



# EXPLAINER

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## Delivering Results: An Overview of Federal Implementation Processes Updated March 16, 2022

### Summary

Activists, organizers, and everyday people fight hard for policies that ensure every family has the chance to thrive. However, our communities will only experience the full benefits of a law if it is implemented in a way that puts equity first. The way regulations are enforced or federal funds are spent can make the difference between window-dressing the status quo and transformational change.

One great example of the importance of community involvement is the disability community's [advocacy](#) to ensure that newly enacted civil rights protections were implemented in a meaningful way. Congress forbade discrimination in employment on the basis of disability in Section 504 of the Rehabilitation Act of 1973. However, in order for people with disabilities to truly hold employers accountable, the Health, Education, and Welfare agency (HEW) needed to issue regulations telling employers how to interpret the statute. Under pressure from big corporations, HEW delayed issuing the regulations for years. Disability rights groups continued campaigning for the regulations until HEW finally issued draft regulations in 1977. When the Carter administration took office and attempted to weaken the existing draft regulations, activists led sit-ins and protests nationwide until the regulations were finally instituted with no change.

Disability rights activists ensured that Section 504 was implemented in a way that supported their community. They understood that just passing laws was not enough. We have to keep fighting for the change we need at every step of the process. Without sustained community organizing, policymaking favors entrenched special interests with the power, access, and funding to engage in drawn-out and complex implementation processes.

This explainer is intended to support community organizers working to ensure that the demands of the people closest to the problems are reflected in the final policy. It lays out the three primary ways policies are implemented: rulemaking, grant funding, and plan development. For each, it will explain the process, the stakeholders, the timeline, and key intervention points that can transform the

outcome. This includes delaying tactics that slow the implementation of harmful legislation, or which may be used by moneyed interests to impede our activism.

## Rulemaking

Most laws, after passage, are implemented via agency [rulemaking](#). **Rules** (also known as regulations) are a series of explanations laid out by agencies that describe how a law will be interpreted and enforced within the limits set by Congress. They often include definitions, details, and examples that guide managerial and judicial decisions. Rules can significantly impact how a law is interpreted.

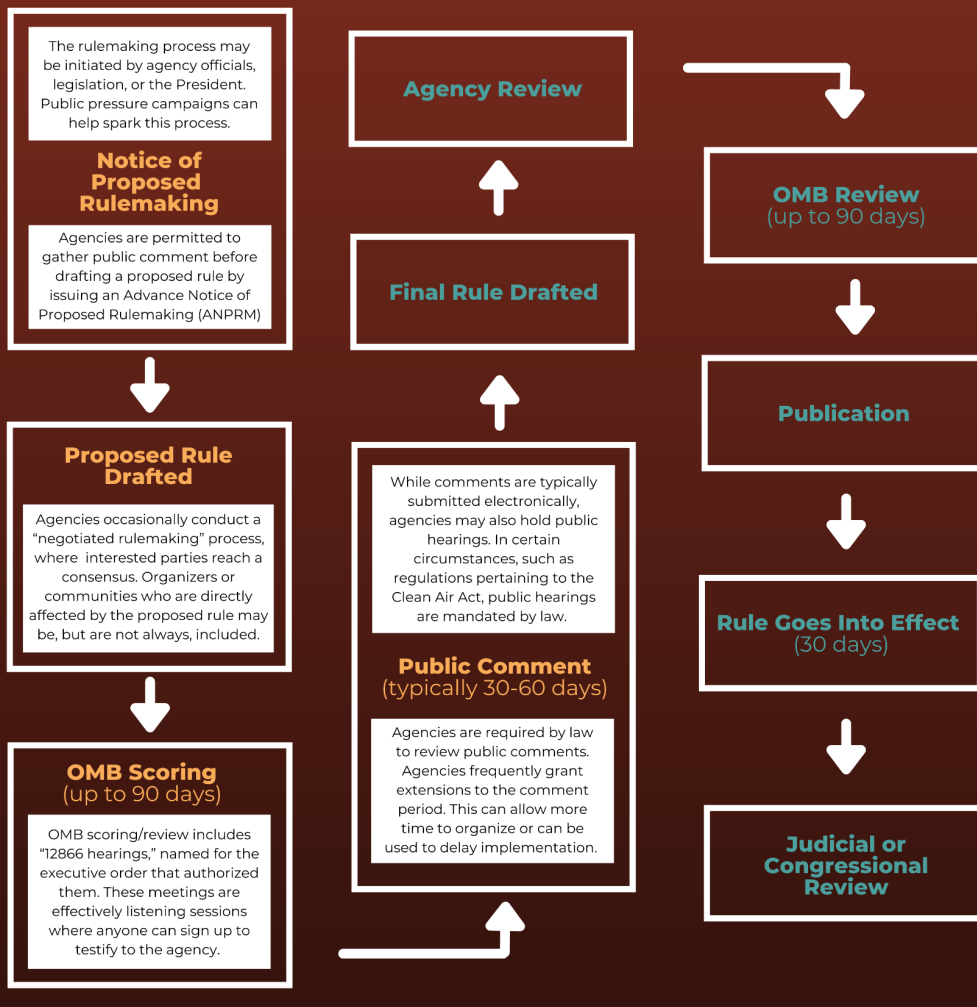
There are several different types of rulemaking processes. Notice-and-comment rulemaking is the most commonly used, but agencies may also undergo formal rulemaking, hybrid rulemaking, direct final rulemaking, or negotiated rulemaking. Agencies may also issue [subregulatory guidance](#), though this guidance does not carry the same weight as rules that undergo the full rulemaking process. However, subregulatory guidance can still have a significant impact on how laws affect our communities.

In this explainer, we provide an overview of **notice-and-comment rulemaking** because it is the most common rulemaking process advocates are likely to encounter. This process is very technical and involves a series of codified steps. Because of its granularity, notice-and-comment rulemaking is a lengthy process (often taking two to three years). But it also includes dedicated time for public comment, which creates opportunities for communities to make their voices heard.

## Timeline and Intervention Points

The timeline associated with the federal rulemaking process can vary greatly depending on the size, scope, and controversy of a proposed rule and the type of rulemaking process followed by the agency. Agency capacity is also a consideration: smaller agencies that are less able to devote staff to writing a regulation and reviewing public comments sometimes require more time to issue a final rule. The chart below sets out the process for notice-and-comment rulemaking. [You can also view an animated version of the federal rulemaking process here.](#)

# THE RULEMAKING PROCESS



Federal Register. The agency drafts a preliminary rule proposal and sends it to different departments and teams within the agency for review and comment.

When the agency-level feedback has been incorporated into the **proposed rule**, the agency sends it to the Office of Management and Budget (OMB) for scoring. OMB conducts a cost-benefit analysis, a process that typically takes 90 days. OMB's cost-benefit analysis has been criticized for failing to adequately quantify the public costs and benefits associated with proposed regulations (e.g., the societal costs of the worsening climate crisis in environmental regulations or the savings associated with everyone having access to medical care under Medicare for All). That said, in 2021, the Biden Administration [directed](#) OMB to start including many of these concerns in their analysis. In particular, OMB will now consider impacts on public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations—even if they are difficult to quantify.

After incorporating OMB feedback, the agency posts the proposed rule and gathers public comments on the proposed rule over 30 to 60 days. It solicits this input through written comment or through hearings held by agency staff. Public hearings are an especially effective tool for federal agencies to solicit input from low-income, minority, and rural communities that often lack the resources necessary to weigh in. For example, the EPA held multiple field hearings in Alaska to solicit input from Alaskan Natives on the proposed rollback of the Clean Water Act under the Trump Administration. Agencies may also elect to request a second comment period to allow for “reply comments” (comments that respond to those submitted in the first period).

The agency integrates the public comments into the drafting process of its **final rule**, which repeats the intra-agency and OMB review processes. Following OMB review of the final rule, the agency publishes the final rule, which takes effect 30 days thereafter.

This lengthy process can be circumvented through two rarely-used [shortcuts](#). In **direct final rulemaking**, an agency publishes a final rule immediately, with a note of the effective date. If a single adverse comment is filed before that date, the agency rescinds the rule and undertakes the standard process. Otherwise, the rule goes into effect on the appointed date.

In **interim final rulemaking**, an agency issues a final rule, effective immediately, and undertakes the standard review process afterward—while the rule is in effect. The agency then revises the rule after collecting feedback. Because of its immediacy, the

interim final rulemaking process is intended for use only in emergencies—though agencies are increasingly using it in less urgent circumstances.

Final rules can be overturned in three ways: agency reconsideration, **judicial review**, or **Congressional review**. An agency may decide to rescind a rule that was issued previously—sometimes replacing it with a new rule using the standard process. Most invalidated rules, however, are subjects of legal challenge, where judges make decisions on a rule's legality after listening to lawyers present cases. The current Supreme Court, dominated by far-right activist conservatives, has increasingly attempted to curtail the government's administrative capabilities by overturning rules and drafting expansive decisions that forbid regulation.

Congress can also invalidate a rule by passing a **joint resolution of disapproval** within 60 legislative days of the rule being issued. As with any bill, the joint resolution must be signed by the president and can be vetoed. Until the Trump Administration, Congress had only successfully passed a joint resolution of disapproval [once](#). But the Trump Administration aggressively used the process to [overturn sixteen rules](#) that got in the way of profits for big corporations and corporate special interests. These include [waterway protections](#), [internet privacy protections](#), and the requirement that [employers document workplace injuries](#).

## Strengths and Weaknesses

Rulemaking's greatest weakness is also its strength: it takes a long time. The median rule takes [roughly a year](#) to go into effect, though most rules that affect daily life take a much longer time—as many as four to seven years. This means that after a rule is finalized, it cannot be quickly overturned and typically requires the same years-long process be undertaken to impose a new rule.

Rulemaking is supposed to be very transparent and accessible to the public. While it is not necessarily possible to see every comment, the federal government publishes the names of those who submitted them and those who scheduled hearings. Anyone can submit comments through [regulations.gov](#) and/or schedule 12866 hearings through [reginfo.gov](#). However, rulemaking campaigns are difficult to sustain because the rulemaking process is complex, rules are frequently written in technocratic jargon, and comment submission tools are challenging to use. The rulemaking process is also highly centralized and often requires a nationally-organized campaign in order to ensure that community voices are reflected in the process.

## Grants

**Grants** are a form of federal financial assistance that governments distribute to lower levels of governments or government contractors. There are three primary grant types: block grants, categorical grants, and general revenue-sharing. Because general revenue-sharing has not been used since the 1980s, this explainer only outlines the first two.

Historically, state and local governments and organizations—as well as federal legislators—could request federal funding for local projects through **earmarks**, also called **congressionally-directed spending**. These are noncompetitive grants appropriated by Congress specifically targeting particular local projects. They were effectively banned in 2010, but they were recently reinstated for the 2022 omnibus spending bill. Earmarks provide targeted funding for specific projects which can allow communities to fight for the projects they need most, but they can also reflect the pet projects of well-connected special interests. The chief strength of earmarks is that they provide dedicated funding for a specific project and allow for state and local governments, as well as some nonprofits, to push for projects that reflect the unique needs of their communities. We will discuss earmarks further in our forthcoming “Must-Pass Bills” explainer, but the CPCC included an overview of earmarks in an [explainer on the appropriations process](#).

### Block Grants

**Block grants** are federal funds distributed by formula. They can only be used for a specific set of programs, but do not restrict what activities the recipient can engage in. Block grants can be both flexible and unreliable sources of funding to achieve a particular policy objective. The Department of Transportation is currently facing this challenge as it distributes formula-based infrastructure funding to states. Although this money was intended to be used to fix existing infrastructure, many states are using the funding to expand highways [instead](#).

### Categorical Grants

**Categorical grants** specify programs and activities that recipients can engage in. Because the government has tighter control over how recipients spend the money, categorical grants are much more common than block grants. They can be distributed by formula (**formula categorical grant**) or awarded on a competitive basis through an application process (**project categorical grant**). There are also **formula-project categorical grants** which typically allocate funds to states based on a formula, but then allow states to oversee a competitive grants process to distribute those funds in turn. Finally, **open-end reimbursement categorical grants** provide

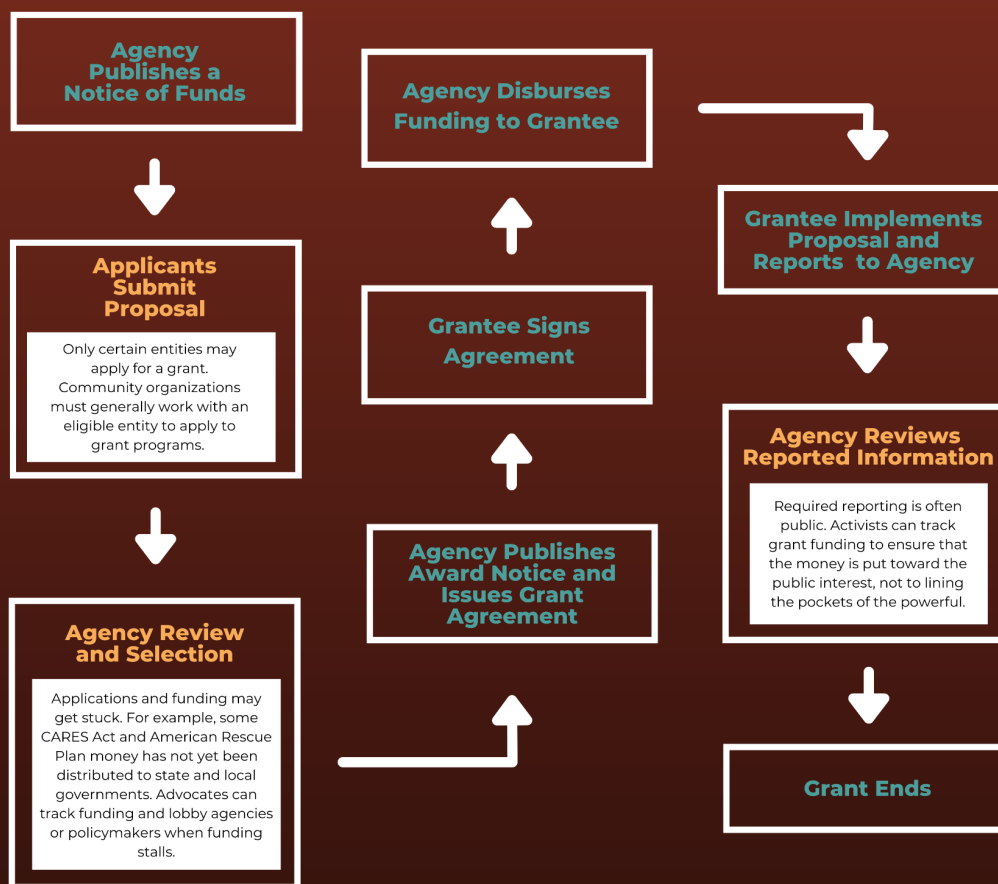
reimbursement of a portion of recipient costs, which eliminates competition among recipients. Because open-end reimbursement grants do not have a cost maximum, only the federal government can establish them.

| Type                                 | Block  | Categorical                                    |   |  |                                  | Earmarks               |
|--------------------------------------|--|--|---|--|----------------------------------|------------------------|
| <b>How is money distributed?</b>     | Formula  | Formula  | Competitive - Project   | Formula - Project  | Open-End Reimbursement           | Defined in legislation |
| <b>How restricted are the funds?</b> | General program                                | Specified activities                           | Application activities only (constrained to specified activities) | Application activities only (constrained to specified activities ) | Specified activities             | Specified activities   |
| <b>Who gets the money?</b>           | States and tribal govts (depending on formula) | States and tribal govts (depending on formula) | Local govts or private entities (must apply)                      | States, then local govts or private entities (must apply)          | States and tribal govts, usually | Specified recipients   |
| <b>Are you guaranteed funding?</b>   | Yes  | Depends on statute                             | Depends on statute  | States: Yes<br>Grantees: No  | Yes                              | Yes                    |

## Timeline and Intervention Points

While the precise timeline varies from grant to grant, most competitive grants take under a year from announcement to disbursement. After distribution, funding can be allocated for years at a time. Federal grant applicants (and eventual grantees) can be state governments, local governments, or private contractors, depending on the purpose of the grant.

# THE GRANT PROCESS



## Process

Most grants are project categorical grants or formula-project categorical grants. This is because governments do not typically have the internal capacity to undertake major projects. Instead, they hire contractors to plan and execute government programs through a competitive grant process. Formula categorical grants, where they occur, are typically direct budget supplements to agencies and lower governments.

Congress funds grants through the appropriations process (which is described in [this CPCC document](#)). The grant money is allocated to state or local governments when



the administering agency (1) calculates formulas or establishes a review panel and (2) publishes a **notice of funds**. Potential grantees then [submit](#) a proposal describing how they would carry out the project. These plans often include **impact statements** that describe the impact of the proposal on the environment, historical sites, or equity. When a proposal is approved, the agency publishes an award notice and issues a grant agreement which the agency and the grantee both sign. This obligates the funding to the lower government, allowing it to either conduct its own subgrant process or use the money directly.

Through the lifetime of the grant, the agency [tracks](#) expenditures and distributes funds, monitors recipient compliance with program requirements, and conducts audits to assess efficacy and limit abuse. At the same time, the grantee submits regular performance and financial reports from both itself and from subgrantees.

The subgrant process works similarly to the initial grant process, though subgrants are almost always awarded on a competitive basis rather than by formula.

## Strengths and Weaknesses

Grants are the primary way government action is used to invest in our communities. Once funds have been allocated, they are very rarely rescinded, except in cases of gross noncompliance. For this reason, the process of financial distribution from Congress is called **obligation**. However, until the money is actually distributed, it is still in the hands of the agency, and Congress may reclaim it. For example, Republicans have tried to claw back unobligated CARES Act funding [on numerous occasions](#).

Formula grants—both block and categorical—often are more restrictive than competitive project grants. Their funding can be used only for defined purposes, but can be more equitable because they are distributed using a transparent formula. Project grants frequently require states and local governments to consult with each other and with other stakeholders. This could be an opportunity for public input. Often, however, governments consult primarily with business interests and lobbyists, leading to preferential treatment during the proposal review stage.

Grants also have few direct intervention points for community feedback. Other than advocating for their local government to apply for a grant, there is little opportunity for organizers to provide input. Nowhere is this more clear than when several state governments refused to expand Medicaid under the Affordable Care Act. The policy gave millions of low-income families access to affordable health insurance and was fully funded by the federal government. But because state governments [did not want to apply](#) for the funding, community organizers were unable to intervene.

The grants timeline can also work against community organizers. Because project categorical grants are often awarded on a rolling basis, they frequently favor affluent communities that can quickly prepare a proposal. They may also be captured by contractors or other entrenched interests who produce a “shovel-ready” proposal for underfunded or inexperienced local and state government entities.

## Implementation Plans

When federal legislation impacts state or local governance, Congress or a federal agency may require state governments to draft an implementation plan.

**Implementation plans** are documents that describe how a government intends to comply with legislation or rules, laying out the regulations it will impose, the services it will fund, and the timeline at which different steps will be taken. They may be required by mandate—as in the Clean Air Act, or as a prerequisite for receipt of funding—as in the American Rescue Plan Act.

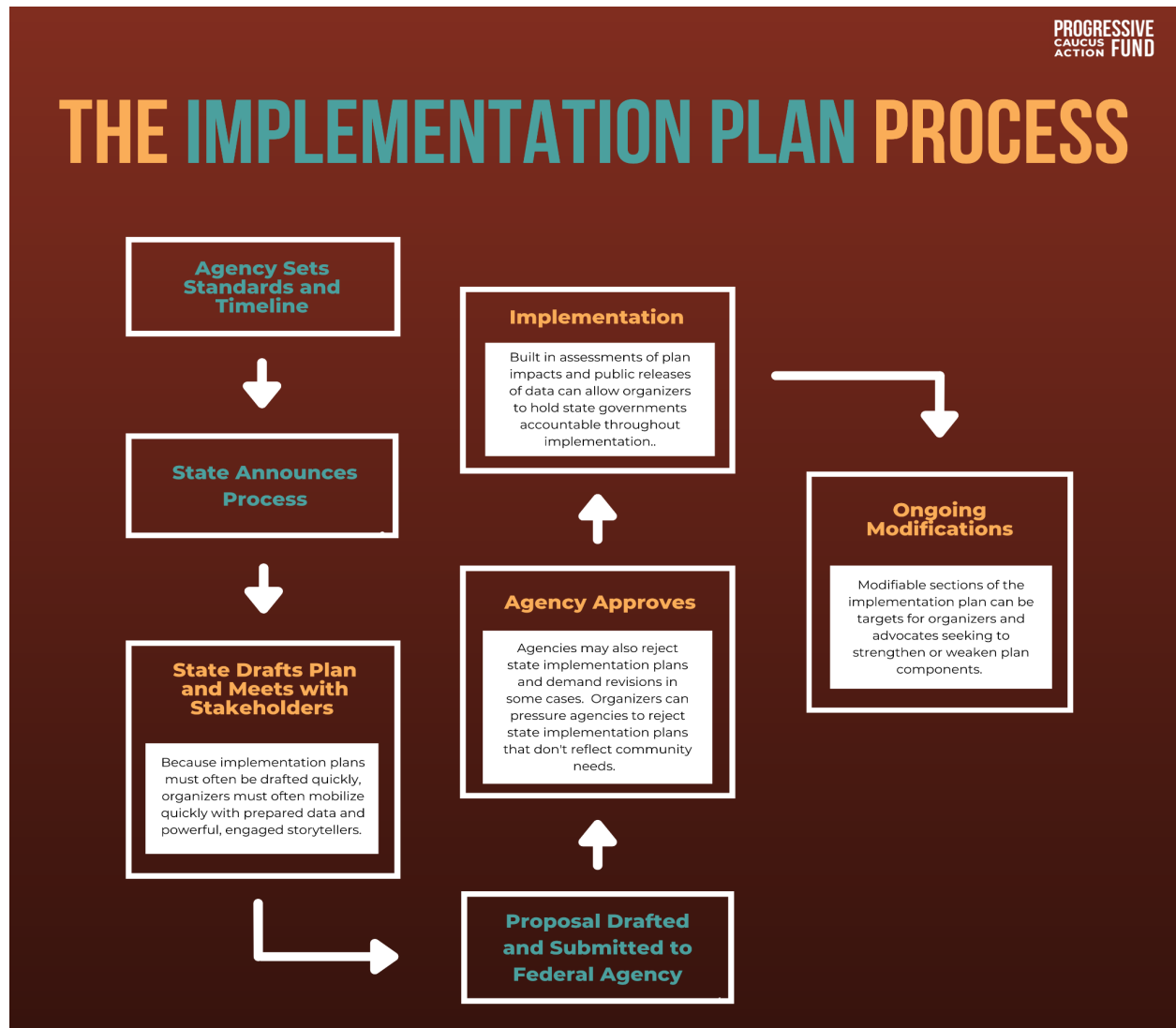
The originating legislation outlines specific aims and standards that the implementation plan must include. In contrast to rulemaking processes which may apply to states or directly limit the behavior of businesses, implementation plans instruct states to create a plan to implement a policy (which in turn may impact private entities). In some cases, these are specific targets or regulations that a state must enforce. In others, the state is given more leeway in their methodology, or are permitted to change later. Because implementation plans have a strict timeline, states put significantly more effort into how to meet the specific requirements, and leave looser or modifiable sections to a hasty drafting process.

Implementation plans often affect government and business operations for decades, yet they are typically drafted quickly. In the case of the Obama Administration’s Clean Power Plan (stymied by court challenges and later repealed by the Trump Administration), states had two years to develop an implementation plan—or four years if they asked for an extension. The [Clean Power Plan](#) directed states to cut emissions of greenhouse gasses from the electricity sector to 30% of 2005 levels by 2030. States could meet these targets by either upgrading power plant technology or shifting towards more renewable energy sources. If a state failed to submit a plan by the deadline, the Environmental Protection Agency would impose its own plan on the state.

Community organizing can dramatically impact plans on a state-by-state level if organizations are able to mobilize quickly, build off of existing organizing, and work with elected champions to ensure a fair and inclusive process.

## Timeline and Intervention Points

Because implementation plans are wholly designed by state or local governments, they vary significantly based on state rulemaking laws. Similarly, there is a lot more flexibility in how (and whether) the government solicits public input because states are not subject to the same requirements as federal agencies. The timeline below is a good overview of typical steps in the development process—though precise time periods will be directed by federal instruction and the individual decisions of states.



## Process

The development process for implementation plans varies significantly based on the originating legislation or executive order. Thus, it is important for organizers to pay

close attention to the procedural language in order to determine who the stakeholders are and how the process can be influenced.

In general, a federal agency sets the standards, reporting requirements, and timeline that state implementation plans must adhere to. When these stipulations have been finalized, states begin their development process. They are usually required to determine for themselves whether they are compliant with each standard. In a transparent process—which is not always followed—states will gather public comment through listening sessions and town halls.

Implementation plan campaigns should have two stages: an agency-level campaign and a state-level campaign. Organizers should pressure the agency to adopt standards that require transparency, public input, and extensive oversight. This ensures that the state-level process is fair and allows subsequent local organizing its best chance at success.

A final—and unique—component of implementation plans is that they are frequently iterative. After a plan is finalized, changes are often permitted. While modifications must be approved by the federal agency, they represent an important opportunity for long-term organizing.

## **Strengths and Weaknesses**

Implementation plans are very locality-specific. For example, the proposed Clean Power Plan [process](#) had unique targets for each state, and states were able to choose their regulatory actions and implementation plan design processes freely. This meant some states designed their plans largely behind closed doors, with only a few stakeholders involved. Other states engaged in wide and participatory processes that included local meetings and listening sessions that provided opportunities for community involvement.

Organizers know their communities better than corporate lobbyists, so the local focus can give organizers an edge where they have existing campaigns or engaged bases. It also underscores the importance of sustained organizing across all community-led movements so that we are positioned to act when short-lived opportunities for change arise.

Implementation plans are often shaped by those with the initiative and resources to assist state governments with development. Speed usually benefits large corporations who can afford lobbyists and a policy team. But it can also benefit organizers willing to seize the moment and mobilize quickly.

Depending on the originating vehicle, implementation plans may be overturned by unfriendly officials at the federal level. For example, the Clean Power Plan was immediately [challenged](#) in court and then eventually replaced by the Trump Administration. Since then, courts and agencies have fought over the Environmental Protection Agency's ability to impose these regulations. The future of this type of administrative rulemaking and accompanying implementation plan will hinge on the Supreme Court's forthcoming decision on this [issue](#).

The fate of the Clean Power Plan is also an example of the precarious nature of implementation plans under judicial review and a shift in Presidential Administrations. However, public organizing around the Clean Power Plan created change in some communities in spite of the fossil fuel industry's court challenge. Several states voluntarily continued their processes to set emission reduction goals and the community organizing sparked by the Clean Power Plan has continued to shape the climate movement in many local communities.

## Conclusion

The disability justice community popularized the phrase “nothing about us without us.” When policy decisions are made at the federal level, community organizers must be involved if these decisions are to advance equity and sustainability. This explainer described the three most common processes through which legislation impacts communities. Rulemaking shapes how laws are interpreted by courts and regulators, Grant administration affects how funding reaches communities. And, finally, implementation plans outline long-term agendas for local change. Organizers, advocacy organizations, nonprofits, and local officials who are familiar with these processes can affect how federal policy impacts their communities.

| Type of Presidential Directive | Executive Orders  | Presidential Memoranda   | Substantive Proclamations   | Other Directives  |
|--------------------------------|---|--|---|---|
| <b>Definition</b>              | <p>Manages operations of the federal government including deciding how (and how much) legislation or statutes will be enforced, addressing emergencies, or directing an agency to take action</p> <p>Must be published in the federal register and justify Presidential authority</p> | <p>Similar to an EO but typically concern "routine executive decisions and determinations" - direct agency priorities or elaborate on EOs</p> <p>Doesn't require justification or need to be published in the Federal Registry</p> <p>Generally clarifying/ expanding on an existing authority or policy</p> | <p>Legal pronouncements on areas of direct executive authority like international trade, national emergencies, or federal land management</p> | <p>Ceremonial proclamations (for example recognizing a holiday or significant event)</p> <p>Designation of officials (for example appointing an acting head of an agency)</p> <p>Pardons and clemency</p> |
| <b>Examples</b>                | <p>President Biden sets minimum wage for federal contractors to \$15 an hour</p> <p>President Biden ordering a whole-of-government commitment to advancing equity with EO 13985</p>   | <p>President Biden's memorandum directing federal agencies to put COVID-19 workplace safety measures in place for government employees</p> <p>President Obama's Deferred Action for Childhood Arrivals (DACA)</p>  | <p>President Biden restoring protections for the Bears Ears national monument and sacred site</p> <p>The Emancipation Proclamation</p>        | <p>President Biden proclamation recognizing Flag Day</p> <p>President Ford pardoning President Nixon</p>  |





## Summary of Key Advocacy Strategies for Implementation

**Before the Bill Becomes a Law:** Anything that is explicitly included in the statute will be much easier to defend. Advocating for specific priorities within legislative text is critical to setting up the implementation process for success. The more specific the recommendations are, the more likely that elected champions will be able to respond effectively to their community. Specific areas to consider in a bill under consideration to strengthen community voices could include: expansive and inclusive definitions, directing federal funding to programs with strong worker protections, including mandates for participatory processes within the legislation, including directions to explicitly include considerations of equity and justice in implementation or directing funding, and including requirements for data transparency and reporting.

**With the Federal Agency:** The federal agency in charge of the law sets many of the parameters, definitions, processes, and other key factors. It is critical to build relationships with the federal agencies and advocate for a policy implementation process that reflects the needs of all families and communities, especially those harmed by systemic oppression. Community advocates can also fight for specific implementation priorities through your elected members of Congress (for example by asking your representative to write a letter to the agency or contact the federal agency in question). By engaging with the implementing federal agency, advocates can fight for changes to the policy and the policy design process that increase access, equity and justice nationwide instead of just in states where community based organizations may have enough built-out campaigns or organized bases of people to meaningfully shape the local context. Below are a few examples of demands that advocates might fight for in an implementation process with a federal agency:

- Advocate for a process that maximizes community participation with listening sessions and public hearings
- Advocate for a process that requires states to consider and address issues of equity, justice, historic impacts of discrimination or environmental justice impacts
- Request an email address to submit comments to in addition to comments submitted through the regulations.gov portal to allow organizers to use digital tools to encourage their communities to make their voices heard
- Fight for agencies to use definitions that maximize access, equity and justice for example requiring states to use strong and enforceable local hire and job quality measures or requiring states to assess comprehensive measures of contamination rather than just pollutant-by-pollutant standards that can miss the cumulative impact on frontline communities
- Advocate for data transparency that includes the regular public release of program data and requiring that it is disaggregated by income, geography and race so that advocates can assess the equity of the policy and hold our representatives accountable if programs





are disproportionately benefiting some groups or disproportionately harming some groups

- Advocate for significant funding to help people learn about and access the program. For example, community navigators were crucial to ensuring that millions of people were able to access health care under the Affordable Care Act (ACA), especially those who have been historically excluded or harmed by government systems in the past

**At the State and Local Levels:** State legislatures often have broad latitude to design state programs that receive federal funding or to move other money around in response to new sources of federal funding. For example, increases in funding for families struggling to get by can often end up being diverted if states use federal funds to replace state-level funding and move general funds into regressive priorities like tax cuts for the rich. Advocating for new federal funding to be used to increase the final level of service provided to our communities rather than allowing state legislators to move general funding to other priorities is often a critical role for advocates. States also generally have wide latitude to decide how funds are used and how programs are designed within a broad category. For example, infrastructure funding in the Infrastructure Investment and Jobs Act can be used to repair existing infrastructure to improve energy efficiency and keep our communities safe. Alternatively, that same funding could be used to build projects that will further increase our carbon emissions and worsen the climate crisis. The way that federal funds are used by the states can transform the impact of a particular bill. In addition, states' decisions can be critical in determining if a program is successful and equitable. For example, states can often decide who will qualify for the program, how complex the application process will be and what documents are needed to apply, whether community outreach will be used to encourage people to access the program and whether the program will actively work to include people who are often excluded from programs such as people experiencing homelessness, people with disabilities, people who are not fluent in English or people in rural areas.

Depending on the law in question, local governments may have federal funding or federal mandates to implement directly and the same strategies that advocates would use with the State Legislatures are relevant. In addition, local governments also often have a role in consulting with the state on state implementation plans and can champion the demands of their constituents within state processes.

In the case of competitive grant programs, it is often necessary to advocate for state governments, Tribal governments and local governments to proactively apply for the funding and fight to ensure that the projects identified in the application reflect community demands. The speed of applications and the complexity of designing a successful application for competitive grants programs can advantage entrenched interests and contractors who do not necessarily reflect the needs of the community. Therefore, it is critical for advocates to play an early and





proactive role in encouraging their representatives to apply and in selecting the programs that are included.

It is critical that organizers and advocates play an active role in policy implementation at every step of the process from drafting a bill to implementation to the on-the-ground work of signing people up for a benefit. Sustained engagement at every level of the policy process makes sure that the people who are closest to the problem can shape the solutions.

# Improving “Life Chances”: Surveying the Anti-Transgender Backlash, and Offering a Transgender Equity Impact Assessment Tool for Policy Analysis

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**Keywords:** Transgender Rights, Policy Analysis,  
Social Determinants of Health, Social Justice

**Abstract:** Transgender inclusion within policy is critical yet often missing. We propose a policy tool to assesses human rights, access to resources and opportunities, language, and implications for transgender and nonbinary individuals. Acknowledging trans communities as standard policy practice can serve as an essential practice to shift dialogue and norms.

*“Trans people are told by the law, state agencies, private discriminators and our families that we are impossible people who cannot exist, cannot be seen, cannot be classified, and cannot fit anywhere.”*

- Dean Spade<sup>1</sup>

*“You have to act as if it were possible to radically transform the world. And you have to do it all the time.”*

- Angela Davis

## I. Introduction

A significant legislative struggle over transgender equity currently exists in America. Anti-trans legislation across the U.S. has increased in record amounts, from 79 bills in 2020 to 147 bills in 2021, with 2022 already showing signs of reaching a new historical high.<sup>2</sup> In January, the Human Rights Campaign has warned that the 2022 legislative session could host an “intentional, coordinated attack” on transgender individuals and particularly youth.<sup>3</sup> Within the first week of 2022 alone seven states proposed anti-trans bills, including bills restricting access to sports, gender-

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affirming care, and bathrooms.<sup>4</sup> That number has skyrocketed to 30 states at the time this article was being written (see Figure 1).<sup>5</sup> However, so too have bills to protect the rights of trans and nonbinary youth and adults, such as inclusive nondiscrimination policy and gender marker and name change on state identification cards. The transgender equity impact assessment tool is a critical addition to tools for analyzing potential impacts of proposed and existing legislation and educating policymakers and others about transgender issues.

In general, many people, including many policymakers, lack understanding about gender diverse people and how policy impacts their health and well-being. In brief, gender diverse people are anyone who does not identify as cisgender — or with a gender that

reaching voters who may be unaware and/or open to change. Other policies are less obviously harmful; these require a critical lens and awareness of intersectional identities to understand their impacts, which an equity impact assessment process can provide. Further, similar to the recognition that addressing structural racism requires both the dismantling of structurally racist systems *and* forward-looking action focused on healing and repairing,<sup>11</sup> gender equity work must be ongoing, focusing both on preventing and undoing harmful policies as well as on the promotion of gender-affirming and inclusive policies that protect the human rights of T&N people while also recognizing the unique needs and assets of people of all genders. Policymakers, government officials, advocates, and community members are increasingly recogniz-

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**Building from the growing number of racial equity and healthy equity impact assessment tools for assessing policy, we propose a transgender equity impact assessment tool designed for use by policymakers, advocates, and community members to assess proposed and existing legislation for gender inclusivity and discrimination.**

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aligns with the sex they were assigned at birth, which includes binary trans individuals (trans women and trans men) and trans nonbinary individuals (anyone who does not identify as exclusively a woman or man). Diversity of gender identity and expression is expansive, and present across cultures and throughout history.<sup>6</sup> According to current national estimates, between 0.6% and 5.0% of adults in the United States claim a gender identity under the broad transgender category.<sup>7</sup> Trans and nonbinary individuals are each unique though they often share similar experiences of discrimination and stigma.<sup>8</sup> Understanding the nuances of gendered experiences by trans and nonbinary people are best assisted by people within these communities.

Despite a changing social climate of acceptance and some progress in trans advocacy,<sup>9</sup> discriminatory legislation continues to be proposed and passed with negative repercussions for transgender and nonbinary (T&N) communities. Numerous bills each year are proposed that explicitly attack the rights of transgender people.<sup>10</sup> The recent waves of bills appear to be motivated by animus against trans people. In these situations, education and equity impact assessment processes are not likely to change proponents' minds, although they may still create a platform for

ing the value and importance of equity impact assessment tools for this kind of work, particularly in the context of advancing racial equity and health equity.<sup>12</sup> At the heart of the transgender equity impact assessment tool is community engagement through a community advisory board that is constantly working and ready to analyze policy when needed. This approach is an ongoing commitment *with* and *by* community for T&N inclusion and equity.

Building from the growing number of racial equity and healthy equity impact assessment tools for assessing policy,<sup>13</sup> we propose a transgender equity impact assessment tool designed for use by policymakers, advocates, and community members to assess proposed and existing legislation for gender inclusivity and discrimination. In Section II, we explain the policy landscape of discriminatory and affirming legislation relating to T&N and Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) identity or status. In Section III, we provide an overview of the research documenting the adverse health impacts of discrimination on T&N people, demonstrating the importance of inclusive policy to address health inequities. In Section IV, we explain the tool, the theory and values that inform it, and describe how it can be applied. Finally,

in Section V, we conclude by describing our goals for future transparent and gender-affirming policy work.

#### *A. Positionality Statement*<sup>14</sup>

For readers to understand the perspective of the authors, we offer a positionality statement for transparency of our identities and perspectives. The first author is a queer, nonbinary, white, currently non-disabled assistant professor. They have worked with transgender and nonbinary people for eight years, including healthcare, policy analysis, advocacy, and research to improve the lives of gender diverse people. As a trans person, I prioritize work that assists policy-makers to leverage their positions to improve the lives of gender diverse people and to effectively combat harmful anti-trans policies. The second author is a cisgender, demisexual, white, able-bodied woman who is an emerging lawyer and social worker specializing in civil rights and public policy with particular interest in critical social theories as applied to gender equity. The third author is a bi-racial (Japanese/white), cisgender, heterosexual, nondisabled woman who has lived with both racism and privilege. The authorship team was intentional to represent multiple different roles, identities, and histories. Anti-oppression and activism for social justice are shared values among the authors that propelled the development of this transgender equity impact assessment tool.

## **II. The Legal Landscape**

The struggle for equitable and just treatment of T&N people is one of the defining issues of our time. It is happening across our communities in hospitals and doctors' offices, schools, libraries, workplaces, places of worship, senior living centers, prisons, and other places that impact the full spectrum of human experience. This struggle is shaped by policy decisions made by local, state, federal, and Tribal governments,<sup>15</sup> as well as by court cases challenging or interpreting these policy actions.

The public policy pendulum swings radically and erratically. In June 2020, for example, the Trump administration reintroduced measures to roll back certain Patient Protection and Affordable Care Act ("ACA") restrictions on discrimination against T&N patients in the provision of health care and health insurance.<sup>16</sup> Just days later, the Supreme Court ruled that terminating an individual's employment on the basis of their gender or sexual orientation is a violation of Title VII of the Civil Rights Act of 1964.<sup>17</sup> In 2021, the U.S. Supreme Court let stand a federal court of appeals decision holding that a school board's policy of requiring transgender students to use bathrooms separate

from other students violated federal laws against sex discrimination in education.<sup>18</sup> In that same month, the Court issued a decision that the City of Philadelphia improperly terminated a contract with Catholic Social Services for refusing to allow married LGBTQ couples to be considered for foster parents, even though this violated the city's antidiscrimination laws.<sup>19</sup>

Unfortunately, the pendulum all too often swings against the side of equity and nondiscrimination. In 2021, state legislatures considered a staggering 150 anti-trans and anti-LGBTQ bills, at least 15 of which were ultimately signed into law.<sup>20</sup> Anti-trans and anti-LGBTQ policies impact a wide and deep range of human needs and activities, including access to essential healthcare services; access to public accommodations such as public restrooms; access to human services, such as eligibility to serve as foster or adoptive parents; access to supportive educational environments, including school athletics; and the right to indicate on driver's licenses, birth certificates, death certificates, and other official government records a person's correct gender identity.

The struggle for human rights and civil rights protections for T&N people spans many years and is happening across all types of and at all levels of government. For this article, however, we chose to focus primarily on state legislative bills introduced and/or adopted during the 2021 legislative session. We focus on state bills because actions by state legislatures can have powerful upward and downward effects, significantly influencing the national and local policy landscapes in both positive and negative ways. Sometimes, states have been more progressive on social justice issues, including gender diversity, creating space for municipal governments within those states to also be progressive, and helping to drive changing social norms in ways that lead to positive federal policy change.<sup>21</sup> More recently, local governments have been the ones to introduce progressive measures, leading some states to react with preemptive laws to strip or limit local authority to enact T&N affirming measures, even when no municipality within the specific state had introduced such a measure.<sup>22</sup> We chose 2021 because it is a recent year, and because the plethora of state bills that were introduced that year, mostly anti-trans and anti-LGBTQ but also some affirming and inclusive bills, provide ample illustration of the wide and deep impact of such policies.

#### *A. Anti-Trans Legislation*

Anti-trans legislation affects all areas of life for T&N people. Below, we call out recent examples from the

health care sector, public accommodations, and school athletic programs.

Arkansas recently passed a bill prohibiting health care professionals from providing gender-affirming health services such as hormone therapy or plastic surgery to minors, and it also bars insurance companies from reimbursing or otherwise covering such services.<sup>23</sup> The state has further prohibited as discriminatory “tak[ing] an adverse action against, or communicat[ing] a threat of adverse action to” health care professionals or institutions who refuse to provide such services on the basis of conscientious objection — despite the fact that federal courts have held that Section 1557 of the ACA’s prohibition of sex-based discrimination includes gender identity and applies to all health care programs receiving federal funding.<sup>24</sup> Shortly following the passage of the bill, the US District Court in the Eastern District of Arkansas granted a preliminary injunction which kept the law from being implemented, though that decision is under appeal in the Eighth Circuit Court of Appeals.<sup>25</sup>

Tennessee enacted two of the handful of “bathroom bills” that surface each year.<sup>26</sup> One, an addition to the state’s building regulations code, requires all businesses allowing trans patrons to use the bathrooms of their choice to post brightly-colored signage reading “THIS FACILITY MAINTAINS A POLICY OF ALLOWING THE USE OF RESTROOMS BY EITHER BIOLOGICAL SEX, REGARDLESS OF THE DESIGNATION ON THE RESTROOM.”<sup>27</sup> In the same year, Tennessee also passed the “Accommodations for All Children Act,” a law paradoxically requiring public schools to provide “reasonable accommodations” upon request to students and employees using multi-occupancy bathrooms and changing rooms but simultaneously prohibiting them from allowing individuals to use facilities designated for the opposite sex.<sup>28</sup> The business signage case has been permanently enjoined after a Tennessee judge ruled “It would do a disservice to the First Amendment to judge the Act for anything other than what it is: a brazen attempt to single out trans-inclusive establishments and force them to parrot a message that they reasonably believe would sow fear and misunderstanding about the very transgender Tennesseans whom those establishments are trying to provide with some semblance of a safe and welcoming environment. The Act fails the constitutional standard that actually applies to it, and the inquiry should end there.”<sup>29</sup> Though the school bathroom bill faced a court challenge as well, it is still in effect after the two students on behalf of whom the case was brought, moved out of state citing the hostile environment at the schools.<sup>30</sup> Eight laws curtailing trans athletes’

ability to participate in sports intended for their gender went into effect in seven different states in 2021 alone, many of them incorporating virtually identical language:<sup>31</sup> public-school-sponsored intramural and interscholastic athletic teams and clubs must be designated as male, female, or coed, with membership to be determined solely according to “biological sex” as assigned at birth.<sup>32</sup> Proponents of these laws argue that certain gender equality and trans-affirming policies weigh in favor of such exclusions.

### *B. Trans-Affirming Legislation*

During the 2021 legislative session, fewer states introduced trans- and LGBTQ-affirming bills, but there were some small successes. In 2021, the American Civil Liberties Union (“ACLU”) identified 40 “good” LGBTQ equality bills across; unsurprisingly, none of these bills were introduced in any of the states that proposed overtly exclusionary policies.<sup>33</sup> Nevertheless, five of these 40 bills were enacted into law. We highlight examples relating to health care, and government administration and data collection.

Unlike Arkansas’ laws permitting health care insurers to refuse to cover gender-affirming services on the basis of conscience,<sup>34</sup> Washington state’s “Gender Affirming Treatment Act” prohibits insurers from denying or limiting coverage of medically necessary treatments prescribed “because of, related to, or consistent with a person’s gender expression or identity” as well as from imposing “blanket exclusions” on such treatments.<sup>35</sup> The law further delineates types of patients for whom these treatments may be prescribed, including “two spirit, ... nonbinary, intersex, and other gender diverse individuals,” in addition to transgender individuals,<sup>36</sup> thus explicitly creating space for patients who have traditionally been excluded from the health care debate.<sup>37</sup> California passed three positive laws in 2021 concerning public administration, specifically the modification of birth certificates,<sup>38</sup> the completion of death certificates,<sup>39</sup> and the establishment of a pilot data collection program focusing on gender identity and sexual orientation.<sup>40</sup> Under these new laws, a person can request, the issuance of a new birth certificate reflective of their gender identity (including an option for nonbinary), such that their “legal gender” conforms with their gender identity.<sup>41</sup> Additionally, California death certificates are to be issued with the decedents’ reported gender identities rather than biological sex, unless other identifying documents specify differently.<sup>42</sup> Finally, the California State Department of Health now collects and tracks these data points for all suicides and homicides in six pilot counties “to encourage a better understanding of



disparities in mortality in rate in the LGBTQ community” and support responses to such disparities.<sup>43</sup>

### *C. Summary Thoughts*

The importance of the policy debates and decisions happening in our state legislatures over civil rights and basic human rights for transgender and nonbinary people cannot be overstated. These state actions not only directly impact people's lives, health, and welfare of T&N people, but they also shape our vision of ourselves as a society and a larger community. In other words, they impact T&N people by shaping the contexts within which they receive services and engage with their communities and, also, by creating an overarching social landscape within which anti-trans sentiment and rhetoric cultivate misunderstanding of, hostility towards, and even violence against trans folks.<sup>44</sup> One parent of a trans youth expressed, “I have nightmares about [my daughter's] future already... I already have obstacles in place because she's trans. We weren't exactly excited to find out that she was trans -- it's scary. I lay in bed and think about whether she'll get a job one day or whether she'll find a partner, or will she be murdered by somebody simply for existing.”<sup>45</sup> Trans rights have become a politicized topic with T&N people as pawns and recipients of mounting hostility rather than simply about access to fundamental health and other human needs.<sup>46</sup> For T&N people, social justice includes health equity, legal representation, and social inclusion, among others. In addition to codified human rights, shifting social norms and lowering stigma can be achieved by policy that is explicitly antidiscriminatory and intended to protect and expand resources and opportunities.<sup>47</sup> Dean Spade argues for radical legal reform for trans liberation and justice that includes examining the role of policies in trans peoples' lives, particularly those policies that create conditions that diminish their “life chances” and shorten their lives.<sup>48</sup>

Civil rights will not be enough; we need social rights as well. Gender-based oppression is not only or primarily accomplished through the power of the states: police, courts, and laws... To make it possible for people to transcend gender lines, we must not only change laws and policies, we need to change social attitudes and raise awareness of gender harassment.<sup>49</sup>

This symbolic value is particularly important, given that these debates and decisions are occurring in an increasingly polarized sociopolitical environment.<sup>50</sup>

## **III. Why Transgender and Nonbinary Gender Affirming and Inclusive Policy Matters**

Harmful policies explicitly and implicitly impact the lives of T&N people. The language and punishments proposed in bills intended to limit the rights and resources of gender diverse people create a hostile environment — even when they do not pass. They convey the message that trans people are perceived as a threat and invalid. Having what Dean Spade calls “life chances”<sup>51</sup> up for debate is corrosive to T&N wellbeing. Public policy is a social determinant of health and wellbeing,<sup>52</sup> and it shapes people's experiences of other social determinants of health (SDOH). For example, laws prohibiting discrimination in schools and by employers implicate all of the other SDOH: educational access, community context, access to housing, economic stability, and access to healthcare.<sup>53</sup> As such, policies have individual, organizational, and social implications that must be considered. Next, we will discuss direct and indirect implications for T&N people at each level.

### *A. Implications for Individuals and Public Health*

Consistent with previous stigma research, T&N individuals often report that they are concerned with the lack of protective policies that are inclusive of their gender identity and expression, especially when this absence is used to delegitimize their gender and claim to basic human rights.<sup>54</sup> Stigma experienced by T&N people, due to discrimination on the basis of their socially nonconforming gender identities, contributes to increased depression, anxiety, and suicidality.<sup>55</sup> In particular, misgendering (especially among those who use they/them pronouns) has been found to be positively associated with psychological distress.<sup>56</sup> Further, a lack of protective policies can contribute to internalized stigma (e.g., inferiority) and increased discrimination, while inclusive protective policies are more likely to promote equity and invoke community belonging.<sup>57</sup> Despite research indicating a need for interventions to *support and protect* T&N youth to reduce the risk of adverse mental health outcomes, the opposite is happening and instead, these youth are the ongoing targets of anti-trans bills. The deleterious effect of these bills on their mental health and wellbeing is a public health concern. The 2021 National Survey on LGBTQ Youth Mental Health found disproportionately high rates of discrimination and concerning mental health outcomes, and it connected these with issues such as conversion therapy and lack of access to gender marker changes, which are also subjects of current policy initiatives.<sup>58</sup> T&N

youth reported experiencing symptoms of generalized anxiety disorder (77%) and major depressive disorder (70%). Even more dire, 52% of T&N youth had seriously considered attempting suicide and 20% had attempted suicide in the last year. Nearly a quarter of transgender and nonbinary youth (24%) had experienced discrimination based on their sexual orientation or gender identity in the past year, and the accumulation of multiple types of discrimination was positively correlated with attempted suicide in the last year. Those who were subjected to conversion therapy reported more than twice the rate of attempting suicide (19%) compared to cisgender LGBTQ youth who were not (9%). This startling data illustrates the harm of conversion therapy, and it is consistent with the condemnation of this practice by professional mental health associations.<sup>59</sup> This is why advocates seek formal bans of practices to change one's sexuality or gender identity.

Another protective policy that influences health outcomes for youth is the ability to change legal documents (e.g., name and gender markers on driver's licenses and birth certificates), which is associated with lower rates of suicide attempts. Higher rates of suicidality among T&N youth have been attributed to lack of support, social stigma, and internalized transphobia related to their gender nonconformity.<sup>60</sup> Unsurprisingly, T&N adults also experience adverse mental health impacts from discrimination and stigma; for instance, 41% of respondents to the National Transgender Discrimination Survey reported attempting suicide, compared with 1.6% in the general population.<sup>61</sup> Historically, bathrooms have been a battleground of human rights movements for Black people and other people of color, women, people with disabilities, and now for transgender people.<sup>62</sup> Though the majority of anti-trans bathroom bills have not passed, the repeated proposals and heated discourse around bathroom bills are harmful to T&N people. Bathroom bills place T&N people at risk of violence from verbal and physical assault and mental health risks as a result of facing daily suspicion, harassment, and hostility.<sup>63</sup> In a study by the UCLA's Williams Institute, nearly 70% of transgender participants reported experiencing discrimination when trying to use gendered public restrooms.<sup>64</sup> According to the 2015 U.S. Transgender Survey (USTS), bathrooms are increasingly dangerous spaces for transgender persons at school, work, and other public locations.<sup>65</sup> The majority (59.0%) of respondents reported avoidance of bathrooms for fear of harassment or other problems, of which 89% reported "holding it," 52% reported limiting fluid and food intake to limit necessary bathroom use, and

12.0% reported urinary tract infections or related infections as a result. In school, transgender students reported significantly less perceived safety than their cisgender counterparts, and that their relationships between gender and school safety was significantly mediated by feeling safe to use the bathroom.<sup>66</sup> Further, being denied access to bathrooms has been linked to reduced mental health and increased suicidality among T&N college students.<sup>67</sup> It has been established that minority stressors<sup>68</sup> have a cumulative effect on mental and physical health,<sup>69</sup> including diminishing psychological wellbeing.<sup>70</sup> Further, chronic exposure to stressors in people's residential, occupational, and other environments can have a biological impact on them, which has been called "biological weathering."<sup>71</sup> In other words, "stress-mediated wear and tear on the body" can contribute to health disparities.<sup>72</sup> These findings have been extensively studied among Black and Indigenous populations, and these studies have exposed the connection of marginalization associated with breast cancer, chronic inflammation, accelerated aging, and intergenerational trauma.<sup>73</sup> Though LGBTQ research is just beginning to explore the mental health and biological effects of marginalization, the existing literature shows more anxiety among children with gender dysphoria,<sup>74</sup> more reported health-related problems among LGBTQ individuals who experience greater levels of microaggressions,<sup>75</sup> and correlations between LGBTQ-based victimization and high risk for depression and PTSD symptoms.<sup>76</sup> A study of 65 healthy transmen showed elevated diurnal cortisol levels throughout the day due to transitioning identity stress related to public restrooms, which particularly highlights the direct connection with bills about bathroom usage.<sup>77</sup> The given chronic experiences of transphobia and discrimination among T&N individuals and the accumulative biological weathering support an argument for policy as a social determinant of health.

### *B. Organizational Implications*

Educational and healthcare settings represent two indicators of poor social determinants of health.<sup>78</sup> Minority stressors<sup>79</sup> (e.g., gender-based microaggressions, aggressions, and discrimination) contribute to reduced health and wellbeing, including internalized transphobia.<sup>80</sup> Unlike other life arenas, educational and healthcare settings are necessities in people's lives and are critical areas for T&N protections and disruption of harmful policy and practice.

Though the hostility of school environments for T&N youth have been well established,<sup>81</sup> and this hostility has been found to severely compromise the

psychosocial wellbeing of LGBTQ youth,<sup>82</sup> research has also found that inclusive school policies can *protect* against adverse mental health outcomes.<sup>83</sup> The 2019 National School Climate Survey found that the majority of students (79.1%) reported any form of anti-bullying policy at their school, only 12.5% of T&N students reported that their school had a policy or guidelines regarding T&N students.<sup>84</sup> When a school had a *comprehensive* harassment policy (compared to a generic policy that did not include sexual orientation or gender identity and expression), LGBTQ students were less likely to hear negative remarks about gender expression and transgender people, more likely to report incidents, and school staff were more likely to intervene. Research has found that some teachers report not knowing how to affirmingly engage with gender minority students (e.g., bathroom usage, pronouns),<sup>85</sup> indicating a need for ongoing gender-inclusive training. When gender-inclusive policies were present, T&N students reported better experiences with name and pronoun usage, access to bathrooms and locker rooms that aligned with their gender, and gender expression (no gendered dress codes).<sup>86</sup> T&N students in schools with such policies were less likely to miss school and reported a greater sense of belonging to their school community.<sup>87</sup> T&N people are a medically underserved population<sup>88</sup> who face pervasive discrimination in healthcare access.<sup>89</sup> Healthcare settings are sites of systemic microaggressions, both when seeking urgent care in emergency rooms and gender-affirming care from primary care providers.<sup>90</sup> “It is frustrating, but it’s also definitely invalidating because you have to sit through a very uncomfortable situation anyway because nobody really wants to be at the doctor and misgendered, it’s like I’m already not feeling well, you have to kick me while I’m down, too?”<sup>91</sup> T&N individuals continue to be invisible in or ignored by health care systems through informational erasure (e.g., unprepared health providers) and institutional erasure (e.g., lack of trans-inclusive forms and policies).<sup>92</sup> For example, when insurance policies for transitional surgeries are written exclusively for transitioning from male to female or female to male, a claim from a nonbinary person could be denied. Primary barriers to accessing gender-affirming health care include difficulty finding a trans-affirming provider or a provider who offers services related to medical transitioning, verbal mistreatment (i.e., abusive language) or physical mistreatment (i.e., rough handling) within healthcare settings (including by provider), and denial of care (by provider and insurance).<sup>93</sup> Access to healthcare is also intertwined with employment discrimination and health insurance, considering T&N high

rates of unemployment (15%; three times the national average), lack of insurance (14%), and living in poverty (29%).<sup>94</sup> As a result of healthcare mistreatment, some T&N people seek gender-related clinics and professionals, which can be limited in some geographical areas.<sup>95</sup> Despite progress, such as the World Professional Association of Transgender Health (WPATH) Standards of Care that establish guidelines for practitioners to provide gender-affirming care,<sup>96</sup> T&N individuals are 2.34 times more likely to be denied care across their lifetime compared to their cisgender LGB counterparts.<sup>97</sup> T&N adults who have experienced discrimination from medical professionals may withhold information or postpone care,<sup>98</sup> and fear of negative experiences has led some T&N individuals to self-treat<sup>99</sup> or to pass as cisgender to avoid discrimination.<sup>100</sup> Another important consideration is that health care practitioners report feeling ill-equipped to serve the T&N patients.<sup>101</sup> As such, “The existence of an actual trans person within systems such as health care is too often unanticipated and produces a social emergency of sorts because both staff and systems are unprepared for this reality.”<sup>102</sup> Conversely, when T&N adults had gender-affirming primary care physicians, they were eight times more likely to have pursued a medical intervention than those without.<sup>103</sup> Professional organizations also can influence policy and social change by taking a stand against anti-trans policies and advocating for protections. Similar to how the mental health associations collectively stood up against conversion therapy, medical associations (i.e., American Academy of Pediatrics,<sup>104</sup> Pediatric Endocrine Society<sup>105</sup>) have publicly opposed anti-trans bills that attack trans rights. The American Medical Association called anti-trans bills that could prohibit access to gender-affirming transitional care for minors “a dangerous intrusion into the practice of medicine” and could have “tragic health consequences, both mental and physical.”<sup>106</sup>

### C. Systemic and Societal Implications

In addition to the importance of understanding individual and interpersonal stigma, structural stigma is also critical to the health and wellbeing of T&N people.<sup>107</sup> Structural stigma helps explain why some individuals flourish and why others do not.<sup>108</sup> Policy, and legislative policy in particular, can perpetuate and entrench stigma and discrimination, which causes adverse health impacts, or it can support and protect people.<sup>109</sup> Exclusionary or harmful policies are forms of structural stigma that uphold health inequities and perpetuate social stigma. For example, religious exemptions policies have created legal exemptions for



discrimination, such as doctors refusing transition-related care to T&N patients,<sup>110</sup> which perpetuate the acceptability of restricting and denying health care and services to T&N people.<sup>111</sup> Additionally, hostile public discourse around trans-related policies (e.g., bathroom bills) magnify trans-invalidating hate speech and heighten safety concerns, the impact of which has yet to be studied but is acutely felt by T&N individuals.

Cisnormative assumptions in policy reinforce oppression systemically and organizationally and require change at the same systemic levels.<sup>112</sup> To mitigate these adverse outcomes, antidiscrimination legislation and other protective policies must encompass sexual orientation, gender identity and expression.<sup>113</sup> While sexual orientation has been accepted for inclusion in protective policy, protections for gender

awareness and advance T&N affirming advocacy. The transgender equity impact assessment tool provides a systematic way of analyzing policy for key factors that impacts trans lives. Though it is not a comprehensive evaluation tool, the six steps of the transgender equity impact assessment tool provide a framework that can be expanded upon and informed by current equitable conditions (see Figure 2).

#### *Step #1: Engage Community Members*

Before analyzing any policy, it is important to create a diverse, engaged, and ongoing community advisory board (CAB) in the state or locality wishing to implement the equity tool. The CABs should encompass T&N community stakeholders, including community leaders, students, and families. At times, it may be appropriate to bring in additional community mem-

**In response to the political climate towards T&N people, we propose a transgender equity impact assessment tool for policy analysis. The tool is designed to be used in three primary ways: 1) to support systematic critique of anti-trans policies and illuminate their negative health and discriminatory impacts; 2) to aid the development of affirming and equitable policies for T&N communities, especially by those who are not familiar with T&N issues; and 3) to raise public awareness and advance T&N affirming advocacy.**

identity and expression has been met with greater resistance. In particular, nonbinary inclusion in non-discrimination policy has been debated.<sup>114</sup> Some have argued for policy and research explicitly intended to reduce the structural stigma associated with marginalization.<sup>115</sup> With this approach, policy could become transparent about intended public health impacts while also educating the public; this could help highlight the reciprocal responsibility between policy and societal norms.<sup>116</sup>

#### **IV. The Transgender Equity Impact Assessment Tool for Policy Analysis**

In response to the political climate towards T&N people, we propose a transgender equity impact assessment tool for policy analysis. The tool is designed to be used in three primary ways: 1) to support systematic critique of anti-trans policies and illuminate their negative health and discriminatory impacts; 2) to aid the development of affirming and equitable policies for T&N communities, especially by those who are not familiar with T&N issues; and 3) to raise public

members on a policy-by-policy basis (i.e., T&N youth to analyze high school sports regulations for transgender athletes). Community advisory boards (CAB) are a common form of community engagement.<sup>117</sup> Utilizing CABs in policy work can increase trust with communities and increase the likelihood that policy will lead to improved outcomes for community members. For example, the inclusion of CABs in sugary drink tax policies are considered a best practice for ensuring sustained public support for these policies and that tax revenues are distributed in ways that will benefit community members who are most marginalized by structural health inequities, addressing concerns about tax regressivity.<sup>118</sup> In the gender inclusivity context, when unsure about appropriate affirming language and if a policy could be misinterpreted, a CAB can offer insight about language and lived-experience regarding how policy has been leveraged to assist and hinder T&N individuals.

Concerns about community involvement relate to meaningful engagement on the part of the organizers — concerns including co-optation,<sup>119</sup> tokeniza-

tion,<sup>120</sup> or even merely listening without appropriately responding. Instead, effective community advisory boards require clear parameters in terms of time commitment, roles (educate? make policy recommendations?), and decision-making power.<sup>121</sup> A CAB should have authority to make decisions, shape policy, and in some cases (such as for state or local agency policy) set policy; otherwise, members can become frustrated if their advice is disregarded or if they feel they have no influence over policy outcomes and are just “window dressing.”<sup>122</sup> Similarly, compensation for time is essential to an effective CAB, particularly one composed of marginalized populations who may be experiencing financial and other hardships.<sup>123</sup> When honored as direct connections to community knowledge, CABs can be effective tools for community-responsive policy, trouble-shooting, and community buy-in.<sup>124</sup> Community engagement in policy making can be empowering for community members and can contribute to a new social construct “in which society places greater trust in — and empowers — the public to play a far more active role in the functioning of their government... there is inherent value in rejuvenating civil society and shifting the focus away from unsustainable entitlements to personal responsibility and solidarity.”<sup>125</sup> Community engagement is essential to effective and equitable policy development and thus is central to the transgender equity impact assessment tool.

There are many approaches to creating a CAB.<sup>126</sup> Once created, a CAB can be used on short notice, allowing for a quick and effective response. It is worth reiterating that compensation for time and expertise is an ethical necessity, particularly when considering the emotional labor as well as the value of time being asked of T&N people.<sup>127,12</sup>

#### WAYS A CAB CAN BE HELPFUL:<sup>128</sup>

- Creating a new policy.
- Reviewing drafts of a policy for appropriate language and content.
- Illuminating less obvious harms or negative unintended impacts to T&N people of potential or existing policies.
- Surveillance of proposed policies and enforcement of existing policies, to inform policymakers, other decision-makers, and advocates about both affirming and harmful policies.

A CAB also offers a dual direction of communication that can build trust with communities and provide a direct line of response to community members when issues arise in their communities.

In addition to community members, consultation with researchers, educators, medical and mental health providers, and organizational leadership with work or life experience with the community can provide valuable expert perspectives. Additionally, such professionals may provide expert testimony or perspectives when such is needed. Policymakers could benefit from having ready access to a network of experts across topic areas. However, professional experts cannot replace community experts.

#### *Step #2: Assess for Human Rights*

Once a policy has been identified, the first consideration is whether it is protecting or threatening the human rights of T&N people. This step of analysis looks for explicit and implicit purposes of the policy. Begin with the following prompts:

- What is known about this policy and topic in the context of T&N people?
  - Have similar versions been proposed before? If so, what was said about them?
- Who is proposing this policy and what is their history on T&N and other civil rights issues?
  - What other types of bills or policies have the lead authors or proponents supported or opposed in the past?
  - What is the stated intent of the policy?
  - What groups support or oppose this kind of policy??
- Does the policy have *explicit* or *coded* (implicit) gendered language which is likely to impact T&N individuals?
- What, if any, T&N human rights are explicitly identified in this policy?
- If not explicit, what T&N human rights arguably could be impacted by this policy, and in what ways?

When assessing language for explicit and implicit impact on T&N people, a CAB has an essential role in this work. A policy might not appear on its face to impact T&N individuals. However, critical assessment of the language by community members can reveal implicit impacts on T&N people. One such example is a policy on school sports that does not explicitly mention transgender athletes.<sup>129</sup> However, codifying access to sports only according to biological sex is an indirect way of discriminating against T&N individuals.

If the policy is found to be protective of T&N human rights, continue through the steps to identify supporting evidence about what and how rights are protected with particular attention to step #4. If the policy

threatens human rights, the subsequent steps will help to substantiate the harm to T&N individuals. Many policies will not explicitly identify their benefits or harms; thus, the following steps will help to identify more nuanced impacts of policy on T&N individuals.

*Step #3: Assess the Impact on T&N People's Ability to Access Resources and Opportunities or "Life Chances"*

After the human rights framing of the policy has been assessed, Step #3 explores deeper implications of the policy for T&N individuals. Key areas of access include public accommodations, housing, education, employment, and gender-affirming health care, including puberty blockers, hormone therapy, and surgeries.

Again thinking about the explicit and implicit intent of the policy, answer the following prompts.

- Will this policy increase access to basic needs (bathrooms, shelter, safety, education)?
- Does this policy explicitly allow T&N people access to opportunities or resources (i.e., adoption, marriage, service in the military) that are allowed to cisgender people?

If access is increased, the analysis in Step #4 will help to identify if language is affirming to all gender diverse people and areas for possible improvements. If access is explicitly hindered or prevented, identify the barriers and their underlying rationale to help with developing counterarguments. If the policy creates obscured or implicit barriers, identify those barriers to make them visible, drawing upon research as much as possible, and explain how this policy can be used to limit access for T&N individuals. If the policy neither increases nor decreases access to life chances, ask whether it can be amended to increase equity for T&N people? For example, if the policy is about the expansion of Medicaid coverage, can trans-affirming care be added?

*Step #4: Assess the Language*

Language is neither innocent nor neutral<sup>131</sup> and carries important social norms and meanings, such as rules, privileges, and punishments.<sup>132</sup> Similarly, policy language shapes social and cultural norms and understandings. It also can provide clear indicators of the policy's intended goal, as well as the motivations and mindsets of the policy's authors and supporters. Courts rely on the specific words in a statute or ordinance to interpret laws and understand legislative intent, so policymakers know that policy language matters. Thus, the specific words used in a policy can have far-reaching implications that should be given appropriate consideration.

It is less likely that T&N community members would recommend outdated, offensive language, which is often seen among policies written by those outside of the affected populations. Whether the policy is likely to have explicit or implicit harmful or positive impacts on T&N people, the words in the policy should be assessed for the following:

- Does the policy use outdated language?
  - If yes, note this as another substantiating argument for not supporting the policy.
- If the policy is otherwise protective and expands life chances, how could the language be changed to improve this policy?
- Is the language used to affirm and be inclusive of gender diverse persons? (i.e., culturally appropriate language used correctly)
  - If not, can the language be changed?
- Does the policy language affirm nonbinary/gender-expansive people (i.e., it does not refer to people exclusively as being "man" or "woman," and also includes people who are gender fluid, agender)?
  - If not, can the language be changed to be expressly inclusive of people of nonbinary genders?
- Could the language reasonably be used directly or indirectly (through interpretation) to support gender-based exclusion?
- Does the policy use words that have a specialized legal meaning or significance that might not be apparent on its face? This may be an area where help from an expert or legal technical assistance provider may be needed to identify such language.

As a caveat, language is a social construct that is perpetually evolving and changing. With this understanding, the most current best practices in equitable language guided by T&N community members should be used.

*Step #5: Assess Application in Practice*

The purpose of this step is to assess the policy's practical application. This analysis is a culmination of explicit and implicit rights, access, and language that could directly and indirectly impact T&N community members.

- Does the policy language clearly describe what it requires or prohibits, and how it is to be implemented? Vagueness and lack of clarity are a sign of a poorly-drafted policy, and reason enough

## Box 1

**A Truncated Example Of a Current Policy**

**Policy:** Participation in School Sports (Indiana HB1041)

**Purpose of the Transgender Equity Impact Assessment Statement (TEIAS):** The TEIAS is a proactive tool to evaluate policies and the anticipated impact on T&N individuals in a collaborative decision-making process with the community...

**Purpose of IN HB1041:** To restrict participation in school sports to same-sex teams according to assigned sex at birth or coeducational/mixed teams, which would implicitly ban transgender youth from participating in school sports.

**HB1041 Synopsis:** "Participation in school sports. Requires, for purposes of interscholastic athletic events, school corporations, public schools, nonpublic schools, and certain athletic associations to expressly designate an athletic team or sport as one of the following: (1) A male, men's, or boys' team or sport. (2) A female, women's, or girls' team or sport. (3) A coeducational or mixed team or sport. Prohibits a male, based on the student's biological sex at birth in accordance with the student's genetics and reproductive biology, from participating on an athletic team or sport designated as being a female, women's, or girls' athletic team or sport."

**Transgender (In)Equity:** HB1041 impinges on the rights of T&N athletes to participate in sports teams that correspond with their gender by requiring binary sex-based teams. These restrictions force nonbinary individuals who do not identify as exclusively male or female and binary transgender individuals (trans boys and trans girls) to either not participate in school sports or to be part of a sports team that does not match their gender. It specifically targets trans girls for exclusion. HB1041 also would force T&N students to out themselves publicly and creates a high risk of emotional and physical abuse for them.

**Anticipated Impact:** If passed, HB1041 would perpetuate stigma and exclusion of T&N youth as they navigate significant social and emotional development stages. Dr. J. D. Fortenberry, the founder of Indiana's only adolescent gender health program, testified against anti-trans sports bans, speaking about the adverse social, emotional, and biological impact of such discrimination and exclusion. T&N youth face higher rates of depression, anxiety, and suicidality due to exclusion and stigma. In response to HB1041, S. Ames, the director of advocacy and government affairs for the Trevor Project, stated "[Indiana's] bill claimed to solve a problem of 'fairness' in school sports...that didn't exist, but its negative impacts on the mental health and well-being of trans and nonbinary youth — young people who already face disproportionate rates of bullying, depression, and suicide — are very real."<sup>133</sup> In other words, HB1041 would only exacerbate these risk factors for T&N youth contributing to an already significant and well-documented public health concern.

**Recommendations:** Based on the literature, expert advice, and the community advisory board, HB1041 has been identified as a policy harmful to T&N youth. The ACLU has recommended contacting your local representative to ask them to vote no on HB1041...

**Policy Supporters:** Rep. Michelle Davis (author), Rep. Chris Jeter (co-author), Rep. Joanna King (co-author), Rep. Robert Heaton (co-author), and Sen. Stacey Donato (sponsor).

**Policy location:** <http://iga.in.gov/legislative/2022/bills/house/1041#document-8c4d8ab1>

**Contributors:** M. K. Kinney, T. E. Pearson, and J. Ralston Aoki

to discard or not support any policy. Vague laws are vulnerable to legal challenge. Moreover, if a policy is unclear in such a way that it could be interpreted to limit or deny the rights of T&N individuals, it is particularly dangerous.

- How could the policy be interpreted?

Some well-intended policies that appear to be inclusive might not be as inclusive in practice. For example, some organizational bathroom policies have used language such as "a person can use the bathroom that aligns with their gender." This might appear to be an affirming policy; however, in practice, this policy can still be exclusionary to nonbinary people if only

binary gender (men and women) bathrooms are available. A final consideration is whether or not the policy consciously contributes to progressive social change. Ultimately, political work should move our society towards a better world for all of us.

#### *Step #6: Create a Transgender Equity Impact Assessment Statement*

The final stage of the tool is to produce a transgender equity impact assessment statement (TEIAS), drawing from the research, discussion, and analyses conducted as part of the previous steps. Recommended substantive content for a TEIAS includes:<sup>132</sup>



- Purpose of the TEIAS (could be brief boilerplate statements).
- Policy synopsis (could be copied from the policy for transparency, if a synopsis is available and is accurately written).
- Transgender equity considerations (summarizes human rights protections or restrictions, access to resources and opportunities, based upon input from a CAB, professional experts, and research).
- Anticipated impacts (based on input from a CAB, professional experts, and research, including possible (mis)interpretation and enforcement). This section provides crucial information for raising public awareness about the experiences and existence of T&N people and how the policy (and others like it) are likely to impact their health and lives.
- Recommendations (based on input from a CAB, professional experts, and research).
- Transgender equity impact assessment statements can be used to:
  - Publicly disseminate information about the harmful mental and physical health impacts of discriminatory and unfair policies for T&N people and communities in general
  - Raise awareness about systemic transphobia, discrimination, and unjust and unfair treatment of T&N people
  - Garner support and advance advocacy for affirming and inclusive legislation for T&N people
  - Share across the aisles to recruit political co-authors and supporters
  - Create a repository of information and research that can be used in other jurisdictions when similar policies are proposed or being analyzed

A primary strength of the TEIAS is that they could raise awareness in a concise and easily digestible format for most laypersons, as well as help advocates in multiple jurisdictions who seek to oppose harmful policies and advance inclusive, affirming policies. Similar to the growing wave of racial equity impact assessment tools, as impact statements such as this become used more frequently and, eventually, are normalized as part of policy development processes, this will increase public understanding of T&N human rights and public policy issues.<sup>134</sup>

#### *D. Who Should Use the Transgender Equity Impact Assessment Tool?*

The transgender equity impact assessment tool is intended to be used by anyone interested in analyzing policy for T&N inclusion and raising awareness

about factors impacting T&N communities. The level of comprehensibility for the tool makes it appropriate and useful for a wide range of professional, educational, and lay applications. Legal scholars or others doing policy analysis and/or concerned legislators can use the tool to evaluate policies that exist or are being proposed for their impacts on T&N communities. Strategic policy analysis and decision-making could be shared with CAB members and expert council. Additionally, the use of the TEIAS models transparency in political exchange. Within educational settings, the tool provides a concrete practice tool that could be used in policy, advocacy, and diversity courses (i.e., law, public health, social work, sociology, women's and gender studies) to understand the implications of policy on T&N lives. For example, an assignment can be structured for individuals or groups of students to complete the tool for a specific policy of interest. Laypersons, including concerned citizens, allies, community members, and activists, can use the tool for critiquing policies anytime.

The TEIAS tool can be used across policies — whether they are gender-affirming, ambiguous impact, or explicitly harmful — to raise awareness of both benefits and harm. In particular, the tool can be used with openly discriminatory anti-trans legislation to critique the policy and raise public awareness for those who may not understand the harm to T&N people. Similarly, the impact statement can be used as a Zap<sup>135</sup> to disseminate critical information about a harmful policy to the public and hold lawmakers and organizations accountable for their policy actions. The tool also stresses the existence and benefit of CABs and their role in policy work. Ultimately, as users become more experienced with the tool, they are likely to become better at identifying areas for improvement in policy and gaps in practice/protections for proposing new policy.

For jurisdictions or organizations that already use a racial equity or health equity impact assessment or similar tool, specific questions from the TEIAS could be added (rather than using a separate TEIA) to ensure that T&N issues are being addressed. The intersectional nature of human identity should be a foundational consideration of all equity tools. Given the current political climate, the transgender equity impact assessment tool is timely in serving community advocates, educators, and policymakers as they seek to promote policies that positively impact trans communities.

#### *E. Case Study*

To demonstrate the effectiveness of this tool in practice, we now apply it to the Arkansas “Gender Integrity

Reinforcement Legislation for Sports (GIRLS) Act,”<sup>136</sup> initially proposed by the state’s Attorney General as “a preemptive effort” to curtail a then-recent executive order she feared would interfere with children’s, especially young girls’, ability to “compete on a level playing field.”<sup>137</sup> The law defines “sex” to be immutable and determined by a person’s anatomy at birth. It then requires any school (from elementary to postsecondary) located in Arkansas that receives state funds, and any Arkansas schools that play against these schools in interscholastic, intercollegiate, intramural or club sports, to designate their teams as being specifically for men or boys, for women or girls, or “coed or mixed.” People who are of the “male sex” are prohibited from playing on teams or sports that are designated for “females.” Any school that “knowingly” violates this can be sued by the Attorney General and subject to whatever legal relief is allowed by law, as well as being barred from receiving funds from “any public source.”<sup>138</sup> The legislators responsible for this law invoked the rationale behind Title IX protections and statements by the late Justice Ginsburg to justify the restrictions imposed: “[i]nherent differences’ between men and women ... remain cause for celebration, but not for the denigration of the members of either sex or for artificial constraints on an individual’s opportunity.”<sup>139</sup> Because girls’ and women’s athletic opportunities are still limited, the legislators reasoned,<sup>140</sup> and because boys and men have “physical and hormonal advantages” over their female counterparts,<sup>141</sup> girls’ sports need to be insulated from such unfair advantages to maintain equality between the sexes.

Despite this attempt to leverage a seminal decision in equal rights jurisprudence to its advantage; however, the GIRLS Act nevertheless fails at every step of the analytical framework established by the tool we propose here. A staunch Republican with ties to the National Rifle Association, pro-life movement, and Federalist Society,<sup>142</sup> Arkansas Attorney General Leslie Rutledge is a proven conservative dedicated to “fighting the woke agenda of [the] liberal left.”<sup>143</sup> These values are shared by many of the legislators who co-sponsored this law after Rutledge first introduced it, including the primary author Senator Missy Irvin, who has been recognized for her efforts “supporting persons with mental illness [and] substance abuse disorders” and founded the Human Rights for Kids Organization.<sup>144</sup> Even so, the GIRLS Act makes no mention of T&N people’s rights, or of human rights at all, instead focusing entirely on what it characterizes as equal opportunities for young girls.

Assuming *arguendo* that the law’s purpose is to “promote equality in sports and access to ath-

letic opportunities for girls and women,” the analysis required by a TEIA highlights a critical gap that undermines this goal: The law sets no explicit restrictions on whether girls and women can participate in boys’ or men’s sports.<sup>145</sup> Instead, it only expressly forbids AMAB people<sup>146</sup> from participating on female-only sports teams,<sup>147</sup> implying a similar restriction on AFAB people<sup>148</sup> participating on male-only sports teams but excluding nonbinary individuals altogether. These omissions carry significant misogynistic, paternalistic, and transphobic implications, and suffer from fundamental flaws in the act’s logic. In other words, the policy argues for the explicit protection of (AFAB) girls and women, but does not mention any parallel protections for (AMAB) boys and men, elucidating the proponents do not view trans women as women nor trans men as men. Girls, by any definition, are erased from the narrative: trans girls cannot play, and trans boys are not worth mentioning at all. Additionally, the law does not offer any reasons why this protection is needed other than merely stating that athletic opportunities for girls and women are still limited compared to those available to their male counterparts. By neglecting to acknowledge deeply rooted systems of structural sexism, particularly gender stereotypes about athleticism and the systemic underfunding of women’s sports, the GIRLS Act fails to justify itself.

Additionally, the act leaves no room for nonbinary athletes to participate in either boys’ or girls’ sports; even “[c]oed or mixed” activities are designated as such based on their participants’ “immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth,”<sup>149</sup> such that athletes can be either male or female, but nothing else. In requiring athletic programs to be designated based solely on participants’ biological sex, the GIRLS Act forces nonbinary individuals to choose a gender, thus negating the experiences of the nonbinary community and reinforcing the very same archaic gender and sex stereotypes that have so severely limited women’s opportunities in the first place.

Finally, the law effectively perpetuates the same inequalities it purports to resolve by establishing a cause of action against programs found to be in violation. By stripping covered entities that knowingly violate the law of all funding “from any public source,” the GIRLS Act sets schools up to be completely divested of the resources they need to address the “lingering disparities” the Arkansas legislature set out to eliminate, a counterproductive means of enforcement that ultimately defeats the law’s initial purpose.<sup>150</sup>

### *F. Limitations of the Tool*

Some limitations exist with the use of the transgender equity impact assessment tool. First, the tool is a subjective assessment that may be hindered by one's implicit biases, for which reason we recommend using the tool in diverse teams, such as CABs. The tool is not comprehensive of all facets of risk and benefits to T&N individuals and communities. Additionally, (mis)interpretation is difficult to anticipate (e.g., Can this be interpreted to be used for gender-based exclusion?). Another important limitation is the lack of publicly available, easily accessible data about T&N populations, which is needed to understand the physical and mental health impacts of policies. T&N people are understudied; and because they make up a small percentage of the population (although likely to be underreported due to stigma and discrimination), studies are difficult to implement and need creative approaches and flexible funders. The limited available data is often behind paywalls,<sup>151</sup> inhibiting easy and affordable access for CABs, policymakers, and advocates. Further, interpreting and applying social science/public health data requires some specialized knowledge and familiarity with this kind of data, research methods, and often some kind of formal training, which expertise people using the tool for assessments may not possess. Lastly, the time frames of the legislative process can be very quick [typically, anywhere from a week to a month (which would be considered a long time) to develop and write an impact note]. This restricts the available time for research, CAB meetings, and other preparation for using the tool. When possible, standing ad hoc CABs and people with topical expertise can help to resolve some of these time limitations. In other words, rather than using the tool in response to a specific policy, the transgender equity impact assessment tool and CABs can be a process to begin ensuring the ongoing analysis of bills, education, coalition building, and advocacy. The initial time is an investment but will allow for a smooth and quick response, such as is currently needed.

### *G. Strengths of the Tool*

The transgender equity impact assessment tool can be used for ongoing strategic policy analysis and decision-making that is affirming of T&N people and communities. The development of the tool was informed by the Universal Declaration of Human Rights<sup>152</sup> and the 2015 USTS,<sup>153</sup> which identifies risk factors for T&N people. Further, the design of the tool is modeled on racial equity tools that provided structured strategies and products (e.g., impact statements) for policy analysis. Specific examples include the Montgomery

County, MD Racial Equity Impact Assessment Tool<sup>154</sup> and the Racial Equity and Social Justice (RESJ) Impact Statement.<sup>155</sup> The transgender equity impact assessment tool can be used at any level, including organizational, municipal, state, and federal. For Tribal communities and organizations, further and additional thinking by people grounded in Indigenous lived experiences would be important to ensure that any assessment tool aligns with the specific culture and values of the Tribe or Tribal organization.<sup>156</sup> The possibility exists for the tool to change and grow to become increasingly comprehensive or to be tailored for specific policy topics, such as healthcare policies. Though the tool can be used in direct response to a particular bill, the greatest benefit of the tool is as an ongoing way of examining policy in communities — especially in the current environment.

## **V. Conclusion**

In this paper, we presented a brief overview of the legal landscape of bills impacting T&N people. We made an argument for the adverse impact of discriminatory policies and the need for inclusive protective policies to address health inequities. We presented the transgender equity impact assessment tool as an instrument for raising public awareness about the impact of policy on T&N people. We conclude this paper with our goal for the future of policy work.

It is our hope that this paper and the transgender equity impact assessment tool create movement towards a future of policy work characterized by transparency and collaboration to improve the lives of all citizens, including transgender and nonbinary people. Policymakers have an ethical responsibility to conduct their work with intentional awareness and responsibility for the implications of those bills.<sup>157</sup> Anti-trans policies perpetuate transphobia and incite gender-based discrimination, which have no place in public policy. We hope the transgender impact assessment tool is used to facilitate discussion and hopefully lead to better public policy decisions and transparency in policy work. As equity impact statements become normalized, the goal is to cease the proliferation of anti-trans policies. By centering community in policy work, unintentional harm can be prevented and intentional harm can be faced with the collective power of the people. It cannot be overemphasized that community engagement is integral to policy work.

From classrooms to boardrooms, from reservations to city streets, transcending narrow gender norms can get you harassed, assaulted, or killed. Change won't come quickly; this struggle is just



beginning ... this is a movement whose time has come. Join us ... Get involved. Because gender rights are human rights, and the time for them is now.<sup>158</sup>

The current environment with increasing anti-trans bills has been described as “very dark, and there’s a strong sense among trans people that we are having the door slammed in our face just as we got our foot in the door;” however, T&N people have been urged to “stand up and fight with every breath that we have.”<sup>159</sup> And we encourage you to join us.

#### Note

The authors have no conflicts to disclose.

#### References

1. D. Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Durham: Duke University Press, 2015): 19.
2. P.M. Bailey, “Exclusive: 2022 Could be Most Anti-Trans Legislative Years in History, Report Says,” *USA Today*, available at <<https://www.usatoday.com/story/news/2022/01/20/2022-anti-trans-legislation/6571819001/>> (January 20, 2022).
3. *Id.*
4. M. Laviates, “At Least 7 States Proposed Anti-Trans Bills in First Week of 2022,” NBC News, January 7, 2022, available at <<https://www.nbcnews.com/nbc-out/out-politics-and-policy/least-7-states-proposed-anti-trans-bills-first-week-2022-rcna11205>> (last visited July 26, 2022).
5. The map shows states that have proposed anti-trans bills with one (lightest red) to as many as 14 states (dark red, e.g., Tennessee). “Legislative Tracker: Anti-Transgender Legislation,” Freedom for All Americans, available at <<https://freedomforallamericans.org/legislative-tracker/anti-transgender-legislation/>> (last visited June 30, 2022).
6. American Psychological Association, *Report of the APA Task Force on Gender Identity and Gender Violence* (Washington, DC: American Psychological Association, 2009): at 38; L. Feinberg, *Transgender Warriors: Making History from Joan of Arc to Dennis Rodman* (Boston: Beacon Press, 1996); H. Frohard-Dourlent, B.A. Clark, M. Doull, and E.M. Saewyc, “I Would Have Preferred More Options’: Accounting for Non-Binary Youth in Health Research,” *Nursing Inquiry* 24, no. 1 (2016): e12150; B. Vincent and A. Manzano, “History and Cultural Diversity,” in C. Richards, W.P. Bouman, and M.-J. Barker, eds., *Genderqueer and Non-Binary Genders* (London: Palgrave Macmillan, 2017): at 11-30.
7. J.L. Herman, A.R. Flores, T.N.T. Brown, B.D.M. Wilson, and K.J. Conron, *Age of Individuals Who Identify As Transgender in the United States*, Williams Institute Report (January 2017); *Transgender Issues: A Fact Sheet*, Transgender Law and Policy Institute, available at <<http://www.transgenderlaw.org/resources/transfactsheet.pdf>> (last visited June 30, 2022).
8. M.K. Kinney, *Learning to Thrive in a Binary World: Understanding the Gendered Experiences of Nonbinary Individuals and Ways to Bolster Wellbeing* (Indianapolis: Indiana University, 2021); I.H. Meyer and D.M. Frost, “Minority Stress and the Health of Sexual Minorities,” in C.J. Patterson and A.R. D’Augelli, eds., *Handbook of Psychology and Sexual Orientation* (New York: Oxford University Press, 2013): 252-266.
9. *Bostock v. Clayton County*, Georgia, 140 S.Ct. 1731, 1731 (2020); S. Mukherjee, “What the Supreme Court’s Landmark Ruling on LGBTQ Job Discrimination Means for Transgender Health Protections,” *Fortune*, June 15, 2020, available at <<https://fortune.com/2020/06/15/supreme-court-lgbtq-discrimination-ruling-vote-decision-sctus-transgender-health-care-protections-obama-trump-law-gorsuch/>> (last visited July 26, 2022).
10. M. Laviates and E. Ramos, “Nearly 240 anti-LGBTQ bills filed in 2022 so far, most of them targeting trans people,” NBC News, March 20, 2022, available at <<https://www.nbcnews.com/nbc-out/out-politics-and-policy/nearly-240-anti-lgbtq-bills-filed-2022-far-targeting-trans-people-rcna20418>> (last visited July 26, 2022).
11. R. Yearby, C.N. Lewis, K.L. Gilbert, and K. Banks, “Racism Is a Public Health Crisis. Here’s how to respond,” *Data for Progress Report*, September 2020.
12. Many racial equity assessment tools and processes have been developed, geared towards community organizations, non-profit governance, municipal governments, state and local government agency or department operations, state legislative processes, and so on. See, e.g., *Racial Equity Tools*, available at <<https://www.racialequitytools.org/>> (last visited June 30, 2022); National Association of Chronic Disease Directors, “Moving to Institutional Equity: A Tool to Address Racial Equity for Public Health Practitioners,” available at <<https://chronicdisease.org/moving-to-institutional-equity-a-tool-to-address-racial-equity-in-public-health/>> (last visited June 30, 2022); Local and Regional Government Alliance on Race & Equity, *Racial Equity Toolkit: An Opportunity to Operationalize Equity*, available at <[https://racialequityalliance.org/wp-content/uploads/2015/10/GARE-Racial\\_Equity\\_Toolkit.pdf](https://racialequityalliance.org/wp-content/uploads/2015/10/GARE-Racial_Equity_Toolkit.pdf)> (last visited June 30, 2022); Milwaukee, Wisc., Code § 108.03(2)(e) (2021); Council Office of Racial Equity, available at <<https://www.dcracialequity.org/>> (last visited June 30, 2022); Montgomery Cnty., Md., B. 27-19 (2019) (establishing a requirement for new legislation to go through a racial equity and social justice impact assessment process); Wash Rev. Code § 43.20.285 (2022) (establishing a health impact review process for legislation); Iowa Stat. § 2.56 (requiring new criminal law legislation to undergo limited review for impact on “minorities”).
13. *Id.*
14. Positionality statements are increasingly used in publications to briefly describe one’s insider/outsider position and the advantages and disadvantages of these positions as situated with the work. One’s positions and worldview can potentially have an impact on their work, including race, gender, sexuality, (dis)ability/chronic illness status, social class, religious/spiritual beliefs, ethics, political values, among others. S.L. Budge, S.L. Katz-Wise, E.N. Tebbe, K.A.S. Howard, C.L. Schneider, and A. Rodriguez, “Transgender Emotional and Coping Processes: Facilitative and Avoidant Coping Throughout Gender Transitioning,” *The Counseling Psychologist* 41, no. 4 (2013): 601-647; A.G.D. Holmes, “Researcher Positionality – A Consideration of Its Influence and Place in Qualitative Research – A New Researcher Guide,” *International Journal of Education* 8, no. 4 (2020): 1-10, at 1-3; D. Qin, “Positionality,” in N.A. Naples, R.C. Hoogland, M. Wickramasinghe, W. Ching, and A. Wong, eds., *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies* (Malden: Wiley-Blackwell, 2016); J. Wellington, A.-M. Bathmaker, C. Hunt, G. McCulloch, and P. Sikes, *Succeeding with Your Doctorate* (London: Sage Publications, 2005); P. Greenbank, “The Role of Values in Educational Research: The Case for Reflexivity,” *British Educational Research Journal* 29, no. 6 (2003): 791-801; P. Sikes, “Methodology, Procedures and Ethical Concerns,” in C. Opie, ed., *Doing Educational Research* (Los Angeles: Sage, 2004): 15-33.
15. See, e.g., M.A. Pember, “The Oglala Sioux Tribe Passes Hate Crime Law Protecting Its LGBTQ Citizens,” *Indian Country Today*, September 19, 2019, available at <<https://indiancountrytoday.com/news/the-ogla-sioux-tribe-passes-hate-crime-law-protecting-its-lgbtq-citizens>> (last visited July 26, 2022); S.-a.-d. Edmo and A. Ridings, eds., *Tribal Equity Toolkit*



- 3.0: *Tribal Resolutions and Codes to Support Two Spirit and LGBTQ Justice in Indian Country* (2017).
16. S. Simmons-Duffin, "Transgender Health Protections Reversed By Trump Administration," NPR, June 12, 2020, available at <<https://www.npr.org/sections/health-shots/2020/06/12/868073068/transgender-health-protections-reversed-by-trump-administration>> (last visited July 26, 2022).
  17. See *Bostock v. Clayton Cnty.*, *supra* note 9.
  18. *Gloucester County School Board v. Grimm*, 141 S.Ct. 2878, 2878 (2021).
  19. *Fulton v. City of Philadelphia, Pennsylvania*, 141 S.Ct. 1868, 1868 (2021).
  20. American Civil Liberties Union, "Legislation Affecting LGBTQ Rights Across the Country 2021," December 17, 2021, available at <<https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country-2021>> (last visited July 26, 2022).
  21. The evolution of marriage equality provides one example of this phenomenon, with state marriage equality laws and court decisions upholding marriage equality under state constitutions leading to social norm change and the invalidation of the federal law that defined marriage as between one man and one woman. See M.J. Higdon, "(In)Formal Marriage Equality," *Fordham Law Review* 89 (2020): 1351-1409, at 1356-1365; *Obergefell v. Hodges*, 576 U.S. 644 (2015) (called into question by *Dobbs v. Jackson Women's Health Organization* — S.Ct. \_\_\_\_ (2022)).
  22. Conversion therapy bans provide one example of where local governments have taken action to protect LGBTQ and T & N people beyond state law, leading to efforts to preempt local authority to enact such laws. Movement Advancement Project, *The Power of State Preemption: Preventing Progress and Threatening Equality*, (May 2018). For examples of where states have acted to preempt local authority to advance social justice before any local action was even taken. See H. Blair, D. Cooper, J. Wolfe, and J. Worker, *Preempting Progress: State Interference in Local Policy Making Prevents People of Color, Women, and Low-Income Workers from Making Ends Meet in the South*, Economic Policy Institute, Sep. 30, 2020. As noted below, the Arkansas law (prohibiting trans athletes from playing on teams that do not match their genders assigned at birth) discussed in the case study in Section E was adopted even though the lead proponent of the bill was unaware of any transgender athletes playing on school sports teams in the state.
  23. Ark. Code Ann. § 20-9-1501 *et seq.* (West 2022).
  24. A.C.A. § 17-80-501 *et seq.* (West 2022); T. Wang, E. Kelman, and S. Cahill, *What the New Affordable Care Act Nondiscrimination Rule Means for Providers and LGBT Patients*, Fenway Institute (2016), available at <<https://fenwayhealth.org/wp-content/uploads/HHS-ACA-1557-LGBT-Non-Discrimination-Brief.pdf>> (last visited July 26, 2022).
  25. *Brandt v. Rutledge*, 551 F. Supp. 3d 882 (E.D. Ark. 2021).
  26. M. Sprayregen, "Support for Transphobic 'Bathroom Bills' Is Increasing Amid Nationwide Attack on Trans Rights," *Them*, September 30, 2021, available at <<https://www.them.us/story/transphobic-bathroom-bills-support-increasing>> (last visited July 26, 2022).
  27. Tenn. Code Ann. § 68-120-120 (West 2022).
  28. T.C.A. § 49-2-801 *et seq.* (West 2022).
  29. *Bongo Prods., LLC v. Lawrence*, 548 F. Supp. 3d 666, 671 (M.D. Tenn. 2021) p. 39.
  30. M. Trimm, *Federal Lawsuit Challenging Tennessee's School Transgender Bathroom Law to be Dismissed as Students Move*, *Tennessean*, February 14, 2022, available at <<https://www.tennessean.com/story/news/politics/2022/02/14/tennessee-school-transgender-bathroom-law-lawsuit-dropped-students-move/6750975001/>> (last visited July 26, 2022).
  31. Such boilerplate bills are not uncommon and reflect the immense influence of anti-progressive, anti-LGBTQ+ lobbying groups who disseminate model legislation for states to adopt. See, e.g., D. Avery, "State anti-transgender bills represent coordinated attack, advocates say," NBC News, February 17, 2021, available at <<https://www.nbcnews.com/feature/nbc-out/state-anti-transgender-bills-represent-coordinated-attack-advocates-say-n1258124>> (last visited July 26, 2022); A. Kotch, "ALEC Leaders Boast About Anti-Abortion, Anti-Trans Bills," *Center for Media & Democracy*, October 4, 2021, available at <<https://www.exposedbycmd.org/2021/10/04/alec-leaders-boast-about-anti-abortion-anti-trans-bills/>> (last visited July 26, 2022).
  32. Ala. Code § 16-1-52 (2022); A.C.A. §§ 6-1-107 *et seq.* & 16-130-101 *et seq.* (West 2022); Miss. Code Ann. § 37-97-1 *et seq.* (West 2022); Mont. Code Ann. § 20-7-1306 (West 2022); T.C.A. § 49-6-310 (West 2022); Tex. Educ. Code Ann. § 33.0834 (West 2022); W. Va. Code Ann. § 18-2-25d *et seq.* (West 2022).
  33. See American Civil Liberties Union, *supra* note 20.
  34. A.C.A. §§ 17-80-501 *et seq.* & 20-9-1501 *et seq.* (West 2022).
  35. Wash. Rev. Code Ann. § 49.60.178 (West 2022); R.C.W.A. § 48.43.0128 (West 2022).
  36. R.C.W.A., *supra* note 35.
  37. See, e.g., *Two-Spirit*, Indian Health Service, available at <<https://www.ihs.gov/lgbt/health/twospirit/>> (last visited Feb. 13, 2022) ("Though Two-Spirit may now be included in the umbrella of LGBTQ, [t]he term 'Two-Spirit' does not simply mean someone who is a Native American/Alaska Native and is gay."); T. Lyons, A. Krüsi, L. Pierre, A. Smith, W. Small, and K. Shannon, "Experiences of Trans Women and Two-Spirit Persons Accessing Women-Specific Health and Housing Services in a Downtown Neighborhood of Vancouver, Canada," *LGBT Health* 3, no. 5 (2016): 373-378, at 377 ("[T]he unique experiences of two-spirit individuals may have been overlooked and as such future research would benefit from two-spirit specific research."); K.A. Culhane-Pera, S.L. Pergament, M.Y. Kasouaher, A.M. Pattock, N. Dhore, C.N. Kaigama, M. Allison, M. Scandrett, M.S. Thao, and D.J. Satin, "Diverse community leaders' perspectives about quality primary healthcare and healthcare measurement: qualitative community-based participatory research," *International Journal for Equity in Health* 20 (2021): 1-13, at 6 ("We do not have real representation."); Community-Based Research Centre, "CBRC Responds to the Exclusion of Two-Spirit People from BC's In Plan Sight Report," September 8, 2021, available at <[https://www.cbrc.net/cbrc\\_responds\\_to\\_the\\_exclusion\\_of\\_two-spirit\\_people](https://www.cbrc.net/cbrc_responds_to_the_exclusion_of_two-spirit_people)> (last visited July 27, 2022) ("[T]he report... failed to acknowledge the unique experiences among Two-Spirit and Indigenous queer and trans folks, who face additional barriers and prejudice due to their sexual orientation, gender identity, or gender expression.");
  38. Cal. Health & Safety Code §§ 102430 & 103425 *et seq.* (West 2022).
  39. Cal. Health & Safety Code § 102875 (West 2022).
  40. Cal. Health & Safety Code § 102935 *et seq.* (West 2022).
  41. Cal. Health & Safety Code § 103425 *et seq.* (West 2022).
  42. Cal. Health & Safety Code § 102875 (West 2022).
  43. Cal. Health & Safety Code § 102935 *et seq.* (West 2022); D. Anguiano, "California will Track Violent Deaths of LGBTQ+ People in Nationwide First," *Guardian*, September 23, 2021, available at <<https://www.theguardian.com/us-news/2021/sep/23/california-lgbtq-deaths-track>> (last visited July 28, 2022); R.L. Uyeda, "California will become the First State to Track the Violent Deaths of LGBTQ People," *The Lily*, September 30, 2021, available at <<https://www.thelily.com/california-will-become-the-first-state-to-track-the-violent-deaths-of-lgbtq-people/>> (last visited July 28, 2022).
  44. See, e.g., R. Nixon, *Slow Violence and the Environmentalism of the Poor* (Cambridge: Harvard University Press, 2011): at 2 ("By slow violence I mean a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all."); M. Carlisle, "Anti-Trans Violence and Rhetoric Reached Record Highs Across America in 2021," *Time*, December 30, 2021, available at <<https://time.com/6131444/2021-anti-trans-violence/>> (last visited

- July 28, 2022); M. Mollmann, "Anti-Trans Rhetoric Is Fueling a Pandemic of Violence," Fund for Global Human Rights, December 1, 2021, *available at* <<https://globalhumanrights.org/commentary/anti-trans-rhetoric-is-fueling-a-pandemic-of-violence/>> (last visited July 28, 2022).
45. K. Alfonseca, "Young Transgender Athletes Grappling with Anti-Trans Sports Legislation," ABC News, June 4, 2021, *available at* <<https://abcnews.go.com/Sports/young-transgender-athletes-grappling-anti-trans-sports-legislation/story?id=77880331>> (last visited July 29, 2022).
  46. See, e.g., F. Newport, "The Impact of Increased Political Polarization," Gallup, December 5, 2019, *available at* <<https://news.gallup.com/opinion/polling-matters/268982/impact-increased-political-polarization.aspx>> (last visited July 29, 2022).
  47. H.A. Walter-McCabe and M.K. Kinney, "An Argument for Explicit Public Health Rationale in LGBTQ Antidiscrimination Law as a Tool for Stigma Reduction," *Saint Louis University Journal of Health Law & Policy* 13, no. 2 (2020): 147-174.
  48. See Spade, *supra* note 1.
  49. R.A. Wilchins, "A Continuous Nonverbal Communication," in *Genderqueer: Voices from Beyond the Sexual Binary*, eds. J. Nestle, C. Howell, and R. Wilchins (Los Angeles: Alyson Books, 2002): 11-17.
  50. See Newport, *supra* note 46.
  51. According to Dean Spade, "life chances" is a phrase that captures the many, many vectors of harm and well-being that are being distributed in ways that I'm concerned about. For example, whether or not fresh groceries are available in your community, whether there's toxic waste and polluting industry nearby where you live, whether in your whole life you're likely to have a job that interests you, what level your local schools are funded at, whether someone in your family is dying or suffering from lack of healthcare and you're carrying around the stresses of that." Dean Spade, interview by Meaghan Winter, *Guernica*, March 1, 2011.
  52. See Walter-McCabe and Kinney, *supra* note 47.
  53. Centers for Disease Control and Prevention, "Social Determinants of Health: Know What Affects Health," *available at* <<https://www.cdc.gov/socialdeterminants/about.html>> (last visited June 30, 2022).
  54. P.B. Perrin, M.E. Sutter, M.A. Trujillo, R.S. Henry, and M. Pugh, Jr., "The Minority Strengths Model: Development and Initial Path Analytic Validation in Racially/Ethnically Diverse LGBTQ Individuals," *Journal of Clinical Psychology* 76, no. 1 (2019): 118-136.
  55. L. Mizock, and K.T. Mueser, "Employment, Mental Health, Internalized Stigma, and Coping with Transphobia among Transgender Individuals," *Psychology of Sexual Orientation and Gender Diversity* 1, no. 2 (2014): 146-158.
  56. K.A. McLemore, "A Minority Stress Perspective on Transgender Individuals' Experiences with Misgendering," *Stigma and Health* 3, no. 1 (2018): 53-64.
  57. See Perrin et al., *supra* note 54.
  58. The survey was conducted by the Trevor Project, an LGBTQ youth suicide prevention and crisis intervention organization. Participants were 34,759 LGBTQ youth ages 13-24 across the U.S., of which 38% identified as T&N. The Trevor Project, National Survey on LGBTQ Youth Mental Health 2021, Report of Key Findings, (last visited June 30, 2022).
  59. Human Rights Campaign, "Policy and Position Statements on Conversion Therapy," *available at* <<https://www.hrc.org/resources/policy-and-position-statements-on-conversion-therapy>> (last visited June 30, 2022).
  60. A.H. Grossman, J.Y. Park, and S.T. Russell, "Transgender Youth and Suicidal Behaviors: Applying the Interpersonal Psychological Theory of Suicide," *Journal of Gay & Lesbian Mental Health* 20, no. 4 (2016): 329-349.
  61. J.M. Grant, L.A. Mottet, J. Tanis, J. Harrison, J.L. Herman, and M. Keisling, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, Report of Key Findings*, (2011).
  62. A.E. Dastagir, "The Imaginary Predator in America's Transgender Bathroom War," *USA Today*, April 28, 2016, *available at* <<http://www.usatoday.com/story/news/nation/2016/04/28/transgender-bathroom-bills-discrimination/32594395/>> (last visited July 29, 2022).
  63. K. Bender-Baird, "Peeing under Surveillance: Bathrooms, Gender Policing, and Hate Violence," *Gender, Place & Culture* 23, no. 7 (2015): 983-988, doi:10.1080/0966369X.2015.1073699; S.L. Cavanagh, *Queering Bathrooms: Gender, Sexuality, and the Hygienic Imagination* (University of Toronto Press, 2010).
  64. J.L. Herman, "Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives," *Journal of Public Management & Social Policy* 19, no. 1 (2013): 65-80.
  65. The USTS is the largest anonymous survey of T&N adults (N=27,715) for the purpose of exploring gendered experiences across personal, professional, and health domains. S.E. James, J.L. Herman, S. Rankin, M. Keisling, L. Mottet, and M. Anafi, *The Report of the 2015 U.S. Transgender Survey* (Washington, DC: National Center for Transgender Equality, 2016): at 19.
  66. L.J. Wernick, A. Kulick, and M. Chin, "Gender Identity Disparities in Bathroom Safety and Wellbeing among High School Students," *Journal of Youth and Adolescence* 46, no. 5 (2017): 917-930.
  67. K.L. Seelman, "Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality," *Journal of Homosexuality* 63, no. 10 (2016): 1378-1399.
  68. Minority stressors are experienced, observed, and anticipated stigma and discrimination about a person's marginalized identity. See Meyer and Frost, *supra* note 8.
  69. K.L. Nadal, C.N. Whitman, L.S. Davis, T. Erazo, and K.C. Davidoff, "Microaggressions Toward Lesbian, Gay, Bisexual, Transgender, Queer, and Genderqueer People: A Review of the Literature," *The Journal of Sex Research* 53, no. 4-5 (2016): 488-508.
  70. *Id.*; C.E. Deitz, *Sexual Orientation Microaggressions and Psychological Well-Being: A Mediation Model* (St. Louis: University of Missouri, 2015); D.W. Sue, C.M. Capodilupo, and A.M.B. Holder, "Racial Microaggressions in the Life Experience of Black Americans," *Professional Psychology: Research and Practice* 39, no. 3 (2008): 329-336.
  71. B. Mustanski, R. Andrews, and J.A. Puckett, "The Effects of Cumulative Victimization on Mental Health among Lesbian, Gay, Bisexual, and Transgender Adolescents and Young Adults," *American Journal of Public Health* 106, no. 3 (2016): 527-533; D.R. Williams, S.A. Mohammed, and A.E. Shields, "Understanding and Effectively Addressing Breast Cancer in African American Women: Unpacking the Social Context," *Cancer* 122, no. 14 (2016): 2138-2149.
  72. A.T. Geronimus, M.T. Hicken, J.A. Pearson, S.J. Seashols, K.L. Brown, and T.D. Cruz, "Do US Black Women Experience Stress-Related Accelerated Biological Aging?: A Novel Theory and First Population-Based Test of Black-White Differences in Telomere Length," *Human Nature* 21, no. 1 (2010): 19-38.
  73. *Id.*; Williams et al., *supra* note 71; Sue et al., *supra* note 70; R.L. Simons, M.K. Lei, S.R. Beach, A.B. Barr, L.G. Simons, F.X. Gibbons, and R.A. Philibert, "Discrimination, Segregation, and Chronic Inflammation: Testing the Weathering Explanation for the Poor Health of Black Americans," *Developmental Psychology* 54, no. 10 (2018): 1993-2006; T. Craddock, *Intergenerational Trauma in African and Native American Literatures* (Greenville: East Carolina University, 2014); J.F. Palacios and C.J. Portillo, "Understanding Native Women's Health: Historical Legacies," *Journal of Transcultural Nursing* 20, no. 1 (2009): 15-27.
  74. M.S. Wallien, S.H. Van Goozen, and P.T. Cohen-Kettenis, "Physiological Correlates of Anxiety in Children with Gender Identity Disorder," *European Child & Adolescent Psychiatry* 16, no. 5 (2007): 309-315.
  75. See Sue et al., *supra* note 70.
  76. See Mustanski et al., *supra* note 71.

77. L.Z. DuBois, S. Powers, B.G. Everett, and R.-P. Juster, "Stigma and Diurnal Cortisol Among Transitioning Transgender Men," *Psychoneuroendocrinology* 82 (2017): 59-66.
78. Centers for Disease Control and Prevention, *supra* note 53; L. Kcomt, "Profound Health-Care Discrimination Experienced by Transgender People: Rapid Systematic Review," *Social Work in Health Care* 58, no. 2 (2019): 201-219, doi:10.1080/0981389.2018.1532941.
79. See Meyer and Frost, *supra* note 8 and Minority stressors, *supra* note 68.
80. M.L. Hendricks, and R.J. Testa, "A conceptual framework for clinical work with transgender and gender nonconforming clients: An adaptation of the Minority Stress Model, Professional Psychology: Research and Practice, 43, no. 5 (2012): 460-467. doi:10.1037/a0029597.
81. J.G. Kosciw, C.M. Clark, N.L. Truong, and A.D. Zongrone, The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools (New York: GLSEN, 2020); R.B. Toomey, C. Ryan, R.M. Diaz, N.A. Card, and S.T. Russell, "Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment," *Developmental Psychology* 46, no. 6 (2010): 1580-1589; J. Harrison, J. Grant, and J.L. Herman, "A Gender Not Listed Here: Genderqueers, Gender Rebels, and Otherwise in the National Transgender Discrimination Survey," *LGBTQ Policy Journal at the Harvard Kennedy School* 2, no. 1 (2012): 13-24.
82. K. Asakura and S.L. Craig, "It gets better"... but how? Exploring Resilience Development in the Accounts of LGBTQ Adults," *Journal of Human Behavior in the Social Environment* 24, no. 3 (2014): 253-266.
83. Kosciw et al., *supra* note 81; M.E. Eisenberg and M.D. Resnick, "Suicidality Among Gay, Lesbian and Bisexual Youth: The Role of Protective Factors," *Journal of Adolescent Health* 39, no. 5 (2006): 662-668, doi:10.1016/j.jadohealth.2006.04.024.
84. The 2019 National School Climate Survey was distributed by GLSEN to assess the experience of LGBTQ youth (N=16,713) ages 13-21, of which 43% identified as transgender or nonbinary. Kosciw et al., *supra* note 81.
85. J.E. Schindel, "Gender 101 — Beyond the Binary: Gay-Straight Alliances and Gender Activism," *Sexuality Research & Social Policy* 5, no. 2 (2008): 56-70.
86. See Kosciw et al., *supra* note 81.
87. *Id.*
88. R. Giblon and G.R. Bauer, "Health Care Availability, Quality, and Unmet Need: A Comparison of Transgender and Cisgender Residents of Ontario, Canada," *BMC Health Services Research* 17 (2017): 283-293, doi:10.1186/s12913-017-2226-z; A. Rodriguez, A. Agardh, and B.O. Asamoah, "Self-Reported Discrimination in Healthcare Settings Based on Recognizability as Transgender: A Cross-Sectional Study Among U.S. Citizens, Archives of Sexual Behavior," 47, no. 4 (2017): 973-985, doi:10.1007/s10508-017-1028-z.
89. See Kcomt et al., *supra* note 78.
90. K.L. Nadal, A. Skolnik, and Y. Wong, "Interpersonal and Systemic Microaggressions Toward Transgender People: Implications for Counseling," *Journal of LGBTQ Issues in Counseling* 6 (2012): 55-82, doi:10.1080/15538605.2012.648583.
91. See Kinney, *supra* note 8.
92. G.R. Bauer, R. Hammond, R. Travers, M. Kaay, K.M. Hohenadel, and M. Boyce, "I Don't Think This is Theoretical; This is our Lives': How Erasure Impacts Health Care for Transgender People," *Journal of the Association of Nurses in AIDS Care* 20, no. 5 (2009): 348-361; J. Pyne, "Unsuitable Bodies: Trans People and Cisnormativity in Shelter Services," *Canadian Social Work Review/Revue canadienne de service social* 28, no. 1 (2011): 129-137.
93. *Id.*; See James et al., *supra* note 65; See Kcomt, *supra* note 78; S.J. Gridley, J.M. Crouch, Y. Evans, W. Eng, E. Antoon, M. Lyapustina, and C. McCarty, "Youth and Caregiver Perspectives on Barriers to Gender Affirming Health Care for Transgender Youth," *Journal of Adolescent Health*, 59, no. 3 (2016): 254-261, doi:10.1016/j.jadohealth.2016.03.017; R.L. Stotzer, P. Silverschanz, and A. Wilson, "Gender Identity and Social Services: Barriers to Care," *Journal of Social Service Research* 39, no. 1 (2013): 63-77, doi:10.1080/01488376.2011.637858.
94. See James et al., *supra* note 65.
95. See Kinney, *supra* note 8.
96. E. Coleman et al., "Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7," *International Journal of Transgenderism* 13 (2011): 165-232, doi:10.1080/15532739.2011.700873.
97. See Kcomt, *supra* note 78.
98. See Harrison et al., *supra* note 81; T.M. Cruz, "Assessing Access to Care for Transgender and Gender Nonconforming People: A Consideration of Diversity in Combating Discrimination," *Social Science & Medicine* 110 (2014): 65-73, doi:10.1016/j.socscimed.2014.03.032; J. Lewis, *Resilience Among Transgender Adults who Identify as Genderqueer: Implications for Health and Mental Health Treatment* (Accession No. 57395) (Doctoral dissertation, ProQuest Information & Learning, 2008).
99. See Bauer et al., *supra* note 92.
100. See Kcomt, *supra* note 78.
101. E. Lombardi, "Enhancing Transgender Health Care," *American Journal of Public Health* 91, no. 6 (2001): 869-872.
102. See Bauer et al., *supra* note 92.
103. S.K. Kattari, B. Atteberry-Ash, M.K. Kinney, N.E. Walls, and L. Kattari, "One Size Does Not Fit All: Differential Transgender Health Experiences by Gender Identity and Sexual Orientation, Social Work and Health Care," 58, no. 9 (2019): 899-9017, doi:10.1080/00981389.2019.1677279.
104. American Academy of Pediatrics, "AAP Continues to Support Care of Transgender Youths as More States Push Restrictions, January 6, 2022, available at <<https://publications.aap.org/aapnews/news/19021>> (last visited July 29, 2022).
105. A.S. Wyckoff, "AAP Continues to Support Care of Transgender Youths as More States Push Restrictions," American Academy of Pediatrics, January 6, 2022, available at <<https://publications.aap.org/aapnews/news/19021>> (last visited July 29, 2022).
106. American Medical Association, "AMA to States: Stop Interfering in Health Care of Transgender Children," April 26, 2021, available at <<https://www.ama-assn.org/press-center/press-releases/ama-states-stop-interfering-health-care-transgender-children>> (last visited July 29, 2022).
107. L.D. Hughes, K.E. Gamarel, W.M. King, T. Goldenberg, J. Jaccard, and A.T. Geronimus, "State-Level Policy Stigma and Non-Prescribed Hormones Use among Trans Populations in the United States: A Mediation Analysis of Insurance and Anticipated Stigma," *Annals of Behavioral Medicine* 56, no. 6 (2021): 592-604.
108. B. Link, and M.L. Hatzenbuehler, "Stigma as an Unrecognized Determinant of Population Health: Research and Policy Implications," *Journal of Health Politics, Policy and Law* 41, no. 4 (2016): 653-673.
109. This principle is what underlies the movement for policies to recognize and take action against racism as a public health crisis, for example. *Id.*
110. A.K. Perone, "Protecting Health Care for Transgender Older Adults Amidst a Backlash of U.S. Federal Policies," *Journal of Gerontological Social Work* 63 (2020): 743-752.
111. See Hughes et al., *supra* note 107.
112. Wilchins, *supra* note 49.
113. See Walter-McCabe, *supra* note 47.
114. See Grant et al., *supra* note 61.
115. See Link and Hatzenbuehler, *supra* note 108; see Walter-McCabe and Kinney, *supra* note 47.
116. See Walter-McCabe and Kinney, *supra* note 47.
117. See, e.g., D. Arnos, E. Kroll, E. Jaromin, H. Daly, and E. Falkenburger, *Tools and Resources for Project-Based Community Advisory Boards, Guidebook*, Oct. 2021.



118. See, e.g., Y. Asada, A.A. Pipito, J.F. Chriqui, S. Taher, and L.M. Powell, "Oakland's Sugar-Sweetened Beverage Tax: Honoring the 'Spirit' of the Ordinance Toward Equitable Implementation," *Health Equity* 5, no. 1 (2021): 35-41; *Healthy Food America, Centering Equity in Sugary Drink Tax Policy: Elements of Equitable Tax Policy Design, Sugary Drink Tax Equity Workgroup Report*, Dec. 2020.
119. "Alan Haber of the University of Michigan has warned of the strategy of co-optation which seeks to elevate and 'buy off' less militant leadership by giving them status in official advisory or other 'consensus groups' dominated by community leaders." D. Brieland, "Community Advisory Boards and Maximum Feasible Participation," *American Journal of Public Health* 61, no. 2 (1971): 292-296.
120. Tokenizing is a collection of problematic treatment of individuals from marginalized populations, including performative inclusion, stereotyping, expecting additional services, and undervaluing their work. For example, tokenizing T&N people can happen when individuals are expected to expend their time and energy to educate others about gender and gender expression without compensation. E. Furman, *Bye Bye Binary: Exploring Non-Binary Youths' Experiences of Mental Health, Discrimination, and Community Belongingness* (Canada: Wilfrid Laurier University, 2017).
121. See Brieland, *supra* note 119.
122. *Id.* at 296.
123. In addition to providing compensation for time, CAB members should be reimbursed for costs such as transportation and child care services during meetings to ensure participation. See Brieland, *supra* note 119. Beyond basic reimbursement for time and services, compensation is also an acknowledgment and value of CAB members' expertise and emotional labor. Providing a healthy meal or snack during meetings can also support participation. S.D. Newman, J.O. Andrews, G.S. Magwood, C. Jenkins, M.J. Cox, and D.C. Williamson, "Community Advisory Boards in Community-Based Participatory Research: A Synthesis of Best Processes," *Preventing Chronic Disease* 8, no. 3 (2011): A70.
124. See Brieland, *supra* note 119.
125. D. Linders, "From E-Government to We-Government: Defining a Typology for Citizen Coproduction in the Age of Social Media," *Government Information Quarterly* 29, no. 4 (2012): 446-454.
126. S.D. Newman, J.O. Andrews, G.S. Magwood, C. Jenkins, M.J. Cox, and D.C. Williamson, "Community Advisory Boards in Community-Based Participatory Research: A Synthesis of Best Processes," *Preventing Chronic Disease: Public Health Research, Practice, and Policy* 8, no. 3 (2011): 1-12; N.P. Yuan, B.M. Mayer, L. Joshweseoma, D. Clichee, and N.I. Teufel-Shone, "Development of Guidelines to Improve the Effectiveness of Community Advisory Boards in Health Research," *Progress Community Health Partnerships* 14, no. 2 (2020): 259-269.
127. See Kinney, *supra* note 8.
128. See E. Taylor, D. Marino, S. Rasor-Greenhalgh, and S. Hudak, "Navigating Practice and Academic Change in Collaborative Partnership with a Community Advisory Board," *Journal of Allied Health* 39, no. 3 (2010): 105E-110E; S. Ortega, M.S. McAlvain, K.J. Briant, S. Hohl, and B. Thompson, "Perspectives of Community Advisory Board Members in a Community-Academic Partnership," *Journal of Health Care Poor Underserved* 29, no. 4 (2018): 1529-1543.
129. See, e.g., Ind. H.B. 1041 (2022).
130. M.K. McGowan, *Just Words: On Speech and Hidden Harm* (Oxford University Press, 2019).
131. Wilchins, *supra* note 49.
132. Content for the transgender equity impact assessment statement was directly informed by the Office of Legislative Oversight, *Racial Equity and Social Justice (RESJ) Impact Statement*, December 6, 2021, available at <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill43-21RESJ.pdf> (last visited July 29, 2022).
133. O. Gonzalez, "Indiana Lawmakers Enact Anti-trans Sports Bill after Overriding Veto," AXIOS, May 24, 2022, available at <https://www.axios.com/2022/05/24/indiana-veto-governor-trans-sports> (last visited July 29, 2022).
134. See DEI tools, *supra* note 12.
135. Zap is a community organizing tool for gaining attention to a particular topic through clear, concise targeted information, such as infographics and flyers. For example, ACT UP has effectively used zaps for AIDS activism since the 1980s. AIDS Coalition To Unleash Power, "Actions & Zaps," available at <https://actupny.org/documents/newmem2.html> (last visited June 30, 2022). Showing Up for Racial Justice ("SURJ") holds monthly Zaps on Zoom to keep people up to date on pressing issues. Showing Up for Racial Justice, "Monthly Action Hour Zaps," available at <https://surj.org/monthly-action-hour-zaps/> (last visited June 30, 2022).
136. A.C.A. § 16-130-101 *et seq.* (West 2022).
137. C. Frizzell, "Ark. Attorney General Leslie Rutledge pushes bill banning transgender athletes from girls' school sports," 5 News Online, February 22, 2021, available at <https://www.5news.com/article/news/politics/arkansas-attorney-general-leslie-rutledge-bill-banning-transgender-athletes-from-girls-school-sports/527-37dbc82b-0d30-4268-8699-02f65578d0ac> (last visited July 29, 2022).
138. A.C.A. § 16-130-101 *et seq.* (West 2022).
139. A.C.A. § 16-130-101 *et seq.* (West 2022), quoting *United States v. Virginia*, 518 U.S. 515, 553 (1996).
140. *Id.*
141. E. Claybrook, "Arkansas Senate to consider G.I.R.L.S. Act, after passes Education Committee," 40/29 News, March 8, 2021, available at <https://www.4029tv.com/article/girls-act-aims-to-ban-transgender-women-from-participating-on-womens-sports-teams-in-arkansas/35592538#> (last visited July 29, 2022).
142. M.R. Wickline, "Attorney General Leslie Rutledge on top in GOP race for lieutenant governor," *Arkansas Democrat Gazette*, May 25, 2022, available at <https://www.leslierutledge.com/rutledge-record.html> (last visited July 29, 2022).
143. M.R. Wickline, "Attorney General Leslie Rutledge on top in GOP race for lieutenant governor," *Arkansas Democrat Gazette*, May 25, 2022, available at <https://www.leslierutledge.com/rutledge-record.html> (last visited July 29, 2022).
144. Arkansas Senate, "Senator Missy Irvin," available at <https://senate.arkansas.gov/senators/missy-irvin/> (last visited June 19, 2022).
145. A.C.A. § 16-130-101 *et seq.* (West 2022).
146. AMAB is short for assigned male at birth, which more precisely and inclusively identifies people and is a better alternative to the policy language "biological males."
147. See A.C.A., *supra* note 145.
148. Similar to note 146, AFAB is short for assigned female at birth.
149. See A.C.A., *supra* note 145.
150. *Id.*
151. We recommend creating a free membership to ResearchGate (www.researchgate.net) to contact authors directly for copies of articles.
152. See U.N. General Assembly, Universal declaration of human rights (1948).
153. See James et al., *supra* note 65.
154. See Office of Legislative Oversight, *supra* note 132; Office of Legislative Oversight, "Racial Equity and Social Justice Impact Statements," available at <https://www.montgomerycountymd.gov/OLO/resjis.html> (last visited June 30, 2022); DEI tools, *supra* note 12.
155. See Office of Legislative Oversight, *supra* note 132.
156. For more information about Indigenous assessment tools, see Edmo and Ridings, *supra* note 15; Urban Indian Health Institute, "Indigenous Evaluation," available at <https://www.uihi.

org/projects/indigenous-evaluation/> (last visited June 30, 2022).

157. See Walter-McCabe and Kinney, *supra* note 47.

158. See Wilchins, *supra* note 49.

159. See Laviates, *supra* note 4.