsuit challenging the Board of Medicine and Osteopathic Medicine’s proposed rules. The injunction halts the bans on established gender-affirming care practices for minors, allowing such care to continue while the lawsuit plays out.⁸⁰

The federal district court of northern Florida rules in *Dekker v. Weida* that Florida’s ban on Medicaid coverage for gender affirming care for patients experiencing gender dysphoria is unconstitutional, violating the Equal Protection Clause, as well as the Affordable Care Act’s prohibition of sex discrimination and the Medicaid statute.⁸¹

[76] Treatments for Sex Reassignment, SB 254 (passed to Governor Ron DeSantis on May 4th, 2023).

[77] Parental Rights in Education Act, CS/CS/HB1069, *Laws of Florida*, Ch. 2023-105.

[78] Molly Bohannon, *Florida School District Bars Preferred Pronouns for Students and Staff to Comply with State Law*, Forbes (Aug. 8, 2023),

<https://www.forbes.com/sites/mollybohannon/2023/08/08/florida-school-district-bars-preferred-pronouns-for-students-and-staff-to-comply-with-state-law/?sh=3522357f1a76>.

[79] *Doe v. Ladapo*, No. 4:23cv114-RH-MAF, pg. 33 (Jun. 6, 2023 N.D. Fla.) (order granting preliminary injunction).

[80] Southern Legal Counsel, *Federal Court Blocks Enforcement of Florida Transgender Health Ban, Restoring Access to Care for All Minors*, (Jun. 6, 2023)

<https://www.southernlegal.org/news/federal-court-halts-enforcement-of-florida-transgender-health-ban-against-challengers>.

[81] National Health Law Program, *Victory! Court Voids Florida’s Policy Prohibiting Medicaid Coverage of Gender-Affirming Care*, (Jun. 22, 2023)

[https://healthlaw.org/news/victory-court-voids-floridas-policy-prohibiting-medicaid-coverage-of-gender-affirming-care/#:~:text=Following%20a%20recent%20two%2Dweek,Floridians%20is%20unlawful%20and%20unconstitutional;Dekker v. Weida, No. 4:22CV325-RH-MAF, 2023 WL 4102243 \(N.D. Fla. June 21, 2023\).](https://healthlaw.org/news/victory-court-voids-floridas-policy-prohibiting-medicaid-coverage-of-gender-affirming-care/#:~:text=Following%20a%20recent%20two%2Dweek,Floridians%20is%20unlawful%20and%20unconstitutional;Dekker v. Weida, No. 4:22CV325-RH-MAF, 2023 WL 4102243 (N.D. Fla. June 21, 2023).)

[82] *Id.*

IV. Human Rights Analysis

The denial of gender-affirming care and restrictions on gender inclusive speech violate the international human rights to equality and non-discrimination, health and scientific progress, physical and mental integrity, work, freedom of expression, education, and life. This section examines each of these international human rights in turn, including standards and interpretations and their impact on the trans community.

This analysis relies on the Universal Declaration of Human Rights (UDHR),⁸³ the founding document of the international human rights system, as well as two human rights treaties the U.S. has ratified, the International Covenant on Civil and Political Rights (ICCPR)⁸⁴ and the Convention Against Torture (CAT).⁸⁵ While the UDHR is a not a treaty but a declaration, it has important normative status, and at least parts of it are binding customary law.⁸⁶ Having ratified the ICCPR and CAT, the U.S. is bound to implement them.⁸⁷ Additionally, the analysis draws on two treaties signed but not yet ratified by the U.S.: the International Covenant on Economic Social and Cultural Rights (ICESCR)⁸⁸ and the Convention on the Rights of the Child (CRC).⁸⁹ Having only signed these treaties, the U.S. need not take positive steps to implement them, but it cannot take actions that would go against their “object and purpose.”⁹⁰ Further, this report relies on the Yogyakarta Principles and Yogyakarta Principles Plus 10, authoritative interpretations of international human rights law as applied to sexual orientation and gender identity developed by a global committee of experts.⁹¹

⁸³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

⁸⁴ International Covenant on Civil and Political Rights, ratified Jun. 8, 1992, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁸⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 80, ratified Oct. 21, 1994, 1465 UNTS 85, 113 [hereinafter CAT].

⁸⁶ Schabas, William A., *The belated emergence of the customary international law of human rights*, The Customary International Law of Human Rights (Oxford, 2021; online edn, Oxford Academic, 19 Aug. 2021).

⁸⁷ While these ratified treaties are binding, the U.S. has entered a declaration when ratifying them that they are not self-executing, preventing their use on their own as a cause of action in court. They can however be used to in court to aid interpretation and strengthen claims, as well as in advocacy with the legislative and executive branches of government. Catherine Powell, *Dialogic Federalism, Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. PA.L.REV. 245, 258–259 (2001); Hum. Rts. Comm., United States of America Initial Report to the Human Rights Committee, para. 8, CCPR/C/81/Add.4 (Aug. 24, 1994).

⁸⁸ International Covenant on Economic, Social, and Cultural Rights, signed Oct. 05, 1977, 993 U.N.T.S. 3 [hereinafter ICESCR].

⁸⁹ Convention on the Rights of the Child, signed Feb. 16, 1995, 1577 U.N.T.S. 3 [hereinafter CRC].

⁹⁰ RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 (AM. LAW INST. 2018); *What is the Difference Between Signing, Ratification and Accession of UN treaties?*, DAM HAMMARSKJÖLD LIBR.

⁹¹ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, (Mar. 2007) [hereinafter Yogyakarta Principles]; International Commission of Jurists (ICJ), *The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, (Nov. 10, 2017) [hereinafter Yogyakarta Plus 10].

A. The Right to Equality and Non-Discrimination

Restrictions specifically targeting gender-affirming care and gender inclusive speech violate the right to equality and non-discrimination on the basis of gender identity.

“Trans people are humans too and deserve to live in this country” - Nico Watson⁹²

- Under ICCPR, Article 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. . . . [T]he law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, [...] or other status.”⁹³ See also ICCPR, Article 2;⁹⁴ UDHR, Articles 2 and 7;⁹⁵ ICESCR, Article 2;⁹⁶ CRC, Article 2.⁹⁷
- The right to equality under international human rights law requires addressing disparate impact, not just intentional discrimination.⁹⁸
- The Human Rights Committee⁹⁹ and the Committee on Economic, Social and Cultural Rights (CESCR) have explicitly recognized sexual orientation and gender identity as “a prohibited grounds of discrimination,” with CESCR providing the specific example of persons who are “transgender, transsexual or intersex who ‘often face serious human rights violations, such as harassment in schools or in the workplace.’”¹⁰⁰

⁹² Interview with Nico Watson, trans resident of Florida (Mar. 15, 2023).

⁹³ ICCPR, art. 26, *supra* note 79; see also General Comment: Hum. Rts. Comm., General Comment No. 18: Non-Discrimination, ¶ 7, U.N. Doc. CCPR/C/ (Nov. 10, 1989) [hereinafter HRC General Comment No. 18]; See also UDHR, art. 7, *supra* note 78; ICESCR art. 3, *supra* note 83; CRC art. 29, *supra* note 84.

⁹⁴ ICCPR, art. 2, *supra* note 79.

⁹⁵ UDHR, art. 2, 7, *supra* note 78.

⁹⁶ ICESCR, art. 2, *supra* note 83.

⁹⁷ CRC, art. 2, *supra* note 84.

⁹⁸ HRC General Comment No. 18 ¶ 6, *supra* note 88 (specifying that the right to equality requires an examination of whether an action “has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin”).

⁹⁹ Toonen v. Australia, U.N. GAOR Hum. Rts. Comm., 50th Sess., U.N. Doc. CCPR/C/50/D/488/1992, ¶ 8.7 (1994) (finding that the ICCPR prohibits discrimination based on sexual orientation); G v. Australia, U.N. GAOR Hum. Rts. Comm., 119th Sess., U.N. Doc. CCPR/C/119/D/2172/2012, ¶ 7.12 (2017) (finding that the ICCPR prohibits discrimination based on gender identity).

¹⁰⁰ Committee on Econ., Soc., and Cultural Rts., General Comment No. 20: Non-discrimination in economic, social and cultural rights, ¶ 32, U.N. Doc. CESCR/C/12/Rev. GC/20 (July 2, 2009) [hereinafter CESCR General Comment No. 20]; see Hum. Rts. Council, *Report of the Special Rapporteur on the right to the enjoyment of the highest attainable standard of physical and mental health of persons, communities and populations affected by discrimination and violence based on sexual orientation and gender identity in relation to the Sustainable Development Goals*, ¶ 5, U.N. Doc. A/HRC/50/27 (2022) (“[I]t is well established that sexual orientation and gender identity are prohibited grounds of discrimination under international human rights law.”); Hum. Rts. Council, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, ¶ 9, U.N. Doc. A/HRC/29/23 (2015). (“Application of international human rights law is guided by the fundamental principles of universality, equality, and non-discrimination. All human beings, irrespective of their sexual orientation and gender identity, are entitled to enjoy the protection of international human rights law.”)

B. The Rights to Health and to Enjoyment of the Benefits of Scientific Progress

Prohibiting gender-affirming care violates the right to “the highest attainable standard of physical and mental health” and to the benefits of scientific progress by disregarding scientific evidence and denying a critical health intervention.

“When I woke up from surgery there was this overwhelming sense of peace about things because I didn’t have to worry about my own body fighting against me.” - Nico Watson¹⁰¹

“If we withdraw care from these patients, quality of life and mental well-being can spiral downwards.” - Dr. Lydia Fein, Assistant Professor, Department of Obstetrics, Gynecology, and Reproductive Sciences, University of Miami Miller School of Medicine¹⁰²

- Article 12 of ICESCR sets out “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁰³ See also UDHR, Article 25;¹⁰⁴ CRC, Article 24.¹⁰⁵
 - In interpreting this provision, CESCR explained that the right to health contains a right to healthcare that is available, accessible, acceptable, and of quality.¹⁰⁶
 - The accessibility component requires that “health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination.”¹⁰⁷
 - The quality component requires that health services be “scientifically and medically appropriate.”¹⁰⁸
- Article 15 of ICESCR “recognize[s] the right of everyone . . . [t]o enjoy the benefits of scientific progress and its application.” See also UDHR, Article 27.¹⁰⁹

¹⁰¹ Interview with Nico Watson, trans resident of Florida (Mar. 15, 2023).

¹⁰² Interview with Dr. Lydia Fein, Assistant Professor, Department of Obstetrics, Gynecology, and Reproductive Services, University of Miami Miller School of Medicine (Sept. 22, 2022).

¹⁰³ ICESCR, art. 12, *supra* note 83.

¹⁰⁴ UDHR, art. 25, *supra* note 78; see also General Comment Comm. on the Rts. of the Child, General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health, U.N. Doc. CRC/C/GC/15 (April 17, 2013) [hereinafter CRC General Comment No. 15].

¹⁰⁵ CRC, art. 2, *supra* note 84.

¹⁰⁶ Comm. on Econ., Soc., and Cultural Rts., General Comment No. 14: The Right to the Highest Attainable Standard of Health, ¶ 12, U.N. Doc. CESCR/C/12/ (Aug. 11, 2000) [hereinafter CESCR General Comment No. 14].

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ UDHR, art. 27, *supra* note 78.

- The American Medical Association,¹¹⁰ American Academy of Pediatrics,¹¹¹ American Psychological Association,¹¹² American Academy of Child and Adolescent Psychiatry,¹¹³ and World Professional Association of Transgender Health (WPATH)¹¹⁴ have all published guidelines and policy statements on the provision of appropriate gender-affirming care, essential in treating gender dysphoria.¹¹⁵
- “[M]ore than a dozen studies of more than 30,000 transgender and gender-diverse young people consistently show that access to gender-affirming care is associated with better mental health outcomes.”¹¹⁶
- As the Independent Expert on Sexual Orientation and Gender Identity stated, “evidence shows that acquiring gender characteristics congruent with the self-identified gender identity generally improves health, well-being, and quality of life. Conversely, not being able to live according to one’s self-identified gender identity is likely to exacerbate other forms of ill health and erode dignity.”¹¹⁷
- Yogyakarta Principle 17 calls on states to “[e]nsure access to the highest attainable standard of gender affirming healthcare, on the basis of an individual’s free, prior and informed consent,”¹¹⁸ as well as “[e]nsure that gender affirming healthcare is provided by the public health system or, if not so provided, that the costs are covered or reimbursable under private and public health insurance schemes.”¹¹⁹

¹¹⁰ American Medical Association, AMA reinforces opposition to restrictions on transgender medical care (2021), <https://www.ama-assn.org/press-center/press-releases/ama-reinforces-opposition-restrictions-transgender-medical-care>; American Medical Association, March 26, 2021: State Advocacy Update (2021), <https://www.ama-assn.org/health-care-advocacy/advocacy-update/march-26-2021-state-advocacy-update>.

¹¹¹ American Academy of Pediatrics, Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents (2018), <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for-autologincheck=redirected?nfToken=00000000-0000-0000-0000-000000000000>.

¹¹² American Psychological Association, APA President condemns Texas governor’s directive to report parents of transgender minors (2022), <https://www.apa.org/news/press/releases/2022/02/report-parents-transgender-children>; American Psychological Association, Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools (2020), <https://www.apa.org/pi/lgbt/resources/policy/gender-diverse-children>.

¹¹³ American Academy of Child and Adolescent Psychiatry, AACAP Statement Responding to Efforts to ban Evidence-Based Care for Transgender and Gender Diverse Youth (2019), https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx.

¹¹⁴ WPATH, Standards of Care for Health of Transgender and Gender Diverse People, Version 8 (2022), <https://www.tandfonline.com/doi/full/10.1080/26895269.2022.2100644>.

¹¹⁵ Please find additional statements in support of gender affirming care by leading medical organizations, including the American Academy of Family Physicians and the American College of Obstetricians and Gynecologists, at <https://transhealthproject.org/resources/medical-organization-statements/>. The AMA notes, “Every major medical association in the United States . . . recognizes the medical necessity of transition-related care for improving the physical and mental health of transgender people.” <https://www.ama-assn.org/health-care-advocacy/advocacy-update/march-26-2021-state-advocacy-update>.

¹¹⁶ Heather Boerner, What the Science on Gender-Affirming Care for Transgender Kids Really Shows, Scientific American (2022) <https://www.scientificamerican.com/article/what-the-science-on-gender-affirming-care-for-transgender-kids-really-shows/>. Please see <https://www.psychologytoday.com/us/blog/political-minds/202201/the-evidence-trans-youth-gender-affirming-medical-care> for a description of the studies.

¹¹⁷ Human Rights Council 50/3, *The right to the enjoyment of the highest attainable standard of physical and mental health of persons, communities and populations affected by discrimination and violence based on sexual orientation and gender identity in relation to the Sustainable Development Goals*, ¶ 27, U.N. Doc. A/HRC/50/27 (Jun. 14, 2022); see also Hum. Rts. Council, *Mandate of the United Nations Independent Expert on Protection from Violence and Discrimination based on Sexual Orientation and Gender Identity, Country Visit to the United States of America*, ¶ 31, IE-SOGI-EOM-US (2022) (criticizing the U.S. for restrictions on gender affirming care and noting that “[t]here is a robust stock of knowledge concerning the benefits of gender-affirming treatment, and its positive impact on mental health”).

¹¹⁸ Principle 17(K), Yogyakarta Principles Plus 10 (2017).

¹¹⁹ Yogyakarta Principle 17(L); Yogyakarta Principles Plus 10 (2017).

C. The Right to Physical and Mental Integrity

Impeding lifesaving gender-affirming care and forcing an incongruence with an individual's gender identity violates the right to physical and mental integrity. Moreover, Florida has created an atmosphere that encourages hate and abuse against transgender residents, who fear for their personal security and basic integrity.

“I felt bad and wrong for not feeling like a girl. I felt like a criminal for not feeling good in my own skin. If shame was removed, especially as a child, this would have helped me. This shame has followed me for decades. If I knew this was an option in the first place, I would have felt relief.” - Emmitt Williams ¹²⁰

“Going out every day in the world as a trans person can be hard.” - Nico Watson ¹²¹

- The overarching right to physical and mental integrity under international human rights law is comprised of the rights to privacy, security of person, and freedom from torture and cruel, inhuman, and degrading treatment.
- Principle 32 of the Yogyakarta Principles highlights, “Everyone has the right to bodily and mental integrity and self-determination irrespective of sexual orientation, gender identity, gender expressions or sex characteristics.”¹²² This requires states to “[g]uarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and self-determination.”¹²³

• Right to Privacy

- Under UDHR, Article 12 and ICCPR, Article 17, “No one shall be subject to arbitrary interference with his privacy.”¹²⁴ See also CRC, Article 16.¹²⁵
- Yogyakarta Principle 6 specifically calls on states to “[r]epeal any law that prohibits or criminalises the expression of gender identity . . . or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity.”¹²⁶

• Right to Security of Person

- Under ICCPR, Article 9 “Everyone has the right to liberty and security of a person.”¹²⁷ See also UDHR, Article 3.¹²⁸

¹²⁰ Interview with Emmitt Williams, trans resident of Florida (Mar. 14, 2023).

¹²¹ Interview with Nico Watson, trans resident of Florida (Mar. 15, 2023).

¹²² Yogyakarta Principles Plus 10, Principle 32 (2017), http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

¹²³ Yogyakarta Principles Plus 10, Principle 32(A) (2017), http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

¹²⁴ UDHR, art. 12, *supra* note 78; ICCPR; art. 17, *supra* note 79.

¹²⁵ CRC, art. 16, *supra* note 84.

¹²⁶ Yogyakarta Principles, Principle 6(D) (2009).

¹²⁷ ICCPR, art. 9, *supra* note 79.

¹²⁸ UDHR, art. 3, *supra* note 78.

- Yogyakarta Principle 5 calls on states to “[u]ndertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.”¹²⁹
- **Right to Freedom from Torture and Cruel, Inhuman, and Degrading Treatment**
 - Under UDHR, Article 5 and ICCPR, Article 7, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹³⁰ *See also* CRC, Article 37; CAT, Articles 1 and 16.¹³¹
- Impeding access to medically necessary treatment to alleviate gender dysphoria causes higher rates of depression, anxiety, and suicidality.¹³²
- Transgender Floridians do not feel safe or welcome in a state that promotes hatred towards them and are a common target of hate crimes. In 2022, there were at least 38 fatalities of trans women of color in the country.¹³³

D. The Right to Work

Interfering in the doctor-patient relationship and criminalizing physicians for providing needed gender-affirming care violates the right to work.

“The Board of medicine has never been so restrictive in other realms of surgery and gender-affirming care should be not be treated differently. This will leave us incapable of treating a large number of patients. It never occurred to me when I became a doctor that I would ever, in this country, be forced to withhold care of a treatable condition.” - Dr. Sara Danker, Assistant Professor of Surgery, University of Miami Miller School of Medicine¹³⁴

- Under Article 23 of the UDHR, “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”¹³⁵ *See also* ICESCR, Article 6.¹³⁶

¹²⁹ Yogyakarta Principles, Principle 5 (2009).

¹³⁰ UDHR, art. 5, *supra* note 78; ICCPR art. 7, *supra* note 79.

¹³¹ CRC, art. 37, *supra* note 84; CAT, art. 1, 16, *supra* note 80.

¹³² American Medical Association, Health Insurance Coverage for Gender-Affirming Care of Transgender Patients (2019), <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf>

¹³³ Human Rights Campaign (2022), <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2022>.

¹³⁴ Interview with Dr. Sara Danker, Assistant Professor of Surgery, University of Miami Miller School of Medicine (Oct. 21, 2022).

¹³⁵ UDHR, art. 23, *supra* note 78.

¹³⁶ ICESCR, art. 6, *supra* note 83.

- The American Academy of Pediatrics has recognized that pediatric providers, who are “often the first medical professionals to discover a child's gender identity concerns,” have a special role in caring for these patients that may have anxiety and suicidal ideations.¹³⁷

E. The Right to Freedom of Expression

Limitations on gender inclusive speech and on expression in line with one’s gender identity violate the right to freedom of expression. Moreover, the government has engaged in hate speech specifically targeting gender diverse individuals and normalizing violence.

“When I realized I was trans I needed everyone to know and didn’t want others to see me as a woman anymore. The anxiety I had experienced came from people perceiving me as being a woman.” - Nico Watson ¹³⁸

“What scares me the most is the misinformation surrounding trans people. I wish they had a better understanding of what transness is. We are not groomers or transitioning for attention.” - Emmitt Williams ¹³⁹

- Under ICCPR, Article 19, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.”¹⁴⁰ See also UDHR, Article 19; CRC, Article 13.¹⁴¹
 - In interpreting this provision, the Human Rights Committee has stated that “any such limitations [on the freedom of expression] must be understood in the light of universality of human rights and the principle of non-discrimination.”¹⁴²
 - The Special Rapporteur on Freedom of Opinion and Expression explained that protected speech cannot entail incitement to “discrimination, hostility, or violence,” which “can intimidate vulnerable communities into silence.”¹⁴³
 - The CRC Committee “emphasizes the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy” and calls on states “to protect all lesbian, gay, bisexual, transgender and

¹³⁷ Alyson Sulaski Wyckoff, “AAP continues to support care of transgender youths as more states push restrictions” (January 6, 2022) <https://publications.aap.org/aapnews/news/19021/AAP-continues-to-support-care-of-transgender?autologincheck=redirected>.

¹³⁸ Interview with Nico Watson, trans resident of Florida (Mar. 15, 2023)

¹³⁹ Interview with Emmitt Williams, trans resident of Florida (Mar. 14, 2023).

¹⁴⁰ ICCPR, art. 19, *supra* note 79.

¹⁴¹ UDHR, art. 19, *supra* note 78; CRC art. 13, *supra* note 84.

¹⁴² Hum. Rts. Comm., General Comment No. 22: Freedoms of Opinion and Expression, ¶ 32, U.N. Doc. CCPR/C/34 (Sep. 12, 2011) [hereinafter HRC General Comment No. 22].

¹⁴³ Hum. Rts. Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression*, ¶ 56, U.N. Doc. A/HRC/74/496 (Oct. 9, 2019).

intersex adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures.”¹⁴⁴

- Under Yogyakarta Principle 19, “Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.”¹⁴⁵
- Yogyakarta Principle 30 further calls on states “to eradicate all forms of violence, discrimination and other harm, including any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence on grounds of sexual orientation, gender identity, gender expression or sex characteristics, whether by public or private actors”¹⁴⁶ and to “[d]evelop, implement and support education and public information programmes to promote human rights and to eliminate prejudices on grounds of sexual orientation, gender identity, gender expression and sex characteristics.”¹⁴⁷
- “Don’t Say LGBTQ+” states that any classroom instruction “on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate,” but fails to define what constitutes classroom instruction on sexual orientation or gender identity and what is “age appropriate,” chilling speech more broadly.¹⁴⁸ For instance, a teacher could be removed for simply answering an unprompted question a child might have concerning wearing clothing of the opposite sex.
- The use of “hate speech,” has been prevalent in the Florida Governor’s Office.¹⁴⁹ Government officials have used the term “groomer” to define any member of the LGBTQ community as someone who is a sexual danger to children and normalize violent behavior toward these groups.

F. The Right to Education

Florida violates the right to education by silencing discourse on gender.

- ICESCR “recognize[s] the right of everyone to education.”¹⁵⁰ See also CRC, Article 28.¹⁵¹ Moreover, CRC, Article 29 explains that education “shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms”; and (d) “The preparation

¹⁴⁴ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, ¶ 34, CRC/C/GC/20 (Dec. 6, 2016)

¹⁴⁵ Yogyakarta Principles, Principle 19, *supra* note 86.

¹⁴⁶ Yogyakarta Plus 10, Principle 30, *supra* note 86.

¹⁴⁷ *Id.*

¹⁴⁸ Parental Rights in Education Act, CS/CS/HB 1557, FLA. STAT. § 1001.42 (8)(c)1.

¹⁴⁹ See Chronology, Christina Pushaw (@ChristinaPushaw), TWITTER (Mar. 4, 2022, 6:33 PM), <https://twitter.com/christinapushaw/status/1499890719691051008?lang=en>.

¹⁵⁰ ICESCR, art. 13, *supra* note 83.

¹⁵¹ CRC, art. 28, *supra* note 84.

of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples.”¹⁵²

- In interpreting this right, CESCR specified that “educational institutions and programmes have to be accessible to everyone, without discrimination.”¹⁵³
- According to the Independent Expert on Sexual Orientation and Gender Identity (SOGI), “Protection from violence and discrimination based on sexual orientation and gender identity . . . rely on the implementation of comprehensive gender and sexuality education, in full conformity with freedom of expression and the promotion of the full development of the human personality and the sense of dignity.”¹⁵⁴
- The Independent Expert on SOGI further explained, “The adoption of comprehensive and sexual orientation and gender identity-inclusive sexuality education can significantly reduce physical and psychological health risks for LGBT and gender-diverse youth . . . and help them to avoid secondary effects, such as substance abuse, mistrust of health services and self-medication.”¹⁵⁵
- Yogyakarta Principle 16 specifically requires “education methods, curricula and resources [that] serve to enhance understanding of and respect for . . . diverse sexual orientations and gender identities,”¹⁵⁶ as well as the “inclusion of comprehensive, affirmative and accurate material on sexual, biological, physical and psychological diversity, and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in curricula, taking into consideration the evolving capacity of the child.”¹⁵⁷
- By restricting discussion of gender diversity, Florida halts the personal development of children, including the 1-2% of children (nearly 40,000) that are transgender.¹⁵⁸

G. The Right to Life

Denying needed gender-affirming care leads to increased depression, anxiety, and death, violating the right to life. Additionally, discrimination in health care and education erodes an individual’s dignity and quality of life and creates a climate of abuse, further violating the right to life.

¹⁵² *Id.*

¹⁵³ Committee on Econ., Soc., and Cultural Rts., General Comment No. 13: The right to education, ¶ 6, U.N. Doc. CESCR/C/12/Rev. GC/20 (Dec. 8, 1999).

¹⁵⁴ Hum. Rts. Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, The law of inclusion*, ¶ 83 A/HRC/47/27 (June 3, 2021).

¹⁵⁵ Hum. Rts. Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, The right to the enjoyment of the highest attainable standard of physical and mental health of persons, communities and populations affected by discrimination and violence based on sexual orientation and gender identity in relation to the Sustainable Development Goals*, ¶ 34 A/HRC/50/27 (Nov. 22, 2022).

¹⁵⁶ Yogyakarta Principles, Principle 16, *supra* note 86.

¹⁵⁷ Yogyakarta Plus 10, Principle 16, *supra* note 86.

¹⁵⁸ J. Herman, A. Flores, K. O’Neill, *How Many Adults and Youth Identify as Transgender in the United States?* UCLA School of Law Williams Institute (June 2022).

“I can say that if I hadn’t sought gender-affirming care, I wouldn’t be here now.” - Nico Watson¹⁵⁹

- Under ICCPR, Article 6, “Every human being has the inherent right to life,” and “[n]o one shall be arbitrarily deprived of his life.”¹⁶⁰ See also UDHR, Article 3,¹⁶¹ CRC, Article 6.¹⁶²
 - In interpreting this provision, the Human Rights Committee explained that “the right to life is a right that should not be interpreted narrowly. It concerns the entitlement of individuals . . . to enjoy a life with dignity”¹⁶³
 - Thus, states must “take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”¹⁶⁴
- Lack of access to gender-affirming care correlates with higher rates of depression, self-harming behavior, and suicide.¹⁶⁵ Upon receiving care that accords with their gender identity, transgender and body satisfaction, healthier relationships, improved mental health, including lower rates of depression and anxiety, and a dramatic reduction in suicide attempts.¹⁶⁶
- Transgender people also face horrific levels of violence. In 2022 alone, there were at least 38 killings of transgender people in the U.S..¹⁶⁷ In his 2022 visit to the U.S., the Independent Expert on SOGI found that over 20% of all violent hate crimes documented in the U.S. related to gender-identity or sexual orientation.¹⁶⁸

¹⁵⁹ Interview with Nico Watson, trans resident of Florida (Mar. 15, 2023).

¹⁶⁰ ICCPR, art. 6, *supra* note 79.

¹⁶¹ UDHR, art. 3, *supra* note 78.

¹⁶² CRC, art. 6, *supra* note 84.

¹⁶³ Hum. Rt. Comm., General Comment No. 36: General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, ¶ 3, U.N. Doc. TS 171 (June 8, 1992) [hereinafter HRC General Comment No. 36]; see also *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, ¶ 21, U.N. Doc. A/HRC/69/182 (2016) (emphasizing that the right to life “is not merely a right to continued physical existence [], but rather that what is protected is dignified life.”).

¹⁶⁴ *Id.* at ¶ 26.

¹⁶⁵ Heather Boerner, What the Science on Gender-Affirming Care for Transgender Kids Really Shows, *Scientific American* (2022).

¹⁶⁶ American Medical Association, Health insurance coverage for gender-affirming care of transgender patients (2019), <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf>; What We Know Project, Cornell University, “What Does the Scholarly Research Say about the Effect of Gender Transition on Transgender Well-Being?” (online literature review), 2018.

¹⁶⁷ Human Rights Campaign, Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2022 (2022) <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2022>.

¹⁶⁸ Independent Expert on Sexual Orientation and Gender Identity, *Country Visit to the United States*, ¶ 32 (Aug. 29, 2022).

V. Recommendations

A. State of Florida

To address the above human rights violations and better protect the transgender community, Florida should adopt the following measures:

- Rely on the evidence-based, best practice standards to treat gender dysphoria established by WPATH and lift barriers to medically prescribed gender-affirming care.¹⁶⁹
- Take concrete steps to ensure transgender individuals have access to health care that is available, accessible, acceptable, and of high quality. Similar to California Senate Bill 107 (SB 107),¹⁷⁰ Florida should enact legislation to protect its trans community and act as a safe haven for trans individuals and families by prohibiting “law enforcement participation in the arrest or extradition of an individual that criminalizes allowing a person to receive or provide gender-affirming health care.”¹⁷¹
- Prohibit the unscientific and harmful practice of “conversion therapy,” which attempts to change an individual’s sexual orientation, gender identity, or gender expression to align with heterosexual and cisgender norms. States such as California,¹⁷² Colorado,¹⁷³ and Oregon¹⁷⁴ are each seeking to pass pro-transgender laws protecting transgender healthcare. Florida should follow suit and pass similar legislation.
- Lift the ban on classroom instruction on gender identity and sexual orientation and allow educators to discuss issues related to gender and create a good learning environment for all students.
- Promote an atmosphere that does not tolerate abuse towards the trans community and encourage the restriction of hate speech.

¹⁶⁹ WPATH, Standards of Care for Health of Transgender and Gender Diverse People, Version 8 (2022) <https://www.tandfonline.com/doi/full/10.1080/26895269.2022.2100644>; see also Hussein Abdul Latif, et. al., A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria, Yale School of Medicine (2022) https://medicine.yale.edu/lgbtqi/research/gender-affirming-care/florida%20report%20ofinal%20july%208%202022%20accessible_443048_284_55174_v3.pdf.

¹⁷⁰ California Senate Bill 107, Gender-affirming health care (2022); SB 107 is intended to protect transgender families and individuals who have fled their home state in fear of persecution or prosecution for simply seeking gender-affirming care. The legislation also prohibits California health care providers from releasing medical information related to other states’ prohibitions on gender-affirming care for minors.

¹⁷¹ California Senate Bill 107, Gender-affirming health care (2022).

¹⁷² *Id.*

¹⁷³ Colorado Senate Bill 188, Protections for Accessing Reprproductive Health Care (2023); SB 188 aims to add protections for out-of-state patients seeking reproductive healthcare or gender-affirming care in the state.

¹⁷⁴ Oregon House Bill 2002, Relating to health; declaring an emergency (2023); HB 2002 aims to protect abortion providers and expand gender-affirming care services covered by Medicaid.

B. Florida Residents

Florida residents concerned with violations of the rights of the transgender community should take the following steps:

- Demand Florida lawmakers uphold transgender rights and keep track of relevant legislation at <https://www.trans-week.com/#act>.¹⁷⁵
- Support the work of trans-led organizations through donations at <https://www.trans-week.com/#act> and <https://www.prismfl.org/>.¹⁷⁶
- Raise awareness of violations against the transgender community by sharing resources and staying informed at <https://www.eqfl.org/national-transgender-resources> and <https://www.transgendermap.com/resources/usa/florida/>.¹⁷⁷

¹⁷⁵ <https://www.trans-week.com/#act> (One such page that Florida residents can keep up to date with legislation targeting the transgender community by following pages dedicated to promoting trans rights).

¹⁷⁶ <https://www.trans-week.com/#act> (Transweek.com lists various trans-led organizations and groups that Florida residents can donate to and support); <https://www.prismfl.org/> (PRISM FL has anti-bullying resources and lists ways to get involved).

¹⁷⁷ <https://www.eqfl.org/national-transgender-resources>; <https://www.transgendermap.com/resources/usa/florida/> (Equality Florida and Transgender Map lists various resources for transgender individuals and allies).