



Freedom of Expression Violations against the LGBTQ+ Communities in the United States

Submission to the Special Rapporteur on the Right to Education Ms. Farida Shaheed

Submitted on February 2, 2024, by:

University of Miami School of Law Human Rights Clinic

Tamar Ezer, Acting Director

Nicholas Stelter, Fellow

1311 Miller Drive, Coral Gables, FL 33146

n.stelter-clinic@law.miami.edu

www.law.miami.edu/hrc

(This report benefited from contributions from Ryan Thoreson, a specialist at **Human Rights Watch**, and feedback from Nathan Bruemmer of **Equality Florida** and Simone Chriss of **Southern Legal Counsel**. This submission is an adaptation of the Shadow Report submitted to the Human Rights Committee by Human Rights Watch and the Miami Law Human Rights Clinic)



I. Introduction

“Trans people are humans too and deserve to live in this country.”

- Nico Watson, Teacher¹

1. Discrimination against LGBTQ+ people, and particularly transgender people, in the U.S. remains widespread and has worsened significantly over the past few years. States have increasingly passed legislation limiting the rights of transgender individuals, with over 500 bills introduced limiting transgender rights in just the last year.² The result is an environment where transgender people, particularly transgender children, encounter state-sponsored discrimination in many different areas of their lives, raising safety concerns.³ As of August 2023, 14 states limit discussions of LGBTQ+ issues in schools, and in 5 states, schools with such curricula must inform parents beforehand and allow them to opt their children out of receiving that information.⁴ In nine states, transgender individuals are prohibited from using the bathroom that corresponds with their gender identity in schools and in some instances other public spaces.⁵ In 25 states, transgender students are banned from participating in school sports consistent with their gender identity.⁶ Such laws are just a small portion of increasing discrimination since 2019, as transgender people have become an area of fixation for political opponents.⁷ This discrimination does not only affect those who identify as transgender, but

¹ Interview with Nico Watson, trans resident of Florida (Mar. 15, 2023).

² Susan Miller, “War” on LGBTQ Existence: 8 Ways the Record Onslaught of 650 Bills Targets the Community, USA TODAY (April 5, 2023), <https://www.usatoday.com/story/news/nation/2023/03/31/650-anti-lgbtq-bills-introduced-us/11552357002>; *Snapshot: LGBTQ Equality by State*, Movement Advancement Project (accessed July 30, 2023), <https://www.mapresearch.org/equality-maps> (The Movement Advancement Project tracks laws and policies related to LGBTQ+ rights in the U.S. Their interactive map allows you to sort by issue, and each state is graded on a point scale depending on how positively or negatively their laws and policies impact transgender people). As of January 29, 2024, Florida legislators have introduced additional anti-LGBTQ+ bills that would greatly restrict freedom of expression. A few examples include banning pride flags in government buildings, characterizing accusations of homophobia or transphobia as “defamation per se,” and eliminating legal recognition of gender identity. C. A. Bridges, *Florida GOP doubling down with new anti-LGBTQ bills for 2024. What you need to know*, TALLAHASSEE DEMOCRAT – USA TODAY NETWORK (January 23, 2024), <https://www.tallahassee.com/story/news/politics/2024/01/08/new-anti-trans-bills-law-florida/72119930007/>.

³ Associated Press, *Canada issues travel advisory warning over U.S. states’ LGBTQ+ laws*, NPR (Sep. 1, 2023) <https://www.npr.org/2023/09/01/1197169683/canada-issues-travel-advisory-warning-over-u-s-states-lgbtq-laws>.

⁴ Movement Advancement Project, *LGBTQ Curricular Laws* (accessed Jan. 29, 2024), https://www.mapresearch.org/equality-maps/curricular_laws.

⁵ Movement Advancement Project, *Bans on Transgender People Using Bathrooms and Facilities According to Their Gender Identity* (accessed Jan. 29, 2024), https://www.lgbtmap.org/equality-maps/youth/school_bathroom_bans. In Florida, these bans reach farther by banning trans adults from using the bathroom corresponding to their gender identity in correctional and detention facilities, a wide range of educational institutions, and public buildings owned or leased by state and municipal governments. Facility Requirements Based on Sex, CS/CS/HB 1521, FLA. STAT. § 553.865.

⁶ *Bans on Transgender Youth Participation in Sports*, Movement Advancement Project (accessed Jan. 29, 2024), https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans.

⁷ Hum. Rts. Council, *Mandate of the United Nations Independent Expert on Protection from Violence and Discrimination based on Sexual Orientation and Gender Identity*, Victor Madrigal-Borloz, *Country Visit to the*

also those who are gender non-conforming or who face scrutiny, harassment, or violence because of their gender expression. These provisions attacking transgender people violate the fundamental right to freedom of expression outlined in the UDHR and the ICCPR.⁸

2. State governments have further mobilized discrimination against transgender individuals for political purposes, promoting dehumanizing and discriminatory rhetoric.⁹ As the Independent Expert on Sexual Orientation and Gender Identity noted following his country visit to the U.S., “these actions rely on prejudiced and stigmatizing views of LGBT persons, in particular transgender children and youth, and seek to leverage their lives as props for political profit.”¹⁰
3. This submission addresses egregious violations of transgender people’s rights to freedom of expression, particularly in the school system. It focuses primarily on restrictions on transgender rights in Florida, which has enacted some of the most comprehensive and extreme restrictions on transgender rights in the U.S.¹¹

II. Violations of the Right to Freedom of Expression against Transgender Communities

“It’s like walking through a hailstorm. It’s not like any one piece of hail that gets you, it’s all the hail together.”

- Polly R., parent of a gender nonconforming child¹²

4. In recent years, right-wing activists and lawmakers have sought to ban educational materials and books addressing topics like race, gender, and sexuality, both in school curricula and in libraries where materials are available to students or the public for free. These discriminatory bans violate the “freedom to seek, receive and impart information and ideas of all kinds” in terms of the right to freedom of expression under the ICCPR and erase the visibility of

United States of America: Preliminary Observations, ¶ 47, IE-SOGI-EOM-US (2022). Please see maps indicating the states with discriminatory laws targeting transgender people in the Appendix.

⁸ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (“UDHR”) art. 19, Dec. 10, 1948; International Covenant on Civil and Political Rights, art. 2, *ratified* Jun. 8, 1992, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); *Id.* at art. 26 “[T]he law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”).

⁹ E. Bradner, S. Contorno, K. Sullivan, *Republicans Ramp Up Attacks on Transgender People, In Statehouses and on the Campaign Trail*, CNN (Apr. 30, 2023) <https://www.cnn.com/2023/04/30/politics/republicans-transgender-attacks-statehouse-haley-trump/index.html>.

¹⁰ Hum. Rts. Council, *Mandate of the United Nations Independent Expert on Protection from Violence and Discrimination based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, Country Visit to the United States of America: Preliminary Observations*, ¶ 47, IE-SOGI-EOM-US (2022).

¹¹ Ryan Thoreson, *Florida and the New Assault on LGBT Rights*, VERFASSUNGSBLOG (May 23, 2023), <https://verfassungsblog.de/florida-and-the-new-assault-on-lgbt-rights>.

¹² “*Like Walking Through a Hailstorm*”: *Discrimination Against LGBT Youth in US Schools*, Human Rights Watch (Dec. 7, 2016), <https://www.hrw.org/report/2016/12/07/walking-through-hailstorm/discrimination-against-lgbt-youth-us-schools>.

transgender communities.¹³ At the same time, lawmakers in many states have attempted to prohibit transgender people from expressing their gender identity by prohibiting them from sharing their pronouns, restricting discussions of gender identity, and proposing sweeping bans on drag performance that threaten transgender people’s participation in public life, violating the right to freedom of expression under the ICCPR.¹⁴ As the Special Rapporteur on Freedom of Opinion and Expression has explained, protected speech cannot be used for “discrimination, hostility, or violence,” where such language “can intimidate vulnerable communities into silence.”¹⁵

5. According to the American Library Association, attempts to ban or restrict books doubled from 2021 to 2022, and 45.5% of books at threat of being banned were written by or about LGBTQ+ individuals.¹⁶ As the Special Rapporteur on the Right to Freedom of Opinion and Expression has observed, “banning of books is an undemocratic practice in any part of the world.”¹⁷
6. A flurry of “Don’t Say LGBTQ+” laws and restrictions in school districts and schools have been sweeping the country, preventing classroom discussions on sexual orientation and gender identity and even the use of transgender students’ names and pronouns, violating the right to freedom of expression. The Yogyakarta Principles, guidance on the application of international human rights law to sexual orientation and gender identity developed by an international group of experts, explain that the right to freedom of expression “includes the expression of identity or personhood through . . . choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity.”¹⁸

¹³ ICCPR *supra* note 13, art. 19; *see e.g.*, Hum. Rts. Committee, *Concluding observations on the eighth periodic report of the Russian Federation*, ¶ 13, U.N. Doc. CCPR/C/RUS/CO/8 (Dec. 1, 2022) (indicating that states should repeal laws “banning the dissemination of ‘propaganda’ on nontraditional sexual relations among minors and any other legislation stigmatizing or discriminating against lesbian, gay, bisexual and transgender persons”).

¹⁴ ICCPR *supra* note 13, art. 19 (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”). These also violate rights guaranteed by the Convention on the Rights of the Child (CRC). *See* Convention on the Rights of the Child art. 13, *signed* Feb. 16, 1995, 1577 U.N.T.S. 3 (“The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.”) [hereinafter CRC]. While the U.S. is the only country to have not ratified the CRC, it has signed it and cannot go against its “object and purpose.” RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 (AM. LAW INST. 2018); *What is the Difference Between Signing, Ratification and Accession of UN Treaties?* Dag Hammarskjold Libr. (July 20, 2022), <https://ask.un.org/faq/14594>.

¹⁵ Hum. Rts. Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression*, ¶ 56, U.N. Doc. A/HRC/74/496 (Oct. 9, 2019).

¹⁶ *2022 Book Ban Data*, American Library Association (Mar. 20, 2023), <https://www.ala.org/advocacy/bbooks/book-ban-data>.

¹⁷ Frank La Rue, *Full text of the press statement delivered by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, after the conclusion of his visit to the Republic of Korea* (May 17, 2010), <https://www2.ohchr.org/english/issues/opinion/docs/ROK-Pressstatement17052010.pdf> (last accessed Aug. 25, 2023).

¹⁸ *The Yogyakarta Principles - Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, Principle 19 (Mar. 2007), http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf [hereinafter Yogyakarta Principles].

7. Florida’s Parental Rights in Education Act (or “Don’t Say LGBTQ+” Act), enacted in 2022 and expanded in 2023, has served as a template for similar acts enacted in other states.¹⁹ The “Don’t Say LGBTQ+” Act prohibits classroom instruction on sexual orientation or gender identity from kindergarten to eighth grade or in any grade if it is not deemed “age-appropriate,” but fails to clarify what constitutes classroom instruction on sexual orientation or gender identity or define what is “age appropriate,” broadly chilling speech.²⁰ For instance, the State of Florida has launched an investigation against a teacher for showing fifth graders an animated Disney film that depicts an LGBTQ+ character.²¹ Going further, Florida’s Board of Education, appointed by Governor Ron DeSantis, voted on January 24th to remove “Sociology,” which addresses issues of race, class, and gender, as a core class on college campuses.²²
8. In addition, the expansion of Florida’s “Don’t Say LGBTQ+” Act in 2023 prevents educators from using personal pronouns other than those that match their sex assigned at birth or asking students about their preferred pronouns.²³ The law provides that educators who do not comply can have their education certificate revoked, and Florida’s attorney general can file a civil lawsuit against schools not in compliance for damages up to \$10,000.²⁴ Further, the law provides parents with a private right of action to sue the school district for violating the “Don’t Say LGBTQ+” Act, and this threat of legal action can significantly chill speech.²⁵ These laws have resulted in teachers quitting or leaving to more accepting states.²⁶

III. The Development of Targeted Animosity against Transgender Communities

“What scares me the most is the misinformation surrounding trans people. I wish they had a better understanding of what transness is. We are not groomers or transitioning for attention.”

- Emmitt Williams, Actor²⁷

9. Transgender people in the U.S. are victims of targeted animosity which has often been endorsed and encouraged by government officials leading to a broad chilling effect in the

¹⁹ Dustin Jones & Jonathan Franklin, *Not Just Florida. More Than a Dozen States Propose So-Called ‘Don’t Say Gay’ Bills*, NPR (April 10, 2022), <https://www.npr.org/2022/04/10/1091543359/15-states-dont-say-gay-anti-transgender-bills>.

²⁰ Parental Rights in Education Act, CS/CS/HB1557, FLA. STAT. § 1001.42 (8)(c)1.

²¹ Joe Hernandez, *Florida is Investigating a Teacher who Showed a Disney Movie with a Gay Character*, NPR (May 16, 2023), <https://www.npr.org/2023/05/16/1176334055/florida-investigating-teacher-disney-movie-gay-character-desantis>.

²² Richard Luscombe, *Ron DeSantis condemned as Florida removes sociology as core college class*, THE GUARDIAN (January 26, 2024), <https://www.theguardian.com/us-news/2024/jan/26/florida-sociology-classes-ron-desantis-condemned>.

²³ Parental Rights in Education Act, CS/CS/HB1069, *Laws of Florida*, Ch. 2023-105.

²⁴ Molly Bohannon, *Florida School District Bars Preferred Pronouns for Students and Staff to Comply with State Law*, FORBES (Aug. 8, 2023), <https://www.forbes.com/sites/mollybohannon/2023/08/08/florida-school-district-bars-preferred-pronouns-for-students-and-staff-to-comply-with-state-law/?sh=3522357f1a76>.

²⁵ Parental Rights in Education Act, CS/CS/HB1557, FLA. STAT. § 1001.42 (8)(c)(7)(II).

²⁶ Danielle Prieur, *In Florida, teachers are quitting over anti-LGBTQ laws*, WUSF PUBLIC MEDIA, (Jun. 30, 2023), <https://wusfnews.wusf.usf.edu/education/2023-06-30/florida-teachers-quitting-anti-lgbtq-laws>.

²⁷ Interview with Emmitt Williams, trans resident of Florida (Mar. 14, 2023).

community. In many instances, government officials have used the term “groomer” to cast members of LGBTQ+ communities as a sexual danger to children, a demeaning and inaccurate stereotype that normalizes discrimination and violence toward these groups.²⁸ For instance, in hearings for Florida’s bill banning transgender people from using restrooms consistent with their gender identity, state representative Webster Barnaby referred to transgender opponents of the bill as “demons,” “imps,” and “mutants.”²⁹ This inflammatory language is dehumanizing and incites “discrimination, hostility, or violence,” which the Special Rapporteur on Freedom of Opinion and Expression has warned “can intimidate vulnerable communities into silence.”³⁰ Meanwhile, LGBTQ+ and allied state representatives who have spoken out against discriminatory bills have been silenced by their peers. In Montana, for example, when state representative and trans woman Zooey Zephyr spoke out against a bill that would ban gender-affirming care, other lawmakers banned her from the chamber for the rest of the legislative session.³¹

VI. Recommendations

“I remember watching the leader of the board at the hearing talk to the people protesting, and he said, ‘you can be as loud as you want but you're not going to change anything anyway.’”

- Erin Reed, Journalist and Activist³²

1. The U.S. should enact comprehensive legislation to expressly prohibit any discrimination based on sexual orientation and gender identity in areas such as education, health care, housing, and public accommodations.
2. The U.S. should utilize tools, such as Title IX, to incentivize compliance with non-discrimination requirements on the basis of gender identity and sexual orientation.
3. States should lift bans on books with LGBTQ+ themes and content, and further prohibit such bans by school districts, to ensure an equitable and rights-respecting environment for all students.
4. States should lift bans on classroom instruction on sexual orientation and gender identity and allow educators to discuss age-appropriate issues related to these topics.

²⁸ Anti-Defamation League, *What is “Grooming?” The Truth Behind the Dangerous, Bigoted Lie Targeting the LGBTQ+ Community* (Sep. 16, 2022) <https://www.adl.org/resources/blog/what-grooming-truth-behind-dangerous-bigoted-lie-targeting-lgbtq-community>.

²⁹ E. Bradner, S. Contorno, K. Sullivan, *Republicans Ramp Up Attacks on Transgender People, In Statehouses and on the Campaign Trail*, CNN (Apr. 30, 2023) <https://www.cnn.com/2023/04/30/politics/republicans-transgender-attacks-statehouse-haley-trump/index.html>.

³⁰ U.N. General Assembly, 74th Session, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, ¶ 56, UN Doc. A/74/486 (Oct. 9, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/308/13/PDF/N1930813.pdf?OpenElement>.

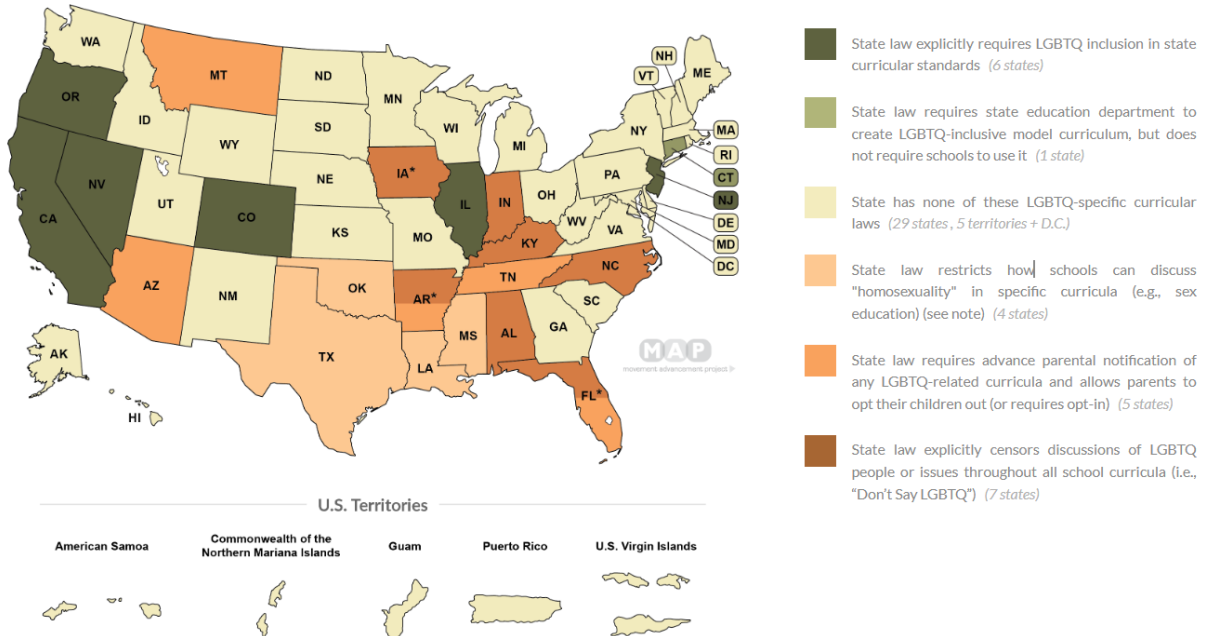
³¹ E. Bradner, S. Contorno, K. Sullivan, *Republicans Ramp Up Attacks on Transgender People, In Statehouses and on the Campaign Trail*, CNN (Apr. 30, 2023) <https://www.cnn.com/2023/04/30/politics/republicans-transgender-attacks-statehouse-haley-trump/index.html>.

³² Interview with Erin Reed, journalist covering anti-trans legislation in the U.S. (Apr. 18, 2023).

- States should repeal discriminatory laws targeting individuals based on their sexual orientation or gender identity and should enact comprehensive protections prohibiting discrimination on those grounds.

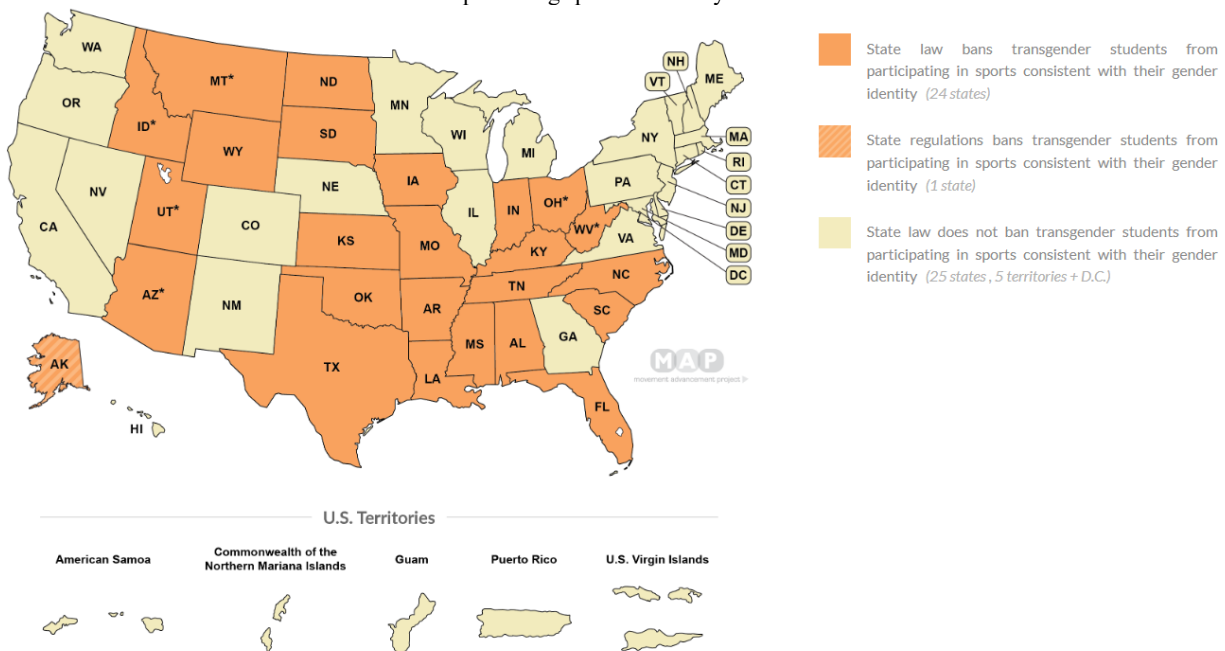
Appendix:

Map tracking "Don't Say LGBTQ+" style legislation in the U.S.³³



³³ Movement Advancement Project, *LGBTQ Curricular Laws*, https://www.lgbtmap.org/equality-maps/curricular_laws (accessed Jan. 29, 2024).

Map tracking sports bans for youth.³⁴



³⁴ Movement Advancement Project, *Bans on Transgender Youth Participation in Sports*, Movement Advancement Project, https://www.lgbtmap.org/equality-maps/healthcare/youth_medical_care_bans (accessed Jan. 29, 2024).