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Queering Reproductive Justice: How to Ensure LGBTQ Access to Sexual and Reproductive Health Care on the Federal Level

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Abstract

This white paper will explore why reproductive justice is an LGBTQ issue and outline the federal policy steps lawmakers must take in order to ensure access to inclusive, comprehensive, and affordable sexual and reproductive health for LGBTQ people. This paper will explain why a series of intersecting factors increase the vulnerability of the LGBTQ community in accessing such care, putting particular emphasis on the barrage of attacks on LGBTQ people, reproductive justice, and health care more broadly by the Trump administration. This paper will go one step further and pinpoint four federal policy solutions to help ensure access to inclusive, comprehensive, and affordable sexual and reproductive health care for LGBTQ people: repealing the Hyde Amendment, funding Title X and eliminating the domestic gag rule, guaranteeing access to the full range of contraceptive options, and safeguarding the Affordable Care Act's LGBTQ protections and gender-affirming care.

I. Introduction: Reproductive Justice and LGBTQ Sexual and Reproductive Health

LGBTQ rights are inextricably linked with reproductive health, rights, and justice.[1] More often than not, the same forces working to restrict and sabotage everyone's access to sexual and reproductive health care are the same people who want to deny legal recognition and rights to LGBTQ people.[2] It is for this reason that reproductive justice is such an important framework to discuss and analyze LGBTQ access to sexual and reproductive health care.

Reproductive justice was first established as a framework in Chicago in June 1994 by a group of prominent Black women, including Loretta Ross, co-founder and the first national coordinator of the organization SisterSong.[3] This group of women recognized that the broader women's rights movement, because it was led by and representing middle class and wealthy white women, could not sufficiently secure or defend the rights of women of color and other marginalized women and transgender people.[4] Consequently, the term reproductive justice and the accompanying movement was born.

Rooted in the internationally-accepted human rights framework created by the United Nations, reproductive justice combines reproductive rights and social justice. SisterSong, a national membership organization dedicated to improving the reproductive lives of marginalized communities, defines reproductive justice as "the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities."[5] SisterSong goes on to say, that reproductive justice is "[a]bout access, not choice" and that it is:

> Not just about abortion. Abortion access is critical, and women of color and other marginalized women also often have difficulty accessing: contraception, comprehensive sex education, STI prevention and care, alternative birth

> options, adequate prenatal and pregnancy care, domestic violence assistance, adequate wages to support our families, safe homes, and so much more.[6]

In other words, reproductive justice not only encompasses reproductive health and rights, but also economic security, criminal justice, domestic violence, and the full spectrum of issues that affect women and marginalized communities.

When we approach sexual and reproductive health care access with a reproductive justice lens, we acknowledge that certain groups—including women of color, transgender people, and queer communities—have a more difficult time accessing care than others. Reproductive justice centers women of color, LGBTQ people and other historically oppressed groups and their right to make their own decisions about their bodies and their families. By centering and uplifting the most marginalized, we in turn are uplifting us all. In other words, by implementing policy solutions focused on aiding the communities most at harm, we improve the lives of every community. This intersectional approach to LGBTQ rights and sexual and reproductive health is essential because marginalized communities face multiple, intersecting oppressions. We can only make effective policy decisions and best serve these communities if we understand and address how these oppressions impact one another. As Audre Lorde said, "There is no such thing as a single-issue struggle because we do not live single-issue lives."[7] It is therefore through a reproductive justice framework that we can best tackle the issues of sexual and reproductive health care access for LGBTQ people.

Using reproductive justice as a lens, this paper will explain why a series of compounding factors make it more challenging for the LGBTQ community to access sexual and reproductive health care, calling particular attention to the onslaught of attacks on LGBTQ people, reproductive rights, and health care more broadly by the Trump administration. This paper will go one step further and identify four approaches federal policymakers should adopt to ensure access to inclusive, comprehensive, and affordable sexual and reproductive health care for LGBTQ people: repealing the Hyde Amendment, funding Title X and eliminating the domestic gag rule, guaranteeing access to the full range of contraceptive options, and safeguarding the Affordable Care Act's (ACA) LGBTQ protections and gender-affirming care.

Throughout this paper "LGBTQ" and "Queer" will be used as umbrella terms for the Lesbian, Gay, Bisexual, Transgender, Non-Binary, Intersex, Asexual, Pansexual, Queer community. This is in no way an exhaustive list. Expressly, LGBTQ and Queer will refer to everyone who does not identify as cisgender (not transgender) heterosexual. While there is no single definition of the "LGBTQ community"—because it is such a diverse and multidimensional group of individuals with unique identities and experiences, with variations by race, ethnicity, income, and other characteristics—LGBTQ individuals do share the common experience of being stigmatized due to their actual or perceived sexual orientation, gender identity, and/or gender expression.[8] This paper will also use the term "sexual and reproductive health" to refer to and encompass reproductive health, rights, and justice more broadly. In other words, sexual and reproductive health will signify the full range of intersectional issues that are a part of the reproductive justice framework.

II. The State of Sexual and Reproductive Health for LGBTQ People

Unlike other marginalized communities, evaluating the health needs and barriers to care for LGBTQ people is particularly challenging. This is in part due to the lack of formal data collection on sexual orientation and gender identity in major health surveys and studies. Where data is available, it mostly focuses on smaller sample sizes, same-sex couples, and lesbian, gay, and bisexual people rather than transgender individuals.[9] However, the National Center for Transgender Equality does conduct an annual U.S. Transgender Survey,[10] which is the largest—and only—survey devoted to the lives and experiences of transgender people. In order to fully assess the health needs and limitations to care for LGBTQ people, we need more routine and more substantive data collection.

With the data we do have available, it is clear that not only do LGBTQ people have unique sexual and reproductive health care needs, but that a variety of issues work together to increase the vulnerability of the LGBTQ community in this area of health. For example, a high percentage of the LGBTQ community is low-income and living below the poverty line.[11] LGBTQ young people, particularly queer and transgender youth, are disproportionately homeless and housing insecure and consequently are more likely to engage in survival sex work (sex work engaged in by a person in order to survive or to supplement low incomes, due to systemic factors and extremely restricted options),[12] which may result in unintended pregnancy or sexual assault.[13] LGBTQ people are also more likely to be uninsured and rely on federal programs like Medicaid and Title X.[14] This

combination of factors makes affording and gaining access to comprehensive health care a significant challenge.

In addition, LGBTQ people—and youth in particular—lack inclusive and comprehensive sex education and health care.[15] This lack of sex education coupled with stigma is part of what makes LGBTQ people at greater risk of unintended pregnancy, sexually transmitted infections (STIs), sexual violence, and high-risk activities in respect to drug and alcohol use and sexual behavior.[16] LGBTQ people face the prospect of having to hide their sexual orientation and/or gender identity and risk being traumatized or discriminated against by lack of competent, inclusive care.[17] This is disproportionately true for transgender and non-binary people.[18] Furthermore, we often talk about abortion or birth control as just a "women's issue" which erases transgender people and anyone that falls outside the gender binary and may need access to such critical health care services.[19]

To make LGBTQ health more complicated, a barrage of attacks by the Trump administration in recent years has severely limited access to sexual and reproductive health care, as well as health care more broadly. The Trump administration has not only targeted LGBTQ people—particularly transgender people—but also mounted an all-out assault on reproductive health, rights, and justice and steadily undermined the Affordable Care Act.[20] In many places in the country, legal abortion care is far from guaranteed, and for people who are low income, LGBTQ, and of color, abortion access has been systematically diminishing. Nearly 430 abortion restrictions were enacted between 2010 and 2018, and so far as of August 2019, 59 abortion restrictions—including some near bans—have been enacted on the state level in this year alone.[21] That means that more than half of all reproductive-aged cisgender women—and even more people if you include transgender and non-binary people that also need abortion care—live in states that are hostile or extremely hostile to abortion rights.[22] And with the newly conservative makeup of the Supreme Court, national access to abortion is under unprecedented threat.[23]

Given the unique health care needs of LGBTQ people, the intersecting factors that make the LGBTQ community particularly vulnerable when it comes to sexual and reproductive health, and the onslaught of attacks by the Trump administration, there are four palpable ways federal policymakers can ensure access to inclusive, comprehensive, and affordable sexual and reproductive health care for LGBTQ people. These four federal policy solutions are: repealing the Hyde Amendment, funding Title X and eliminating the domestic gag rule, guaranteeing access to the full range of contraceptive options, and safeguarding the Affordable Care Act's LGBTQ protections and gender-affirming care.

III. Repealing the Hyde Amendment

The first method federal policymakers can use to ensure access to inclusive, comprehensive, affordable sexual and reproductive health care for LGBTQ people is to repeal the Hyde Amendment. The Hyde Amendment blocks low-income people from accessing the sexual and reproductive health care they need by banning Medicaid coverage for abortion-related health care, except in the limited cases of rape, incest, and life endangerment.[24]

The Hyde Amendment is not permanent law but rather a temporary appropriations "rider." It was first attached to the Congressional appropriations bill in 1977 for the Department of Health and Human Services (HHS). Since then, the Hyde Amendment has been renewed annually by Congress. The Hyde Amendment's reach not only includes Medicaid but also includes the Indian Health Service, Medicare, and the Children's Health Insurance Program. In addition, language similar to that in the Hyde Amendment has been incorporated into a range of other federal programs that provide or pay for health services to people including the military's TRICARE program, federal prisons, the Peace Corps, and the Federal Employees Health Benefits Program.[25] Only 15 states have a policy that directs Medicaid to pay for all or most medically necessary abortions, so the Hyde Amendment effectively functions as a nationwide ban on Medicaid coverage for critical reproductive health care.[26]

Millions of women and LGBTQ people rely on Medicaid for sexual and reproductive health care coverage, which makes the Hyde Amendment a particularly insurmountable obstacle. Approximately one in five cisgender women of reproductive age rely on Medicaid to access no-cost, essential reproductive health care such as birth control, life-saving cancer screenings, and maternity care.[27] Medicaid is also the largest source of reproductive health care coverage, paying for 75 percent of all public funds spent on family planning services.[28] Medicaid enrollees are disproportionately low-income and/or women of color and Medicaid is an essential insurance provider for many LGBTQ people.[29] The Williams Institute estimates that 1,171,000 LGBTQ adults ages 18-64 years old have Medicaid as their primary source of health insurance.[30]

Given the enormous reliance on Medicaid for sexual and reproductive health care and insurance coverage, the

benefits of repealing the Hyde Amendment are considerable. If Congress lifted the ban, it could potentially provide federal support for abortion coverage to over 15 million reproductive-age cisgender women enrolled in Medicaid,[31] in addition to the nearly one million cisgender women of reproductive age who are currently enrolled in Medicare, and many others who receive their care through other affected federal programs.[32] It would specifically broaden abortion coverage for 8 million cisgender women on Medicaid who live in the 34 states and the District of Columbia that currently abide by Hyde restrictions.[33] These numbers are even greater if you include the many transgender and non-binary individuals who also rely on Medicaid and federally-funded programs for reproductive health care coverage.

Limiting people's access to abortion increases their chances of poverty, unemployment, and dependence on public assistance programs. The denial of abortion care leads to further economic insecurity.[34] As LGBTQ people—particularly transgender and gender nonconforming people of color—are more likely to be low-income, the Hyde Amendment poses a particular hurdle. Most LGBTQ people are already struggling to get affordable health care, and the Hyde Amendment creates an impregnable barrier to abortion. Being denied an abortion or being forced to pay out of pocket for such care only pushes LGBTQ people deeper into poverty, may compel them to carry an unwanted pregnancy to term, and puts their lives and livelihood at risk.[35] By repealing the Hyde Amendment, LGBTQ people will be able to access the reproductive health care they need safely and affordably, and in turn, will have the economic security they need to live healthy and successful lives.

IV. Funding Title X and Eliminating the Domestic Gag Rule

The second method federal policymakers can ensure access to inclusive, comprehensive and affordable sexual and reproductive health care for LGBTQ people is by funding Title X (ten) and eliminating the recently implemented "domestic gag rule." Title X is the nation's only federal funding program dedicated solely to providing high-quality, culturally sensitive family planning services and other preventive health care to predominantly poor and low-income people.[36] It was created as part of the Public Health Service Act and signed into law by Republican President Nixon in 1970 with broad bipartisan support.[37] The Title X program is administrated by the Office of Population Affairs (OPA) in the Department of Health and Human Services and is funded in the annual discretionary appropriations process. In addition to providing grants for family planning and related preventive health services, the Title X program also funds training, research, and technical assistance projects.

Over four million patients rely on Title X's nearly 4,000 centers across the country for their sexual and reproductive health care services.[38] Two-thirds of those patients live below the poverty line.[39] Forty-two percent of Title X patients are uninsured, 38 percent have Medicaid or other public health insurance, and 19 percent have private insurance.[40] Title X patients are disproportionately Black and/or Hispanic or Latinx, with 22 percent of Title X patients self-identifying as Black or African American and 33 percent identifying as Hispanic or Latinx.[41] Title X centers are often the only place patients will go to receive medical care. In fact, six in 10 cisgender women receiving contraceptive care at a Title X-supported health care center report that provider as their sole source of medical care in the previous year.[42]

Because LGBTQ people are more likely to live in poverty, rely on Medicaid or public insurance, or be uninsured, and Title X primarily serves those populations, it is clear that Title X is an essential source of care for LGBTQ people. LGBTQ patients particularly rely on Title X for its uniquely comprehensive, high-quality, and confidential care. Compared with other publicly funded health centers that offer family planning services, sites that receive Title X funding are more likely to stock a broad range of contraceptive supplies and have protocols that allow for quick starts of contraceptive methods.[43] Unlike many other health centers, Title X centers also abide by unparalleled patient confidentiality protocols.[44] This is particularly important for LGBTQ people who may not be out in their day-to-day life or want to disclose medical treatment. Title X further provides a wide range of services including pregnancy testing; contraceptive counseling and services; pelvic exams; screening for cervical and breast cancer, high blood pressure, anemia, diabetes, and STIs and HIV/AIDS; infertility services; health education; and referrals for health and social services.[45] LGBTQ people are at a higher risk of contracting STIs and HIV/AIDS due in large part to a lack of sex education and stigma, as well as socioeconomic and systemic factors.[46] Therefore, Title X centers are a particularly important resource for STI and HIV/AIDS testing for LGBTQ people. In 2017, for example, Title X centers provided more than 5.3 million STI tests (excluding HIV/AIDS tests), and 1.1 million HIV/AIDS tests.[47]

However, because the Title X program is funded in the annual discretionary appropriations

process and is administered by OPA within HHS, the presidential administration in power has a large say in how much and in what manner the program is funded. This has posed a significant obstacle under the Trump administration. Not only did the Trump administration not even include the word contraception in its first Title X funding announcement, but they also shortened the time-periods for Title X grants and consistently proposed deep cuts to the program, which threatens the financial and operational stability of the health centers and providers that rely on these grants. [48]

The most devastating attack on the Title X program came recently. On February 22, 2019, the Department of Health and Human services released the final version of its new regulations for the Title X program.[49] The rule, which was initially announced in May of 2018, was modeled after requirements adopted under President Ronald Reagan but never enforced. The rule bans federal family planning funds from going to health providers who perform or refer patients for abortion services and creates onerous "physical separation" requirements specifically designed to block patients from coming to Planned Parenthood health centers[50]—centers which many LGBTQ people rely on for inclusive care.[51] According to the most recent data, Planned Parenthood affiliates make up 13 percent of clinics funded through Title X and provide care to 41 percent of Title X patients seeking contraceptives.[52] Groups receiving money under the Title X program were already prohibited from performing abortions with those funds.[53] This rule is essentially a "domestic gag rule"—censoring Title X providers from ever mentioning abortion or abortion care. This new rule is a dangerous and life-threatening attack by the Trump administration that will effectively dismantle the Title X program and deny comprehensive, high-quality, affordable family planning and sexual health care to those who need it most.

By providing LGBTQ people with comprehensive, high-quality, and affordable sexual and reproductive health care services, Title X allows LGBTQ individuals to have more control over their health, career, and economic security. Title X saves lives with early detection of cancer through its affordable Pap tests and breast exams. Title X helps people screen for STIs and HIV/AIDS and avert a host of other health issues. Title X helps prevent millions of unintended pregnancies.[54] Title X also saves taxpayers money. For every dollar invested in publicly funded family planning programs like Title X, the government saves $7.09 in Medicaid-related costs.[55] Lawmakers must adequately fund Title X and repeal the destructive gag rule so that providers can meet their health care demands and LGBTQ people can get the health care they need.

V. Guaranteeing Affordable Access to the Full Range of Contraceptives

The third federal policy approach to ensure access to inclusive, comprehensive, affordable sexual and reproductive health care for LGBTQ people is by guaranteeing access to contraception. LGBTQ individuals experience the full range of family planning outcomes and need family planning services that include services to prevent and achieve pregnancy and that promote overall sexual and reproductive health.

LGBTQ people—particularly transgender and non-binary people—experience barriers to culturally-competent reproductive health care because most doctors do not understand their bodies or sex lives. Because of stigma and marginalization, LGBTQ people are more likely to engage in risky sexual behavior and experience worse health outcomes than their heterosexual and cisgender peers.[56] LGBTQ adolescents are more likely to be sexually active, have sexual intercourse before age 13 and have sexual intercourse with more partners, and are less likely to use condoms, which puts them at increased risk for STIs and unintended pregnancy.[57] Queer women are at a particularly high risk of unintended pregnancy, and young queer women and transgender women are more likely to experience sexual violence compared to heterosexual and cisgender women.[58]

When we talk about contraception, we need to remember that cisgender straight women are not the only ones with vested interest.[59] LGBTQ people do engage in sex that can result in pregnancy. Some LGBTQ people take birth control for reasons other than pregnancy, like regulating menstruation and alleviating migraines and cramps, and managing certain reproductive syndromes. Counter to public perception, some transgender men use contraception and can experience unintended pregnancy, even after transitioning socially and hormonally.[60] Transgender men, therefore, also need counseling and care regarding reproductive health, including contraceptive and conception counseling. In advocating for sexual and reproductive health—and contraception in particular—we need to include the entire LGBTQ community.[61]

One recent policy that has most notably helped LGBTQ access comprehensive and culturally competent contraceptive care is the Affordable Care Act. The ACA has provided millions of people—including LGBTQ people—with

access to no-cost contraceptive coverage.[62] Prior to the ACA's birth control benefit, cost was a huge barrier in accessing contraceptive care due to high out-of-pocket costs like copays and deductibles.[63] Long-term highly effective methods of contraception like intrauterine devices (IUDs) and contraceptive implants were especially unaffordable because of their high upfront costs. As of 2012, the ACA requires most private health plans to cover a designated list of 18 methods of contraception without out-of-pocket costs, which includes all FDA-approved contraceptive methods and contraceptive counseling for women.[64] Because of the ACA, LGBTQ people can access the full range of contraceptive services they need without cost barriers. One study estimates that cisgender women saved $1.4 billion in out-of-pocket costs in 2013 alone as a result of the ACA's contraceptive benefit.[65]

Legislative attacks on contraception, however, have made it much harder for the LGBTQ community to get the contraceptive care they need and deserve. In addition to cutting funding to Title X, the Teen Pregnancy Prevention Program, and other federal family planning programs that provide contraception,[66] as well as appointing a host of people to HHS and the courts who range from birth control skeptics to people actively working to block birth control access,[67] the Trump administration has also made every effort to roll back contraceptive coverage. In October 2017, HHS released rules allowing virtually any employer, school, or other entity to opt out of providing contraceptive coverage for religious or moral reasons—essentially eliminating the birth control coverage guarantee.[68] These rules would endanger the nearly 63 million cisgender women and the additional transgender and non-binary people who rely on the ACA for insurance coverage of birth control without out-of-pocket costs.[69] The birth control benefit already permitted certain religious exemptions, but the Trump administration has been working vigorously to broaden any opportunity for religious refusal of contraception coverage.

Lawmakers must fight back against these administrative attacks on the ACA and the birth control benefit to safeguard access to comprehensive and low-cost contraception. LGBTQ people have unique sexual and reproductive health needs that must be met. LGBTQ people face delays in getting the reproductive care they need because of fear of discrimination, lack of health insurance, and/or a dearth of knowledgeable and inclusive providers. By ensuring that LGBTQ people have access to the full range of affordable contraception options, we are ensuring that LGBTQ people have stability in their lives, control over their bodies, and can achieve greater economic security.

VI. Safeguarding the Affordable Care Act's LGBTQ Protections and Gender-Affirming Care

The final federal policy solution to ensure access to inclusive, comprehensive, and affordable sexual and reproductive health care for LGBTQ people is by safeguarding the Affordable Care Act's LGBTQ protections and gender-affirming care. Affirming and inclusive care for LGBTQ people necessarily includes: understanding of LGBTQ identities and language; competency in serving LGBTQ people and LGBTQ health care needs; confidentiality; non-discrimination protections; affordability; and the full range of health care services including sexual and reproductive health and gender-affirming care.[70]

LGBTQ people need affirming and inclusive health care, especially because they face such high rates of discrimination in health care settings that, in turn, deter them from getting the care they need. According to the most recent U.S. Transgender Survey, one-third (33 percent) of respondents who saw a health care provider in the past year reported having at least one negative experience related to being transgender; one in four (25 percent) respondents experienced a problem in the past year with their insurance related to being transgender; more than half (55 percent) of those who sought coverage for transition-related surgery and 25 percent of those who sought coverage for hormones in the past year were denied.[71] Similarly, according to data collected by the Center for American Progress, among LGBQ respondents, eight percent said that a doctor or other health care provider refused to see them because of their actual or perceived sexual orientation, and six percent said that a doctor or other health care provider refused to give them health care related to their actual or perceived sexual orientation.[72]

In light of the disproportionate rates of discrimination LGBTQ people face in health care settings, factors commonly found to encourage LGBTQ patients in establishing continued health care include a welcoming clinic environment with access to family planning information, availability of health insurance, and the absence of differential care by providers.[73] According to a recent study, once in care, LGBTQ patients described several factors associated with a positive clinic experience, such as providers demonstrating knowledge about LGBTQ health, displaying supportiveness, using

gender inclusive language (e.g., in clinic visits and on forms) and creating welcoming clinic environments (e.g., visuals suggesting safety for all clients).[74] Patients in the study also emphasized the need for provider assurances of confidential care and maximal facetime with their provider during the clinic visit.[75]

As previously stated, the Affordable Care Act was a landmark law for LGBTQ people's access to health care. Not only did the ACA significantly decrease the rates of uninsurance and increase Medicaid and contraceptive coverage for hundreds of thousands LGBTQ people, it also provided unprecedented nondiscrimination protections.[76] Prior to the ACA, insurance companies could deny LGBTQ individuals insurance coverage, exclude certain services, or charge higher rates based on sexual orientation or gender identity.[77] Insurers were also able to deny insurance coverage or charge higher rates to people with health conditions that disproportionally affect LGBTQ individuals[78] such as HIV/AIDS, mental illness, and substance use disorders.[79] Because of the ACA, in most health care programs and activities, people cannot be discriminated against on the basis of sex, which has been interpreted as including both sexual orientation and gender identity.[80] It also provided discrimination protections for people with HIV/AIDS and has made HIV/AIDS treatment more affordable for those who need them.[81]

Section 1557 of the ACA—also known as "The Health Care Rights Law"– was the first broad prohibition of sex discrimination in health care in federal law.[82] It was passed as part of the ACA in 2010 and prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in most health care programs or activities.[83] Under Section 1557, discrimination based on sex stereotyping, gender identity, and pregnancy are all prohibited forms of sex discrimination. Section 1557 applies to programs that receive federal funding (many insurance carriers and hospitals), programs administered by a federal agency (including Medicaid, Medicare, TRICARE and VA programs, CHIP, Indian Health Service), and programs governed by any entity established under Title I of the ACA (such as the federal Health Insurance Marketplace and state-run Marketplaces).[84] The Health Care Rights Law is particularly important for transgender people, who face harassment, denial of treatment, and other forms of discrimination at disproportionate rates.[85] It is also especially significant for women experiencing pregnancy complications who have been denied the care they need, even in life-threatening situations.

For example, under Section 1557, an insurer cannot automatically deny coverage for transition related care or refuse to cover a particular health service for a transgender person when similar services are covered for cisgender people with other conditions. In essence, Section 1557 requires that insurers and health care providers treat everyone in a way that is in accordance with their gender identity, guaranteeing that transgender people have equal access to health programs and facilities. Section 1557's sex discrimination protections also prohibit health care providers from treating individuals poorly or denying care or coverage because they are in a same-sex relationship or do not identify as heterosexual.[86]

Even though the ACA's protections have helped ensure that LGBTQ individuals can get the affirming care they need, these protections are under threat. The Trump administration in May 2019 released a proposed rule that would dismantle and roll back Section 1557.[87] This proposed rule would open the door for insurance companies, hospitals, doctors, and nurses to deny patients care because of their sexual orientation or gender identity, or because they have had or are seeking abortion care. It would ultimately put individual's lives and health in danger. This rule comes on the heels of another final rule, released earlier in May, that would allow health care providers to refuse to perform or assist in medical care that violates their religious or moral beliefs—essentially giving health care entities and providers a license to discriminate.[88] This rule therefore is part of a broader agenda to allow health care entities and providers to discriminate against LGBTQ people under the guise of "religious freedom."[89] The institutionalization of religious refusals under the Trump administration is a direct attack on the health and wellbeing of LGBTQ people.

In light of these attacks on the Affordable Care Act, lawmakers must safeguard the Health Care Rights Law and protect LGBTQ people's access to affirming care. Every person has a right to health care without fear of discrimination.

VII. Conclusion: Uplifting the Most Marginalized Uplifts Us All

LGBTQ rights are inextricably and inseparably intertwined with reproductive health, rights, and justice. Because reproductive justice addresses the full range of issues that affect oppressed peoples throughout their reproductive lives and centers the most marginalized through an intersectional framework, it is the most apt approach to investigate LGBTQ sexual and reproductive health care access.

When investigating this issue through a reproductive justice lens, the available data is clear: LGBTQ people have unique health care needs and a variety of intersecting factors make the LGBTQ community particularly vulnerable when it comes to sexual and reproductive health access. However, there are four palpable ways federal policymakers can ensure access to inclusive, comprehensive, and affordable sexual and reproductive health care for LGBTQ people: repealing the Hyde Amendment, funding Title X and eliminating the domestic gag rule, guaranteeing access to the full range of contraceptive options, and safeguarding the Affordable Care Act's LGBTQ protections and gender-affirming care.

By prioritizing LGBTQ people—particularly transgender people of color—in efforts to defend and expand reproductive health, rights and justice, we will improve sexual and reproductive health care for all communities. As we look towards the future, advocates, lawmakers, and every one of us must focus on those most vulnerable, join together across aisles, disciplines and movements, and tackle the intersecting and systemic oppressions that affect every facet of our lives.

Endnotes

1 Zsea Beaumonis and Candace Bond-Theriault, "Queering Reproductive Justice: A Toolkit," National LGBTQ Task Force (2017) http://www.thetaskforce.org/wp-content/uploads/2017/03/Queering-Reproductive-Justice-A-Toolkit-FINAL.pdf
2 Jon Wong, "Repro Justice Isn't Just for Cis, Straight Women. It's for Queer Folks Like Me, Too." If/When/How, June 27, 2018 https://www.ifwhenhow.org/pride-2018-queer-repro-justice/
3 Alex Berg, "Why Reproductive Justice Is an LGBTQ+ Rights Issue," Out Magazine, February 19, 2019 https://www.out.com/out-exclusives/2019/2/19/why-reproductive-justice-lgbtq-rights-issue
4 "Reproductive Justice," SisterSong Women of Color Reproductive Justice Collective https://www.sistersong.net/reproductive-justice
5 "Reproductive Justice," SisterSong.
6 Ibid.
7 Audre Lorde, "Learning from the 60s," in Sister Outsider: Essays & Speeches by Audre Lorde (Berkeley, CA: Crossing Press, 2007), 138.
8 For a more expansive definition list of LGBTQ-related terminology see: Zsea Beaumonis and Candace Bond-Theriault, "Queering Reproductive Justice: A Toolkit," National LGBTQ Task Force (2017) http://www.thetaskforce.org/wp-content/uploads/2017/03/Queering-Reproductive-Justice-A-Toolkit-FINAL.pdf
9 Jen Kates, Usha Ranji, Adara Beamesderfer, Alina Salganicoff, and Lindsey Dawson, "Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the U.S." Kaiser Family Foundation (May, 2018) http://files.kff.org/attachment/Issue-Brief-Health-and-Access-to-Care-and-Coverage-for-LGBT-Individuals-in-the-US
10 "2015 U.S. Transgender Survey," National Center for Transgender Equality http://www.ustranssurvey.org/
11 Nico Sifra Quintana, "Poverty in the LGBT Community," Center for American Progress, July 1, 2009 https://www.americanprogress.org/issues/lgbt/reports/2009/07/01/6430/poverty-in-the-lgbt-community/
12 Jordan N. DeLoach, "Decriminalizing Sex Work Is a Matter of Survival," Truthout, March 2, 2019 https://truthout.org/articles/decriminalizing-sex-work-is-a-matter-of-survival/; "Language Matters: Talking About Sex Work," Stella and Allies to Educate and Mobilize Communities Around Legal Advocacy and Decriminalization of Sex Work, 2013 https://www.nswp.org/sites/nswp.org/files/StellaInfoSheetLanguageMatters.pdf
13 Andrew Cray, Katie Miller, and Laura E. Durso, "Seeking Shelter: The Experiences and Unmet Needs of LGBT Homeless Youth," Center for American Progress (September, 2013) https://www.americanprogress.org/wp-content/uploads/2013/09/LGBTHomelessYouth.pdf; Meredith Dank, Jennifer Yahner, Kuniko Madden, Isela Banuelos, Lilly Yu, Andrea Ritchie, Mitchyll Mora, and Brendan Conner, "Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex," Urban Institute (February 25, 2015) https://www.urban.org/research/publication/surviving-streets-new-york-experiences-lgbtq-youth-ymsm-and-ywsw-engaged-survival-sex/view/full_report; "Addressing Anti-Transgender Violence: Exploring Realities, Challenges and Solutions for Policymakers and Community Advocates," Human Rights Campaign and Trans People of Color Coalition, (November, 2015) http://assets2.hrc.org/files/assets/resources/HRC-AntiTransgenderViolence-0519.pdf
14 "Medicaid and Reproductive Health," Planned Parenthood Action Fund, 2019 https://www.plannedparenthoodaction.org/issues/health-care-equity/medicaid-and-reproductive-health
15 "A Call to Action: LGBTQ Youth Need Inclusive Sex Education," Human Rights Campaign, 2019 https://www.hrc.org/resources/a-call-to-action-lgbtq-youth-need-inclusive-sex-education
16 Kates, Ranji, Beamesderfer, Salganicoff, and Dawson, "Health and Access to Care."
17 Shabab Ahmed Mirza and Caitlin Rooney, "Discrimination Prevents LGBTQ People from Accessing Health Care," Center for American Progress, January 18, 2018 https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/
18 Sandy E. James, Jody L. Herman, Mara Keisling, Susan Rankin, Lisa Mottet, and Ma'ayan Anafi, "The Report of the 2015 U.S. Transgender Survey," National Center for Transgender Equality (December, 2016) https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF
19 Lauren Paulk, "Abortion Access Is an LGBT Issue," National Center for Lesbian Rights, October 1, 2013 http://www.nclrights.org/abortion-access-is-an-lgbt-issue/
20 Ty Cobb, "The Trump administration wants to help LGBTQ people abroad. Maybe it should start at home." Washington Post, February 22, 2019 https://www.washingtonpost.com/opinions/2019/02/22/trump-administration-wants-help-lgbtq-people-abroad-maybe-it-should-start-home/?utm_term=.65064d5b859d; Kinsey Hasstedt and Heather D. Boonstra, "Taking Stock of Year One of the Trump Administration's Harmful Agenda Against Reproductive Health and Rights," Rewire.News, January 18, 2018 https://www.guttmacher.org/article/2018/01/taking-stock-year-one-trump-administrations-harmful-agenda-against-reproductive; "Sabotage Watch: Tracking Efforts to Undermine the ACA," Center on Budget and Policy Priorities, March 29, 2019 https://www.cbpp.org/sabotage-watch-tracking-efforts-to-undermine-the-aca
21 Elizabeth Nash, Rachel Benson Gold, Zohra Ansari-Thomas, Olivia Cappello, Sophia Naide, and Lizamarie Mohammed, "State Policy Trends 2018: With Roe v. Wade in Jeopardy, States Continued to Add New Abortion Restrictions," Guttmacher Institute, December 11, 2018 https://www.guttmacher.org/article/2018/12/state-policy-trends-2018-roe-v-wade-jeopardy-states-continued-add-new-abortion; "State Policies on Abortion," Guttmacher Institute, 2019 https://www.guttmacher.org/united-states/abortion/state-policies-abortion
22 "More than half of U.S. women of reproductive age live in states that are hostile or extremely hostile to abortion rights," Guttmacher Institute, January 5, 2015 https://www.guttmacher.org/infographic/2015/more-half-us-women-reproductive-age-live-states-are-hostile-or-extremely-hostile
23 Jill Filipovic, "It's Naive to Think a Conservative Supreme Court Wouldn't Target Roe v. Wade," Time, July 12, 2018 http://time.com/5336630/kavanaugh-roe-v-wade/
24 See Deborah Kacanek, Amanda Dennis, Kate Miller, and Kelly Blanchard, "Medicaid Funding for Abortion: Providers' Experiences with Cases Involving Rape, Incest and Life Endangerment," Perspectives on Sexual and Reproductive Health 42 (June, 2010): 79-86 https://www.guttmacher.org/journals/psrh/2010/04/medicaid-funding-abortion-providers-experiences-cases-involving-rape-incest; Sarah Erdreich, "The Fallacy of Rape, Incest, and Life Endangerment Clauses," Rewire.News, March 22, 2013 https://rewire.news/article/2013/05/22/the-fallacy-of-rape-incest-and-life-endangerment-clauses/
25 S. 142, Sess. of 2013 https://www.congress.gov/113/bills/s142/BILLS-113s142is.pdf
26 "State of Funding of Abortion Under Medicaid," Guttmacher Institute, April 1, 2019 https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid
27 "Medicaid and Reproductive Health," Planned Parenthood.
28 Ibid.
29 Ibid.
30 Kerith J. Conron and Shoshana K. Goldberg, "LGBT Adults with Medicaid Insurance," The Williams Institute UCLA School of Law (January, 2018) https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Medicaid.pdf
31 "Women's Health Insurance Coverage," Keiser Family Foundation, December 2018 http://files.kff.org/attachment/fact-sheet-womens-health-insurance-coverage
32 Alina Salganicoff, Caroline Rosenzweig, and Laurie Sobel, "The Hyde Amendment and Coverage for Abortion Services," Kaiser Family Foundation, October 16, 2017 https://www.kff.org/womens-health-policy/perspective/the-hyde-amendment-and-coverage-for-abortion-services/
33 Salganicoff, Rosenzweig, Sobel, "The Hyde Amendment and Coverage for Abortion Services."
34 Diana Greene Foster, "Turnaway Study," Advancing New Standards in Reproductive Health, December 2015 https://www.ansirh.org/research/turnaway-study
35 "Hyde Amendment Fact Sheet," All* Above All, January 25, 2019 https://allaboveall.org/resource/hyde-amendment-fact-sheet/; Diana Greene Foster, M. Antonia Biggs, Lauren Ralph, Caitlin Gerdts, Sarah Roberts, and M. Maria Glymour, "Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States," American Journal of Public Health 108 (March, 2018): 407-413 https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304247
36 "Title X: An Introduction to the Nation's Family Planning Program," National Family Planning & Reproductive Health Association, September 2018 https://www.nationalfamilyplanning.org/file/Title-X-101-2018-.pdf; "Title X Family Planning," U.S. Department of Health & Human Services Office of Population Affairs, September 7, 2018 https://www.hhs.gov/opa/title-x-family-planning/index.html
37 Family Planning and Services and Population Research Act of 1970, Public Law 91-572 (December 24, 1970) http://uscode.

house.gov/statutes/pl/91/572.pdf
38 "Title X Family Planning Annual Report: 2017 National Summary," U.S. Department of Health & Human Services Office of Population Affairs (August, 2018) https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2017-national-summary.pdf
39 "Title X Family Planning Annual Report," U.S. Department of Health & Human Services.
40 Ibid.
41 Ibid.
42 Megan L. Kavanaugh, Mia R. Zolna, and Kristen Burke, "Use of Health Insurance Among Clients Seeking Contraceptive Services at Title X–Funded Facilities in 2016," Perspectives on Sexual and Reproductive Health 50, no. 3 (September, 2018): 101-109 https://www.guttmacher.org/journals/psrh/2018/06/use-health-insurance-among-clients-seeking-contraceptive-services-title-x
43 Mia R. Zolna and Jennifer J. Frost, "Publicly Funded Family Planning Clinics in 2015: Patterns and Trends in Service Delivery Practices and Protocols," Guttmacher Institute (November, 2018) https://www.guttmacher.org/report/publicly-funded-family-planning-clinic-survey-2015
44 "Program Requirements for Title X Funded Family Planning Projects," U.S. Department of Health & Human Services Office of Population Affairs (April, 2012) https://www.hhs.gov/opa/sites/default/files/Title-X-2014-Program-Requirements.pdf
45 "Title X Family Planning Annual Report," U.S. Department of Health & Human Services.
46 "Lesbian, Gay, Bisexual, and Transgender Health," Centers for Disease Control, March 28, 2018 https://www.cdc.gov/lgbthealth/index.htm
47 "Title X Family Planning Annual Report," U.S. Department of Health & Human Services.
48 Jessica Ravitz, Trump administration hit with lawsuits over low-income family-planning dollars, CNN, May 2, 2018 https://www.cnn.com/2018/05/02/health/title-x-lawsuits-bn/index.html; Katelyn Burns, "Trump Administration Dramatically Shortens Funding Period for Title X Grants," Rewire.News, August 31, 2018 https://rewire.news/article/2018/08/31/trump-administration-dramatically-shortens-funding-period-for-title-x-grants/
49 Ariana Eunjung Cha, "Trump administration bars clinics that provide abortions or abortion referrals from federal funding," Washington Post, February 22, 2019 https://www.washingtonpost.com/health/2019/02/22/trump-administration-bars-family-planning-clinics-that-provide-abortion-referrals-million-program/?utm_term=.55eb328fb9f3
50 "Title X Notice of Final Rule," U.S. Department of Health & Human Services Office of Population Affairs, March 4, 2019 https://www.hhs.gov/opa/sites/default/files/title-x-notice-of-final-rule.pdf
51 "This is Who Planned Parenthood Is," Planned Parenthood Federation of America, Inc. (September 2017) https://www.plannedparenthood.org/uploads/filer_public/59/9d/599dbbaf-10be-4f49-a6f3-97999027e3d9/who_we_are_lgbtq_community_september_2017.pdf
52 Frost, Frohwirth, Blades, Zolna, Douglas-Hall, and Bearak, "Publicly Funded Contraceptive Services."
53 "Program Requirements for Title X Funded Family Planning Projects," U.S. Department of Health & Human Services Office of Population Affairs (April, 2012) https://www.hhs.gov/opa/sites/default/files/Title-X-2014-Program-Requirements.pdf
54 "Publicly Funded Family Planning Services in the United States," Guttmacher Institute, September, 2016 https://www.guttmacher.org/fact-sheet/publicly-funded-family-planning-services-united-states.
55 Adam Sonfield, "Beyond Preventing Unplanned Pregnancy: The Broader Benefits of Publicly Funded Family Planning Services," Guttmacher Policy Review 17, no. 4 (2014).
56 David A. Klein, Erin Nicole Berry-Bibee, Kristin Keglovitz Baker, Nikita M. Malcolm, Julia M. Rollison and Brittni N. Frederiksen. "Providing quality family planning services to LGBTQIA individuals: a systematic review." Contraception 97, no. 5 (2018): 378-391.
57 Klein, Berry-Bibee, Baker, Malcolm, Rollison and Frederiksen. "Providing quality family planning services."
58 Ibid; "Sexual Assault and the LGBTQ Community," Human Rights Campaign, 2019 https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community.
59 "Why We Need to Talk About Queer and Trans People and Birth Control," The Establishment, December 2, 2017 https://theestablishment.co/why-we-need-to-talk-about-queer-and-trans-people-and-birth-control-972952542269/.
60 Alexis Light, Lin-Fan Wang, Alexander Zeymo, Veronica Gomez-Lobo. "Family planning and contraception use in transgender men." Contraception 98, no. 4 (2018): 266-269.
61 Caitlin Lowell and Erin Longbottom, "Trans & Non-Binary Folks on Why Birth Control Isn't Just for Cis Women," National Women's Law Center, November 16, 2016 https://nwlc.org/blog/trans-non-binary-folks-on-why-birth-control-isnt-just-for-cis-women/
62 National Partnership for Women & Families, Aliya Bean, "Scarier than your worst 90s outfit," Medium (blog), January 26, 2017 https://medium.com/@NationalPartnership/scarier-than-your-worst-90s-outfit-83f835293ef3
63 Bean, "Scarier than your worst 90s outfit."
64 "Insurance Coverage of Contraceptives," Guttmacher Institute, April 1, 2019 https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives
65 Jamila Taylor and Nikita Mhatre, "Contraceptive Coverage Under the Affordable Care Act," Center for the American Progress, October 6, 2017 https://www.americanprogress.org/issues/women/news/2017/10/06/440492/contraceptive-coverage-affordable-care-act/
66 "Timeline: Trump's Attacks on Access to Birth Control," Planned Parenthood Action Fund, 2019 https://www.plannedparenthoodaction.org/fight-for-birth-control/facts/timeline-trumps-attacks-access-birth-control
67 "The Trump Appointees Who Want to Take Your Birth Control," Planned Parenthood Action Fund," 2019 https://www.plannedparenthoodaction.org/fight-for-birth-control/facts/meet-trump-appointees-who-want-sabotage-your-access-birth-contro
68 Christine Grimaldi and Jessica Mason, "Trump Opens Door for End of Birth Control Benefit," Rewire.News, October 6, 2017 https://rewire.news/article/2017/10/06/trump-opens-door-end-birth-control-benefit/; Katelyn Burns, "Trump Administration Moves to Restrict Birth Control Benefit and Abortion in Post-Midterm Attack," Rewire.News, November 8, 2018 https://rewire.news/article/2018/11/08/trump-administration-moves-to-restrict-birth-control-benefit-and-abortion-in-post-midterm-attack/
69 "New Data Estimate Nearly 62.8 Million Women Have Coverage of Birth Control without Out-of-Pocket Costs," National Women's Law Center (November, 2018) https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/09/New-Preventive-Services-Estimates-4.pdf
70 "Providing Inclusive Services and Care for LGBT People," National LGBT Health Education Center: A Program of the Fenway Institute https://www.lgbthealtheducation.org/wp-content/uploads/Providing-Inclusive-Services-and-Care-for-LGBT-People.pdf; "Affirmative Care for Transgender and Gender Non-Conforming People: best Practices for Front-line Health Care Staff," National LGBT Health Education Center: A Program of the Fenway Institute (Fall, 2016) https://www.lgbthealtheducation.org/wp-content/uploads/2016/12/Affirmative-Care-for-Transgender-and-Gender-Non-conforming-People-Best-Practices-for-Front-line-Health-Care-Staff.pdf.
71 James, Herman, Keisling, Rankin, Mottet, and Anafi, "The Report of the 2015 U.S. Transgender Survey."
72 Mirza and Rooney, "Discrimination Prevents LGBTQ People from Accessing Health Care."
73 Klein, Berry-Bibee, Baker, Malcolm, Rollison and Frederiksen. "Providing quality family planning services."
74 Ibid.
75 Ibid.
76 Kates, Ranji, Beamesderfer, Salganicoff, and Dawson, "Health and Access to Care"; Lindsey Dawson, Jennifer Kates, and Anthony Damico, "The Affordable Care Act and Insurance Coverage Changes by Sexual Orientation," Kaiser Family Foundation, January 18, 2018 https://www.kff.org/disparities-policy/issue-brief/the-affordable-care-act-and-insurance-coverage-changes-by-sexual-orientation/
77 Dawson, Kates, and Damico, "The Affordable Care Act and Insurance Coverage Changes."
78 Ibid.
79 Kates, Ranji, Beamesderfer, Salganicoff, and Dawson, "Health and Access to Care"
80 "Nondiscrimination Protection in the Affordable Care Act: Section 1557," National Women's Law Center, September 2015 https://nwlc.org/wp-content/uploads/2015/09/Reproductive-Rights-and-Health_1557_2.2.16.pdf
81 Lindsey Dawson and Jennifer Kates, "What is at Stake in ACA Repeal and Replace for People with HIV?" Kaiser Family Foundation, May 5, 2017 https://www.kff.org/hivaids/issue-brief/what-is-at-stake-in-aca-repeal-and-replace-for-people-with-hiv/
82 "Summary: Final Rule Implementing Section 1557 of the Affordable Care Act," U.S. Department of Health and Human Services Office of Civil Rights, June 6, 2016 https://www.hhs.gov/sites/default/files/2016-06-07-section-1557-final-rule-summary-508.pdf
83 "Nondiscrimination in Health Programs and Activities; Final Rule," 81 Federal Register 96 (May 18, 2016), pp. 31376-31473 https://www.govinfo.gov/content/pkg/FR-2016-05-18/pdf/2016-11458.pdf
84 "Final HHS Regulations on Health Care Discrimination: Frequently Asked Questions," National Center for Transgender Equality

http://www.transequality.org/sites/default/files/HHS-1557-FAQ.pdf
85 James, Herman, Keisling, Rankin, Mottet, and Anafi, "The Report of the 2015 U.S. Transgender Survey."
86 Kellan Baker, "LGBT Protections in Affordable Care Act Section 1557," Health Affairs (blog), June 6, 2016 https://www.healthaffairs.org/do/10.1377/hblog20160606.055155/full/
87 "Nondiscrimination in Health and Health Education Programs or Activities; Proposed Rule," Federal Register (May 24, 2019) https://www.hhs.gov/sites/default/files/1557-nprm-hhs.pdf
88 Ema O'Connor and Dominic Holden, "The Trump Administration Will Allow Health Workers To Refuse Abortion And Sex Reassignment Services," BuzzFeed.News, May 2, 2019 https://www.buzzfeednews.com/article/emaoconnor/trump-rule-religious-doctors-refuse-abortion-sex
89 "The Discrimination Administration: Trump's record of action against transgender people," National Center for Transgender Equality, (2019) https://transequality.org/the-discrimination-administration