

Policing Gender: The Interest Convergence of Women’s and Transgender Rights

Michael R. Ulrich & Arpita Khanna

I.	REEMERGENCE OF GENDER FUNDAMENTALISM	587
A.	<i>Glamorizing the “Traditional” Woman</i>	587
B.	<i>Enforcing the Sex Binary</i>	589
II.	THE RIGHT KIND OF WOMAN.....	593
III.	SUPPORTING YOUR OWN DISENFRANCHISEMENT	598
IV.	CONCLUSION	601

The social, political, and legal landscape has seen a resurgence of gender fundamentalism, seeking to reinforce archaic notions of what it means to be a woman. Social media movements run in tandem with this resurgence of gender fundamentalism. For instance, the “tradwife” phenomenon that romanticizes a domestic, subservient role for women.¹ Alabama Senator Katie Britt most infamously reflected the convergence of these trends when she delivered her response to the State of the Union from a kitchen table and proclaimed that her message was “a direct appeal” to her “fellow moms.”² Meanwhile, executive orders and state laws have exponentially increased efforts to narrowly define sex and gender to exclude transgender, nonbinary, and intersex people, emphasizing the importance of women’s ability to reproduce.³ Yet, the pervasive effort to define and redefine what it means to be a “real woman” contradicts the asserted ease of a gender binary based solely on “biological sex.”

¹ Harmeet Kaur, *Tradwives’ Promote a Lifestyle That Evokes the 1950s, But Their Nostalgia Is Not Without Controversy*, CNN (Dec. 27, 2022, 11:38 AM), <https://www.cnn.com/2022/12/27/us/tradwife-1950s-nostalgia-tiktok-ccc/index.html> [https://perma.cc/2DPT-GZT4].

² Laura Santhanam, *Read Sen. Katie Britt’s Full Response to the State of the Union*, PBS NEWS (Mar. 7, 2024, 11:26 P.M.), <https://www.pbs.org/newshour/politics/read-sen-katie-britts-full-response-to-the-state-of-the-union> [https://perma.cc/5RQ3-U4XF]; see also *Saturday Night Live, State of the Union Cold Open*, YOUTUBE (Mar. 9, 2024), <https://www.youtube.com/watch?v=cCfLpuLdF8Q>.

³ Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 20, 2025); H.B. 1449, Reg. Sess. (Okla. 2024).

Anti-transgender laws seek to enforce the gender binary based on the illusion that all people can be easily and objectively categorized as male or female.⁴ This allows proponents to assert that anti-trans restrictions are merely protections for cisgender women from dangers posed to them by transgender women.⁵ These laws, however, ignore the unavoidable truth that there are millions of people born who defy the scientifically inaccurate claim that there is one universal truth for each sex.⁶ More importantly, these laws have enabled enforcement of gender norms that seek to codify the qualities and characteristics that all women should share. Far from protecting cisgender women, these laws have facilitated increased examination, surveillance, and inspection into who rightfully qualifies as a woman.

For example, cisgender women who outperform their contemporaries in competition or perhaps do not conform to the right feminine norms have been attacked, vilified, and ostracized.⁷ Indeed, these persistent efforts to limit the scope of womanhood reveal that it is not simply a biological category but rather a sociopolitical construct that is carefully crafted and enforced to maintain the gender hierarchy, exercise paternalistic control over bodily autonomy, and further disenfranchise marginalized groups. Controlling the rights, liberties, and bodies of women under the guise of protecting those very same women is nothing new.⁸ Yet, by shrouding anti-trans laws under the fallacy that they are meant as a benefit to “real” women, these governments have been able to garner alarming levels of support from cisgender women.⁹

⁴ Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

⁵ *Id.*; Marjorie Taylor Greene states, “Women have been the victim of this garbage for long enough” and Nancy Mace says, “This is the last war on women and I aim to stop it.” Elena Moore & Rachel Treisman, *GOP Lawmaker Seeks Bathroom Restrictions on Federal Property*, NPR (Nov. 20, 2024, 2:56 PM), <https://www.npr.org/2024/11/19/nx-s1-5196116/capitol-transgender-bathroom-ban-nancy-mace-sarah-mcbride> (discussing legislation restricting trans women from using women’s bathroom on federal property) [<https://perma.cc/4923-YA2W>].

⁶ *Its Intersex Awareness Day – Here Are 5 Myths We Need to Shatter*, AMNESTY INT’L (Oct. 26, 2018), <https://www.amnesty.org/en/latest/news/2018/10/its-intersex-awareness-day-here-are-5-myths-we-need-to-shatter> [<https://perma.cc/AM3Y-FWPF>].

⁷ Christina Cauterucci, *This Olympics Moment Shows Where Anti-Trans Calls to “Protect Women” Have Brought Us*, SLATE (Aug. 6, 2024, 1:46 P.M.), <https://slate.com/culture/2024/08/boxer-imane-khelif-olympics-anti-trans-campaign.html> [<https://perma.cc/658D-YTC6>]; Cyd Zeigler, *Olympics Rugby Star Ilona Maher Brought to Tears by Sexist Attacks, Being Called a Man*, OUTSPORTS (Aug. 1, 2024, 5:08 AM), <https://www.outsports.com/2024/8/1/24099006/ilona-maher-usa-rugby-olympics-medal-stereotypes-cry> (on file with authors).

⁸ *Muller v. Oregon*, 208 U.S. 412 (1908); *Gonzales v. Carhart*, 550 U.S. 124 (2007).

⁹ See, e.g., Marquise Francis, *Poll: Most Americans Oppose Trans Women Competing in Female Sports, Including 2 of 3 in Gen Z*, NBC NEWS (Apr. 30, 2025, 1:56 PM), <https://www.nbcnews.com/politics/news/poll-americans-oppose-trans-women-competing-female-sports-2-3-gen-z-rcna203658> (on file with authors) (discussing the survey results showing a majority opposition to transgender women participation despite NCAA President Charlie Baker finding

This Essay first observes in Part I how the increasing rhetoric around gender roles and the gender binary dovetail to surreptitiously ensconce the gender hierarchy. Part II examines how the need to enforce anti-trans laws paves the way for heightened surveillance of women. This leads to a discussion in Part III of how women who support and defend anti-trans laws are likely advocating against their own interests and could be helping to justify expanding transgender surveillance to include reproductive data as a means to avoid more intimate inspections.

I. REEMERGENCE OF GENDER FUNDAMENTALISM

The parallels between the attacks on reproductive rights and transgender rights are uncanny. It is hard to see the former as anything other than a blueprint for the latter. Both are buttressed by ignoring medical expertise, undermining empirical research, and presenting misleading information as objective data. Both use hyperbolic rhetoric and drastically overstated examples of regret to spuriously claim the interest is protection.¹⁰ In truth, these paternalistic efforts are not protective but safeguard societal orders that keep women under control. Combined, these policies do not improve women's wellbeing but, as Justice Ruth Bader Ginsburg warned, advance "ancient notions about women's place in the family and under the Constitution—ideas that have long since been discredited."¹¹

A. Glamorizing the "Traditional" Woman

Data surveillance is not simply a tool for government infiltration of the public's privacy. Private actors often weaponize this tool to keep users in a state of hypnotic addiction.¹² Ongoing litigation demonstrates how social media platforms, in particular, use various mechanisms to keep users glued to their sites and, as a result, can influence a person's beliefs and values.¹³ A

fewer than 10 transgender athletes out of more than 500,000 participating in college athletics). See also Angus Cochrane, *Supreme Court Backs 'Biological' Dbacks 'biological' definition of Woman*, BBC (Apr. 16, 2025), <https://www.bbc.com/news/articles/cvg7pqzk47zo> (on file with authors) (discussing the U.K. Supreme Court's unanimous decision that the term "woman" refers to a "biological woman." Susan Smith, co-founder of For Women Scotland, the group who brought the case against the Scottish government, stated, "[s]ex is real and women can now feel safe that services and spaces designated for women are for women and we are enormously grateful to the Supreme Court for this ruling.")

¹⁰ Alesha Doan et al., *"We Are the Visible Proof": Legitimizing Abortion Regret Misinformation through Activists' Experiential Knowledge*, 40 L. & POL'Y 33 (2018); Maggie Astor, *How a Few Stories of Regret Fuel the Push to Restrict Gender Transition Care*, N.Y. TIMES (May 16, 2023), <https://www.nytimes.com/2023/05/16/us/politics/transgender-care-detransitioners.html> (on file with authors).

¹¹ *Gonzales v. Carhart*, 550 U.S. 124, 185 (2007) (Ginsburg, J., dissenting).

¹² Matthew B. Lawrence, *Addiction and Liberty*, 108 CORNELL L. REV. 259, 290–98 (2023).

¹³ Press Release, Office of the New York State Attorney General, Attorney General James Sues TikTok for Harming Children's Mental Health (Oct. 8, 2024) <https://ag.ny.gov/press->

lawsuit stemming from the Buffalo mass shooting in 2022 provides a useful illustration, as the plaintiffs allege that platforms such as YouTube and Reddit caused the shooter to “develop the mentality required to target and kill Black people” through “unreasonably dangerous and negligent design choices.”¹⁴ Though the risk posed is different in degree and measure, the mechanisms by which women are inundated with content that glorifies stereotypical gender roles are harmful nonetheless.

Since 2020, tradwives, short for “traditional wives,” have become an increasingly popular online community.¹⁵ Not to be confused with stay-at-home mothers, tradwives are their own subculture, complete with perfect appearances, spotless homes, and every meal made from scratch.¹⁶ Though there is nothing inherently wrong with wanting to be a homemaker, the content creators within this community have been heavily criticized for promoting, explicitly or implicitly, conservative ideals that a woman’s place is in the home, taking care of her husband and children.¹⁷ To be clear, social media content about motherhood has long preceded this boom of tradwife content.¹⁸ However, what were once forums for discussing the otherwise hidden struggles of motherhood have quickly devolved into a curated performance meant to delude and conscript an unsuspecting audience.¹⁹

Central to the dialogue about being a tradwife is a fundamentalist view on sex and gender. Whether due to religion or perceived biology, women championing the tradwife mantra often maintain that femininity is natural

release/2024/attorney-general-james-sues-tiktok-harming-childrens-mental-health [https://perma.cc/2UY6-FZ3T].

¹⁴ Jones v. Mean LLC, No. 810316/2023 (N.Y. Sup. Ct. Mar. 18, 2024).

¹⁵ Rebecca L. Stotzer & Ashley Nelson, *The (Anti) Feminism of Tradwives*, 37 TERRORISM & POLITICAL VIOLENCE 1 (2025).

¹⁶ It is noteworthy that this largely white presentation of domesticity is ahistorical given that most low-income households have required women, especially women of color, to work outside of their own homes. See Ayesha Rascoe, *Trad wives' Are Trending. What Does That Say About Feminism Today?*, NPR (Jan. 28, 2024, 8:21 AM), <https://www.npr.org/2024/01/28/1227453741/trad-wives-are-trending-what-does-that-say-about-feminism-today> [https://perma.cc/QH6W-U7SJ]; see also Marika Lindholm, *The Tradwife Trend Is a Risky Throwback*, PSYCH. TODAY (Sept. 27, 2024), <https://www.psychologytoday.com/us/blog/more-than-womens-work/202409/the-tradwife-trend-is-a-risky-throwback> (on file with authors).

¹⁷ Stotzer & Nelson, *supra* note 15; one study also found that users who interact with tradwife content on TikTok get recommended far-right conspiracy theory videos, see Olivia Little, *Tradwife Influencers Are Quietly Spreading Far-Right Conspiracy Theories*, MEDIA MATTERS (May 1, 2024, 10:55 AM), <https://www.mediamatters.org/tiktok/study-tradwife-influencers-are-quietly-spreading-far-right-conspiracy-theories> (on file with authors).

¹⁸ Morgan Jerkins, *Trad Wives Are Thriving in the Post-Dobbs Era*, MOTHER JONES (July-Aug.), <https://www.motherjones.com/politics/2024/06/trad-wife-wives-nara-smith-estee-williams-dobbs-roe-escapism> [https://perma.cc/E3RY-YFZF].

¹⁹ Kathryn Jezer-Morton, *Did Moms Exist Before Social Media?*, N.Y. TIMES (Apr. 16, 2020), <https://www.nytimes.com/2020/04/16/parenting/mommy-influencers.html> (on file with authors); Jerkins, *supra* note 18.

and a part of being a “good” woman.²⁰ Statements like “women were born to nurture” children or husbands and “being a wife and a mother should be your top priority, always” reinforce the idea that a woman’s value is tied to her domesticity.²¹ Videos espousing these archaic ideals are not limited to an audience of like-minded women. They are posted on platforms like TikTok and Instagram, which are easily accessible and frequented by young people who are absorbing these ideas²² without fully understanding that the eras these influencers romanticize were ones in which women had fewer rights and limited autonomy.²³

This propaganda about a woman’s role could be viewed as an unintended consequence of depicting the benefits of being a homemaker. That is, until these influencers share their views on topics like feminism and transgender women. Some frame feminism as a disruption to the “natural order” and that tradwives can restore that order by returning women to their “rightful places.”²⁴ Sometimes, this anti-feminist rhetoric shifts into anti-transgender attacks through statements like “your inclusion is our elimination” or by discussing giving birth as something only “real” women could do.²⁵ The intention, therefore, is to conflate the benefits of women submitting to their “natural” responsibilities in society with the protections granted by thwarting the “unnatural” women who would seek to intrude and destroy that traditional role.

B. *Enforcing the Sex Binary*

On his first day in office, President Trump signed the executive order “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” to prevent “[e]fforts to eradicate the biological reality of sex [that] fundamentally attack women by depriving them of their dignity, safety, and well-being.”²⁶ Basing federal laws and policies on the “true and biological category” of woman as “a person belonging, at conception, to the sex that produces the large reproductive cell” is scientifically inaccurate and meant more pointedly to repeal protections for

²⁰ Stotzer & Nelson, *supra* note 15.

²¹ *Id.*

²² Fortesa Latifi, *How The Trad Wife Trend on TikTok Sells Biblical Gender Roles*, TEEN VOGUE (Apr. 29, 2024), <https://www.teenvogue.com/story/how-the-trad-wife-trend-on-tiktok-sells-biblical-gender-roles> [https://perma.cc/7HW3-BBM6].

²³ Jacqueline Beatty, *The Truth About the past That ‘Tradwives’ Want to Revive*, TIME (Apr. 22, 2024, 9:00 AM), <https://time.com/6962381/tradwives-history> [https://perma.cc/QE24-QBJ2].

²⁴ Stotzer & Nelson, *supra* note 15.

²⁵ *Id.*

²⁶ Exec. Order No. 14,168, 90 Fed. Reg. 8615, 8615 (Jan. 20, 2025).

people who are gender nonconforming or transgender.²⁷ The attempt to integrate fetal personhood terms like “at conception” ignores that all fetuses start the same.²⁸ During early development in the womb, all genitalia are female, and it is not until week six or seven of gestation that sex differentiation begins.²⁹ The “biological sex” tactic reflected in the executive order also ignores that the biology of sex includes chromosomes, hormones, genitalia, reproductive capabilities, and many factors that can change over time in utero and well after birth.³⁰ More simply put, there are people with XX chromosomes that have a penis and testes, people with XY chromosomes that have a vagina and uterus, men with high estrogen and practically no testosterone, and women with practically no estrogen and high testosterone.³¹ There are people born with reproductive elements of both sexes and men and women whose bodies are unable to reproduce.³²

Despite the clear inaccuracy of a rigid sex binary, the executive order claims the mantel of protection by relying on unproven dangers that arise when permitting men to “self-identify as women and gain access to intimate single-sex spaces and activities designed for women.”³³ The administration’s claim that it “will defend women’s rights” is laughable, considering it is the same group responsible for the downfall of abortion rights, increased attacks on reproductive rights and women’s bodies, and even performing involuntary, medically unnecessary hysterectomies on women held by U.S. Immigration and Customs Enforcement (ICE).³⁴ Nevertheless, other right-wing legislators have followed suit with consistent attempts to define women not just by their assigned sex at birth but also by their reproductive potential. For example, at the confirmation hearing for Justice Ketanji Brown Jackson,

²⁷ *Id.*

²⁸ NATIONAL ACADEMY PRESS, EXPLORING THE BIOLOGICAL CONTRIBUTIONS TO HUMAN HEALTH: DOES SEX MATTER? 45 (Theresa M. Witzmann & Mary-Lou Pardue eds. 2001).

²⁹ *Id.*

³⁰ Jessica A. Clarke, *Sex Assigned at Birth*, 122 COLUM. L. REV. 1821, 1835–36 (2022).

³¹ *Differences of Sex Development*, MEDLINEPLUS, <https://medlineplus.gov/ency/article/001669.htm> [<https://perma.cc/YLE3-TPWN>].

³² *Intersex*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/articles/16324-intersex> [<https://perma.cc/Z685-ZNGH>].

³³ Exec. Order No. 14,168, 90 Fed. Reg. 8615, 8615 (Jan. 20, 2025).

³⁴ Caitlin Dickerson, et al., *Immigrants Say They Were Pressured into Unneeded Surgeries*, N.Y. TIMES (Sept. 29, 2020), <https://www.nytimes.com/2020/09/29/us/ice-hysterectomies-surgeries-georgia.html> (on file with authors). The absurdity of attempting to claim the label of women’s protector also includes President Trump calling himself the fertilization president. *Trump Touts IVF Expansion, Calls Himself ‘Fertilization President’ at Women’s Event*, NBC NEWS (Mar. 26, 2025), <https://www.nbcnews.com/video/trump-touts-ivf-expansion-calls-himself-fertilization-president-at-women-s-event-235451973833> [<https://perma.cc/PL4J-5EQH>].

Sen. Marsha Blackburn (R-TN) asked her to define the word “woman.”³⁵ Though Justice Jackson did not answer the question, multiple Republican legislators have since attempted to do so, such as Sen. Josh Hawley (R-MO) explaining that “[s]omeone who can give birth to a child, a mother, is a woman, someone who has a uterus is a woman.”³⁶ Rep. Diana Harshbarger (R-TN) said at a press conference, “[w]omen have two X chromosomes and are born with a uterus and ovaries.”³⁷ These personal definitions have even begun translating into law. Sen. Danny Verdin (R-SC) filed a joint resolution proposing an amendment to the South Carolina Constitution to define male or female “in the context of reproductive potential or capacity.”³⁸ Oklahoma also passed legislation in 2024 defining a female as someone who “naturally has, had, will have, or would have, but for a developmental or genetic anomaly or historical accident, the reproductive system that at some point produces, transports, and utilizes eggs for fertilization.”³⁹

These attacks targeting transgender people, including Trump’s executive order, these legislators’ opinions, and the array of rights restrictions, have already been shown to harm transgender and nonbinary people by invalidating their existence entirely. Researchers have observed significant increases in suicide attempts within the first year after states pass anti-transgender laws.⁴⁰ Less attention, however, has been paid to the impact on cisgender women. Women, even cisgender women, are not a monolith. By reducing womanhood to a rigid, binary classification based solely on one’s sex “at conception” or reproductive systems, these proponents fail to account for the biological diversity among cisgender women.

³⁵ *Confirmation Hearing on the Nomination of Hon. Ketanji Brown Jackson to Be an Associate Justice of the Supreme Court of the United States: Hearing on S. 1843 Before the Comm on the Judiciary*, 117th Cong. 422 (2022). Similarly, Khiara Bridges, a law professor at UC Berkeley, used the phrase “people with a capacity for pregnancy” at a Senate hearing and was pressed by Sen. Josh Hawley on whether that just meant “women,” see Jo Yurcaba, *Law Professor Khiara Bridges Calls Sen. Josh Hawley’s Questions About Pregnancy ‘Transphobic’*, NBC NEWS (Jul. 13, 2022, 1:47 PM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/law-professor-khiara-bridges-calls-sen-josh-hawleys-questions-pregnanc-rcna38015> [<https://perma.cc/UZD3-P3RF>].

³⁶ Arthur Delaney & Jennifer Bendery, *What’s A Woman? GOP Senators Stumble on Their Own Question to Ketanji Brown Jackson*, HUFFPOST (Apr. 6, 2022, 5:45 AM), https://www.huffpost.com/entry/republicans-ketanji-brown-jackson-woman_n_624c9967e4b0d8266ab22274?5uf (on file with authors).

³⁷ Emily Brooks, *GOP Resolution Defines ‘Woman’ on Basis of Biological Sex*, HILL (May 20, 2022, 2:27 P.M.), <https://thehill.com/homenews/house/3495975-gop-resolution-defines-woman-on-basis-of-biological-sex> (on file with authors).

³⁸ S.J. Res. 624, 125th Sess. (S.C. 2023).

³⁹ H.B. 1449, Reg. Sess. (Okla. 2024).

⁴⁰ Wilson Y. Lee et al., *State-Level Anti-Transgender Laws Increase Past-Year Suicide Attempts Among Transgender and Non-Binary Young People in the USA*, 8 NATURE HUM. BEHAV. 2096, 2101 (2024).

Differences of sexual development (DSD) are conditions involving one's genes, hormones, and reproductive organs.⁴¹ Three common DSD conditions that can affect those who are assigned female at birth are congenital adrenal hyperplasia, complete androgen insensitivity syndrome, and Turner syndrome.⁴² Congenital adrenal hyperplasia can involve symptoms like atypical external genitalia, including an enlarged clitoris or partly closed labia that resemble a penis and scrotum, respectively,⁴³ which is often addressed by surgical interventions in infancy.⁴⁴ Women with congenital adrenal hyperplasia may also have genitals that look typical at birth but may still have fertility issues. Complete androgen insensitivity syndrome occurs when a person develops a typical vulva,⁴⁵ but they do not have a uterus, fallopian tubes, or a cervix.⁴⁶ Turner syndrome, a condition exclusive to females, involves a complete or partial absence of an X chromosome,⁴⁷ potentially resulting in failed ovary development.⁴⁸

These conditions nullify most of these lawmakers' definitions of a woman. For example, fashion model Hanne Gaby Odiele has walked the runway for some of the largest brands in the world since being signed in 2005. In 2017, they revealed that despite working as a model for women's apparel, they were born with XY chromosomes and internal testes.⁴⁹ The forced binary typically results in these individuals being coerced into one gender or the other as infants, which may itself result in a future transgender label. Intersex activist Sean Saifa M. Wall exemplifies the hoops one must jump through as a result of the sex-gender stringency because he now must inject himself with testosterone after his testes were removed as a child.⁵⁰

⁴¹ *Differences in Sex Development*, NHS, <https://www.nhs.uk/conditions/differences-in-sex-development> [https://perma.cc/B5Z4-9P8S].

⁴² Veronica Gomez-Lobo et al., *Disorders of Sexual Development in Adult Women*, 128 *OBSTETRICS & GYNECOLOGY* 1162 (2016).

⁴³ *Congenital Adrenal Hyperplasia*, MAYO CLINIC (Mar. 22, 2024), <https://www.mayoclinic.org/diseases-conditions/congenital-adrenal-hyperplasia/symptoms-causes/syc-20355205> [https://perma.cc/9NU2-5KQV].

⁴⁴ Gomez-Lobo et al., *supra* note 42.

⁴⁵ *Id.*

⁴⁶ *Id.*; Bruce Gottlieb & Mark A. Trifiro, *Androgen Insensitivity Syndrome* in *GENE REVIEWS* (University of Washington, Seattle ed., 1999).

⁴⁷ Gomez-Lobo et al., *supra* note 42; *Turner Syndrome*, MAYO CLINIC (Feb. 11, 2022), <https://www.mayoclinic.org/diseases-conditions/turner-syndrome/symptoms-causes/syc-20360782> [https://perma.cc/6LV8-W7G].

⁴⁸ Gomez-Lobo et al., *supra* note 42; *Turner Syndrome*, *supra* note 47.

⁴⁹ Jenni Avins, *Fashion Models Have Become the Unlikely Challengers of Antiquated Gender Norms*, *QUARTZ* (Jan. 24, 2017), <https://qz.com/892963/fashion-models-have-become-the-unlikely-challengers-of-antiquated-gender-norms> [https://perma.cc/Y9JA-G6WB].

⁵⁰ Sean Saifa M. Wall, *American Surgeons Are Still Mutilating Children Who Don't Look "Normal"*, *QUARTZ* (Apr. 26, 2015), <https://qz.com/391209/american-surgeons-are-still-mutilating-children-who-dont-look-normal> [https://perma.cc/3QQR-29NX].

Legislation that does account for the genetic anomalies affecting reproductive system developments is not constructed to accurately depict the spectrum of sexual development among women but rather to emphasize what these lawmakers believe a woman should do—reproduce. The fixation conservatives have on reproduction does not just functionally exclude transgender people; it reinforces control over women's bodies. And the need to enforce a strict gender binary will inevitably facilitate more intrusive surveillance, which will result in limited bodily autonomy for *all* women.

II. THE RIGHT KIND OF WOMAN

During oral arguments for *United States v. Skrametti*—the case determining the constitutionality of gender-affirming care bans—Justice Sotomayor raised a practical question about how clinicians would know whether they are complying with the law: “if a sex-neutral-looking child walks into a doctor and says, I don’t want to grow breasts, doesn’t the doctor have to know whether it’s a girl or a boy before they prescribe the drug?”⁵¹ Justice Sotomayor defied any contention that identifying who is male and female is readily apparent by candidly admitting that she has mistakenly misgendered children.⁵² Justice Jackson echoed the point, using the hypothetical of a patient who wanted to lower their voice.⁵³ Since the availability of medication is determined by whether the purpose is inconsistent with a person’s “biological sex,” then a patient who wishes to deepen their voice to sound more masculine would need to be affirmed as a “biological male” to ensure the clinician is not opening themselves up to state penalties.⁵⁴

These scenarios exemplify that while the frequently purported aim of transgender restrictions is to protect cisgender women, practical questions about how to identify who may or may not be transgender remain. Short of governments requiring some sort of branding or other forced outing, people in jeopardy of being assessed civil or criminal penalties would have to find ways to determine the “biological sex” of individuals. This could result in unnecessary exclusion, harassment, and coerced assimilation into what the government deems gender-appropriate appearances. These types of laws, aimed at limiting “social transitioning,” are already percolating through state legislatures such as Arkansas, proposing a bill that would allow hairdressers and barbers to be held liable for punitive damages ranging from \$10,000 to \$10 million for providing gender-nonconforming

⁵¹ Transcript of Oral Argument at 119, *United States v. Skrametti*, (2024) (No. 23-477).

⁵² *Id.* at 119.

⁵³ *Id.* at 122.

⁵⁴ *Id.* at 123.

haircuts.⁵⁵ This sort of extremism is just one instance displaying how rhetoric about protecting women in bathrooms and on sports teams has led to gender policing, which is an invasive intrusion into all women's lives.

The dangers of transgender people using bathrooms that align with their gender identity have long been a right-wing talking point. Conservatives maintain that allowing transgender women—though they prefer to use the term “men” disparagingly—to enter women's restrooms would threaten the safety of women and girls.⁵⁶ There is no evidence to suggest that inclusive public accommodations cause harm to cisgender women,⁵⁷ though there is evidence that gender-neutral bathrooms have a broader benefit beyond transgender and non-binary individuals.⁵⁸ Bathroom restrictions are even more irrational when considering the laws create no actual barrier to entry for someone in search of women in a vulnerable state. In reality, exclusion from public accommodations results in increased physical and sexual violence against transgender women.⁵⁹ This helps to explain why the first unnecessary bathroom ban, passed by North Carolina in 2016, received such intense backlash from the public, corporations, and even conservative policymakers.⁶⁰ Nevertheless, after more diligent research led policymakers to focus on gender-affirming care for minors and women's sports as a more optimal strategic starting point, the bathroom bans have reemerged along with gender fundamentalism.⁶¹ Seventeen states ban transgender people from using publicly owned

⁵⁵ H.B. 1168, 95th Gen. Assemb., Reg. Sess. (Ark. 2025). Jesus Mesa, *Arkansas Bill Targets 'Gender Nonconforming' Haircuts for Kids*, NEWSWEEK (Mar. 20, 2025, 6:26 PM), <https://www.newsweek.com/arkansas-bill-targets-gender-nonconforming-haircuts-kids-2048152> [<https://perma.cc/42E7-ZQJA>].

⁵⁶ Amira Hasenbush, Andrew R. Flores, & Jody L. Herman, *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 SEXUALITY RES. & SOC. POL'Y 70, 70–71 (2019).

⁵⁷ *Id.* at 78.

⁵⁸ Luc Bovens & Alexandru Marcoci, *The Gender-Neutral Bathroom: A New Frame and Some Nudges*, 7 BEHAVIORAL PUB. POL'Y 1, 14–15 (2020/2023).

⁵⁹ Orion Rummler & Grace Panetta, *The 19th Explains: How Bathroom Bans on Federal Property Would Impact Trans Americans*, 19TH (Nov. 27, 2024), <https://19thnews.org/2024/11/trans-americans-impact-bathroom-bans-federal-property>; *Transgender Teens with Restricted Bathroom Access at Higher Risk of Sexual Assault*, HARVARD (May 7, 2019), <https://hsph.harvard.edu/news/transgender-teens-restricted-bathroom-access-sexual-assault> [<https://perma.cc/7KKD-MZBV>].

⁶⁰ Elena Schneider, *The Bathroom Bill That Ate North Carolina*, POLITICO MAG. (Mar. 23, 2017), <https://www.politico.com/magazine/story/2017/03/the-bathroom-bill-that-ate-north-carolina-214944> (on file with authors).

⁶¹ Michael R. Ulrich, *Practicing Medicine in the Culture Wars — Gender-Affirming Care and the Battles over Clinician Autonomy*, 390 NEW ENG. J. MED. 779, 780 (2024).

bathrooms that are consistent with their gender identity,⁶² and attempts have been made at the federal level to bar transgender women from using women's restrooms on federal property.⁶³

However, these bills lack enforcement mechanisms,⁶⁴ inadvertently deputizing citizens—or intentionally, in some cases⁶⁵—to decide who is male or female. Just as clinicians may be unable to determine simply by appearance who is a “biological” male or female, shifting restrictions into the public sphere presents the same challenges but with more dangerous consequences for all women. Restrictions in public settings empower anyone to question or challenge the sex of any person. The implication is that women may have to prove their womanhood on demand. This will subject *all* women to potential scrutiny, especially those who may not fit the feminine norms held by any would-be public enforcer. In a Florida Walmart, for example, a cisgender woman was followed into the women's bathroom by a man yelling transgender slurs and threatening physical assault, which kept her fearfully hiding in the stall until he left.⁶⁶ The 29-year-old woman, who was a Walmart employee and fired for discussing the incident with her supervisor, was likely harassed because she is 6-foot-4 and failed to meet the diminutive expectations of her assailant.⁶⁷

Even in states without bathroom bans, cisgender women who are gender nonconforming are being subjected to invasive scrutiny in public. This time, in an Arizona Walmart, a Black masculine-presenting cisgender

⁶² *Bans on Transgender People Using Public Bathrooms and Facilities According to their Gender Identity*, MAP (May 16, 2025), https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom_bans [https://perma.cc/54M3-Q8VZ].

⁶³ Press Release, Off. of Congresswoman Nancy Mace, Congresswoman Nancy Mace Re-Introduces Triage of Bills Protecting Women's Privacy and Safety (Feb. 6, 2025), <https://mace.house.gov/media/press-releases/congresswoman-nancy-mace-re-introduces-triage-bills-protecting-womens-privacy> [https://perma.cc/8E64-6ZM5].

⁶⁴ James D. Esseks, *Anti-Trans Bathroom Bills Have Nothing to Do With Privacy and Everything to Do With Fear and Hatred*, HUFFPOST (Apr. 15, 2016), https://www.huffpost.com/entry/anti-trans-bathroom-bills_b_9703224?utm_hp_ref=queer-voices (on file with authors).

⁶⁵ Idaho, for example, allows students who encounter a transgender person in their bathroom to sue the school and, if successful, be awarded up to \$5000 (not including attorney fees or monetary damages). See S.B. 1100, 67th Leg., 1st Reg. Sess. (Idaho 2023). A similar city ordinance amendment was passed in Odessa, TX, in which claimants can be awarded statutory damages “not less than \$10,000” if they prevail. See CITY COUNCIL OF THE CITY OF ODESSA, City Council Meeting Agenda, 158 (Oct. 22, 2024), https://www.odessa-tx.gov/AgendaCenter/ViewFile/Agenda/_10222024-757 [https://perma.cc/L23N-YNTJ]; see also Kiara Alfonseca, *Transgender residents living under bathroom ban reflect on Sarah McBride controversy*, ABC NEWS (Nov. 23, 2024, 6:05 AM), <https://abcnews.go.com/US/transgender-residents-living-bathroom-ban-reflect-sarah-mcbride/story?id=116129609> [https://perma.cc/7YRV-V68H] (confirming that the city ordinance amendment was passed).

⁶⁶ Daniel Wu, *Walmart fires woman who reported anti-trans threats from man in bathroom*, WASHINGTON POST (Mar. 27, 2025), <https://www.washingtonpost.com/nation/2025/03/27/walmart-fires-woman-trans-hate-bathroom> (on file with authors).

⁶⁷ *Id.*

woman had the police called on her for entering the bathroom that aligned with both her gender identity and biological sex.⁶⁸ The store employee who called the police likely believed she was a man. Yet it was the male officers who barged in to remove her that became the alleged target of lawmakers: men in the women's bathroom threatening and endangering innocent citizens.⁶⁹ Even after the 19-year-old woman lifted her shirt to prove that she was a woman, one of the officers continued to insist that she looked like a man.⁷⁰ These incidents illustrate that bathroom bans—regardless of the sincere safety concerns of any proponent—will infringe on the privacy of all women and further entrench a narrow standard of womanhood.

The suspicion that fuels the vigilante enforcement of bathroom bans also exists in restrictions surrounding women's sports and competitions. Here, the justification is that transgender women have an unfair advantage and pose a threat to the physical safety of "real females."⁷¹ Despite another circumstance where alleged harms are unsubstantiated, President Trump signed an executive order titled "Keeping Men Out of Women's Sports," threatening to rescind federal funds to educational institutions that allow transgender women to participate in women's sports teams.⁷² The asserted interest is to "protect opportunities for women and girls to compete in safe and fair sports,"⁷³ however, research shows that the inclusion of transgender athletes does not impact participation or achievements in women's sports.⁷⁴ Instead, exclusion only negatively impacts transgender women's and girl's mental health.⁷⁵ Even still, twenty-seven states have

⁶⁸ John Russell, *Cops burst into women's restroom to remove butch lesbian, accusing her of being a man*, LGBTQ NATION (Mar. 7, 2025), <https://www.lgbtqnation.com/2025/03/cops-burst-into-womens-restroom-to-remove-butch-lesbian-accusing-her-of-being-a-man> (on file with authors).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Brooke Sopelsa et al., *Trump signs executive order banning trans women from women's sports*, NBC NEWS (Feb. 5, 2025), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/trump-executive-order-ban-trans-women-sports-rcna190767> [<https://perma.cc/8KTQ-T9D4>].

⁷² The White House recently stated it would freeze \$175 million of federal funding to the University of Pennsylvania due to Penn's school policies on transgender athletes. See Alana Wise, *Trump suspends \$175 million in funding to University of Pennsylvania over trans athletes*, NPR (Mar. 20, 2025, 3:26 PM), <https://www.npr.org/2025/03/20/nx-s1-5333675/university-pennsylvania-upenn-trump-suspends-funding-trans-student-athletes> [<https://perma.cc/S56K-G2PQ>].

⁷³ Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 5, 2025).

⁷⁴ Shoshana K. Goldberg, *Fair Play: The Importance of Sports Participation for Transgender Youth*, CTR. FOR AM. PROGRESS (Feb. 8, 2021), <https://www.americanprogress.org/article/fair-play> [<https://perma.cc/8VWA-Z9MK>].

⁷⁵ Elana Redfield, *The Impact of Transgender Sports Participation Bans on Transgender People in the US*, UCLA SCH. OF LAW (2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Sports-Ban-EO-Feb-2025.pdf> [<https://perma.cc/LWQ5-UFMU>].

banned transgender students from participating in school sports that align with their gender identity.⁷⁶

Most of these state laws do not specify how to verify a student's sex or gender.⁷⁷ Allowing institutions the discretion to determine an athlete's sex can enable the use of invasive measures, like a genital exam⁷⁸ or testosterone level test. Regardless of enforcement mechanisms, the existence of these laws invites surveillance of all women's abilities or appearances to identify possible "threats."⁷⁹ As a result, these restrictions also place *all* women at risk of being accused of not being, in essence, the right type of woman.⁸⁰ And rather than protect and promote fairness, competitive restrictions have resulted in women with *naturally* exceptional ability to be targeted, ostracized, and banned. Caster Semenya, a Black South African women's runner, was accused of being a man because of her performance and physique.⁸¹ Though the 19-year-old offered to show athletic officials her vagina, she was forced to undergo sex tests despite being assigned female at birth.⁸² Ultimately, she was pressured to take medication or undergo surgery to lower her naturally high testosterone levels in order to continue competing.⁸³

Both of these bans assume that it is easy to determine who is male or female. However, the fact that these trans-exclusionary policies have implicated cisgender women illustrates their underlying purpose: to enforce what a woman should be. Women of color, particularly Black women, have long been subjected to intense scrutiny over their femininity, resulting in them feeling pressured to expose themselves to prove their belonging.⁸⁴ For centuries, Black women have been stereotyped as

⁷⁶ *Equality Maps: Bans on Transgender Youth Participation in Sports*, MAP, https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans [<https://perma.cc/7LDA-6F88>].

⁷⁷ *Id.*

⁷⁸ Ohio attempted to mandate the use of genital exams to verify the sex of athletes whose gender is disputed, *see* Maia Belay et al., *Ohio bill would require genital exams for student athletes if sex is questioned*, HILL (Jun. 10, 2022, 12:42 PM), <https://thehill.com/news/wire/3519065-ohio-bill-would-require-genital-exams-for-student-athletes-if-sex-is-questioned> [<https://perma.cc/P9EQ-MKGL>].

⁷⁹ Michael R. Ulrich & Arpita Khanna, *Inclusivity as Fairness*, 24 AM. J. OF BIOETHICS 30, 32 (2024).

⁸⁰ *See id.*

⁸¹ Gerald Imray, *Semenya says she offered to show track officials her body*, AP NEWS (May 23, 2022, 7:45 PM), <https://apnews.com/article/entertainment-health-sports-caster-semenya-medication-9ac09233a724c7e6373be2bcc45c34e1> [<https://perma.cc/L4LV-LZJU>].

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Russell, *supra* note 68; Imray, *supra* note 81. Sojourner Truth also stood before white men and women at an anti-slavery rally and bared her breasts to prove she was a woman and, even

hypermasculine, hypersexual, or hyper-independent,⁸⁵ consequently denying them membership into womanhood that is freely given to white women, who are conversely seen as feminine, demure, and fragile.⁸⁶ These stereotypes have not only justified systemic mistreatment of Black women⁸⁷ but can also make them especially vulnerable to gender policing. One study, for example, examined the effects of racial identity on person perception and found that when guessing the gender of a presented face, participants erroneously identified Black women as men more often than they miscategorized any other race and gender intersection.⁸⁸ It is hard to believe these newly deputized enforcers would not make similar mistakes.

Policies that police gender based on appearance do not exist in a vacuum. They rely on and reinforce existing biases. Anti-trans laws, therefore, contribute to a landscape in which women of color, women who are androgynous and gender nonconforming, or women who do not fit whatever arbitrary standards of femininity will arise next, will be subject to increased scrutiny, interrogation, and even physical examination. President Trump and other supporters of anti-trans legislation can endlessly tout that inclusivity in bathrooms and sports results in the humiliation of women,⁸⁹ but it is these laws that enforce sex segregation that will truly strip women of their dignity and worsen an already intense culture of surveillance against all women.

III. SUPPORTING YOUR OWN DISENFRANCHISEMENT

The ubiquitous presence of the transgender community in political discourse is illogical, given that the population represents approximately one

still, was not believed. *See* BELL HOOKS, *AIN'T I A WOMAN?: BLACK WOMEN AND FEMINISM* 159 (1981).

⁸⁵ *See generally* Lisa Rosenthal & Marci Lobel, *Stereotypes of Black American Women Related to Sexual Motherhood*, 40 *PSYCHOL WOMEN Q.* 414 (2016); *see also* Cailyn Petrona Stewart, *The Mule of the World: The Strong Black Woman and the Woes of Being 'Independent'*, 3 *KNOTS: AN UNDERGRADUATE J. OF DISABILITY STUD.* 31 (2017).

⁸⁶ *See generally* Kathy Deliovsky, *Normative White Femininity: Race, Gender and the Politics of Beauty*, 33 *ATLANTIS* 49 (2008); *see also* Isis H. Settles et. al., *Through the Lens of Race: Black and White Women's perceptions of Womanhood*, 32 *PSYCHOL WOMEN Q.* 454 (2008); *see also* Alaina Demopoulos, *'Very Demure, Very Mindful': Why Everyone's Jumping on the Modesty Bandwagon*, *GUARDIAN* (Aug. 16, 2024), <https://www.theguardian.com/technology/article/2024/aug/16/demure-tiktok-trend> [<https://perma.cc/788D-MCHQ>].

⁸⁷ Erin Lewis, *A Literature Review of Black Women's Portrayal in Media and Its Effects on Their Treatment in Society* (Dec. 4, 2019) (B.A. thesis, University of North Carolina at Chapel Hill) (Carolina Digital Repository).

⁸⁸ *See generally* Phillip Atiba Goff et. al., *"Ain't I a Woman?": Towards an Intersectional Approach to Person Perception and Group-Based Harms*, 59 *SEX ROLES* 392 (2008).

⁸⁹ Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 5, 2025); *see generally* Exec. Order 14,168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

percent of the country.⁹⁰ But a manufactured crisis is nothing new. History is replete with “crises” that were used to distract the public or pit underserved communities against one another.⁹¹ After the results of the 2024 election, even more politicians turned against transgender people for perceived political gain.⁹² However, instead of propagating the exploitation of transgender people’s rights and wellbeing, the interest convergence between transgender rights and women’s rights should be a more prominent part of the public discourse.⁹³ Enforcement of a strict gender binary will only further entrench the gender hierarchy and perpetuate gender norms of what it means to be the right type of woman. As a result, women supporting anti-transgender laws do so at their own peril. Anti-trans laws are likely to exacerbate the ongoing assault on women’s rights to privacy and bodily autonomy.⁹⁴

The rhetorical force of “biological sex” provides both a misleading simplicity to the issue of gender and speciously presents anti-trans legislation as protecting the *natural* state of people. But women, unfortunately, provide their own tragic examples of the deceit in such claims. In a press conference regarding eligibility to participate in global competitions, Sebastian Coe, the president of World Athletics, explained enforcement of the organization’s stringent testosterone restrictions against certain DSD women as “necessary to ensure their *naturally* high testosterone levels are no longer giving them an

⁹⁰ The Associated Press, *Transgender people are about 1% of the U.S. population. Yet they’re a political lightning rod*, NBC NEWS (Mar. 31, 2025, 9:57 AM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/transgender-people-are-1-us-population-yet-re-political-lightning-rod-rcna198852> [https://perma.cc/P3FY-8J9M]; Jody L. Herman et al., *How Many Adults and Youth Identify as Transgender in the United States?*, WILLIAMS INSTITUTE (2022), <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states> [https://perma.cc/S74T-MREL].

⁹¹ See generally JONATHAN METZL, *DYING OF WHITENESS* (2019).

⁹² See, e.g., Christopher Cadelago, *Gavin Newsom breaks with Democrats on trans athletes in sports*, POLITICO (Mar. 6, 2025, 7:53 AM), <https://www.politico.com/news/2025/03/06/gavin-newsom-breaks-with-democrats-on-trans-athletes-in-sports-00215436> [https://perma.cc/EUC2-5UGN] (recapping a conversation between California governor Gavin Newsom with right-wing conservative activist, Charlie Kirk, on Newsom’s podcast in which Newsom suggested Democrats were wrong for allowing transgender women in sports, that it was “deeply unfair,” and that he understands how Republicans were able to “weaponize that issue at another level.”).

⁹³ Derrick A. Bell, Jr., Comment, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (explaining the principle of interest convergence as “[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.”).

⁹⁴ See generally Rose Mackenzie & Arli Christian, *The Intertwined Future of Attacks on Abortion and Gender-Affirming Care*, ACLU (Jan. 18, 2023), <https://www.aclu.org/news/reproductive-freedom/the-future-attacks-abortion-freedom-gender-affirming-care-lgbtq-rights> [https://perma.cc/U9MJ-DJEP].

advantage over *biological women*.”⁹⁵ This is how women assigned females at birth, raised as females, presenting as females, and competing in women’s sports throughout their lives could be excluded for conditions that they never knew they had. The admission that women are being castigated and disqualified for what is naturally occurring in their bodies further reveals the opposition to transgender people is not tied solely to their choices for physical modification.

In fact, World Athletics has used competition bans to coerce women to alter their biological, natural bodies through irreversible and medically unnecessary surgery.⁹⁶ One Ugandan runner, Annet Negesa, agreed to the organization’s recommended procedure and subsequently suffered from depression, joint aches, headaches, and had to seek asylum in Berlin because she feared imprisonment or death if she returned home to a country that condemns all LGBT individuals.⁹⁷ She has not competed since her surgery.⁹⁸ These are not efforts to protect women but opportunities for people in power to become arbiters of womanhood.

This type of empowerment includes discretion in determining who deserves protection and against whom. Sports competition officials decided that women with testosterone levels below 5.0 nmol/L warranted protection from women whose levels were higher.⁹⁹ That is until they decided the women deserving the right to compete were only those below 2.5 nmol/L.¹⁰⁰ Similarly, the people who consider themselves deputized to enforce bathroom bans are no longer worried about keeping men out of women’s intimate spaces but anyone whose appearance deviates from the public patrol’s perception of acceptable femininity. Given the reliance on whistleblowers, there will inevitably be a disparate impact based on who is deemed suspicious enough to be tested. Those who do not conform to social standards, which are more likely to be women of color, are almost certain to suffer disproportionately.¹⁰¹ To be clear, oversight and privacy invasions have always worked this way. For example, *Ferguson v. City of Charleston*, a pivotal case in reproductive privacy, arose from another fabricated crisis, the “crack babies” epidemic, where Black women were targeted, demonized, and

⁹⁵ *Tested: The Choice*, NAT’L PUB. RADIO, at 24:00 (July 15, 2024), <https://www.npr.org/transcripts/1216507596> [<https://perma.cc/ZDJ2-VFZV>] (emphasis added).

⁹⁶ Geneva Abdul, *This Intersex Runner Had Surgery to Complete. It Has Not Gone Well*, N.Y. TIMES (Dec. 16, 2019), <https://www.nytimes.com/2019/12/16/sports/intersex-runner-surgery-track-and-field.html> (on file with authors).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Katerina Jennings & Esther Braun, *Beyond Suppressing Testosterone: A Categorical System to Achieve a “Level Playing Field” in Sport*, 24 AM. J. OF BIOETHICS 4, 5 (2024).

¹⁰⁰ Ulrich & Khanna, *supra* note 79, at 30.

¹⁰¹ *See generally id.*

criminalized.¹⁰² Indeed, *Roe*'s downfall was built substantially on the inability to trust women to "do the right thing," which justified governmental intervention on reproductive privacy and bodily autonomy to "protect" the fetus from those who would improperly disregard their womanly obligations to carry their pregnancy to term.¹⁰³

There is still a risk that the erroneous declarations of protection could invade privacy even further. The need to enforce expansive gender segregation could give rise to demands for increased efficiency. Alleged interest in avoiding intimate confirmation measures such as genital examinations could be used to justify alternative approaches to determine any incongruence between appearance and "biology." These types of excuses could ultimately be used to justify intrusion into personal data. Interest in using technology to enforce reproductive restrictions has only grown since *Dobbs*, and using resources to track and punish political targets is already underway.¹⁰⁴ In Hungary—where one of President Trump's many dictatorial inspirations Viktor Orbán rules—proposals have been made to harness the capabilities of artificial intelligence and facial recognition systems to find participants in Budapest's Gay Pride march.¹⁰⁵ These patterns illustrate the lengths some will go to advance their power and political interests. The threat of more extensive intrusions into privacy will only continue to grow as the line demarcating the "real women" from the imposters becomes the interest of legislatures and law enforcement—which are, notably, disproportionately men (or male, if you prefer).

IV. CONCLUSION

Women should determine the weight of alleged interests in protecting women. Opposition to anti-trans laws cannot be equated to a disregard for the safety and wellbeing of women. North Carolina's bathroom ban was not in response to citizen demand or a surge in women being assaulted in bathrooms.¹⁰⁶ It was a direct rebuke of Charlotte's City Council passing a local law allowing transgender people to use the bathroom aligned with their

¹⁰² See *Ferguson v. City of Charleston*, 532 U.S. 67, 103 (2001) (Scalia, J., dissenting).

¹⁰³ This includes nonviable fetuses, even at the risk of future fertility or, in at least one rare case, another fetus in utero.

¹⁰⁴ See generally Leah R. Fowler & Michael R. Ulrich, *Femtechmodystopia*, 75 STAN. L. REV. 1233 (2023).

¹⁰⁵ Sandor Zsiros, *Exclusive: Hungary's Gay Pride Surveillance Would Breach the EU's AI Act, says Leading MEP*, EURONEWS (Mar. 26, 2025, 5:41 PM), <https://www.euronews.com/my-europe/2025/03/26/exclusive-hungarys-gay-pride-surveillance-would-breach-the-eu-ai-act-says-leading-mep> [https://perma.cc/BS8B-WXGT].

¹⁰⁶ Elena Schneider, *The Bathroom Bill that Ate North Carolina*, POLITICO.MAG. (Mar. 23, 2017), <https://www.politico.com/magazine/story/2017/03/the-bathroom-bill-that-ate-north-carolina-214944> [https://perma.cc/35AW-7LXN].

gender identity.¹⁰⁷ Following the law's demise there was no change in bathroom assaults either. Conservative efforts to control the bodies and rights of women are a far greater threat than the mythical men in wigs sneaking into women's bathrooms and stealing all the Olympic medals. Yet, as policymakers and judges continue their attempts to drag this country back into the era of coverture, there is a distinct risk that women will not realize their best interests are not a genuine priority when anti-trans laws are pursued. Independent journalist Erin Reed publishes a monthly map for anti-trans legislative risk assessments.¹⁰⁸ Many of the same states that have the most extreme efforts to target transgender people, such as Texas and Florida, also have the most restrictive abortion policies according to Guttmacher Institute.¹⁰⁹ There is also significant overlap between the most dangerous states for transgender people and pregnant women, based on maternity care deserts¹¹⁰ and maternal mortality rates.¹¹¹

Advances by women have always been met with concerted attempts to put them back in their "rightful" places. After women proved their capabilities in the workplace due to the need created by World War II, it was not long before mass media was weaponized to convince them how good they had it when they were less assertive, independent, and hardworking.¹¹² All women were then inundated with propaganda meant to convince them that the woman's place was in the home and that women would be more fulfilled with a husband and children.¹¹³ Soon thereafter, "[t]he working woman, be she black or white, found it necessary to prove her femininity."¹¹⁴ More recently, women were exposed to \$215 million in anti-transgender

¹⁰⁷ *Id.*

¹⁰⁸ Erin Reed, *Anti-Trans National Risk Assessment Map: March Edition*, ERIN IN THE MORNING (Mar. 25, 2025), <https://www.erininthemorning.com/p/anti-trans-national-risk-assessment> [<https://perma.cc/Q45H-LC6G>].

¹⁰⁹ *Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER (May 12, 2025), <https://states.guttmacher.org/policies> [<https://perma.cc/TB2H-B4LS>].

¹¹⁰ A. Stoneburger et. al., *Nowhere to Go Maternity Care Deserts Across The US: 2024 Report for United States (Report No. 4)*, MARCH OF DIMES (2024), <https://www.marchofdimes.org/peristats/reports/united-states/maternity-care-deserts> [<https://perma.cc/7GJA-53CI>].

¹¹¹ *Maternal Deaths and Mortality Rates per 100,000 Live Births*, KFF, <https://www.kff.org/other/state-indicator/maternal-deaths-and-mortality-rates-per-100000-live-births/?activeTab=map¤tTimeframe=0&selectedDistributions=number-of-deaths&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> [<https://perma.cc/NUD9-WV3Q>].

¹¹² HOOKS, *supra* note 84, at 177.

¹¹³ *Id.*

¹¹⁴ *Id.*

advertising leading up to the November 2024 election.¹¹⁵ According to conservative political operatives themselves, the trans terror was a contrived political ploy to galvanize base voters and raise funds, with the influential impact going well beyond those original expectations.¹¹⁶ As history repeats itself, this is but another effort to control women by the very political leaders that consistently aim to control their bodies.

Anti-trans laws are the latest divide and conquer strategy. In the past, inferiority has been based on religion, philosophy, theology, and even the science of biology.¹¹⁷ But regardless of reason, “whether it is race, caste, class, or sex reduced to an inferior condition, the justification process is the same.”¹¹⁸ Virtuous descriptions of the “good black” or the “true woman” are in reality efforts by those in power to “keep them ‘in their place.’”¹¹⁹ As Simone de Beauvoir explains, girls throughout history have been told “myths created by men’s pride and desires,” meant to “confirm this [gender] hierarchy in the little girl’s eyes.”¹²⁰ Through joint efforts by those who believe in self-determination, inclusivity, and kindness, the damage of this myth of the treacherous transgender woman can be stopped.

¹¹⁵ Bill Barrow & Marc Levy, *Trump Hammered Democrats on Transgender Issues. Now the party is at odds on a response*, AP NEWS (Nov. 14, 2024, 1:17 PM), <https://apnews.com/article/transgender-rights-campaign-trump-kamala-harris-democrats-republicans-bbae5660ef59110e5fc9c24f98b082d6> [https://perma.cc/999G-9EWF].

¹¹⁶ Adam Nagourney & Jeremy W. Peters, *How a Campaign Against Transgender Rights Mobilized Conservatives*, N.Y. TIMES (Apr. 16, 2023), <https://www.nytimes.com/2023/04/16/us/politics/transgender-conservative-campaign.html> (on file with authors).

¹¹⁷ SIMONE DE BEAUVOIR, *THE SECOND SEX* 12 (1949).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 302.

