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# 'Whiplash' Of LGBTQ Protections And Rights, From Obama To Trump

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Heard on All Things Considered



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Supporters of LGBTQ rights took to the street in a demonstration in front of the U.S. Supreme Court last October.

*Manuel Balce Ceneta/AP*

At the heart of a story now playing out in schools, workplaces and courts across the U.S. is a disagreement over the legal meaning of the word "sex" — and whether discrimination against gay and transgender people for being gay or transgender is sex discrimination.

The White House has a particular kind of power over this question. It has the power to interpret whether LGBTQ people are protected by sex discrimination protections in laws passed by Congress, to issue rules and policies that reflect that interpretation, and — through those actions — the power to send a message to the country.

In the last several years, two White House administrations have used this power in diametrically opposite ways. LGBTQ activists and their allies say it feels like civil rights "whiplash."

Take, for instance, the Obama administration's guidance to schools on transgender students that came out in the spring of 2016. It required schools to protect transgender students from harassment, accommodate their preferred names and pronouns, and give them access to the locker rooms and bathrooms of their choice.



#### LAW

LGBTQ Youth Fight For Equality In Sex Ed In South Carolina Classrooms

Sasha Buchert clearly remembers the relief she felt when that guidance came out. At the time, she was an attorney with the Transgender Law Center in Oakland, Calif., tracking these issues closely, and watching as the country became consumed with what the *New York Times* editorial board referred to as "trans bathroom hysteria."

Earlier that year, a bill called HB2 had passed in North Carolina requiring people to use the bathrooms that matched their birth certificate.

During debate on that bill in the North Carolina statehouse, Buchert listened to the untelevised special session from her office in Oakland — it was 4 a.m. on the West Coast.

"It passed and my heart just sank," she says.



Attorney Sasha Buchert now works for Lambda Legal, in Washington, D.C., on LGBTQ federal policy and litigation.

*Max Posner/NPR*

The law sparked protests and a national financial backlash against North Carolina: PayPal decided not to bring 400 jobs to the state, Bruce Springsteen canceled a concert, and the National Basketball Association moved its All-Star Game out of the state.

At the same time, Virginia teenager Gavin Grimm's lawsuit against his county school board for its policy on transgender students was headed for the Supreme Court. As he explained to NPR at the time, "The alternative facility was a unisex bathroom. I'm not unisex. I'm a boy."

More and more personal stories from young transgender people flooded the news, including one about a 9-year-old who said she was "really mad and sad," to have an

anonymous note slipped into her homework folder that read: "You're a boy not a girl get it throu your head."

When the Obama education department issued its federal guidance to schools in May of that year, Buchert felt empathy and relief — first of all — for young transgender people around the country, she says. "There are real people — real trans people — who are suffering discrimination, not going to the bathroom, skipping gym class. Those kinds of discriminatory conditions can have a lifelong impact on these youth."

She says she also felt relief on behalf of the schools around the country that needed clarity.

"I don't think that all schools have deep-seated animus towards transgender people," Buchert says. "I think they're just confused and they don't know what their liabilities are, what they're required to do under the law. The guidance was helpful for them — it clarified what their duties and responsibilities are."



Krys Didtrei, left, and Gloria Merriweather, center, led chants in a Raleigh, N.C., statehouse protest in 2016 in opposition to HB2, a state law that, in effect, required people to only use designated bathrooms that matched the sex on their birth certificate. The law was repealed in 2017.

*Robert Willett/Raleigh News & Observer/Tribune News Service via Getty Images*



One thing she did not feel was that the White House was creating new law, or acting on an activist agenda.

"It was based on existing law," she says. Buchert had studied the legal history years earlier, as a newly out transgender lawyer living in Washington, D.C. "I would go to the American University Law School and just read through the case law and just try to get a better idea about trans rights," she says.

Though the U.S. had a history of discrimination, Buchert realized, "there is just so much case law holding that trans people are protected" when it comes to discrimination on the basis of "sex." The Obama administration's school guidance — in her view — was correctly applying that existing law.

Ryan Anderson's reaction at the time was very different. He's a senior research fellow at The Heritage Foundation, a conservative think tank, and he's written books about religious liberty, gender and marriage.

"This was the executive branch of government making new law, which violates separation of powers," he says of the Obama White House's 2016 guidance to schools on transgender issues. Anderson also felt the guidance only considered the needs of transgender students.

"It didn't take into consideration the concerns of other students — whether that would be female athletes who have concerns [about] competing against boys who identify as girls, whether that's female students have concerns about privacy and bathrooms, locker rooms, dorm rooms, etc."

### **Sudden policy reversals under Trump**

The turnabout from the Trump administration came quickly. In February 2017, just a few weeks after President Trump's inauguration, his administration rescinded the transgender student guidance. Weeks after that, because of the reversal, the Supreme Court took transgender plaintiff Gavin Grimm's case off its calendar.





Gavin Grimm, who is now 20, with his mom Deirdre Grimm a couple of years ago, in Gloucester, Va. The transgender teen sued the Gloucester County School Board in 2015, after it barred him from using the boys' bathroom.

*Nikki Khan/The Washington Post via Getty Images*

Of course, Obama's transgender student guidance wasn't the only one Trump quickly reversed. Obama's policies in regards to Iran, the Paris Climate Accord, many environmental regulations and more have also been reversed. Much of that was telegraphed in campaign promises. But the reversals on LGBTQ rights and protections were not, Buchert says.

"It did shock me," she says, "that this was one of the first things they decided they needed to move on." Before President Trump came into office, he seemed to be moving in a different direction on these issues — vowing "to protect our LGBTQ citizens" in his convention speech, and posing with a rainbow flag while campaigning.

Trump's reversal of Obama's transgender student guidance was just the first "warning shot," Buchert says, that the courtship of LGBTQ voters ended with the campaign, and as president, Trump planned to move aggressively to roll back LGBTQ protections.

For Anderson, Trump's pivot was no surprise. Despite the signals that he might be friendly to the LGBTQ community, Anderson says, "the general stance that Trump had

taken was, 'Look, I'm going to be a friend to social conservatives. I'm going to be a friend to evangelicals and Catholics.' "

Rolling back Obama's transgender student guidance was a priority for those groups, Anderson says. Plus, he adds, rescinding the guidance was simply a return to how things had been less than a year before. "I don't think that's a particularly extreme, outrageous, controversial position to hold."

More reversals soon followed. In July 2017, Trump tweeted that transgender people could no longer serve in the military. Buchert, a veteran who served as a scout sniper in the Marine Corps, says she found that particular policy change "extremely insulting."

In October of 2017, then Attorney General Jeff Sessions issued a memo that the U.S. Department of Justice would no longer argue in court that transgender people are federally protected from employment discrimination. By that point, Buchert had packed up her belongings and moved to Washington D.C. to work for Lambda Legal on LGBTQ federal policy and litigation, so she could "be in the fight."

Behind all of these reversals is the Trump administration's position that being gay or transgender is a category of identity that is different from "biological sex," and therefore not protected under current law — a complete about-face from the position taken by the Obama administration.

"It deeply concerns me as a transgender person that they're going after our protections, placing our lives at risk. But it's also offensive as an attorney," Buchert says. "They just are willfully ignoring the rule of law." For instance, she points out the department of Justice memo on transgender people and employment discrimination cites a dissent in a sexual orientation case, which she calls "very, very sketchy justification."





Transgender Army veteran Tanya Walker addressed protesters in New York's Times Square on July 26, 2017. The demonstrators had gathered near a military recruitment center, angry at Trump's decision to reinstate a ban on transgender individuals from serving in the military.

*Spencer Platt/Getty Images*

Buchert knows that most transgender people are not reading and analyzing these memos and rules as legal documents. What they are hearing, she says, is the message that they're not protected by the federal government and that they should be afraid. Buchert emphasizes there are many years of judicial cases establishing the protections and rights of transgender people.

"We've tried very hard to reassure people that those protections still exist and we'll keep fighting for you," she says. As an attorney working on these issues, she says it's "hard not to carry the weight."

"I keep hoping our country is better than this," she says.

### **A failed 'poison pill' in a landmark law**

To better understand the history of sex discrimination and U.S. law, a good place to start is a major piece of legislation that established broad protections for many vulnerable groups: the Civil Rights Act of 1964.



"The original Civil Rights Act of 1964 prohibited discrimination based on race, color, national origin, etc., but did not include discrimination based on sex," says law professor Samuel Bagenstos of the University of Michigan.

"Sex" was added to Title VII — the part of the law that prohibits employment discrimination — in an amendment put forward in late stages of debate of the bill that became the Civil Rights Act. The group behind the amendment was what Bagenstos calls a "weird coalition" of Southern conservatives (who believed the word would be a "poison pill" that would doom the whole bill) and women's rights advocates (who thought it was an important and necessary protection).

"Obviously, the people who calculated that adding 'sex' would sink the bill were wrong," Bagenstos notes. "Sex" got added, and the bill got passed anyway."

Still, even though it was on the books, sex-based discrimination initially was viewed as "kind of a joke," Bagenstos says. "It really took a lot of work by social movement actors within the feminist movement to organize and mobilize and bring cases — and bring political pressure — so that by the end of the 1960s, both the [Equal Employment Opportunity Commission] and the courts were beginning to recognize the prohibition on sex discrimination was something serious."

Anthony Michael Kreis, a law professor at Chicago-Kent College of Law, says when it comes to LGBTQ people, if you took a time machine back to the year the law first passed — 1964 — you'd find a "pretty bleak" legal landscape.

"There isn't a state-wide anti-discrimination law that protected LGBTQ people [at that time]," Kreis says. "There's no relationship recognition for same sex couples. And trans people are targeted — because many municipalities had anti cross-dressing laws."

It didn't take long for people involved in the growing gay rights movement to begin considering how the protection against discrimination on the basis of "sex" might impact them, Kreis says.

"In 1966, there was a protest at Julius's Bar in Manhattan — the bar, citing state regulators, refused to serve these openly gay men," Kreis says. "And at the time, the

chairman of what's essentially the New York City's version of the Equal Opportunity Employment Commission, suggested that this was a form of sex discrimination — and this is only two years after the Civil Rights Act of 1964 was passed."

In the 1970s and 1980s, gay and transgender people began to file lawsuits making this argument, Kreis says, but it took decades before judges began to side with them.

Two important Supreme Court decisions set the foundation for their arguments. The first was *Price Waterhouse vs. Hopkins* in 1989. Ann Hopkins was not promoted to partner at the firm because those in charge thought her too aggressive and not feminine enough. (One partner at the firm advised her, she says, that if she wanted a promotion, she should "walk more femininely, talk more femininely, dress more femininely, wear makeup and jewelry, have my hair styled.")



Ann Hopkins, pictured with her children, was the plaintiff in a landmark case about sex-discrimination in the workplace — *Price Waterhouse v. Hopkins*. The Supreme court ruled in 1989 that "sex stereotyping" — discriminating against someone for not conforming to gender-based expectations — is a form of sex discrimination.

*Lucian Perkins/The Washington Post via Getty Images*

The court ruled that "sex stereotyping" — discriminating against someone for not conforming to gender-based expectations — was a form of sex discrimination.

Then, another landmark decision emerged from the high court in 1998: In *Oncale v. Sundowner Offshore Services, Inc.*, Joseph Oncale claimed that he had been harassed on the basis of sex by his male co-workers on an oil platform in the Gulf of Mexico. The court ruled unanimously that this did constitute sex discrimination.

Justice Antonin Scalia, who wrote the decision, made a crucial point: "Male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII. But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws, rather than the principal concerns of our legislators, by which we are governed."

LGBTQ advocates have built on that argument, Bagenstos of the University of Michigan explains. "In 1964, maybe no one was thinking about this law protecting gays and lesbians and transgender individuals — they may not have had all the same words to describe actually the kind of discrimination at issue here that we do now," he says. "But they wrote a law that said if you're treated less well because of your sex, that is unlawful. And these are people who are being treated less-well because of their sex."

Today, the argument attorneys for LGBTQ people are making goes something like this: "If you're fine with Jane coming to work as Jane, but you have a problem with Jane coming to work as Joe, the only thing that's changed is the sex," explains Buchert of Lambda Legal.

"Or if Jane has a picture of her husband on her desk and you're fine with that, but she puts a picture of her wife on her desk and you have a problem with that — that's a sex-based consideration."

The counterargument from the Trump administration and its allies is that someone's sex refers to whether they are a man or a woman, and that even if discrimination on the basis of sexual orientation or gender identity is unjust, it's not sex discrimination — and is currently not legally protected.

To illustrate this idea, Anderson from Heritage uses the example of how Caitlyn Jenner, a celebrity who is transgender, might experience sex discrimination in applying for a job: "Someone could say, I think you're really a man and therefore I'm not going to hire you because only women can do this sort of work, or I think you're a woman and I won't hire you because only men can do this sort of work."

In either of those cases, Anderson argues, "Caitlyn is still protected against sex discrimination. But if someone was to say, 'Oh, I won't hire you because you're trans,' that's not a statutory protection that Congress has chosen to enact."

### **A need for clarity**

In the early days of the Obama administration, Bagenstos worked in the Civil Rights Division of the Justice Department, and says it was a clear priority within the White House to "try and see where — within existing law — they could extend more protections against discrimination to LGBT individuals."

It started around 2011, when officials in the Obama administration's Employment Equal Opportunity Commission decided they needed to make a clarifying call on the question of whether "sex" encompassed sexual orientation and gender identity.

The story of this process is laid out in an amicus brief in three employment discrimination cases currently before the Supreme Court — a brief submitted by federal officials who worked in the Obama administration. In the brief, they write: "The evolving and increasingly confused case law, and escalating need to address real, ongoing discrimination, prompted the EEOC and several Departments to undertake deep and detailed analyses of whether the prior exclusionary approaches to Title VII and similar laws were correct."

After creating an LGBT working group and doing careful analysis, the EEOC concluded that sexual orientation and gender identity "are intrinsically subsets of sex and, thus, are squarely covered by Title VII's prohibition of discrimination based on sex."

Other departments and agencies around the same time were coming to the same conclusion. In 2014, Attorney General Eric Holder wrote in a memorandum: "I have



determined that the best reading of Title VII's prohibition of sex discrimination is that it encompasses discrimination based on gender identity, including transgender status." In 2016, the Defense Secretary announced that transgender servicemembers could serve openly. The Federal Bureau of Prisons, Health and Human Services, and the Department of Housing and Urban Development all issued rules and policies in the same vein in those years.



Destiny, transgender and, at the time, homeless, talked with a friend near a Chicago homeless shelter in 2011. The Trump administration has proposed reversing an Obama-era rule that requires homeless shelters to house transgender people according to their gender identities.

*David Pierini/Chicago Tribune/Tribune News Service via Getty Images*

This was part of a systematic effort across the executive branch. "One of the principles that has heretofore governed government policy is that the government should speak with one voice," says Jocelyn Samuels, who directed the HHS Office for Civil Rights in the Obama years, and now runs the Williams Institute, a LGBTQ think tank at the UCLA School of Law. The collective efforts were painstaking, she says.

"The agencies involved took a very careful look at the language of each statute underlying the programs, at the legislative history and at the case law," she says, in coming to the conclusion that sexual orientation and gender identity were legally protected.

That process stretched beyond Title VII and employment discrimination to include, for instance, sex discrimination in health care, as outlined in Section 1557 of the Affordable Care Act, and sex discrimination in schools in Title IX of the of the Education Amendments Act of 1972.

Buchert says the work happening in the federal government was "the culmination of a lot of advocacy that had been done and a lot of recognition that trans people exist," she says. "That visibility also brings along with it a lot of opposition."

## A 'tit for tat' response

Under the Trump Administration, each of these policies has been rolled back or rescinded, one by one.

"The Obama administration was working to advance LGBTQ rights within the scope of what the law permitted," says Anthony Kreis, the law professor who studies LGBTQ discrimination. "The Trump administration is — tit for tat — going back and trying to reverse-engineer every single one of those advances."

## Changes In LGBTQ Rights Under Obama And Trump

Many rights and regulations enacted or clarified in the Obama era have been reversed by the Trump administration. Here are some highlights of what happened and when.

### TOPIC

#### Employment

#### OBAMA ADMINISTRATION

U.S. Attorney General Eric Holder issues a memorandum on the ways Title VII of the 1964 Civil Rights Act applies to transgender people. "I have determined that the best reading of Title VII's prohibition of sex discrimination is that it encompasses discrimination based on gender identity, including transgender status," Holder writes.

Dec. 2014 — [Read the memo](#)

#### TRUMP ADMINISTRATION

U.S. Attorney General Jeff Sessions withdraws Holder's 2014 memo, and orders the Justice Department to take the opposite position when arguing court cases. "Title VII's prohibition on sex discrimination encompasses discrimination between men and women, but does not encompass discrimination based on gender identity *per se*, including transgender status," he writes.

Oct. 2017 — [Read the memo](#)

#### Education

The federal government issues guidance to public school districts in a "Dear Colleague" letter that says transgender students are entitled to protection that

Newly-appointed Secretary of Education Betsy DeVos rescinds the Obama-era guidance in a new "Dear Colleague" letter and also informs the

transgender students are entitled to protection that includes the right to use the bathroom that aligns with their gender identity.

"Dear Colleague" letter and also informs the Supreme Court of its new position regarding transgender students' access to bathrooms.

## Military

May 2016 – [Read the letter](#)

Defense Secretary Ash Carter holds a press conference announcing a new policy: "Effective immediately, transgender Americans may serve openly, and they can no longer be discharged or otherwise separated from the military just for being transgender."

Feb. 2017 – [Read the letter](#)

In a series of tweets in July 2017, President Trump writes: "the United States Government will not accept or allow ... transgender individuals to serve in any capacity in the U.S. Military." It takes nearly two years to draft and implement a policy based on that announcement, but what's sometimes referred to as the "trans military ban" comes into effect in March 2019, with some exceptions. As of early 2020, it is still being challenged in court.

## Employment

In an executive order, President Obama says that people who work as contractors with the federal government are protected from discrimination on the basis of gender identity and sexual orientation.

March 2019 – [Read the policy](#)

The Department of Labor proposes a rule to reverse the Obama-era protections. But the rule goes further, allowing certain for-profit federal contractors to hire and fire their employees based on the employer's religious beliefs. As of early 2020, the rule has not been finalized and is not currently in effect.

July 2014 – [Read the executive order](#)

## Housing

The Department of Housing and Urban Development issues a rule requiring homeless shelters that receive a certain type of HUD funding to provide shelter to transgender individuals according to their gender identity. It's known as the Equal Access Rule.

Aug. 2019 – [Read the proposal](#)

HUD proposes a rule that would allow homeless shelter operators to determine which services transgender people have access to. Operators could base their decisions on their own religious beliefs, among other factors. As of early 2020, this rule has not been finalized and is not currently in effect.

Sept. 2016 – [Read the rule](#)

## Health care

The Department of Health and Human Services issues a rule to protect people from discrimination in health care on the basis of gender identity and sexual orientation. The rule is finalized, but blocked by a federal judge, so it never goes into effect.

May 2019 – [Read the rule](#)

A proposed HHS rule would only protect people on the basis of "sex" -- meaning biological sex -- but not on the basis of sexual orientation or gender identity. Office for Civil Rights' Director Roger Severino explains that his office concluded that "discrimination on the basis of sex does not cover gender identity." As of early 2020, this rule has not been finalized and is not in effect.

Dec. 2016 – [Read the rule](#)

## Criminal Justice

The U.S. Federal Bureau of Prisons issues guidelines in a document called the Transgender Offender Manual. It recommends that incarcerated transgender individuals be housed according to their gender identity when appropriate.

June 2019 – [Read the rule](#)

The Bureau of Prisons issues an update to the Transgender Offender Manual, stating that an inmate's "biological sex" should serve as the initial determination for placement, and that housing by gender identity is "appropriate only in rare cases."

Jan. 2017 – [Read the manual](#)

May 2018 – [Read the manual](#)

## Child Welfare

Under an HHS rule, child welfare organizations that

The Trump administration proposes a new rule that

***Don't see the graphic above? Click here.***

Kreis says it's created a feeling of "whiplash" between the Obama and Trump administrations, especially in the context of Trump's signals early on that he would be more supportive of LGBTQ rights than past Republican presidents. The Trump administration does not just demonstrate "a resistance or passivity towards LGBTQ

rights," Kreis says. "It's openly hostile in a way that I don't think anyone really quite could have predicted."

Buchert describes the reversals as "hurtful and infuriating." She adds that the administration has also, in her view, appointed many anti-LGBTQ judges, and has made moves to stop collecting data on LGBTQ people in a "drive to erase LGBT people from the record." Evidence for those charges was detailed in a report last year by the Sunlight Foundation, a nonprofit, nonpartisan group that advocates for openness in government.

Jocelyn Samuels — the former HHS director — says watching the current administration undo the work that she and other officials labored over is "heartbreaking, because it stands to put vulnerable people at risk across a whole spectrum of activities in which they should be able to engage without fear of discrimination."

The Trump White House pushes back on the notion that President Trump is against gay or transgender people.

"President Trump has never considered LGBT Americans second class citizens, and has opposed discrimination of any kind against them," White House spokesperson Judd Deere tells NPR in an emailed statement. He notes Trump's participation in Washington's Pride activities last year, and that the president has hired and promoted White House staff who are gay, and pushed for international decriminalization of homosexuality.

The Trump administration has also launched a plan to end the HIV epidemic — "a commitment that, when achieved, will save LGBT lives across the country," Deere says.

Anderson adds that the Trump administration's reversals are "entirely appropriate." If you have determined, as the Trump administration has, that Obama overstepped the authority of the executive branch and misinterpreted the meaning of sex discrimination, Anderson says, "then all of the various actions that the Obama administration took where it interpreted the word sex as gender identity were



unlawful. So going back to the original meaning of the word isn't a 'tit for tat,' it's a restoring — upholding the rule of law."

## **What's next from Congress and the Supreme Court**

Will these legal reversals on protections for LGBTQ people continue to toggle back and forth every time the White House changes parties?

The answer to that depends in part on what the Supreme Court decides in those three upcoming cases related to LGBTQ people and employment discrimination: *Altitude Express v. Zarda*; *Bostock v. Clayton County*; and *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*. Oral arguments in those cases were heard in October 2019.

In each case, a gay or transgender person was fired allegedly because of their sexual orientation or gender identity. The Supreme Court's decisions, expected sometime this spring, will establish whether or not those firings are legal under Title VII of the Civil Rights Act of 1964, which prohibits "sex" discrimination in employment.



Aimee Stephens was fired from the Michigan funeral home where she worked in 2013 — because, she says, she'd recently come out as being transgender. Stephens' lawsuit is one of three cases now under consideration in the Supreme Court that explore federal civil rights law as it relates to LGBTQ people.

*Paul Sancya/AP*

"The Supreme Court, when it weighs in on these Title VII cases, will probably tell us a lot about what the law is going to be — unless and until Congress acts," Bagenstos says. Those decisions will determine how "sex" can be interpreted under current law. But, he adds, "ultimately you'll get more stability when Congress passes a new law."

A bill called The Equality Act has been kicking around Congress for decades — it was first introduced in 1974, just 10 years after the Civil Rights Act became law. The current version of the Equality Act would enshrine in law many of the protections conferred by the Obama administration's rules and policies, by explicitly prohibiting discrimination on the basis of sexual orientation and gender identity in education, federal funding, employment, housing, and more. Last year, the Democrat-controlled House passed the bill and sent it to the Republican-controlled Senate, where it is not expected to be brought up for a vote.

Kreis makes the point that polls suggest that, in comparison to past eras, American society is now much more accepting and understanding of people who are gay or transgender.

"Those lessons from the social movement — the LGBTQ rights movement — haven't changed and most Americans' views on this have not changed [since Trump's election]," Kreis says. That's "what makes the Trump administration's about-face so hard for so many people to swallow."

Anderson from the Heritage Foundation doesn't think there's a contradiction between social progress and Trump's rollbacks — he says it's about "nuance" on these issues. "I don't think anyone in America wants to be bullying or harassing or denigrating LGBT people," he says. "But I also think there are reasons that women are concerned about privacy and safety in public restrooms or locker rooms or the equality on athletic fields and tracks."





Joaquín Carcaño, at his home in North Carolina in 2016. A transgender man, Carcaño was the lead plaintiff in a lawsuit brought against the governor of North Carolina to block HB2, the state's "transgender bathroom law." The case settled last year after the law was repealed.

*Gerry Broome/AP*

For Buchert of Lambda Legal, "it's not about the bathroom," she says, and "it's about it's not about the cake," referring to the famous Masterpiece Cakeshop Supreme Court case.

"If you look at the legislative attacks," Buchert says, "they have evolved. And you can see that this is clearly a concerted effort to find what's going to work to rollback trans rights. Is it the bathroom? They had high hopes and it didn't work out — there was a lot of support and a lot of love for trans people in the community, and people saw through the charade that [allowing trans people to use certain bathrooms] is harmful for women in some way."

She says she sometimes reminds herself of a saying about social movements: "First, they do ignore you, then they do laugh at you and then they fight you — and then you win."

"For a long period of our history, we've been ignored and laughed at," Buchert says. "If you look at the sitcoms from '60s, '70s, '80s TV — a man in a dress is 'the most hilarious thing ever,' " she says. "The folks that oppose us have moved from laughing at us to fighting us. It's not over — we're rolling up our sleeves because it's gonna be a long fight."

Along with her work on policy and LGBTQ discrimination cases — Buchert also wants to fight the message she says the Trump administration's actions are sending: that gay and transgender people should not be protected from discrimination and that they should just disappear or pretend to be something they are not.

Her own message? "We're just people," Buchert says, and laughs. "We like dogs. We like ice cream. We're real people — this is how we were made." And, she adds, "we're not going back in the closet."

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