

# TIMELINE OF REGULATIONS AND POLICIES that May Protect Transgender Individuals

1989

**Americans with Disabilities Act (ADA):** In 1989, transgender individuals were considered exempt from ADA protections. In 2015, the law faced its first challenge to the constitutionality of the 1989 decision through *Blatt v. Cabela Retail Inc.* on the grounds that the retailer didn't make restroom accommodations in accordance with the plaintiff's gender identity and gave her a nametag with her former name.<sup>1</sup>

2014

**President Barack Obama signed Executive Order 13672** extending protection against discrimination in hiring and employment to LGBTQ+ people. The Executive Order created specific protections for transgender civilian members of the federal workforce and prohibited companies that contract with the federal government for more than \$10,000 from discrimination in employment based on sexual orientation and gender identity.<sup>3, 4</sup>

**Title VII of the Civil Rights Act of 1964:** Attorney General Eric Holder directs the Department of Justice (DOJ) to take the position that protection under Title VII of the Civil Rights Act of 1964 extends to claims of discrimination based on an individual's gender identity, including transgender discrimination.<sup>5</sup>

2016

**ACA §1557:** In May 2016, the Office of Civil Rights (OCR) within HHS issued a final rule clarifying the extent of §1557's nondiscrimination protections, including those for transgender people, stating that explicit categorical exclusions for coverage of care associated with gender transition is prohibited.<sup>4, 9, 10</sup>

In December 2016, a Federal District Court judge in Texas issued a **nationwide preliminary injunction** in *Franciscan Alliance v. Azar* preventing HHS from enforcing the §1557 final rule.<sup>10, 11</sup>

2019

Following the preliminary injunction issued in 2016, the same Federal District Court judge in Texas issued a final ruling in *Franciscan Alliance v. Azar* **vacating ACA §1557's nondiscrimination provisions.**<sup>13</sup>

2021

OCR announced in May 2021 that it will interpret the prohibitions on the basis of sex under ACA §1557 and Title IX to include **discrimination on the basis of sexual orientation and gender identity**, pursuant to the Supreme Court's decision in *Bostock v. Clayton County*.<sup>17, 18</sup>

After being reintroduced in both the 115<sup>th</sup> and 116<sup>th</sup> Congresses, **the Equality Act** was again reintroduced in the 117<sup>th</sup> Congress and passed by the House of Representatives in February 2021. The Senate has not taken up the legislation to date.<sup>8, 19</sup>

In his first State of the Union address, President Biden called for the **passage of the Equality Act.**<sup>20</sup>

In response to state actions targeting children receiving gender-affirming care, OCR issued guidance in March 2022 describing how restrictions on access to gender-affirming care or disclosure of patient information related to gender-affirming care could be in violation of federal nondiscrimination protections under **ACA §1557** and the **Health Insurance Portability and Accountability Act (HIPAA).**<sup>21, 22</sup>

**President Biden issued Executive Order #14075**, which aimed to address equality issues facing LGBTQ+ people through a variety of measures,

2012

**Title VII of the Civil Rights Act of 1964:** The Equal Employment Opportunity Commission (EEOC) ruled in the case of *Macy v. Holder* in April 2012 that employers that discriminate based on gender identity violate the prohibition of the sex discrimination clause in Title VII.<sup>2</sup>

2015

**Affordable Care Act (ACA) §1557:** In September, the Department of Health and Human Services (HHS) proposed a new rule that prohibits discrimination in participation in certain health programs based on gender identity (in addition to existing protections based on race, color, national origin, sex, age and disability). This is the first time a federal law has included gender identity in discrimination clauses relating to health programs.<sup>6</sup>

Congressional Democrats in both the House of Representatives and the Senate first introduced the **Equality Act during the 114<sup>th</sup> Congress.** The legislation sought to incorporate protections against LGBTQ+ discrimination into the Civil Rights Act of 1964 by prohibiting discrimination on the basis of sex, sexual orientation and gender identity in employment, housing, public accommodations, education, federally funded programs, credit and jury service. The legislation was not taken up for a vote by either chamber in the 114<sup>th</sup> or 115<sup>th</sup> Congress. The House of Representatives passed the Equality Act during the 116<sup>th</sup> and 117<sup>th</sup> Congresses, but it was not taken up by the Senate.<sup>7, 8</sup>

2017

**Title VII of the Civil Rights Act of 1964:** The Trump administration reversed course from the Obama administration's DOJ policy, with Attorney General Jeff Sessions releasing a memo stating that Title VII of the 1964 Civil Rights Act does not protect transgender people from discrimination at work.<sup>12</sup>

2020

In June 2020, HHS issued a new rule **reversing the prior administration's interpretation**, rewriting ACA §1557 to remove protections against discrimination based on sexual orientation and gender identity.<sup>14, 15</sup>

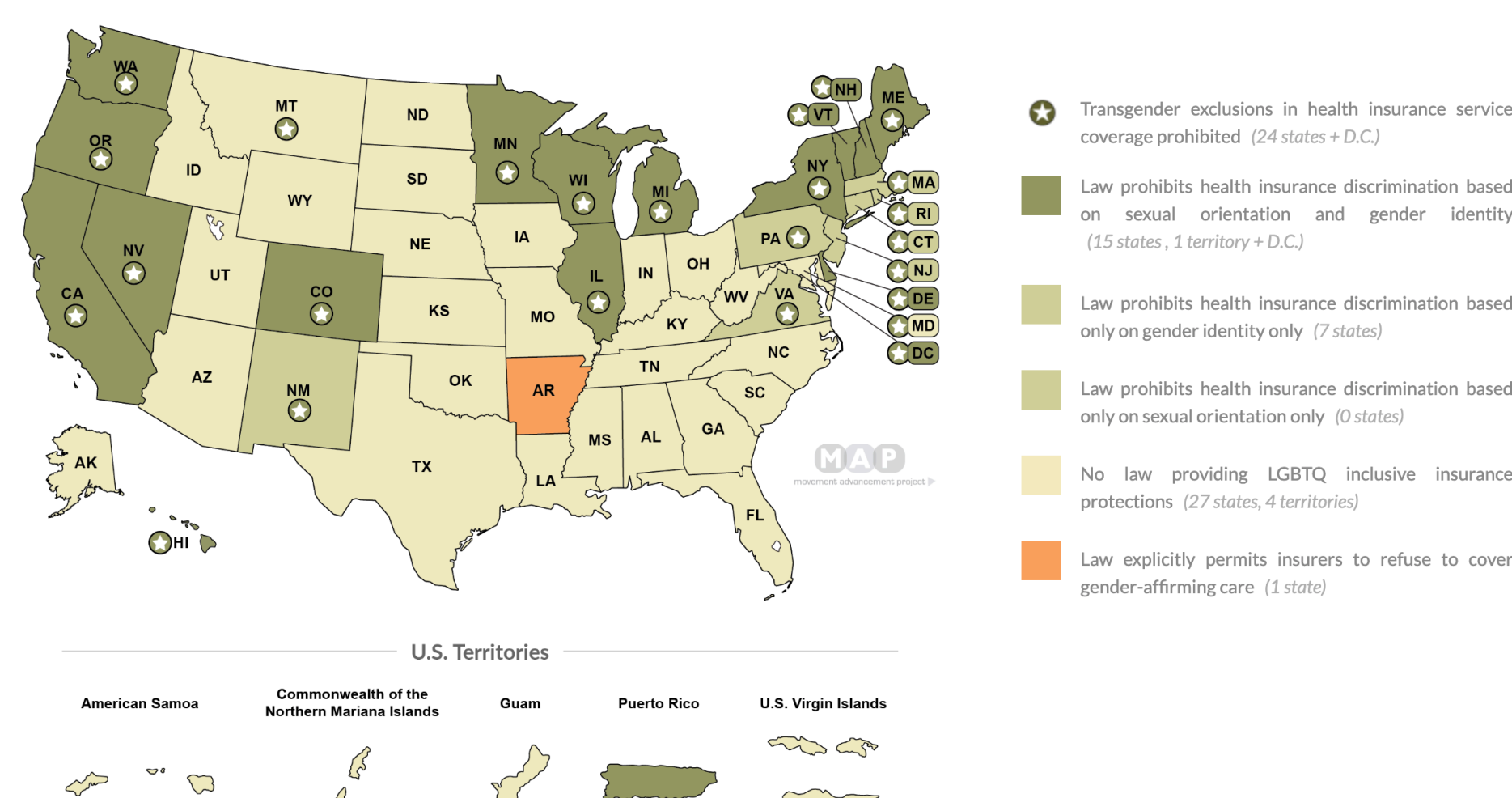
Days after the Trump administration issued its proposed rule, **the U.S. Supreme Court issued rulings in two cases** with profound implications for the discrimination protections afforded by Title VII of the 1964 Civil Rights Act. In *Bostock v. Clayton County*, the Supreme Court held that Title VII of the Civil Rights Act of 1964 protects against discrimination for LGBTQ+ employees, ruling that discrimination on the basis of sexual orientation or gender identity is necessarily also discrimination "because of sex" as prohibited by Title VII. In *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC*, the Supreme Court held that Title VII of the Civil Rights Act of 1964 extends workplace protections to transgender people, ruling that discrimination on the grounds of transgender status is a form of discrimination based on sex.<sup>8, 16</sup>

2022

including by directing the federal government to ensure that LGBTQ+ individuals have access to medically necessary care when state and local laws limit such care.<sup>23, 24</sup>

**HHS issued new proposed ACA §1557 rules** in July 2022. The Biden Administration's rules reinstate nondiscrimination provisions for gender identity and sexual orientation that were previously narrowed by the Trump administration's 2020 final regulations and expand upon certain other provisions. Like the ACA §1557 regulations issued by both the Obama and Trump administrations, legal challenges to the latest regulations are expected before final rules are implemented.<sup>25</sup>

As of 2022, 24 states and the District of Columbia (DC) prohibit transgender exclusions in health insurance service coverage. Fifteen (15) states and DC have enacted laws prohibiting health insurance discrimination based on sexual orientation and gender identity, while an additional seven states have laws prohibiting health insurance discrimination based on gender identity only.<sup>26</sup>



On June 24, 2022, The U.S. Supreme Court issued its final decision in *Dobbs v. Jackson Women's Health Organization*. This decision was foreshadowed in a leaked draft opinion in May 2022 and reversed the precedent set by *Roe v. Wade* nearly 50 years ago that provided certain protections for access to abortion at the federal level. The impact will be to revert control of abortion access to each state and to no longer apply a uniform federal standard of accessibility.<sup>27</sup>



There are concerns about the effect the Supreme Court's decision will have on transgender populations. Even prior to overturning *Roe v. Wade*, members of the LGBTQ+ community faced abortion access issues—leaving them at an increased risk for unwanted and mistimed pregnancies or to consider ending a pregnancy by themselves, without medical supervision (e.g., self-managed abortion). Research suggests that among transgender people who have been pregnant, more than one-third considered a self-managed abortion, and 19% went through with the attempt.<sup>28</sup>

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