Trans Youth Legislation: Uncovering Potential Harms

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Abstract

In the last two years, the United States has seen an uptick in proposed legislation that targets trans and non-binary youth, specifically regarding access to medical care. There are a vareity of issues with the bills such as, those that aim to punish doctors for administering hormone treatment or surgeries, naming parents abusive for allowing their children to consider or undergo medical treatment, and even adding gender re-assignment surgery under the caterogry of genital mutilation. All of these restrictions strip trans youth of their right to access medical care and produce dangerous and often ill- informed assumptions about trans health care in general.

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Problem Definition

In the present day and for the past two years, legislation targeting minority groups, specifically sexuality and gender minorities, has gained media coverage and prevalence in our government. The problem with the influx of policies targeting these minorities is that the government has turned its attention to transgender and non-binary youth and their bodies. While legislation regarding trans identities is polarizing on the adult level, targeting trans youth, their families, and their doctors opens the door to many potentially harmful consequences to all parties targeted by such legislation. The specific problem is the lack of consideration for the mental and physical health of children as they are impacted by legislation that targets their community, especially due to a vast lack of representation for those who identify as trans and/or non-binary in our legislative body, both on a national and a state level. The legislation in question most specifically addresses gender-affirming surgery or care, those that perform it, and the parents of the children that seek it. The legislation and officials involved in this policy problem require a larger understanding of the experience of the trans youth and the medical interventions they seek if any, as well as the risks associated with such care in comparison to their experience without such gender-affirming treatment. Additionally, the problem addresses the dangers of targeting a group of individuals from age 6 to 17, as those of this age group are in a developmental stage and at the mercy of the religious, moral, and political views of their peers and surrounding adults (parents, teachers, etc.) during their time in schools.

Specifically, legislation that involves schools on the matter of trans identity in ages under 18 creates a slippery slope involving topics that should otherwise be safe topics, especially when most of the legislation and the legislators claim to have the protection of children at the top of their priority list. In conclusion, the problem regarding policies involving the restriction and sometimes criminalization of gender-affirming treatment for trans youth is ill-informed as well as inadequate in considering the very real harms that can be done with the passing of such legislation. We aim to discuss this as the main problem because the legislation of this variety wants the protection of children to be the reason for these policies but fails to discuss how the policies themselves may lead to less protection for the children in question.

NUMBER OF TRANS YOUTH PER STATE

Number of Transgender Youth Aged 13-17

- 0-1,999
- 2,000-3,999
- 4,000-5,999
- 6,000-7,999
- 8,000-9,9999
- 10,000-20,000
- >20,000

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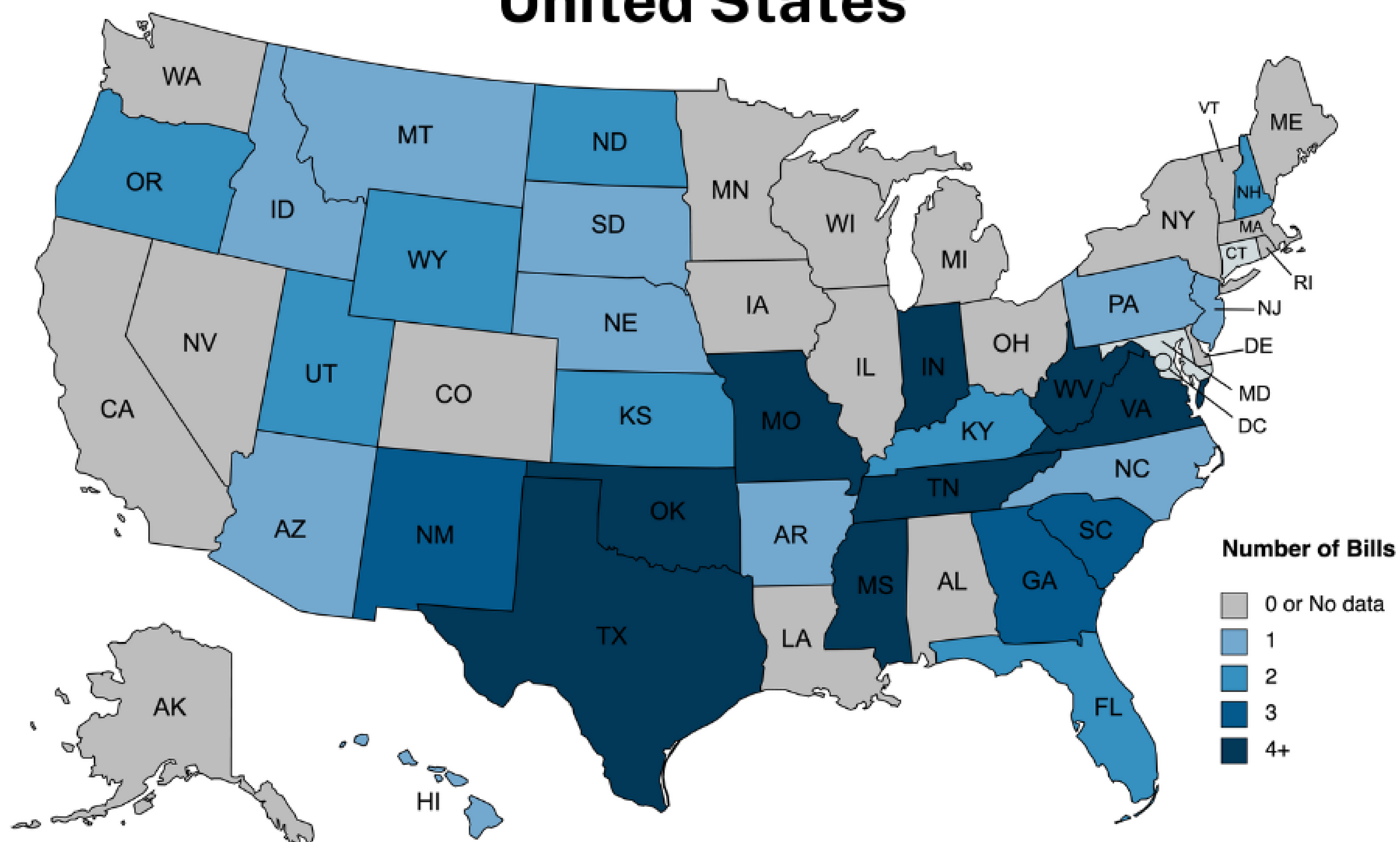
Current Policy Context

From 2021 to 2023, there have been 25 states that introduced bills that restricted gender-affirming care for trans youth in some way, whether that be regarding the actual care, the doctors performing the care, or the parents seeking it for their children. For the purpose of this policy problem, legislation that potentially leads to harm for both the trans youth who are having their access to care restricted as well as other groups (such as parents, doctors, or society) is found to be most urgent. Idaho HB675, introduced in 2022, aims to add gender-affirming care to the definition of genital mutilation, which has consequences not only for those seeking care but also implies that the right to choose what happens to one's body in a way that does not align with the gender-binary is in itself wrong (Kraschel 2022). In a similar vein, Missouri HB33, introduced in 2021, aims to consider parents or guardians who allow their child to obtain gender-affirming care guilty of child abuse and urges them to be reported to the state's child welfare division (Kraschel 2022). While the bills in Idaho and Missouri have not been enacted into law, (in fact, the Missouri bill is now dead), the goals and language of such bills are concerning. Firstly, they imply that attempting to prescribe a treatment that has to be deemed medically necessary by a professional is abusive or mutilation. Secondly, some bills, such as the Alabama SB184 which passed into law in April of 2022, imply that "standard treatment for a transgender adolescent would include genital surgery, when, in fact, the current consensus in the field is to wait until the patient reaches the age of majority before pursuing such surgical procedures'' (Kraschel 2022, pg. 3).

The misconception that gender reassignment surgery is a common and simply undertaken course of action in those under 18 pushes legislators to include restrictive language in their bills that does not truly apply to the totality of their target population. More commonly, hormone therapy and more specifically, puberty blockers are the main course of medical intervention in trans youth and those with gender dysphoria. Research has shown that according to doctors, hormone therapy “is a medically necessary intervention for many transsexual, transgender, and gender nonconforming individuals with gender dysphoria” (Priest 2019, pg. 50). Furthermore, the choice to pursue hormone treatment or puberty blockers is made “by the healthcare team on an individualized, patient-directed basis”, emphasizing that no trans or non-binary patient is the same and their experiences should not be simplified to the same universal course of action that this legislation often implies (Handler et al. 2019, pg. 5).



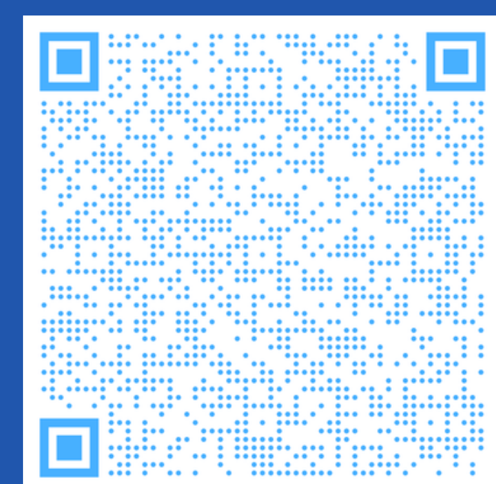
Role For Government

In the case of those with gender dysphoria under the age of 18 that are seeking medical intervention, it is important to fully understand the risks as well as the benefits of the treatments being offered. While the government does, understandably, want to avoid allowing children to make potentially life-altering decisions for themselves, it is important to leave misinformation and attacks on parents and doctors out of the legislation. The role of the government, and it can be on a national or state level, should be to provide clear restrictions based on data that understands both the mental and physical risks of not pursuing hormone therapy as well as pursuing it. In general, while the medical community may not know the full long-term effects of puberty blockers, there are many other medical interventions that doctors deem medically necessary for kids that do not fall under the label of trans, gender non-conforming, or non-binary. For example, hormonal contraceptives are used by adolescent women, and “it is estimated that 88% of all women of fertile age” have used it at some point. A study in 2020 explores the idea that “functional and/or structural brain changes” were associated with the use of the very common contraceptive (Brønnick et al. 2020, pg. 1). These changes can affect parts of the brain like the “left middle frontal gyrus and left insula”, producing changes in “brain reactivity were accompanied by more depressed mood, mood swings, and fatigue, compared both to the control group and to pre-treatment” (Brønnick et al. 2020, pg. 10). The impact that hormonal contraceptives may have on women was specifically explored in those 18 and over in the previously mentioned study but researchers anticipate that the effects on adolescent women may be even further significant due to the brain’s developmental stage.

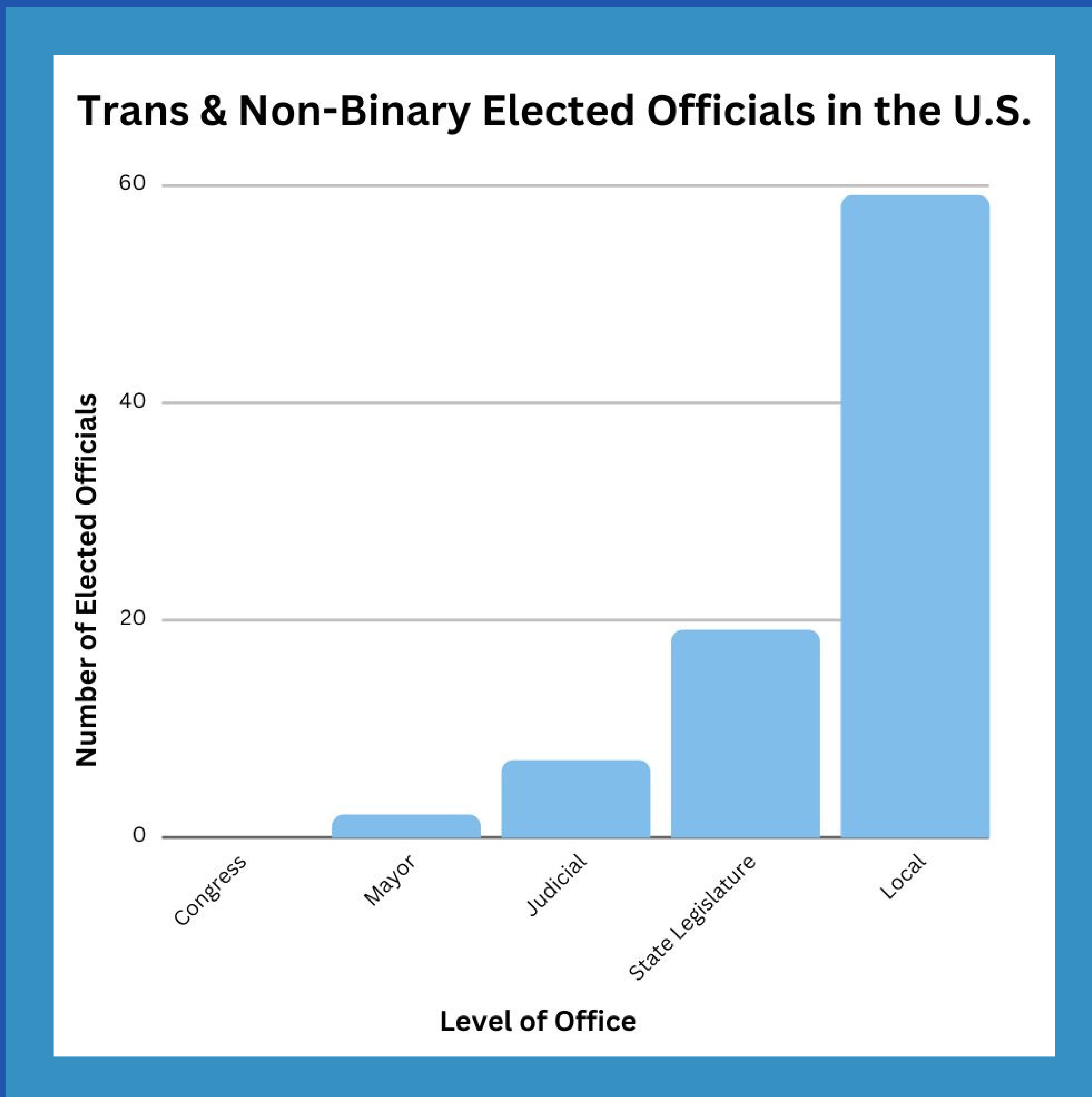
If the government seeks no health protection legislation in regard to hormonal birth control in adolescents despite clear risks, there is no reason why the government would also seek it with treatments for trans and non-binary youth. The role of the government regarding the safety of children surrounding medical intervention should not be to restrict or ban every form of potentially necessary treatment. The reality of children using medicine is that there are always going to be risks and it should be up to the child, the parents, and the medical professionals to decide whether those risks are worth taking. In addition to the potential physical risk of restricting treatment, the government opens the doors to mental and emotional risks to children as well. “The Minority Stress Model states that chronic stress arising from the marginalization, discrimination, rejection, violence, and transphobia that may be encountered, feared, or internalized leads to the presenting mental health issues such as depression, anxiety, suicide, or substance abuse” (Weiselberg et al. 2019, pg. 7). This model emphasizes that the greatest challenge faced by trans and non-binary children will be caused by marginalization and discrimination, likely from their peers, and due to their inability to access the health care that would allow them to present their gender in a way that more closely conforms to what the United States society deems “normal”. Additionally, “about three in five LGBTQ students reported having experienced sexual harassment at school” largely due to the lack of acceptance surrounding individuals that may present themselves in a manner that falls outside of the gender binary (Seals and Gonzales 2019, pg. 1). While it is also argued that the rise of trans and non-binary youth could be triggered by media coverage on the subject, school-age children, that may express their gender as different than their sex or completely outside the binary, at age 6 being to realize that “other children find their behaviors odd” (Weiselbery et al. 2019, pg. 4).

It is almost immediate that a child may experience bullying, harassment, and isolation from their peers and relevant adults as soon as they present their gender differently than societally expected. While it is possible for that child, as they become a teenager, to simply resort back to identifying within their biological sex, it is unjust to restrict children from the healthcare they need to address their gender identity as it comes up. A study in Northern California on 417 unique trans and non-binary pediatric patients (aged 3 to 17), looked at a total of 506 referrals for puberty blockers, hormone treatment, and surgery among other healthcare services relevant to the community. In those referrals, the study found that "34% were for puberty suppression or cross-sex hormones'' but "27% were for mental health" suggesting that not all healthcare sought by trans and non-binary youth is physically medical (Handler et al. 2019, pg. 3). Additionally, it is common for doctors to work in collaboration with a gender therapist when assessing patients' "readiness to start medical transition" as there are pros and cons that must be properly discussed and the child properly evaluated (Handler et al. 2019, pg. 5). In conclusion if the government were to place restrictions, they should do so in an informed and appropriate manner. The role of the government should be to research the medical interventions that apply to trans and non-binary youth and possibly speak to representatives of this community. Currently, there are only 87 elected officials in the entire country that identify as gender non-conforming, genderqueer, non-binary, or transgender.

CHECK OUT THIS SOURCE TO LEARN MORE ABOUT LGBTQ+ REPRESENTATION IN GOVERNMENT



None of these elected officials reside in the federal legislation and only 19 reside in all the state legislatures in the country combined. In terms of the bills laid out previously - regarding Idaho, Missouri, and Alabama - not one of those states has a single representative that identifies with the trans and non-binary community in any government body (LGBTQ+ Victory Institute 2023) Even if you expand the identity of government officials to the border identity of LGBTQ+, Idaho still has zero representatives and Alabama has only one representative in the legislature (LGBTQ+ Victory Institute 2023). Without proper representation in our government or thorough research on the topic of trans and non-binary youth healthcare that includes conversations with healthcare officials and members of this community, it is unjust to compose legislation that restricts a community from healthcare that should have a right to



Policy Solutions

Through evidence on both physical and mental health, it is clear that the legislation targeting access to healthcare for trans and non-binary youth will cause harm. To prevent this legislation from being implemented, we propose a ban on discrimination against LGBTQ+ people on legal grounds. There are many laws that "explicitly outline anti-discrimination policies'' such as the Equal Access Act, Title IX, The First Amendment, and the Equal Protection Clause of the 14th Amendment (Seals 2019, pg. 2). The existing bills directly attack transgender and non-binary people, violating their rights to life and liberty. These pieces of legislation are grounded in a problem that does not exist: transgender minors do not have access to most of the treatments that are being banned without a full assessment by health care professionals in both a mental and physical capacity. The purpose of these bills is solely to discriminate and incite fear, not protect children as they claim. Equal access to healthcare is a human right and in order to prevent this discrimination in legislation against the trans and non-binary community, the solution must lie in the Equal Protection Clause and/or in Title IX as it applies to school-age children. "Title IX prohibits sex discrimination in federally funded educational programs or activities" and this applies to trans and non-binary youth as their gender identity falls under discrimination based on sex in the sense that they are discriminated against due to their lack of being confined by their sex in the way that society prefers (Keller 2021, pg. 142).

Additionally in Bostock v Clayton County, the Supreme Court ruled in regards to Title VII that "discrimination based on sexual orientation or gender identity fits within the confines of the statutory phrase 'discrimination based on sex'" (Keller 2021, pg. 138). If the Supreme Court provides the definition of discrimination based on sex in the Bostock case, there is a precedent to apply this difference to all sex discrimination cases and if not, the Supreme Court must be pushed to a decision involving further clarity. Additionally, protection under the Equal Protection Clause would "prevent state officials from denying any individual equal protection under the law" which should naturally include those of any identity (Seals 2019, pg. 5). The solution to the policy problem is to urge lawmakers to consider that even though healthcare has risks, so does restricting access to it. The bodies of trans and non-binary youth should be advised by parents and doctors, not by the government and it should be the aim of said government when creating laws to be as clear and concise as possible while equally considering all potential consequences to their action even if that leads them to challenge their stance in the process.

2021 Trans Youth Treament Data

42,167	4,231	1,390	282
new gender dysphoria diagnoses	initiated hormone treatment	initiated puberty blockers	underwent top surgery

Citations

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