

# ENSHRINING INEQUALITY FOR LGBTQ PEOPLE

*AUGUST 2023*



# UNDER FIRE

THE WAR ON LGBTQ PEOPLE IN AMERICA



movement advancement project ▶

This report was authored by:

### **Movement Advancement Project**

MAP's mission is to provide independent and rigorous research, insight, and communications that help speed equality and opportunity for all people. MAP works to ensure that all people have a fair chance to pursue health and happiness, earn a living, take care of the ones they love, be safe in their communities, and participate in civic life. For more information, visit [www.mapresearch.org](http://www.mapresearch.org).

---

### **Contact information**

Movement Advancement Project  
1905 15th Street #1097  
Boulder, CO 80306  
1-844-MAP-8800  
[www.mapresearch.org](http://www.mapresearch.org)

### **Recommended citation**

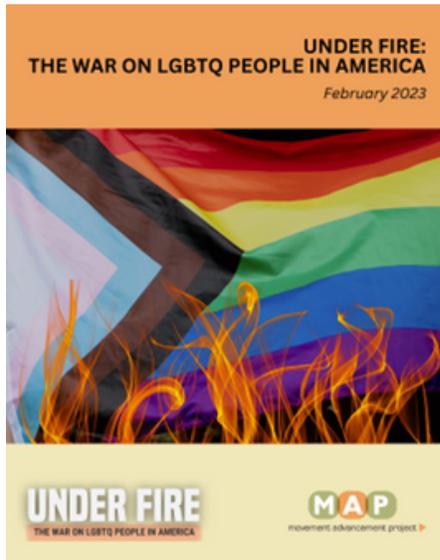
Movement Advancement Project. August 2023. *Under Fire: Enshrining Inequality for LGBTQ People*. <https://www.mapresearch.org/under-fire-report>.

**MAP IS VERY GRATEFUL TO THE FOLLOWING MAJOR FUNDERS, WHOSE GENEROUS SUPPORT MAKES IT POSSIBLE FOR US TO DO OUR WORK:**

David Bohnett Foundation  
David Dechman & Michel Mercure  
Gill Foundation  
Esmond Harmsworth  
Evelyn & Walter Haas, Jr. Fund  
Jim Hormel  
Johnson Family Foundation  
Laughing Gull Foundation  
Weston Milliken  
Ineke Mushovic  
The Palette Fund  
Mona Pittenger  
Ronald W. Naito MD Foundation  
MacKenzie Scott  
Ted Snowdon Foundation  
Tzedek Social Justice Fund  
Van Ameringen Foundation  
Wild Geese Foundation

## TABLE OF CONTENTS

|   |          |
|---|----------|
| <b>WHAT MAKES THIS MOMENT DIFFERENT: A FIRESTORM</b> .....              | <b>1</b> |
| <b>OPPONENTS' GOAL: ENSHRINING INEQUALITY</b> .....                     | <b>2</b> |
| <b>OPPONENTS' TACTICS: HOW THEY ARE ACCOMPLISHING THEIR GOALS</b> ..... | <b>2</b> |
| <i>#1: Rolling Back Nondiscrimination Protections</i> .....             | <b>3</b> |
| <i>#2: Redefining Sex</i> .....   | <b>4</b> |
| <i>#3: Attacking LGBTQ Families</i> .....                               | <b>5</b> |
| <i>#4: Denying Health Care</i> .....                                    | <b>6</b> |
| <b>WHAT'S NEXT</b> .....  | <b>7</b> |



**THIS IS THE FOURTH  
REPORT IN THE *UNDER FIRE*  
SERIES FROM THE  
MOVEMENT ADVANCEMENT  
PROJECT (MAP).**

**THE ENTIRE SERIES IS  
AVAILABLE [HERE](#).**

## WHAT MAKES THIS MOMENT DIFFERENT: A FIRESTORM

LGBTQ people in America are under attack like never before. Some of what is happening across the country is appearing in the media. Certainly, there has been increased attention to so-called “Don’t Say Gay or Trans” bills and efforts to censor school curricula, ban books, ban transgender youth from playing sports, and ban transition-related care for transgender youth.

However, seeing each of these issues individually is like focusing on a single skirmish without understanding that they are part of a larger war against LGBTQ people in America. Anti-LGBTQ forces will settle for nothing less than eliminating openly LGBTQ people from the fabric of society. They are launching fast, furious, and coordinated attacks that are astonishing in their breadth, cruelty, and flagrant disregard for personal freedoms.

*In this series from the Movement Advancement Project, and outlined in more detail below, opponents of LGBTQ people are pursuing their goals through policies that:*

- **Erase LGBTQ people from schools and public life.** They want to make it impossible for LGBTQ youth to be themselves in schools—banning or fining teachers and schools for even talking about LGBTQ people or issues, pulling books off library shelves, and banning teachers from supporting LGBTQ students. In short, they want LGBTQ youth to be treated like they don’t exist, and those who disagree will be fired, fined, or even imprisoned.
- **Criminalize and ban transition so transgender people can’t be themselves.** Opponents want to make it impossible for transgender people to be themselves by banning transition-related care and criminalizing supportive parents and doctors. They are also prohibiting transgender and nonbinary people from updating their identity documents like birth certificates, driver’s licenses, and ID cards. They are passing policies requiring governments, schools, and teachers to only recognize sex assigned at birth or inaccurate pronouns.

- **Enshrine inequality.** They want to enshrine legal inequality so that LGBTQ people and their families will be poorer, less secure, and face more obstacles. This includes repealing or fighting nondiscrimination protections so that LGBTQ people can be fired or not hired, refused housing, denied service in public places, even denied medical care, and more.
- **Erect systemic and structural barriers to make change harder.** By rolling back voting rights, doubling down on gerrymandering, insulating lawmakers from accountability, and much more, these opponents have made it even harder than ever before for individuals to make change, or to elect leaders that reflect the values held by the majority of Americans, including support for LGBTQ people.
- **Silence supporters.** Anti-LGBTQ opponents also want to silence, sue, fine and penalize parents, teachers, doctors, companies and others who are LGBTQ allies.

In all these efforts, opponents are using increasingly dangerous and inflammatory rhetoric to vilify LGBTQ people. Anti-LGBTQ activists paint LGBTQ people as predators and foment violence against them. The resurgence of the “groomer” narrative—that LGBTQ people are explicitly sexualizing and abusing children—is particularly troubling and dangerous. These harmful narratives seek to push LGBTQ people to the corners of society and have them fear for their lives.

It is a mistake to see 2023 as a moment of progress with a few setbacks. In reality, it is clear this is a war against LGBTQ people in America and their very right and ability to openly exist.

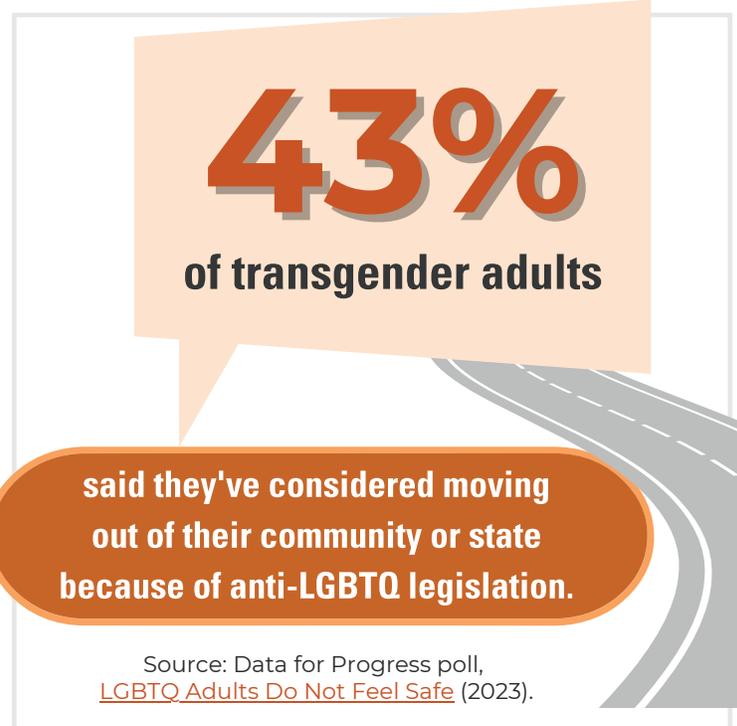
**This report, the fourth in the *Under Fire* series, focuses on efforts to enshrine legal inequality for LGBTQ people.** All the reports in this series are available [here](#), including MAP’s overview report released in February 2023.

## OPPONENTS' GOAL: ENSHRINING INEQUALITY

Opponents of LGBTQ equality are working to enshrine legal inequality. They want to roll back existing protections as well as carve immense holes into existing laws at every level of government. As a result of their efforts, discrimination against LGBTQ people would be legal. LGBTQ people could be legally fired or not hired just for being who they are; they could be denied health care, service at restaurants, or even government services; and they would have no recourse under the law for this treatment.

The legal landscape for LGBTQ people at both the federal level and in the states remains a patchwork. There are improved federal protections against discrimination resulting from a 2020 U.S. Supreme Court case and subsequent protections articulated by the Biden administration in key areas of life including employment, housing, education, and health care. Yet opponents of LGBTQ equality are seeking new and creative ways to undermine these protections and to pass state laws that explicitly permit discrimination and enshrine legal inequality for LGBTQ people, especially transgender people.

The effect of these policies is telling: in a [survey of LGBTQ adults across the country](#), 27% of all LGBTQ people said that they have considered moving out of their community or state as a result of anti-LGBTQ legislation, and among transgender participants, the rate (43%) was even higher.



## OPPONENTS' TACTICS: HOW THEY ARE ACCOMPLISHING THEIR GOALS

Opponents are utilizing multiple avenues in their broad, interrelated attacks on LGBTQ people. This moment is unique because of the quantity and speed of attacks; the breadth, creativity, and boldness of attacks; and the hostility, vitriol, and violence that is being encouraged.

To advance their goal of enshrining inequality for LGBTQ people, opponents have several key tactics. They are working in the states and through the courts to roll back – and carve holes into – laws to protect LGBTQ individuals from discrimination so that these protections are less

effective, and enacting policies to ensure that new protections cannot be adopted. Opponents have also introduced and passed laws to redefine sex in a manner that erases transgender and nonbinary people, and which risk creating barriers to accessing programs, services, and participating in the democratic process. Additionally, anti-LGBTQ forces are interfering with LGBTQ families by undermining the legal ties between parents in same-sex relationships and their children. Finally, opponents have pursued policies that would permit medical service providers to deny healthcare based on a patient's gender

identity or sexual orientation, and legislation that would allow employers to refuse to ensure their employee health plans cover access to PrEP, which prevents HIV transmission, and contraceptives.

These efforts are being undertaken with great speed. For example, 16 bills were introduced this year to permit medical professionals to refuse service to LGBTQ people based on their religious opposition. Opponents are also attacking LGBTQ people with a bold creativity. For instance, bills to redefine sex are novel, and the four laws that have been enacted thus far were all passed [just this year](#).

All of this leaves LGBTQ people in the precarious position of not knowing if and when they will encounter serious barriers to going about their lives, and should those barriers materialize, leaves them without recourse because the inequality they face is enshrined within the law.

### TACTIC #1: ROLLING BACK NONDISCRIMINATION PROTECTIONS

In 2020, the Supreme Court ruled in [Bostock v. Clayton County](#) that discrimination based on sexual orientation and gender identity is prohibited by federal laws outlawing sex discrimination. The Biden administration has utilized this decision to articulate protections in under federal law in key areas of life including employment, housing, education, and health care.

Yet opponents of LGBTQ equality and nondiscrimination have worked to rollback and undermine these protections as well as state and local nondiscrimination laws and ordinances. These rollbacks include flatly repealing protections, carving religious and speech exemptions into existing protections, and preemption laws, so that LGBTQ people can be refused housing, fired, not get hired, and denied services in public places.

- **Repealing and weakening existing LGBTQ nondiscrimination protections.** Some states have

### OPPONENTS' GOAL: ENSHRINING INEQUALITY

**Tactic #1:** Rolling Back Nondiscrimination Protections

**Tactic #2:** Redefining Sex

**Tactic #3:** Attacking LGBTQ Families

**Tactic #4:** Denying Health Care

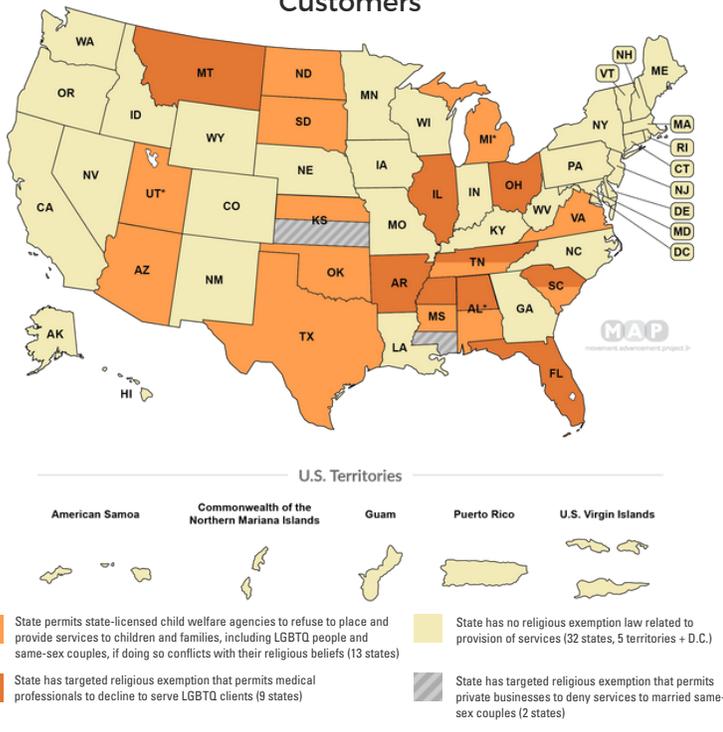


attempted to rewrite their nondiscrimination laws to explicitly exclude gender identity as a protected group. For example, in 2023, Iowa introduced a bill that strikes the words 'gender identity' from the list of protected identities in employment, public accommodations, housing, education, and credit from the state's nondiscrimination law.

- **Undermining nondiscrimination protections through exemptions.** Some states are working to allow businesses, healthcare providers, and others who serve the public to refuse to serve LGBTQ people, unmarried people, those of minority faiths, and others, as shown in *Figure 1* on the next page. This year, several states have introduced legislation that would create religious exemptions for medical care providers, pharmacists, lawyers, and adoption and foster care providers, and [many states have already enacted such policies](#).

In June 2023, in *303 Creative, Inc. v. Elenis*, the U.S. Supreme Court ruled that certain expressive businesses could refuse to serve some customers, in violation of a state nondiscrimination law. This ruling was narrow, but will embolden discrimination against LGBTQ people, people of minority faiths, people of color, and others by a wide range of businesses.

Figure 1. Many States Have Laws Allowing Taxpayer-Funded Agencies, Service Providers to Turn Away Customers



- Blocking local nondiscrimination protections.** Another tactic used to roll back and prevent nondiscrimination protections for LGBTQ people being utilized by opponents is the passage of so-called preemption laws. These are laws that block local governments from passing nondiscrimination protections if those protections are broader than the protections offered by the state. So, if a state's nondiscrimination law does not protect individuals based on sexual orientation, then a town, city, or other municipality within that state cannot pass protections that include sexual orientation. For example, this year [Texas](#) enacted a very broad preemption law that prohibits local governments from passing any ordinance that is not consistent with state laws, such as a labor ordinance that creates nondiscrimination protections for LGBTQ people.

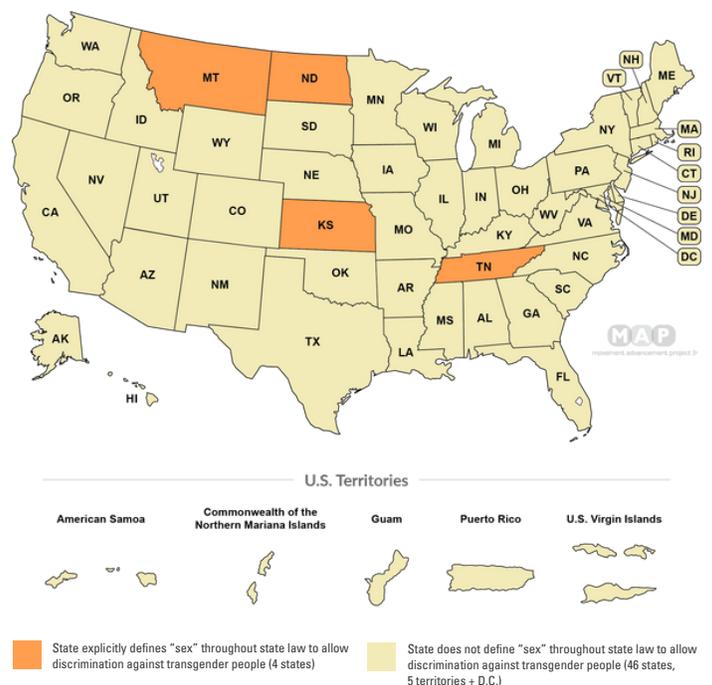
These policies are designed to ensure that LGBTQ people will not be able to operate in public life with the expectation that they will be treated fairly and further, to make sure they will not be able to seek any recourse for mistreatment, no matter how great a barrier to their lives the discrimination poses.

**TACTIC #2: REDEFINING SEX**

In addition to attacking nondiscrimination based on sex, states are introducing legislation to redefine sex itself in ways that legally erase transgender and nonbinary people. This year at least 22 bills were introduced attempting to simplify sex to merely "male" or "female," and only as they were assigned to people at birth with 4 states passing such bills into law, as shown in *Figure 2* below.

For example, [Montana](#) passed a bill that redefined sex exactly this way, based on peoples' reproductive traits. While on their face these laws do not automatically stop recognition of transgender and nonbinary people in state law, they create the conditions for a wide range of implications. For example, these laws could limit the recognition for transgender and nonbinary people in areas of public life such as access to emergency shelters, nondiscrimination protections, and identity documents which are needed to access public programs, private services, and, in some places, to cast a vote.

Figure 2. Four States Have Passed Novel Laws Defining Sex to Allow Discrimination



This is already happening in states like [Kansas](#). Earlier in 2023, the state passed a [law redefining sex](#) as an “individual’s biological sex, either male or female, at birth.” Just a few months later, the state’s Attorney General successfully argued before a state court that the state’s new definition of sex prohibits Kansans from changing the sex listed on their drivers’ licenses, even though the law did not specifically reference state ID documents at all. Further, the Attorney General has argued that the new law should apply retroactively, which would mean voiding IDs for Kansans who have already updated the sex on their licenses.

These attacks are also being attempted at the federal level, with bills introduced in the House to [ban prescribed medical care for transgender youth](#) and [restrict sports participation for transgender youth](#) also including language that similarly redefines sex in such a way that erases transgender and nonbinary people.



**TACTIC #3: ATTACKING LGBTQ FAMILIES**

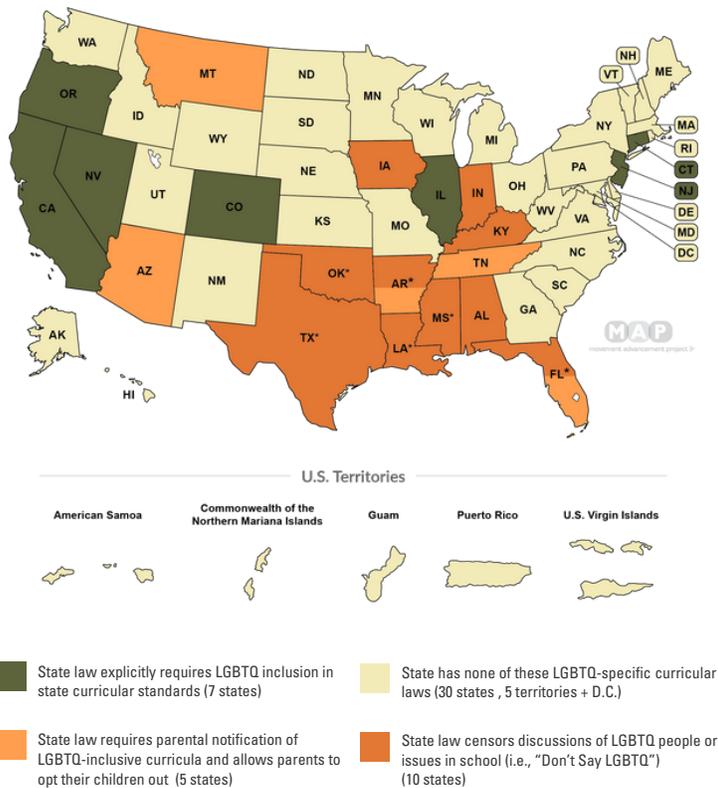
Like all families, it is imperative that LGBTQ families have the security of knowing that their relationships will be respected, recognized, and treated equally under the law. Yet, another tactic toward enshrining inequality for LGBTQ people has come in a wave of attacks on LGBTQ families.

- **Creating carveouts to nondiscrimination laws.** As discussed above, religious exemptions and carveouts to nondiscrimination protections would make it possible for any person or entity to refuse to recognize the legal marriages of same-sex couples. Opponents want to allow business owners, hospitals, service providers, and employers to refuse service to LGBTQ people and their families. There have been efforts for years in some states to limit the recognition of same-sex couples’ marriages, including by taxpayer-funded child welfare agencies who wish to turn away otherwise qualified families. They also seek to allow anyone to refuse to recognize a married same-sex

couple for any reason, including for social services, issuance of marriage licenses themselves, and in public places like bakeries.

- **Altering marriage laws to exclude same-sex couples.** Recently, a few states have introduced bills that would create alternative marriage contracts that would only be available to different-sex couples. For example, this year [Tennessee](#) introduced a bill that would create a marital contract only available to different-sex couples. While not restricting marriage licenses, [a bill introduced in 2023 in South Carolina](#) would have required that licenses list “Bride” and “Groom” on the signature lines, rather than continuing to be inclusive for all couples. [North Carolina and Mississippi](#) have adopted laws that permit state and local officials to refuse to marry couples whose marriage those officials personally disapprove of. Not only is this stigmatizing, but it contradicts the spirit and letter of the Supreme Court’s ruling in [Obergefell v. Hodges](#), which held that it is unconstitutional for a state to refuse to marry a same-sex couple on the same terms available to different-sex couples.
- **Limiting discussions about family diversity and LGBTQ families.** As part of school curriculum censorship, the abilities of educators to discuss family diversity, including LGBTQ families has been limited. For example, under Florida’s so-called “[Don’t Say Gay](#)” law, any discussion of LGBTQ families are censored, leaving many LGBTQ families worried about their children. In a [survey of LGBTQ families in the state](#), 88% said they were worried about the effects of the bill on their children, including whether their children would be stopped from talking freely about their families at school or treated unfairly. Half of families said they have considered moving out of the state because of the law. As shown in *Figure 3* on the next page, there are 10 states with school censorship bills that limit discussions of LGBTQ people, including families, in schools.

**Figure 3. Ten States Have School Censorship Laws Limiting Discussions of LGBTQ People, Including Families, in Schools.**



In another attack on LGBTQ families, some states, such as [Iowa](#), have introduced bills allowing child welfare agencies to bar same-sex parents from fostering and adopting children as a religious exemption for those agencies. As it stands [13 states](#) allow state-licensed agencies to refuse to place children with LGBTQ families and to provide services to LGBTQ children if doing so conflicts with those agencies' religious beliefs, as [shown in Figure 1 on page 4](#). This means that [22% of the adult LGBTQ population resides in states](#) that allow child welfare agencies to refuse service to LGBTQ people seeking to adopt or foster children.

All of these attacks are underscored by the concurring opinion penned by U.S. Supreme Court Justice Clarence Thomas in [Dobbs v. Jackson Women's Health Organization](#). In concurring to the Court's decision to overturn abortion rights, Justice Thomas argued that, because the Court saw fit to end abortion previously adopted under the legal doctrine known as substantive due process, all the rights based on this doctrine should be reconsidered by the Court, including marriage equality. [This concurring opinion has raised concerns](#) that the rights that LGBTQ people have achieved access to through the courts are under threat as well and the laws being passed attacking families may generate lawsuits ripe for the kind of legal re-examination that Justice Thomas' concurrence invites.

- Undermining recognition of LGBTQ parents.** There have been attacks on LGBTQ families' parentage rights and attempts to adopt and foster children. In some states, courts are refusing to recognize the parentage, or the legal relationship between a parent and their child, of LGBTQ parents as despite the U.S. Supreme Court having [previously ruled](#) that it was unconstitutional to treat same-sex couples differently than different-sex couples in presuming parentage.

For instance, a court in Oklahoma denied the parental rights of a lesbian mother and instead assigned parentage to her child's sperm donor after the mother's relationship ended, even though at the time of the child's birth, this mother was listed on the birth certificate.

**TACTIC #4: DENYING HEALTH CARE**

There is an ongoing and rapidly expanding effort to ban and even criminalize access to best practice medical care for all transgender people (which will be addressed in full in a future report in the Under Fire Series, but is outlined, in part, in [this 2023 report](#)). Alongside these attempts to ban certain kinds of care, opponents are also working to erect barriers so that even if access to care is legal, health care is too difficult for LGBTQ people to effectively pursue.

- **Allowing health care refusals.** Many states have worked to make it possible for healthcare providers to not only refuse to provide certain types of care, but to refuse to care for certain patients. For instance this year [Florida](#) enacted a law that allows medical care providers to refuse to perform any health service as long as they have moral objections, not just to the service itself but to certain unprotected identities of people seeking care. Opponents of the bill that was passed tried to add amendments that would have protected sexual orientation, gender identity, disability status, and marital status to the groups the bill does protect (race, color, religion, sex, and national origin), but these additions were rejected. This leaves LGBTQ people in the state incredibly vulnerable.
- **Allowing employers to determine what care employees can access through insurance.** The attacks have also come through the courts, with recent cases siding with businesses who have sued to be able to not only [refuse to offer contraception](#) to employees and their dependents through health insurance, but also to [refuse to cover medications like PrEP](#), which prevents HIV transmission. The business in the case regarding PrEP based their challenge to the Affordable Care Act's requirement that employers provide this and other preventative care in their insurance plans, because the care is supportive of LGBTQ people, even though this medication provides the same exact health benefit to anyone who takes it regardless of their identity.

These efforts have serious, potentially deadly health consequences for LGBTQ people. Not only do the outright denials of care and coverage for the care that LGBTQ people need create clear health risks, but the laws allowing discrimination have their own harmful impacts. Past experiences of discrimination, and even the knowledge that they may be discriminated against without having experienced it before [causes many LGBTQ people to avoid or delay seeking medical care](#), even if it is available, for fear of being mistreated and turned away. Delaying or avoiding medical care translates into [worse health outcomes](#) because it increases the risk of becoming ill, staying ill for a longer time than would otherwise be the case, and the risk of mortality.

## WHAT'S NEXT?

Along with enshrining inequality for LGBTQ people, states are attacking the democratic process which allows people to pull the levers of power to create change. Further, they continue to advance legislation that makes it unsafe and even illegal for LGBTQ to be themselves and be supported at school, threatens those who support LGBTQ youth, removes LGBTQ content from bookshelves and libraries, and makes LGBTQ visibility and drag illegal. Each of these efforts are just a part of a multi-prong war on LGBTQ people, as summarized in our kickoff report, [Under Fire: The War on LGBTQ People in America](#).

The [majority of Americans](#) support LGBTQ people and rights. At this moment, it is critical that we see beyond individual bills or even categories of bills and understand the broader scope of what is occurring; there is a coordinated, organized effort to erase LGBTQ people from public life and to make it impossible for LGBTQ people to live their lives. These bills, and the rhetoric fueling them, are incredibly harmful to LGBTQ people and their families.

**We at MAP will continue to track these efforts on our LGBTQ Equality Maps and through the ongoing Under Fire series, all of which will be available [here](#).**



Learn more about the targeted, coordinated campaign against LGBTQ people in the U.S. in our report series:

### UNDER FIRE: THE WAR ON LGBTQ PEOPLE IN AMERICA

Access all of our reports here:  
[www.mapresearch.org/under-fire-report](http://www.mapresearch.org/under-fire-report)