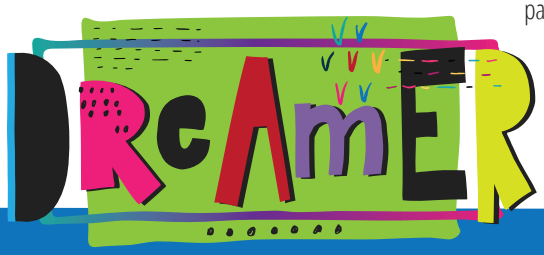
Respect
WINTER 2021 VOL 20 NO. 2
A DIVERSITY NEWSLETTER

Court Decisions Preserve DACA For Now *by Maria Wood*

In 1875 the U.S. Supreme Court ruled that the regulation of immigration is a federal responsibility and in the 1880s Congress passed its first piece of immigration legislation, according to the U.S. Citizenship and Immigration Services (USCIS). The country has been grappling with immigration issues ever since.

The Deferred Action for Childhood Arrivals (DACA) Program was created in 2012 via an Executive Order signed by then President Barack Obama. The DACA Program allows undocumented immigrants who were brought to this country as children to apply for lawful status that exempts them from deportation and allows them to work in the U.S. The DACA Program does not grant citizenship.

DACA applicants must show they arrived in America before they reached age 16 and that they were under the age of 31 as of June 15, 2012. Applicants must have lived in the United States continuously since 2007 and graduated high school, earned a GED or been honorably discharged from the military. They must also pass a background check and have no criminal record. DACA status allows recipients to work legally in the U.S. and receive a social security number in order to pay taxes. DACA recipients are also sometimes called Dreamers after the DREAM Act. The DREAM Act was legislation, first proposed in 2001, which would have created a pathway to citizenship for children brought to this country by their parents. Despite being re-introduced several times with revisions and compromises, the Act was never passed.



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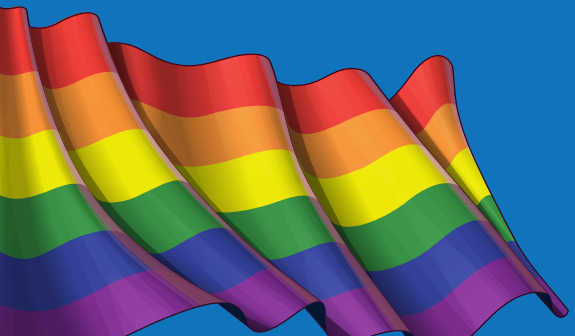
LGBTQ Community Makes Strides with Recent Ruling *By Phyllis Raybin Emert*

LGBTQ (Lesbian, Gay, Bisexual, Trans, Queer or Questioning) rights in the United States have advanced over the past decades. Members of the LGBTQ community, however, still face discrimination that others do not. A recent U.S. Supreme Court decision may signal a shift.

In June 2020, the U.S. Supreme Court handed down a landmark, pro-LGBTQ rights decision in *Bostock v. Clayton* County. Although *Bostock* deals with employment discrimination, the Court's decision has far-reaching implications in other areas as well, including health care, housing and education. The Court ruled that Title VII of the 1964 Civil Rights Act, which prohibits discrimination on the basis of sex, includes sexual orientation and gender identity.



A closer look at *Bostock*

Title VII of the Civil Rights Act of 1964 protects federal employees and employees in businesses with over 15 workers against discrimination based on race, color, national origin, religion and sex. *Bostock* combined three employment discrimination cases into one, including two cases of discrimination against gay men and one case against a transgender woman.

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Redlining Making a Comeback, But in Reverse *by Michael Barbella*

There was a time in our nation's history when it was hard for people of color, particularly African Americans, to buy homes. Mortgage lenders subjected minorities to the discriminatory, unethical and illegal practice of redlining, effectively barring them from home ownership by denying them credit.

The term redlining refers to the red lines that mortgage lenders would draw on a map, indicating the neighborhoods in which they would not grant loans based exclusively on the demographics of the area. In other words, they would not grant mortgages in predominantly Black neighborhoods. While redlining still exists in more subtle forms today, the Fair Housing Act of 1968 diminished its more harmful impacts. The Act prohibits discrimination in the sale, rental and financing of housing based on race, religion, national origin or sex.

Redlining in reverse

Today, minorities are experiencing redlining in reverse. The practice of reverse redlining occurs when minorities are targeted and sold products and services at higher prices. It is also referred to as predatory lending. One area where reverse redlining is playing out is in the for-profit college industry.

Colleges are classified as either nonprofit or for-profit. A non-profit college can be either private (Harvard University) or public (Rutgers University) and is typically managed by a board of trustees. A for-profit college (University of Phoenix) is run like a business and is beholden to its owners and shareholders who want to see a profit.

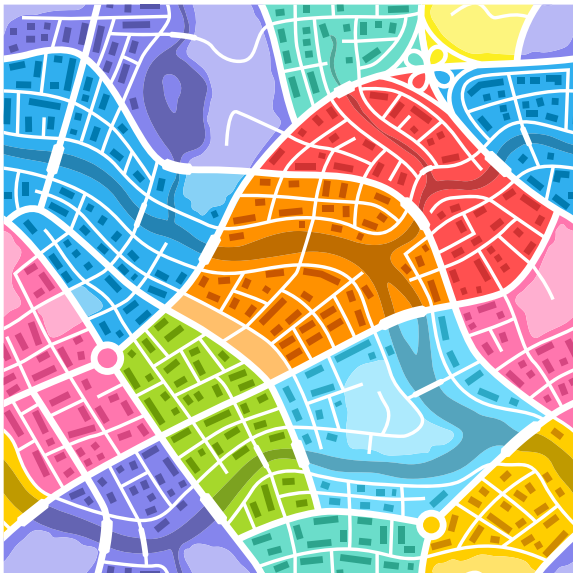
While some for-profit institutions and trade schools provide a good alternative for students who can't afford the tuition at a nonprofit college, a number of for-profit colleges have become embroiled in lawsuits with claims of predatory lending that targets minorities.

Take the case of Kareem Britt, an African American man living in Florida, who is currently part of a class action lawsuit against Florida Career College, a for-profit educational institution. The suit was filed in April 2020 by the Project on Predatory Student Lending at the Legal Services Center of Harvard Law School.

According to court documents, Britt was barely making ends meet working two jobs when he came across a Facebook ad for Florida Career College (FCC), which read: "Are you tired of working minimum-wage jobs? Eating ramen noodles?" the ad asked. "Are you ready to step up to steak? HVAC degrees make $16 to $23/hr."

Britt contacted FCC and spoke to a recruiter, arranging an on-campus interview and tour where he was shown an HVAC (heating, ventilation, air conditioning) classroom and its related equipment. He also inquired about job placement and was told the school would help him find a job. Britt registered with the college, financing the $20,400 HVAC degree program partly through a $6,000 Pell Grant and a $3,000 "scholarship loan" from the college. A financial aid advisor told Britt he would have to pay $75 per month for the loan while attending classes.

Soon after enrolling at FCC in 2018, Britt suspected the college had misrepresented itself during the recruitment process. Among other things, the class action lawsuit cites Britt's "limited to non-existent" access to the tools and machinery needed to train in the HVAC field; the lack of knowledge from



FCC's instructors; and the empty promise of future employment.

Recruiting is key

The lawsuit against FCC references multiple allegations including fraud, negligence, breach of contract and racial discrimination, but it mainly targets FCC's recruiting practices. The suit claims the college—which received $17 million in pandemic relief funds in 2020—pressures low-income students to enroll and borrow money by misleading

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Respect

This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

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them about its programs and services. Specifically, the lawsuit claims the school deliberately featured Black models in many of its ads; promoted itself on radio stations with predominantly Black audiences; and sponsored billboard ads in overwhelmingly Black neighborhoods.

The lawsuit charges that FCC is "discriminating against students on the basis of race by inducing them to purchase a worthless product by taking on debt they cannot repay." The complaint also contends that FCC "continues to use these recruitment and advertising tactics to target Black people for its predatory product." According to U.S. Education Department data, 85 percent of FCC's students are people of color.

FCC is also accused of using tuition money more on recruitment efforts and advertising initiatives rather than educational instruction. In the 2018 fall semester, for example, FCC spent between four percent and 18 percent of the tuition it collected on instructional expenses at its three campuses, according to U.S. Department of Education data. Tuition can cost up to $51,925, yet instructional expenses totaled $2,952 at the college's Hialeah campus, $3,032 at its West Palm Beach location, and $4,483 at its Lauderdale Lakes branch.

"For-profit colleges have a long history of perpetuating racial and economic injustices," Toby Merrill, director of the Project on Predatory Student Lending, said in a statement when the class action suit was filed. "FCC targeted Black students with a predatory product using the for-profit college playbook of lies and high-pressure recruitment, and left them in debt they could never repay. Race-conscious recruitment can be a tool to provide opportunity and promote diversity. But FCC's racial targeting for predatory products is discrimination and violates the law."

Not the first time

Legal claims in higher education gained momentum with a 2011 class action lawsuit against the Richmond School of Health and Technology (RSHT), also known as Chester Career College, a for-profit school that targeted poor and minority students who were eligible for larger federal loans and grants. In that case, RSHT was ordered to pay $5 million to more than 4,100 students that attended the school from July 2004 and February 2013.

Similar accusations have been levied against numerous for-profit colleges over the last nine years, which led to the creation of a working group comprised of 37 state attorneys general. Past defendants have included Education Management Corporation (investigated or sued in 12 states), ITT Educational Services (investigated or sued in 19 states), as well as Alta Colleges, Lincoln Technical Institute and Kaplan Career Institute, according to news reports.

William J. Pinilis, a civil trial attorney and an adjunct professor at Seton Hall University Law School where he teaches consumer law, says the FCC case was definitely fraud.

"Minorities were just flat out lied to about the education they would receive and the prospects for employment after completion of the program," Pinilis says. "They were offered high-interest, sub-prime [high risk] loans to finance their education. Many borrowers are enticed to take loans because they think the loan will enhance their financial position. However, in the Florida case, they were simultaneously lied to about the product they were getting and the cost and consequences of the loans."

Deceit was also the main culprit in a class-action lawsuit against Star Career Academy, a multi-campus occupational training school that closed in late 2016, roughly a year after a Camden County court ordered the for-profit institution to pay $9.2 million to more than 1,000 students for misrepresenting facts about the accreditation of its surgical technology program.

The rule of gainful employment

In 2015, the Obama Administration enacted the Gainful Employment Rule in order to protect students from predatory for-profit institutions by revealing how a program prepared a potential student for their career path. The rule dispersed federal student loans to schools based on their graduates' average debt-to-earnings ratio. Under the rule, if graduates don't earn enough income to pay

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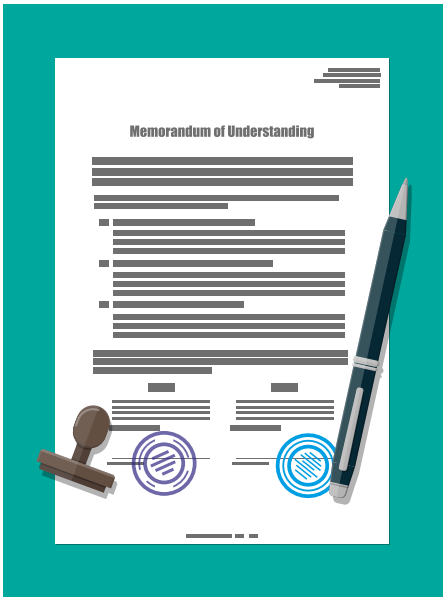
DACA CONTINUED FROM PAGE ONE

In jeopardy

In September 2017, the Trump Administration terminated the DACA Program. Jeff Sessions, the U.S. Attorney General at the time, issued a letter where he argued that President Obama lacked the authority to establish the program.



DACA, he wrote, "was effectuated by the previous administration through executive action, without proper **statutory** authority and with no established end-date, after Congress' repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch."

According to the Pew Research Center, as of 2019 approximately 650,000 immigrants have protection under the DACA Program. While DACA recipients live in all 50 states and the District of Columbia, according to Pew, six states—California, Texas, Florida, New York, Illinois and North Carolina—have the most DACA recipients, accounting for half of the total number. In addition, a Pew Research poll conducted in 2020 found that 74 percent of Americans favor giving permanent legal status to undocumented children who came to the U.S. with their parents.

Court decisions

After a series of lower court rulings that **upheld** the DACA program, the issue came before the U.S. Supreme Court. In June 2020, the Court preserved the DACA Program but its ruling was based on a technicality. The court emphasized the Trump Administration had the right to end the program; however, the majority of justices ruled the administration failed to justify why it sought to end the program.

"We do not decide whether DACA or its **rescission** are sound policies," Chief Justice John Roberts wrote for the Court's majority in *Department of Homeland Security v. Regents of the University of California*. "The wisdom of those decisions is none of our concern. Here we address only whether the Administration complied with the procedural requirements in the law that insist on a 'reasoned explanation for its action.'"

Chief Justice Roberts stated that the letter from Attorney General Sessions did not provide a reasoned analysis for ending the program. In addition, Justice Roberts noted that the administration did not consider the impact that rescinding the program would have on DACA recipients.

"Since 2012, DACA recipients have enrolled in degree programs, embarked on careers, started businesses, purchased homes and even married and had children, all in reliance on the DACA program," Chief Justice Roberts wrote.

The Chief Justice went on to write that the consequences of rescinding DACA would "radiate outward" to the families of DACA recipients. He quoted statistics from immigration advocates who estimate that there have been more than 250,000 children born to DACA recipients. Those children are U.S. citizens.

In addition, Chief Justice Roberts wrote, "Excluding DACA recipients from the lawful labor force may, [economists] tell us, result in the loss of $215 billion in economic activity and an associated $60 billion in federal tax revenue over the next 10 years."

The concerns, Chief Justice Roberts said, don't prevent the program's termination, but they do need to be addressed. The Court concluded that the Trump Administration did not address these concerns, and therefore, its decision to rescind DACA was "**arbitrary** and **capricious**."

Lauren Herman, a supervising attorney with Make the Road New Jersey, an immigrant rights organization, was encouraged by the Court's ruling.

"The Court didn't go so far as to say the administration couldn't end the program; it just said they didn't do so properly," Herman explains. "That said, it was a significant victory for immigrant communities. It was powerful to hear the U.S. Supreme Court recognize what this program has meant to so many people."

Another hurdle

The Court's decision ordered the Trump Administration to process DACA applications again. Originally, DACA recipients applied for renewal every two years; however, following the Court's decision, Acting Department of Homeland Security Secretary Chad Wolf issued a memo on July 28, 2020 outlining changes to DACA. The memo stated no new applications would be accepted and that the renewal period was shortened from two years to one. The application process costs $495.

That memo became the subject of another lawsuit. Eastern New York U.S. District Court Judge Nicholas Garaufis ruled that Wolf was not acting lawfully as Acting Secretary of Homeland Security, thereby invalidating the order. Judge Garaufis ordered the administration to start accepting new DACA applications and revert back to the two-year renewals.

The decision to restart initial applications was welcome news to Erika Martinez, a junior at Rutgers University and a potential DACA recipient. Martinez, who came to the U.S. from El Salvador at age two, works as a youth organizer at Make the Road New Jersey and is president of RU Dreamers, an on-campus

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DACA CONTINUED FROM PAGE FOUR

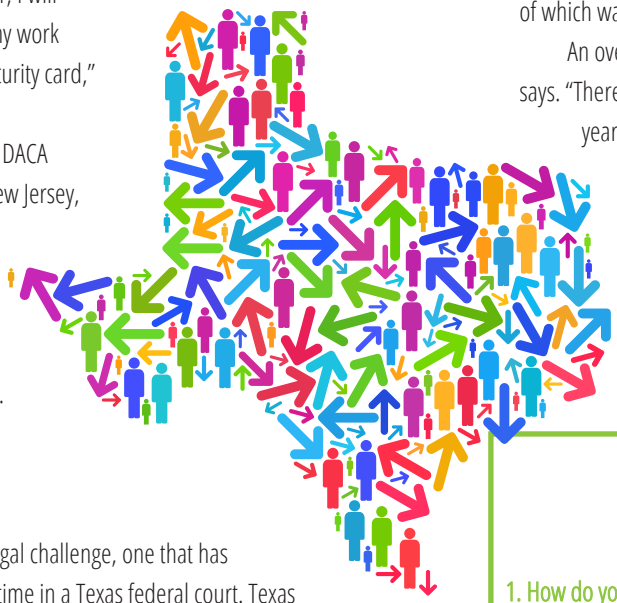
> "This is one area where there is pretty broad agreement for providing support to Dreamers. They've grown up here for most of their lives, have gone to school here, and should have options for a more permanent path to residency and ultimately citizenship."

advocacy organization for undocumented students. She was eligible to apply for DACA, but had not done so because it was unclear whether the government would accept her application due to the conflicting court and administration decisions.

With the Wolf memo reversed, Martinez gathered the necessary documents and applied. The application process can take up to six months, she says.

"So probably by June 2021, I will be hearing back to see if I get my work authorization and my Social Security card," Martinez says.

As of March 2020, 16,350 DACA recipients currently reside in New Jersey, according to estimates from the American Immigration Council. A total of 22,171 people in the state have been granted DACA status since 2012.



Another court challenge

DACA still faces another legal challenge, one that has been going on since 2018, this time in a Texas federal court. Texas Attorney General Ken Paxton filed a 2018 lawsuit questioning the legality of President Obama's original executive order that created DACA. Eight states (Alabama, Arkansas, Kansas, Louisiana, Mississippi, Nebraska, South Carolina and West Virginia) joined Texas in the lawsuit. The states in the case argue that they face irreparable harm if DACA is allowed to continue. In their complaint, they cite bearing the extra costs of healthcare, education and law enforcement protection to DACA recipients.

Lawyers for the Mexican American Legal Defense and Educational Fund (MALDEF) are representing 22 DACA recipients in the Texas case. The Texas lawsuit is not like the other suits attempting to end DACA.

"The [previous] suits have been about whether or not it was lawful to terminate DACA," Herman says. "The Texas suit is about whether or not the program was lawful in the first place."

Herman contends the executive order establishing DACA was legal, saying the President, as head of the Executive Branch, has the authority to issue such orders.

"President Obama only created the program when Congress failed to act," Herman says. "I don't think there was anything wrong with the program and hope it will continue until we get a legislative solution."

Back in 2018, U.S. District Court Judge Andrew Hanen declined to temporarily halt the program, arguing that ending the program "was contrary to the best interest of the public." However, he held a hearing in the case in December 2020. MALDEF attorneys hope that Judge Hanen reaches the same conclusion as he did in 2018. He could also decide to give the states bringing the suit a full hearing, make a ruling on DACA's legality or decide that the states haven't proven harm, dismissing the case. At press time, the judge had not rendered a decision yet.

Jason Hernandez, an attorney and director of Rutgers Immigrant Community Assistance Project, says the Texas case will likely be **appealed**, regardless of which way Judge Hanen rules.

An overhaul of the country's immigration laws is long overdue, Herman says. "There has not been comprehensive immigration reform in over 30 years, which means the current immigration laws are not adequate to address the current reality in our country," she says. "This is one area where there is pretty broad agreement for providing support to Dreamers. They've grown up here for most of their lives, have gone to school here, and should have options for a more permanent path to residency and ultimately citizenship." •

1. How do you feel about the DACA Program? What do you see as the benefits and drawbacks of the program?
2. If the DACA Program were determined to be unlawful, current DACA recipients could be deported. Many DACA recipients do not remember living in the country where they were born. How would you feel about the possibility of being sent to a country you've never known?
3. According to the article, DACA recipients stimulate the U.S. economy in the billions of dollars, as well as pay billions in taxes. Is that a reason to allow them to stay and possibly give them a path to citizenship? Why or why not?

Redlining CONTINUED FROM PAGE FIVE

off student loans, the school's federal aid could be in jeopardy. According to the class action complaint against FCC, 16 of its 17 programs failed under the rule's metrics.

Steve Gunderson, head of Career Education Colleges and Universities, a trade organization that represents more than 1,500 for-profit colleges, told National Public Radio that the Gainful Employment Rule holds for-profit schools to unrealistic standards.

"You've got to go into the five- or 10-year mark before most of these occupations have what you and I would call our respectable salaries," Gunderson said.

Betsy DeVos, the U.S. Education Secretary at the time, **repealed** the Gainful Employment Rule in July 2019 and the repeal took effect in July 2020. Former Secretary DeVos claimed the rule created burdensome reporting requirements for colleges and without the rule students would retain "the right to enroll in the program of their choice, rather than allowing government to decide which programs are worth a student's time and financial investment."

States contend the repeal harms their economies as well as students' future finances. A coalition of states, including New Jersey, is suing the U.S. Department of Education for repealing the Gainful Employment Rule. At press time, it is unclear what the fate of the Gainful Employment Rule is. A new Education Secretary could choose to re-instate it. •

1. How do you feel about the fact that in the past mortgage lenders refused to grant loans based exclusively on the demographics (redlining) of a particular area? What do you think the purpose of redlining was?
2. How do you feel about the opposite problem of reverse redlining? What are the potential problems that can happen when lenders/ proprietors target minorities for predatory lending?
3. What do you think about the Gainful Employment Rule? What role should government play in regards to protecting the interests of students who attend for-profit colleges?

LGBTQ Community CONTINUED FROM PAGE ONE

In the transgender case, Aimee Stephens, who had worked at a funeral home for six years, advised her boss that she was a transgender woman and would begin dressing as a woman at work. Two weeks later she was fired. In another case, Gerald Bostock, who worked with neglected and abused children, was fired after it became known at work that he had joined a gay softball league. The third case involved a skydiver who revealed his status as a gay man and was fired after a customer complained.

"Today, we must decide whether an employer can fire someone simply for being **homosexual** or **transgender**. The answer is clear," U.S. Supreme Court Justice Neil Gorsuch wrote in the Court's **majority opinion**. "An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

Leonore F. Carpenter, a professor at Temple University's Beasley School of Law in Philadelphia, who teaches courses on gender identity, LGBTQ rights and sexual orientation, says it was clear that Title VII protections had to include discrimination based on sexual orientation and gender identity.

"Discrimination based on gender identity is, very literally, discrimination 'because of sex,'" Professor Carpenter says. "When you think about the concept of 'sexual orientation,' it's impossible to do so without thinking of the gender of a person in comparison to the gender of the person to whom they're attracted. So sexual orientation discrimination also clearly is a kind of discrimination that occurs 'because of sex.'"

In his opinion for the Court, Justice Gorsuch gave a hypothetical situation to explain his reasoning. "Consider, for example, an employer with two employees, both of whom are attracted to men.

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LGBTQ Community CONTINUED FROM PAGE SIX

The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman," Justice Gorsuch wrote. "If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague."

Professor Carpenter calls *Bostock* "a milestone for LGBTQ rights" pointing out that Title VII covers employees nationwide. Prior to the Court's decision, 26 states allowed people to be fired for being gay or transgender.

Protecting LGBTQ rights

Professor Carpenter notes that the ruling in *Bostock* could provide the basis for interpreting other federal laws prohibiting sex-based discrimination. It has already had an effect on the military's transgender ban.

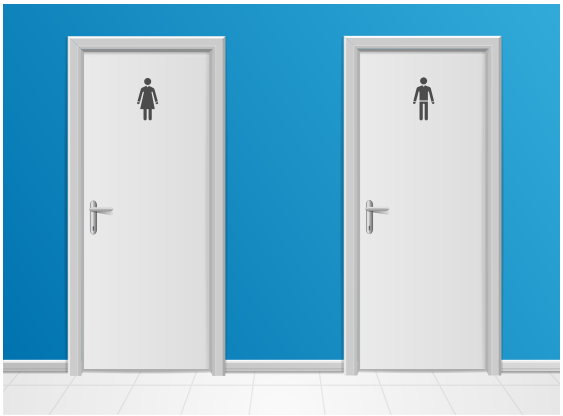
In 2016, President Barack Obama lifted the ban on transgender people openly serving in the military, a prohibition that had been in place since 1960. In 2017, however, President Donald Trump brought the ban back, resulting in lawsuits challenging its constitutionality. At first, **injunctions** prevented the ban from going into place, but a U.S. Supreme Court decision in January 2019 held that the injunctions could be lifted while the lawsuits continued.

In his first days in office, President Joseph Biden issued several executive orders concerning LGBTQ rights. First, he reversed President Trump's transgender military ban, allowing all "qualified Americans to serve their country." In addition, citing the *Bostock* decision, he directed all federal agencies to interpret civil rights laws that prohibited discrimination based on sex to include discrimination against sexual orientation and gender identity, ensuring protection for LGBTQ Americans in housing, education and health care.

The case of Gavin Grimm

Gavin Grimm, a transgender male student sued Virginia's Gloucester County School District in 2015 for the right to use the boy's bathroom at his high school. The American Civil Liberties Union (ACLU) represented Grimm, arguing the school district's bathroom policy was unconstitutional under the 14th Amendment (equal protection under the law) and Title IX.

The district court denied Grimm's claims, but a three-judge panel of the Fourth Circuit Court of Appeals **overturned** the lower court's decision. In 2016, the school district **appealed** to the U.S. Supreme Court, which sent the case back to the Fourth Circuit Court for further consideration. Despite the ruling in *Bostock*, the school district asked



the Fourth Circuit to hear the case *en banc* (meaning in front of all 15 judges not just the three-judge panel). The Fourth Circuit Court declined to hear the case in September 2020, allowing its original August 2020 ruling to stand. That's a victory for Grimm, who is now a 20-year-old college student.

U.S. Circuit Court Judge Henry F. Floyd wrote, "After the Supreme Court's recent decision in *Bostock*..., we have little difficulty holding that a bathroom policy precluding Grimm from using the boy's restrooms discriminated against him 'on the basis of sex.'"

In a statement released by the ACLU, Grimm said, "All transgender students should have what I was denied: the opportunity to be seen for who we are by our schools and our government. Today's decision is an incredible affirmation for not just me, but for trans youth around the country."

Despite the decision in *Bostock* and other lower court rulings, other states, including Oregon, Iowa and Florida, are attempting to pass similar "bathroom bills" like the one that was struck down in Virginia. In February 2021, the Gloucester County School District again **appealed** the Fourth Circuit's ruling to the U.S. Supreme Court.

Focusing on sports

In April 2020, Idaho passed the Fairness in Women's Sports Act, which blocks transgender girls from participating in girl's and women's sports. This ban, the first of its kind in the nation, would allow anyone to challenge an athlete's gender and require medical testing. Supporters of the measure (HB 500) believe transgender females, who were assigned male at birth, have physical advantages over **cisgender** females, those whose identity and gender correspond to their birth sex. Louisiana, Arizona, Alabama and Tennessee are considering similar bills.

The ACLU filed a lawsuit arguing that the Idaho ban was unconstitutional and violated Title IX, which prohibits sex discrimination in any educational institution that receives federal funding. The plaintiffs in the case include a transgender female athlete who wants to compete on her college's cross-country team, and a cisgender high school athlete who is concerned about having to undergo invasive physical exams and genetic testing to prove her biological sex.

In August 2020, U.S. District Court Judge David Nye issued a temporary injunction prohibiting the law from going into effect. Judge Nye issued the injunction since he believes the case was "likely to succeed" in the court system.

"While the citizens of Idaho are likely to either vehemently oppose or fervently support the Act, the U.S. Constitution must always prevail," Judge Nye said.

In protest of the Fairness in Women's Sports Act, more than 400 student-athletes, as well as prominent professional athletes like tennis pioneer Billie Jean King and soccer star Megan Rapinoe, are

urging the National Collegiate Athletic Association (NCAA) not to host any events in Idaho.

On the Idaho ban, Professor Carpenter says, "It seems to clearly discriminate based on sex because it treats cisgender and transgender athletes differently. It also does not allow athletes assigned male at birth to participate in women's sports but does allow athletes assigned female at birth to participate in men's sports, which is also discriminatory." •

1. How do you feel about the U.S. Supreme Court's decision in *Bostock*? What do you think of Justice Gorsuch's reasoning in the case?
2. The article mentions discrimination faced by the LGBTQ community with regard to housing, employment and education. What other forms of discrimination might members of the LGBTQ community face? What gains have been made over the years?
3. Gavin Grimm talks about being denied the opportunity to be seen for who he is. Describe a time when you felt like you weren't seen. How did not "being seen" make you feel? How do you think transgender students feel when they are treated differently than their classmates?

Glossary

appealed—when a decision from a lower court is reviewed by a higher court. **arbitrary**—random. **capricious**—unpredictable. **cisgender**—term for people whose gender identity matches the sex they were assigned at birth. **homosexual** — a person who is emotionally, romantically, physically and/or sexually attracted to those of the same sex. **injunction**—a judicial order that requires halting a specific action. **majority opinion**—a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues. **overturned**—to void a prior legal precedent. **rescission**—revocation, cancellation or repeal of a law, order or agreement. **repealed**—revoked. A law that (or amendment) is repealed has been withdrawn or cancelled and is no longer a law. **statutory**—required or permitted by law or statute. **transgender**—a person whose gender identity—their deeply held knowledge of their gender—and/or their expression of gender is different from cultural expectations based on the gender they were assigned at birth. **upheld**—supported; kept the same.