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## HOSTILE ENVIRONMENTS: PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS OF THE TRUMP ADMINISTRATION'S ATTEMPTED REVERSAL OF SEX STEREOTYPING AS SEX BASED DISCRIMINATION

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# HOSTILE ENVIRONMENTS: PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS OF THE TRUMP ADMINISTRATION'S ATTEMPTED REVERSAL OF SEX STEREOTYPING AS SEX BASED DISCRIMINATION

*JUDE DIEBOLD*<sup>1</sup>

## I. INTRODUCTION: LIFE AS A TRANSGENDER PERSON IN THE UNITED STATES

Imagine coming into your place of employment, where your employer has, unknowingly for many years, referred to you as the wrong gender. Imagine further, this treatment is the overall cultural norm in your place of employment, and society at large. From day to day, you drift through a world where you are not seen — a world that ascribes to you an identity that greatly differs from the person you know yourself to be. Now, imagine after years of putting up with this treatment, you come into the place of your work, correct your employer and tell them, I am actually a woman. In the midst of your great act of bravery, self-love, and human vulnerability, your employer reacts by firing you. Further, your employer admittedly fires you because they ‘disagree’ with the person you are, and simply believe you should not exist. In 2013, this is what happened to Aimee Stephens, the plaintiff in the recent supreme

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<sup>1</sup> Jude Diebold is a Juris Doctor Candidate at Golden Gate School of Law graduating in summer 2021. A message from the author: “Special thanks to Professor Helen Chang, Jessica Jandura, and Norjmaa Battulga for helping me prepare this article for publication. Also special thanks to Aimee Stephens for bringing her fight for the rights of transgender people all the way to the Supreme Court, and all of my friends who supported me through my own transition. There are too many of you to count.”

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court case, *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission*.<sup>2</sup>

An event like this can have tragic consequences for the individual involved. However, what is often overlooked is the community impact that discriminatory conduct precipitates, including negative public health outcomes and environmental issues. This paper will explore the resounding effects of not only what happens to transgender people who are denied workplace discrimination protections, but the residual public health and environmental impacts in communities where transgender workplace discrimination occurs.

In 2013, Aimee Stephens, an employee of six years at R.G & G.R. Harris Funeral Homes, informed her employer she is transgender, and would begin living as a woman full time.<sup>3</sup> The employer disbelieved Stephens' gender identity; they viewed Stephens as male, and in violation of their sex specific dress code for men, which requires men to wear button downs and ties, and women to wear skirts and heels.<sup>4</sup> Two weeks after informing her employer of her true gender identity, Harris Funeral Homes fired Stephens, stating that her refusal to abide by the sex specific dress code as a "biological male" was the reason for termination.<sup>5</sup> The employer has not denied that Ms. Stephens was fired due to her transgender identity, but rather, contends that her gender identity is not a protected by the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex, among other forms.<sup>6</sup>

#### A. MAKING THE THRESHOLD DISTINCTION BETWEEN SEX AND GENDER

Ms. Stephens' employer discriminated against her, at least in part, due to a deep misunderstanding about sex and gender. The AMA Journal of Ethics defines sex and gender as follows: "Sex refers to the biological differences between males and females. Gender refers to the continuum of complex psychosocial self-perceptions, attitudes, and expectations people have about members of both sexes."<sup>7</sup> However, simply defining sex as biological and gender as expression or self-perception

<sup>2</sup> *Equal Employment Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018).

<sup>3</sup> Brief in Opposition for Respondent at 22-23, *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*, 884 F.3d 560 (6th Cir. 2018).(No. 16-2424).

<sup>4</sup> *Id.* at 23-24.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 24-25.

<sup>7</sup> Tseng, Jennifer, *Sex, Gender, and Why the Difference Matters*, AMA JOURNAL OF ETHICS ILLUMINATING THE ART OF MEDICINE, paragraph 1, July 2008.

is not fully encompassing of the broad range of bodies and identities that exist.

While most people are born with either XX or XY chromosomes, determining their sex as either male or female, many people are intersex, with a variation of both male and female anatomy, internally or externally.<sup>8</sup> It is hard to know how many people are intersex, but it is estimated that 1-2 out of every 100 people born in the United States are some variation of intersex.<sup>9</sup> Notably, this is not the same as being transgender. Transgender is an umbrella term for a spectrum of people whose sex assigned at birth does not correspond with their identity.<sup>10</sup> For example, a transgender person may be assigned male at birth, and have male genitalia, but identify as a woman and express their gender more fluidly.<sup>11</sup> As of 2016, approximately 1.4 million transgender people live in the United States.<sup>12</sup>

#### B. IMPACTS OF USSC RULINGS AGAINST STEPHENS/EEOC

Aimee Stephens lost her job for not conforming to her employer's vision of how a person of a particular sex should dress or behave. The effect of a Supreme Court ruling upholding R.G. & G.R. Harris Funeral Homes' decision to fire Aimee Stephens on the transgender community would clearly be detrimental. The plaintiff in the aforementioned case decided to move forward with her claim against her former employer because she likely knew the extensive impact that discrimination, and in particular, workplace discrimination, has on the transgender community.<sup>13</sup>

The sex stereotyping that caused Ms. Stephens to lose her job is unlawful discrimination and the failure to recognize transgender persons as a protected class affected by sex stereotyping has discrete environmental impacts and broad social impacts. These include transgender persons experiencing an increased likelihood of homelessness, drug use and

<sup>8</sup> Neerguard, Lauren, *Science Says Sex and Gender Aren't the Same*, THE ASSOCIATED PRESS, paragraph 11, (Oct. 23, 2018).

<sup>9</sup> <https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity/whats-intersex> (last visited May. 6, 2020).

<sup>10</sup> Bradford, Alina, *What Does Transgender Mean*, LIVE SCIENCE (Jun. 17, 2018), <https://www.livescience.com/54949-transgender-definition.html>.

<sup>11</sup> *Id.*

<sup>12</sup> Chappel, Bill, *1.4 Million Adults Identify As Transgender In America, Study Says*, NATIONAL PUBLIC RADIO (Jun. 30, 2016), <https://www.npr.org/sections/thetwo-way/2016/06/30/484253324/1-4-million-adults-identify-as-transgender-in-america-study-says>.

<sup>13</sup> Moreau, Julie, *Laughed out of Interviews, Trans Workers Discuss Job Discrimination*, NBC NEWS (Oct. 6, 2019), <https://www.nbcnews.com/feature/nbc-out/laughed-out-interviews-trans-workers-discuss-job-discrimination-n1063041>.

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mental health issues, as well as susceptibility to violent crimes. The transgender community will be impacted by a loss and continued denial of workplace protections. At the crux of these risks is housing, as one's inability to maintain shelter due to job instability significantly impacts all other aspects of an individual's health, as well as their surrounding environments.

The impacts of the Supreme Court failing to interpret transgender identity as a protected class could be detrimental to not just the transgender and LGBT community, but any community and local environment where transgender people live. Negative impacts that affect this vulnerable population will spill over into their local geographic and personal networks. Some of these potential impacts include contamination of local water sources, increased litter, spread of infectious disease, and an increase in dangerous drug related waste. Taking into consideration the large number of transgender people in the United States, local communities with increasingly higher rates of homelessness will experience additional public health risks and negative environmental impacts. Further, in the wake of the COVID-19 outbreak, this deadly novel virus is nearly impossible to contain where the homeless are unable to follow guidelines to minimize its spread.

Moreover, the decision of this case might not only affect transgender people. It may lead to the legalization of discrimination against cisgender individuals who do not conform to their employer's perception of sex appropriate behavior, or interpretation of appropriate gender presentation, even if based on sex stereotypes. Thus, the public health and environmental effects that precipitate from this decision will be even more far spread; the larger the population that is vulnerable to discrimination, the larger the impact will become.

In order to prevent the exacerbation of already existing public health and environmental concerns, Congress must intervene to include gender identity among the protected categories from workplace discrimination if the Supreme Court sides against the rights of more than one million transgender individuals. Further, environmental groups should also partner with state legislators to ensure the passage of state and local laws protecting the rights of transgender individuals to be free from discrimination in the workplace in their local communities.

C. THE DOJ DISAGREES WITH THE EEOC'S POSITION THAT  
TRANSGENDER DISCRIMINATION IS A FORM OF SEX BASED  
DISCRIMINATION

The Trump Administration's Department of Justice's ("DOJ") Writ of Certiorari in opposition to the petitioner, the Equal Employment Opportunity Commission ("EEOC") on behalf of Aimee Stephens, claims that the foundation for sex stereotyping as a form of sex-based discrimination, as established in *Price Waterhouse v. Hopkins*, is an incorrect and confusing interpretation of sex based discrimination. The DOJ attempts to narrow the definition of sex-based stereotyping claiming; "the plurality [in *Price Waterhouse v. Hopkins* condemned not all sex stereotypes in the workplace, but only the disparate treatment of men and women resulting from sex stereotypes."<sup>14</sup>

Further, the DOJ refers to the EEOC argument that sex-based discrimination is prohibited by the Civil Rights Act of 1964 ("Title VII"), as opposed to disparate treatment [based on a strictly male or female sex] as "bewildering."<sup>15</sup> The DOJ argues that Title VII does not require employers to acknowledge an employee's decision to transition from one sex to another, comparing transgender individuals to some myth of a "white employee who identifies as African American."<sup>16</sup> Essentially, the DOJ argues: (1) sex stereotyping is not sex discrimination if both sexes are burdened by the same rules to appropriately conform to their biological sex, (2) while treating a male or female employee disparately based on their sex is sex discrimination, treating a transgender person disparately due to their transgender identity is not sex discrimination, because the DOJ only recognizes gender as male or female, effectively erasing and failing to acknowledge transgender identities as 'valid,' and (3) the disparate treatment of a transgender woman is not discrimination if a transgender man would be treated in the same manner.

The DOJ argument itself requires mental gymnastics to process. These arguments seem to conflict with common sense, and illustrate the DOJ bending over backwards in order to formulate a 'logical' reason to deny workplace protections to transgender people. The true purpose of these arguments is to legalize discrimination, and mask that discriminatory legislation under thinly veiled legal jargon. However, the DOJ's

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<sup>14</sup> *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (quoting *Manhart*, 435 U.S. at 707 n.13) *City of Los Angeles, Dep't of Water & Power v. Manhart*, 435 U.S. 702, 711, 98 S. Ct. 1370, 1377, 55 L. Ed. 2d 657 (1978); Brief for Federal Respondent in Opposition at 21, *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission* (18-107).

<sup>15</sup> *Id.* at 23.

<sup>16</sup> *Id.* at 24.

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attempts to legalize discrimination against transgender people contradicts the legal precedent which acknowledges sex stereotyping in both the employment setting and through criminal law.

II. EXAMINING THE PRECEDENT

A. THE EVOLUTION OF PROTECTED CLASS STATUS, DISCRIMINATION, AND HATE CRIME LAWS

In 1964, Congress passed the Civil Rights Act, prohibiting workplace discrimination on the basis of race, color, religion, sex or national origin.<sup>17</sup> In 1968, Congress passed the first federal hate crimes statute in response to the increase in violence against people due to their race, color, religion, sex, or national origin.<sup>18</sup> In particular, these laws protect against the interference with persons taking part in federally protected activity, which is described as “public education, employment, jury service, travel, or the enjoyment of public accommodations, or helping another person to do so.”<sup>19</sup> These federal hate crime laws were further expanded in 2009 in response to the murder of Mathew Shepard,<sup>20</sup> to include crimes because of gender, disability, gender identity, and sexual orientation.<sup>21</sup>

Further, since 1989, the Supreme Court has held that sex stereotyping, i.e. enforcing a certain dress code or code of conduct based on stereotypical beliefs about one’s sex, is a form of sex-based discrimination.<sup>22</sup> This illuminates the need for transgender persons to be included in employment law discrimination protections; the federal government has already formally acknowledged that transgender people experience violence in accessing employment by codifying gender identity in the federal hate crime statute.

The Supreme Court siding with the employer who fired Aimee Stephens would also be a stark reversal from the prior direction federal law was moving under the Obama Administration. Despite this fact, the Trump Administration’s 2018 Department of Justice intervened in *R.G. & G.R. Harris Funeral Homes*, urging the Supreme Court to not consider

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<sup>17</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. (2020).

<sup>18</sup> *Hate Crime Laws*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/crt/hate-crime-laws> (last visited May 6, 2020).

<sup>19</sup> *Id.*

<sup>20</sup> The U.S. government responded to this murder as it was particularly cruel in nature. Shepard was tied to a fence, tortured, beaten and left for dead due to his sexuality. Sheerin, Jude, *Matthew Shepard: The Murder that Changed America*, BBC NEWS (Oct. 26, 2018).

<sup>21</sup> *Hate Crime Laws*, at 1.

<sup>22</sup> *See* (Holding) *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) at 1667.

sex stereotyping as a form of sex-based discrimination.<sup>23</sup> This is in direct conflict with the Obama Administration's 2016 "Dear Colleague" letter, which instructed schools to allow transgender individuals to use the restroom in accordance with their gender identity.<sup>24</sup> Further, it conflicts with the EEOC's prior interpretation of the Civil Rights Act of 1964 that discriminating against someone for their transgender identity is discrimination based on sex.<sup>25</sup>

B. *PRICE WATERHOUSE V. HOPKINS* ESTABLISHED SEX-BASED DISCRIMINATION PRECEDENT

While there is much to be said about the DOJ's interpretation of Title VII and its blatant erasure of transgender people, what is perhaps most startling is its departure from precedent set by *Price Waterhouse v. Hopkins*. In this case, a female attorney sued her firm for denying her promotion due to her sex, despite bringing millions in revenue to the firm. To support her allegations, the plaintiff cited partner reviews of her work, which were considered during the firm's evaluation for making her partner.<sup>26</sup> The reviews in question referred to the plaintiff as "abrasive," "in need of charm school," and "overcompensating for being a woman."<sup>27</sup> Ultimately, the court decided there were mixed motivations, leading to multiple reasons why the plaintiff was not promoted, some of which were not discriminatory.

However, the Court also rightfully established that sex-based discrimination includes stereotyping based on sex.<sup>28</sup> For example, the Court reasoned the plaintiff's peers viewed her negatively for being more "abrasive," when similarly situated male employees were often rewarded for such behavior, or viewed as more competent for it, not in spite of it.<sup>29</sup> Thus, the plaintiff was treated disparately due to her sex because she did not conform to the sex-based stereotype, which asserts that women should be docile as opposed to abrasive.<sup>30</sup>

This precedent is important because it sets the stage for transgender people to be included as a protected category under the Civil Rights Act

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<sup>23</sup> *Dear Colleague Letter on Transgender Students*, U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, AND U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION (May 13, 2016).

<sup>24</sup> *Id.*

<sup>25</sup> *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (E.E.O.C.) (April 20, 2012) <https://www.hivlawandpolicy.org/resources/macy-v-holder-appeal-no-0120120821-us-equal-employment-opportunity-commission-apr-20-2012>.

<sup>26</sup> *Hopkins*, 490 U.S. at 239.

<sup>27</sup> *Id.* at 237.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 239.

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of 1964. By establishing that sex-based stereotypes are a form of discrimination, the Court also establishes that not conforming to one's sex assigned at birth, and being treated disparately because of it, is also a form of discrimination. For example, a person transitioning from female to male who is subjected to disciplinary action for wearing men's clothes, while cisgender men are encouraged to wear men's clothes, would have a viable claim against their employer for sex-based discrimination.

C. THE DOJ THREATENS TO OVERTURN THE IMPORTANT PRECEDENT SET BY *PRICE WATERHOUSE V. HOPKINS*

In order to deny transgender people workplace protections, the DOJ ignores the reality of thousands of transgender Americans by misconstruing transgender people as male or female, regardless of their identity, presentation, medical diagnosis, or medical/surgical treatment or therapies. Further, it ignores Ms. Stephen's agreement that she would abide by her workplaces' women's dress code, and simply ignores her transgender status, thrusting upon her male, rather than female, workplace dress code requirements. Thus, the DOJ ignores the reality that the dress code requirements, being a product of sex-based stereotypes of women being feminine and men being masculine, may themselves, standing alone, be a violation of Title VII.

III. CURRENT IMPACTS ON THE TRANSGENDER COMMUNITY ARE LIKELY TO BE EXACERBATED IF SCOTUS RULES IN AGREEMENT WITH THE DOJ

The ways in which systemic discrimination impacts marginalized individuals are numerous, many of which are deeply personal and unique to the impacted individual. However, some of those impacts can be concretely observed and analyzed, and none of those impacts exist in a vacuum, but rather, coincide and intersect with one another. Below, this article examines some of the most horrific consequences of systemic discrimination against the transgender community, including homelessness, drug abuse, mental illness and suicidality, and vulnerability to violent crime. Specifically, each of these experiences can be tied back to one's tenuous or unprotected status in the workplace. However, it must be noted that the impacts discussed below are not comprehensive, and do not necessarily account for the myriad of ways in which transgender individuals experience or live their lives, nor do they highlight intersecting forms of discrimination, such as on the basis of race or national origin.

A. HOMELESSNESS IN THE TRANSGENDER COMMUNITY AND ITS  
RELATION TO JOB LOSS

Laws protecting transgender people in the workplace will help to bolster equal treatment for transgender individuals under the eyes of the law. Currently, only 23 states have legal workplace protections for transgender people, 22 states explicitly ban transgender discrimination, and two states interpret sex-based discrimination protections as applicable to transgender individuals.<sup>31</sup> However, civil rights protections only go so far in protecting vulnerable communities from abuses, legal or otherwise.

Transgender individuals face adversity even in states where they have legal protections. This is likely due to both societal discrimination in everyday life and fear of retaliation for seeking enforcement of the laws that provide protection. Despite its workplace protection laws under the Fair Employment and Housing Act, California has the highest number of homeless individuals nationally, accounting for 50% of the transgender population experiencing homelessness.<sup>32</sup> There are other factors that may contribute to this statistic, such as California being a highly populous state with notably high housing costs. Additionally, California has a nationwide reputation for being a politically left leaning safe harbor, thus attracting gender minorities, such as transgender people. However, the high number of homeless transgender individuals in California still illustrates a general trend of materially adverse impacts on a minority community, even in a state with transgender workplace protections.

That being said, the detrimental consequences on transgender individuals is magnified in states where no workplace protections exist because individuals have no legal recourse. For example, Mississippi, which offers no workplace discrimination protections for transgender individuals, has the highest percentage of transgender people among their statewide homeless population, despite having a low number of transgender people in their overall population.<sup>33</sup> Specifically, transgender individuals make up only .61% of Mississippi's statewide population, but account for 1.5% of their homeless population.<sup>34</sup>

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<sup>31</sup> *Equality Maps/Non Discrimination Laws Employment Protections*, MOVEMENT ADVANCEMENT PROJECT (last updated Oct. 25, 2019) [https://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](https://www.lgbtmap.org/equality-maps/non_discrimination_laws).

<sup>32</sup> Analysis of the Point in Time Data provided by U.S. Department of Housing and Urban Development. *Demographic Data Project: Gender Minorities*, NATIONAL ALLIANCE TO END HOMELESSNESS, <https://endhomelessness.org/demographic-data-project-gender-minorities/> (last visited May 6, 2020).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

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The epidemic of homelessness and housing instability in the transgender community is often the pinnacle from which much of this community's suffering flows; having only tenuous rights to maintain and secure employment makes this unstable foundation even more rocky. Without housing, one often cannot secure proper medical care, food, safety, or any other resources necessary to a healthy and productive life. By potentially codifying legal transgender discrimination in the workplace, this already vulnerable community will only suffer more, as the domino effect of losing one's job can so easily result in also losing one's housing.

In 1980s transgender activist, Lou Sullivan's, recently published diaries, he chronicles the economic hardships of transitioning from female to male at work in the 1980s, including the need to save enough money to be able to afford housing while living under the assumption he would have to quit his job during his transition period.<sup>35</sup> Sullivan, who had the support of his family in his transition, described his experience as such: "I wonder how I could do all this . . . I am ready to leave my job and could take a clerical job as a young man. I could leave my apartment and rent as a young man. *It would all be worth the trouble.*"<sup>36</sup> Sullivan also describes trying to time his transition in order to keep his job as long as possible while undergoing hormone therapy, stating, "Tomorrow I call [Dr.] Fuller . . . and make THE appointment. Looks like my job is safe too, til at least the end of the year."<sup>37</sup>

Sullivan's observations of his economic situation are pertinent because they illustrate several huge issues facing the transgender community that are linked to homelessness. Transgender people must financially plan for potential job termination; without a financial safety net, transgender people may be unable to transition. Notably, Sullivan had the emotional and financial support of his family, which was in part what made his transition possible.<sup>38</sup> However, for many transgender people this is not the case, making homelessness a looming possibility, among other adversities. For example, one study noted:

[T]ransgender and gender non-conforming people face injustice at every turn: in childhood homes, in school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the grocery store, the hotel front desk, in doctors' offices and emergency

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<sup>35</sup> Martin, Ellis and Ozma Zach, *WE BOTH LAUGHED IN PLEASURE, THE SELECTED DIARIES OF LOU SULLIVAN 1961-1991* 210 (Nightboat, 2019).

<sup>36</sup> *Id.* Emphasis added.

<sup>37</sup> *Id.* at 223.

<sup>38</sup> *Id.* at 210.

rooms, before judges and at the hands of landlords, police officers, health care workers and other service providers.<sup>39</sup>

Discrimination is not just the act of preventing individuals from accessing the same services, but also includes acts that force individuals out of those same services — i.e. having an open door doesn't mean everyone is treated equally once inside the room. Facing an atmosphere where one has no workplace protections puts one on a trajectory towards homelessness, especially if their job loss is the result of a larger pattern of discrimination felt throughout the individual's life. Aveda Adara, a 41-year-old transgender woman, told reporters in a recent interview with NBC News that harassment because of her gender identity led her to quitting her job at a company in Texas.<sup>40</sup> Adara stated; "I was constantly misgendered by managers, supervisors and employees." Eventually, she was able to secure part-time work to sustain herself after being "laughed out of interviews for so many years."<sup>41</sup>

Further, as of May 8, 2020, Ms. Stephens, the plaintiff in *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission*, became critically ill and was moved into hospice care.<sup>42</sup> In order to pay for her end of life expenses, her partner started a Crowdfunding Page which states: "Being fired from her employer caused an immediate financial strain . . . Friends and family have stepped in when they can, but years of lost income have taken a toll on their finances. Because of this, we are asking for assistance with Aimee's future funeral costs and end-of-life care."<sup>43</sup> On May 12, 2020, Stephens passed away.<sup>44</sup> Stephens' struggle to pay her end of life costs due to being fired from her job even further illustrates the heart breaking detrimental public health toll caused by workplace discrimination, which without the safety net of friends and family, could very easily have led to her own homelessness during her end of life.

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<sup>39</sup> J. Grant, Ph.D., J. L. Mottet, & J. Tanis, (2011). *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY* p 2. (Washington: National Center for Transgender Equality 2011).

<sup>40</sup> Moreau, Julie, *Laughed out of Interviews, Trans Workers Discuss Job Discrimination*, NBC NEWS (Oct. 6, 2019) <https://www.nbcnews.com/feature/nbc-out/laughed-out-interviews-trans-workers-discuss-job-discrimination-n1063041>.

<sup>41</sup> *Id.*

<sup>42</sup> Katelyn Burns, *Aimee Stephens brought the first major trans rights case to the Supreme Court. She may not live to see the Decision* (May 8, 2020) <https://www.vox.com/identities/2020/5/8/21251746/aimee-stephens-trans-supreme-court-health>.

<sup>43</sup> *Id.*

<sup>44</sup> Jason A. Michael, *Obituary: Aimee Stephens*, Michigan News, May 18, 2020 (Last Visited: May 19, 2020).

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As the law stands today, legal protections are just the first step in protecting transgender people from discrimination. However, it is an essential step that cannot be ignored. Specifically, in one study interviewing homeless individuals, the number one cause of their homelessness was a recent job loss, accounting for 31% of interviewees.<sup>45</sup> In comparison, the next highest ranked reason for homeless, drug and alcohol use, came in at only 20%.<sup>46</sup>

An inability to pay one's rent or mortgage due to a lack of income, is also the most materially obvious link in one's inability to stay housed. Keep in mind, a lack of workplace protections means not only that an employer may fire an employee for merely being transgender, but they may also deny the individual a position or promotion for which they are qualified based solely on their transgender identity. This traps a jobless transgender person in a potential cycle of poverty that is likely to culminate in a substantial material loss throughout their entire life, such as a loss of one's housing.

In addition to the severe adversities in housing that the transgender community is currently facing, the Trump Administration has even gone so far as to also intervene in anti-discrimination protections for transgender people seeking temporary reprieve from homelessness on the streets by turning his attention to shelters. In May 2019, the Trump Administration announced plans to walk back the Department of Housing and Urban Development 2012 "Equal Access Rule," which ensures that shelters do not discriminate on the basis of sexual orientation or gender identity.<sup>47</sup> This action, hand in hand, with the Trump Administration's intervention in transgender workplace anti-discrimination protections, will only exasperate and increase street-based homelessness, further endangering the lives of transgender people, and reinforcing the detrimental effects of street-based homelessness on the communities that are impacted by it.

## B. DRUG USE IN THE TRANSGENDER COMMUNITY

Another impact of workplace discrimination, directly related to public health, is the likely increase in the prevalence of drug use among queer and transgender communities. Drug use also has the effect of fur-

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<sup>45</sup> DOWNTOWN STREETS TEAM, THE TRUTH ABOUT HOMELESSNESS: WHAT CAUSES HOMELESSNESS? (2015).

<sup>46</sup> *Id.*

<sup>47</sup> Heng-Lehtinen, Rodrigo, Trump Administration Announces Plan to Gut Protections for Trans People in Shelters, THE NATIONAL CENTER FOR TRANSGENDER EQUALITY (May 22, 2019) <https://transequality.org/press/releases/trump-administration-announces-plan-to-gut-protections-for-trans-people-in-shelters>.

ther increasing homeless. According to one study on the lives of LGBT people, 30% of the LGBT population abuses substances, in comparison with the general population, of which only 12% abuses substances.<sup>48</sup> There is also a direct correlation between drug use and homelessness, as it is often the second most commonly cited reason for one's current bout of homelessness, second only to job loss.<sup>49</sup> Further, according to a 2015 National Survey on Drug Use and Health, adults defined as a "sexual minority" (in this survey, meaning lesbian, gay, or bisexual) were more than twice as likely as heterosexual adults (at a rate of 39.1% versus 17.1%) to have used any illicit drug in the past year.<sup>50</sup>

The reasons for this correlation may be numerous, and often personal, but the overall pattern speaks directly to the experiences in which transgender and "sexual minorities" live. Often the lives of transgender individuals are wrought with discrimination, public condemnation, and ostracization from their communities.<sup>51</sup> In turn, drug use becomes an easy escape from a world where one is made to feel, over and over, that they do not belong.<sup>52</sup> However, drug and substance abuse, and the potential for addiction, intersects with the other hardships often faced by transgender individuals. The relationship between homelessness and addiction is often undeniable, and while addiction can often be the cause of homelessness, the inverse is also true. According to the Addiction Center,

Oftentimes, addiction is a result of homelessness. The difficult conditions of living on the street, having to find food, struggling with ill-health, and constantly being away from loved ones creates a highly stressful state of being. Individuals suffering from homelessness may additionally develop psychiatric conditions in response to the harsh lifestyle of feeling threatened by violence, starvation, and lack of shelter and love.<sup>53</sup>

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<sup>48</sup> Stacey Boon, *Substance Use in Queer and Trans Communities*, "LGBT" ISSUE OF VISIONS JOURNAL (2009) at 12-13.

<sup>49</sup> DOWNTOWN STREETS TEAM, *THE TRUTH ABOUT HOMELESSNESS: WHAT CAUSES HOMELESSNESS?* (2015).

<sup>50</sup> Grace Medley, Rachel N. Lipari, and Jonaki Bose, *Sexual Orientation and Estimates of Adult Substance Use and Mental Health: Results from the 2015 National Survey on Drug Use and Health*, NSDUH DATA REVIEW (OCT. 2016), <https://www.samhsa.gov/data/sites/default/files/NSDUH-SexualOrientation-2015/NSDUH-SexualOrientation-2015/NSDUH-SexualOrientation-2015.htm>.

<sup>51</sup> J. Grant, Ph.D., J. L. Mottet, & J. Tanis, (2011). *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY PAGE* (Washington: National Center for Transgender Equality 2011).

<sup>52</sup> Medley, *supra*, note 50.

<sup>53</sup> Krystina Murray, *The Connection Between Homelessness and Addiction*, THE ADDICTION CENTER (Jul. 10, 2019) <https://www.addictioncenter.com/addiction/homelessness/>.

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Transgender individuals face a higher risk of homelessness by being legally vulnerable to workplace discrimination, up to and including, termination from their job because of their gender identity. Job loss is also the most commonly cited reason for why one became homeless, so as we expose the transgender community to a higher likelihood of homelessness, we also expose them to a higher likelihood of drug addiction. As we will discuss, higher rates of drug addiction also have an impact on the local/geographical communities in which this occurs.

C. MENTAL HEALTH STRUGGLES AND SUICIDE IN THE TRANSGENDER COMMUNITY

In addition to struggling with high rates of homelessness and drug use, transgender individuals are also particularly vulnerable to mental health struggles and suicide. As the lives of transgender people are made more difficult by denying workplace discrimination protections, the high rates of mental illness and suicide among transgender people will also increase. Essentially, suicidal ideation, homelessness, and drug use create a vicious cycle that is difficult to escape from.

Living in a world where one is repeatedly struggling to overcome both societal and institutional barriers in order to access basic needs can drive one into this cycle. A transgender individual may become depressed due to the pain of marginalization, which may lead to drug addiction, poor performance at work, and job loss. This may precipitate an increase in depression or lead to suicidal ideation. Or, the cycle may begin with suicidal ideation and lead to drug use. This cycle can play out in a variety of ways, and each time it can lead to a domino effect of losses as the transgender individual's self-worth is chipped away with every turn.

Further, when forced to decide between losing one's job and expressing one's true gender identity, many transgender people may find themselves at a dangerous crossroads where they feel they must stay closeted in order to maintain employment and survive. When transgender people and sexual minorities attempt to suppress, rather than live out their identities, their likelihood of suicide attempts actually increases.<sup>54</sup>

According to the Suicide Prevention Resource Center, transgender people are more at risk of suicide than heterosexual people and lesbian,

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<sup>54</sup> Lara Rodriguez and Donald Gatlin, *Seeking Help from Religious Counselors Associated with Increased Suicide Risk Among LGB People*, THE WILLIAMS INSTITUTE, UCLA SCHOOL OF LAW (Jun. 25, 2014).

gay, and bisexual people.<sup>55</sup> Additionally, transgender people also experience mental illness at significantly higher rates than the general population.<sup>56</sup> This heightened risk is primarily due to the fact that transgender people face unique stressors, including stress from being part of a minority group, as well as stress related to not identifying with one's biological sex.<sup>57</sup> For example, a 2015 U.S. Transgender Survey found that transgender people experienced a 40% lifetime prevalence of suicide attempts, compared with 4.6% in the general population.<sup>58</sup> Additionally, the issue of transgender suicidality is an international issue, with the rate of suicide attempts among transgender individuals fluctuating between 32% to 50% of the overall transgender population worldwide.<sup>59</sup> It is also worth noting that substance use, which, as discussed above, is prevalent in the transgender community, is also considered a significant risk factor for suicidality.<sup>60</sup>

Furthermore, transgender individuals who are not working are more likely to suffer from mental health issues and psychiatric disorders.<sup>61</sup> This is consistent with recent data, which found that 80% of people receiving public mental health services were also unemployed.<sup>62</sup> Researchers speculated that based on this data, one of the ways to mitigate suicidality and mental illness among transgender individuals is through employment, because it provides "increased financial security, purpose and community."<sup>63</sup> Additionally, according to one study, transgender people who have experienced discrimination have an even higher likelihood of attempting suicide.<sup>64</sup> By placing additional hurdles between the transgender population and employment, lawmakers will increase the al-

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<sup>55</sup> *Suicide risk and prevention in gay, lesbian, bisexual and transgender youth*, SUICIDE PREVENTION RESOURCE CENTER, (last visited May 7, 2020).

<sup>56</sup> Alpert Reyes, Emily, *Transgender Study Looks at Exceptionally High Suicide-Attempt Rate*, Los Angeles Times (Jan 28, 2014) <https://www.latimes.com/local/lanow/la-xpm-2014-jan-28-la-me-ln-suicide-attempts-alarming-transgender-20140127-story.html>.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> H. G. Virupaksha et al, *Suicide and Suicidal Behavior among Transgender Persons*, 38(6) *Indian J. Psychol. Med.* 505, 505-09 (2016).

<sup>60</sup> *Substance Abuse and Suicide Prevention: Evidence and Implications*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, <https://radarcart.boisestate.edu/library/files/2017/07/SubstanceAbuseAndSuicidePrevention.pdf> (last visited May 7, 2020).

<sup>61</sup> Sita Diehl et al, *Road to Recovery: Employment and Mental Illness*, NATIONAL ALLIANCE ON MENTAL ILLNESS <https://www.nami.org/Support-Education/Publications-Reports/Public-Policy-Reports/RoadtoRecovery> (last visited May 7, 2020).

<sup>62</sup> *Id.* at 5.

<sup>63</sup> K. CLEMENTS-NOLLE ET AL, *ATTEMPTED SUICIDE AMONG TRANSGENDER PERSONS: THE INFLUENCE OF GENDER-BASED DISCRIMINATION AND VICTIMIZATION* p 1 (Department of Health Ecology, University of Nevada, Reno, NV, 2006).

<sup>64</sup> *Id.* at p.1.

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ready startling high rates of suicide and attempted suicide among the transgender population.

D. VULNERABILITY TO VIOLENT CRIME AS A MEMBER OF THE  
TRANSGENDER COMMUNITY

Due to the societal and institutional marginalization of transgender people, they are also exposed to some of the highest rates of violent hate crime, including assaults, sexual assaults, and murders. Homeless individuals already experience high susceptibility to violent crime, and transgender individuals will face even higher rates of susceptibility as they become part of the homeless population as well. Thus, a denial of workplace protection will also increase the likelihood of violent crime experienced by the transgender community.

For example, from October 2017 to September 30, 2018, there were 369 recorded murders of transgender people internationally.<sup>65</sup> Many of the murders were particularly cruel and horrific, including five deaths by beheadings and nine deaths by stoning.<sup>66</sup> Twenty-eight of those murders occurred in the United States in 2018.<sup>67</sup>

It is also worth noting that of the murders of transgender people in 2019, nearly all of them were black transgender women.<sup>68</sup> Discrimination does not exist in a vacuum, and while transgender people experience discrimination at a high rate, the likelihood of discrimination may also increase as one person's multiple marginalized identities intersect, alongside the likelihood of facing deadlier violence.

Those in the transgender community able to avoid deadly violence face other incredibly widespread forms of abuse. According to a national report, 53% of transgender individuals reported experiencing harassment in a place of public accommodation, such as a restaurant or public restroom.<sup>69</sup> Notably, many attacks and murders go unreported, so the true numbers may be even higher.

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<sup>65</sup> Joe Morgan, *Beheaded, gunned down and stoned to death: 369 trans people killed this year*, GAY STAR NEWS (Nov. 19, 2018) <https://www.gaystarnews.com/article/beheaded-gunned-down-and-stoned-to-death-368-trans-people-killed-this-year/>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Trudy Ring, *These are the transgender people killed in 2019*, THE ADVOCATE (last updated Dec. 19 2019) <https://www.advocate.com/transgender/2019/5/22/these-are-trans-people-killed-2019#media-gallery-media-21>.

<sup>69</sup> *Statistics about Transgender Discrimination*, THE GAY AND LESBIAN ALLIANCE AGAINST DISCRIMINATION ("GLAAD") citing J. Grant, Ph.D., J. L. Mottet, & J. Tanis, (2011). INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY PAGE (Washington: National Center for Transgender Equality 2011).

The murder and harassment of transgender people occurs due to discrimination, fear, and hate. Facing continued discrimination often puts transgender people in particularly vulnerable positions. Out of the 369 transgender people murdered in 2018, 62% were also sex workers.<sup>70</sup> While some people may choose freely to engage in sex work, often times, many do not. As one's options for survival are decimated, sex work becomes one of the few remaining avenues society's most vulnerable may travel in order to stay alive. However, sex work, especially as a transgender person, can be particularly dangerous to one's safety and health. According to one study, "globally, transgender women have an HIV prevalence ranging from 17.7% to 21.6%,"<sup>71</sup> Further, "transgender female sex workers [are] more at-risk with an estimated HIV prevalence of 27.3 percent."<sup>72</sup>

The likelihood of experiencing violent crime also increases when one is experiencing homelessness, which as previously discussed, occurs at a high rate in the transgender community. According to one study, over the past 18 years, there have been 1,769 incidents of crimes committed against homeless individuals.<sup>73</sup> In one particularly gruesome incident in September 2017, a man drove over a group of homeless people sleeping on the street, killing one of them.<sup>74</sup>

However, the picture is even bleaker when transgender status is factored in. According to one survey of transgender individuals, 72% of respondents had taken part in sex work, 65% of respondents had experienced homelessness, and 61% of respondents with disabilities reported being sexually assaulted in their lifetime.<sup>75</sup> As demonstrated by these statistics, there is a correlation between transgender identity, homelessness, sex work, and violent crime vulnerability. All of these horrific statistics can be drawn back to a transgender person's roadblocks in securing and maintaining employment, and thus housing.

Transgender individuals face a unique set of challenges that overlap across many different issues, all of which ultimately relate to widespread

<sup>70</sup> Joe Morgan, *Beheaded, gunned down and stoned to death: 369 trans people killed this year*, GAY STAR NEWS (Nov. 19, 2018) <https://www.gaystarnews.com/article/beheaded-gunned-down-and-stoned-to-death-368-trans-people-killed-this-year/>.

<sup>71</sup> S.D. Baral et al., *Worldwide burden of HIV in transgender women: a systematic review and meta-analysis*, 13(3) *Lancet Infect Dis.* 214, 214–22 (2013).

<sup>72</sup> D. Operario et al., *Sex work and HIV status among transgender women: systematic review and meta-analysis*, 48(1) *J. Acquir. Immune Defic. Syndr.* 97, 97-103 (2008).

<sup>73</sup> *Vulnerable to Hate; A Survey of Bias Motivated Violence Against People Experiencing Homelessness in 2016-2017*, NATIONAL COALITION FOR THE HOMELESS (DEC. 2018) [https://nationalhomeless.org/wp-content/uploads/2018/12/hate-crimes-2016-17-final\\_for-web.pdf](https://nationalhomeless.org/wp-content/uploads/2018/12/hate-crimes-2016-17-final_for-web.pdf).

<sup>74</sup> *Id.* at 12.

<sup>75</sup> NATIONAL CENTER FOR TRANSGENDER EQUALITY, 2015 U.S. TRANSGENDER SURVEY REPORT (2016).

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societal discrimination. Job insecurity because of one's transgender status can also precipitate any and all of the above material consequences of discrimination including homelessness, drug abuse, mental illness and suicidal ideation, and vulnerability to violent crime and disease. Often times, the consequences of discrimination overlap and occur in conjunction to one another, because the effects of discrimination are not isolated to one part of an individual's life but instead extends into all aspects.

IV. DETRIMENTAL, COMMUNITY-WIDE PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS FROM INCREASED MARGINALIZATION OF THE TRANSGENDER COMMUNITY

The experiences discussed here — homelessness, drug addiction and abuse, mental health issues, suicide, and vulnerability to violent crime — do not affect only the transgender community, even though they may often bear the brunt of these burdens. Rather, the detrimental impacts of workplace discrimination, compounded with societal discrimination, create an environment where local communities also suffer as a result of the burdens heaped upon the transgender community, by experiencing increased homelessness, illness, poverty, pollution and crime.

This is not to place blame on transgender people for the societal impacts that trickle down from their suffering, but rather, to highlight the need for positive systemic change, and specifically, workplace discrimination protections for transgender individuals. If there is anywhere to place blame for the larger societal implications of transgender discrimination, it is on the companies, politicians, courts, and individuals who perpetuate systemic suffering in these communities. The negative consequences of legalizing discrimination of transgender people in the workplace are not limited to the transgender population, who is directly burdened, but will also create a ripple effect that will burden and hurt all communities. My hope in writing this is, that if understanding the plight of transgender individuals is not enough to push society toward positive change, then understanding how the plight of vulnerable communities can come back to hurt one's own community, will be enough.

Essentially, all of the most obvious and material detriments affecting the transgender community can be traced back, in part, to discrimination, and more importantly, workplace discrimination. To summarize, as discussed earlier, a loss of one's job or income source has been cited by homeless populations as the most common cause of one's homelessness.<sup>76</sup> As transgender individuals face barriers to continued employ-

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<sup>76</sup> DOWNTOWN STREETS TEAM BAY AREA, THE TRUTH ABOUT HOMELESSNESS: WHAT CAUSES HOMELESSNESS? (2015).

ment, based solely on their gender expression and identity, they are faced with an impossible choice: conform to their employer's interpretation of what their 'proper' gender expression should be, or face unemployment, and with it, potentially, homelessness.

Further, losing one's home puts one at a higher risk of drug abuse and mental illness, as drug abuse is the second most cited reason for a bout of homelessness, and vice versa.<sup>77</sup> While there is an overlap between the homeless community and the transgender community, both of these communities individually suffer from high rates of mental illness and suicide, with job loss being a frequent factor in their likelihood of suicidality.<sup>78</sup> Finally, homelessness, especially in the transgender community, puts individuals at a higher risk of violent crime, and often forces transgender individuals into street-based sex work for survival.<sup>79</sup> So, when all of these factors are put together, how does it affect surrounding communities and environments?

#### A. HOMELESS ENCAMPMENTS: PREVALENCE OF GARBAGE, DRUG, AND PARAPHERNALIA WASTE

The purpose in examining the detrimental impacts of workplace discrimination is not to demonize the homeless population's attempts at survival, but rather to address the underlying systemic issues that lead to negative impacts when homelessness is increased and rampant in local communities. One study central to Contra Costa County in California succinctly highlights the prominent environmental impacts generated from homeless encampments. The purpose of this study was to address specifically the general spread of pollutants in flooding areas where homeless encampments exist, citing some of the most obvious environmental impacts such as: excessive and improperly disposed of garbage, human waste and its potential for contaminating water supplies, and the spread of disease by improperly discarded drug paraphernalia.<sup>80</sup>

Additionally, in 2014, the Santa Clara Water District in California released a report showing that it, with the City of San Jose, spent

<sup>77</sup> Grace Medley, Rachel N. Lipari, and Jonaki Bose, *Sexual Orientation and Estimates of Adult Substance Use and Mental Health: Results from the 2015 National Survey on Drug Use and Health*, NSDUH DATA REVIEW (OCT. 2016), <https://www.samhsa.gov/data/sites/default/files/NSDUH-SexualOrientation-2015/NSDUH-SexualOrientation-2015/NSDUH-SexualOrientation-2015.htm>.

<sup>78</sup> NATIONAL ALLIANCE ON MENTAL ILLNESS, ROAD TO RECOVERY: EMPLOYMENT AND MENTAL ILLNESS (2014).

<sup>79</sup> D. Operario et al., *Sex work and HIV status among transgender women: systematic review and meta-analysis*, 48(1) J. Acquir. Immune Defic. Syndr. 97, 97-103 (2008).

<sup>80</sup> CONTRA COSTA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT, HOMELESSNESS AND WATER POLLUTION, THINKING OUTSIDE THE CHANNEL (2013).

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\$275,542 to remove 2,011 cubic yards of debris from homeless encampments along creeks and rivers in Santa Clara County.<sup>81</sup> When the encampment known as the ‘Story Road Encampment’ in San Jose closed on December 4, 2014, city officials removed 600 tons of trash and over 1,500 pounds of human waste.<sup>82</sup>

The ways in which these environmental impacts tie together all relate directly to inadequate living conditions due to homelessness. Without proper access to waste disposal or restrooms, those living in homeless encampments have no viable means to dispose of garbage or relieve themselves. Further, this waste disposal may, and often does, include used needles, as drug abuse becomes common and persistent in such poor living conditions.

It is also worth noting, in a terrific twist of irony, in September 2019, the Trump Administration’s Environmental Protections Agency sent a letter to California’s Governor Gavin Newsome blaming water quality issues on the homeless populations.<sup>83</sup> The letter made the claim that homeless encampment needles are washing into the ocean. San Francisco Mayor London Breed responded to this claim, noting that the allegation is false, and rather the Trump Administration was simply attacking San Francisco, “for no reason other than politics.”<sup>84</sup> Mayor Breed’s comments ring true, considering that it is also the Trump Administration that is attempting to block workplace protections that potentially increase rates of homelessness.<sup>85</sup>

This also serves as a stark reminder that the homeless are not to be blamed for detrimental environmental impacts, but rather, blame must be shifted to the power holders that allow homelessness to grow rampantly. Rather, it is actually local communities, and specifically, the homeless, that feel the highest detrimental impacts of rampant homelessness. As was correctly noted by David Lewis of the Save the Bees foundation, “the way to reduce the impacts of homeless encampments is to reduce homelessness.”<sup>86</sup> Various steps must be taken in order to combat homelessness, but a baseline protection is ensuring communities vulnerable to

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<sup>81</sup> GARY PITZER, CAN PROVIDING BATHROOMS TO HOMELESS PROTECT CALIFORNIA’S WATER QUALITY? WATER EDUC. FOUND. (2019).

<sup>82</sup> DOWNTOWN STREETS TEAM BAY AREA, THE TRUTH ABOUT HOMELESSNESS: WHAT CAUSES HOMELESSNESS? (2015).

<sup>83</sup> Pam Fessler, *Trump Administration Blames Homeless for California’s Water Pollution*, NATIONAL PUBLIC RADIO (Sep. 26, 2019, 4:44 PM), <https://www.npr.org/2019/09/26/764759005/trump-administration-blames-homeless-for-californias-water-pollution>.

<sup>84</sup> *Id.*

<sup>85</sup> Brief for Federal Respondent in Opposition at 23, *Equal Employment Opportunity Comm’n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018).

<sup>86</sup> Fessler, *supra*, note 78.

homelessness have basic workplace protections, allowing those communities more stability in their ability to stay housed.

Additionally, while drug paraphernalia is cause for concern, according to a 2015 Center for Disease Control (“CDC”) report, there have been only 58 confirmed industrial healthcare worker transmissions of HIV due to accidental needle contact, and 0 known HIV transmissions from contact with exposed needles on the street, though transmission of HIV in this way is possible.<sup>87</sup> What is often much more likely is bacterial infection due to used needle exposure, which is treatable, but a cause for concern in local communities, especially in public parks where children may be present or play.<sup>88</sup> While there are legitimate public health and safety concerns regarding needle exposure, the Trump administration merely plays toward fears of the homeless population, not addressing the systemic causes of and legitimate public health concerns that come along with rampant homelessness. As expressed by Victoria Vantol in response to Donald Trump’s letter to the California Governor, “All people create waste, the only difference is having the resources for proper disposal.”<sup>89</sup>

#### B. HOMELESS ENCAMPMENTS: SPREAD OF INFECTIOUS DISEASE RELATED TO ENVIRONMENTAL ISSUES

A lack of access to restrooms can have very real and serious consequences to local public health and the environment. Namely, it can account for the spread of disease and public water contamination. While there are many examples of this becoming a cause for concern in local communities, this issue is especially pertinent in 2020 in light of the novel and fatal coronavirus, COVID-19.

In March 2020, with the global spread of COVID-19, the homeless are both uniquely vulnerable to this deadly virus and are often unable to follow the CDC guidelines on how to limit community spread of the virus. As of May 8, 2020, COVID-19 has infected nearly four million people globally and caused more than 250,000 deaths, with an expecta-

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<sup>87</sup> M. Patricia Joyce, MD et al., *Notes from the Field: Occupationally Acquired HIV Infection Among Health Care Workers — United States, 1985–2013*, CENTER FOR DISEASE CONTROL (Jan. 9, 2015), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6353a4.htm>.

<sup>88</sup> Rebekah Webb, *Needlestick Injuries, Discarded Needles and the Risk of HIV Transmission*, AIDSMAP (Jun. 19 2019), <https://www.aidsmap.com/about-hiv/needlestick-injuries-discarded-needles-and-risk-hiv-transmission>.

<sup>89</sup> Victoria Vantol, *Does Homelessness Put the Public’s Health at Risk?*, INVISIBLE PEOPLE (Oct. 2019).

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tion that these numbers will continue to rise.<sup>90</sup> The CDC's main recommendations for stopping the spread of COVID-19 include frequently washing one's hands, avoiding close contact with others, and staying home if you are sick.<sup>91</sup> However, these recommendations are nearly impossible for the homeless to follow, as the homeless often lack access to clean running water, if they are living in an encampment they are unable to avoid close contact with others, and have no home to 'stay in' if they become sick. Thus, the homeless are forced into the public without being able to adhere to the CDC guidelines, making them more vulnerable to contracting the virus, and less able to prevent its spread in the community.

However, COVID-19 is not the only instance where rampant homelessness leads to public health concerns. In 2017, in San Diego, California, there was an outbreak of Hepatitis A, largely among homeless populations, which was believed to be due to a lack of restrooms and proper sanitation.<sup>92</sup> Over the ten months of this outbreak, 584 people became ill, almost 400 were hospitalized, and 20 people died.<sup>93</sup>

Additionally, in early 2019, Los Angeles experienced a severe outbreak of Typhus in its downtown area and the City Hall had to be temporarily closed as a result.<sup>94</sup> While the disease was primarily affecting the local homeless population, public health officials described the outbreak as a public health crisis, warning that the outbreak could easily spread beyond the homeless population, as at least one City Hall employee was also infected.<sup>95</sup> The causes of the spread of the disease are believed to be poor hygiene and feces in and around homeless encampments, where its inhabitants do not have proper access to restroom facilities or clean water.<sup>96</sup>

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<sup>90</sup> WORLDOMETER, COVID-19 CORONAVIRUS PANDEMIC, (last updated May 08, 2020, 06:20 GMT).

<sup>91</sup> *Coronavirus Disease 2019 (Covid-19)*, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited May 8, 2020).

<sup>92</sup> GARY PITZER, CAN PROVIDING BATHROOMS TO HOMELESS PROTECT CALIFORNIA'S WATER QUALITY? WATER EDUC. FOUND. (2019).

<sup>93</sup> *Id.*

<sup>94</sup> Anna Gorman and Kaiser Health News, *Medieval Diseases are Infecting California's Homeless*, THE ATLANTIC, (Mar. 8, 2019) <https://www.theatlantic.com/health/archive/2019/03/typhus-tuberculosis-medieval-diseases-spreading-homeless/584380/>.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

C. CLIMATE CHANGE WILL EXACERBATE THE SUFFERING OF THOSE EXPERIENCING DISCRIMINATION

Extreme heat is the current leading cause of weather related deaths.<sup>97</sup> The homeless are especially susceptible to this type of death on dangerously hot days due to lacking access to cooling spaces.<sup>98</sup> As homelessness increases due to a lack of workplace protections, this means that more and more people will become vulnerable to illness and death brought about due to climate change. Unfortunately, according to a recent Housing and Urban Development report, if temperatures increase as projected, by 2050, there will be a 300% increase in heat related deaths.<sup>99</sup>

These projections are not speculative, as one can already see how the rate of homelessness equates to a higher rate of heat related deaths. In 2015 and 2016, Arizona's Maricopa County performed a study of heat related deaths.<sup>100</sup> While researchers projected 80 heat related deaths during that time period, in reality, there were 150.<sup>101</sup> Researchers also discovered that during that period of time, there was a 25% increase in homelessness, which they hypothesized may account for the spike in heat related deaths as well.<sup>102</sup>

Further, urban environments tend to experience a "heat island effect," where cities experience higher temperatures than surrounding rural areas.<sup>103</sup> According to the EPA, "the annual mean air temperature of a city with 1 million people or more can be 1.8–5.4°F higher than surrounding rural areas."<sup>104</sup> As nearly 80% of the LGBT population lives in non-rural settings,<sup>105</sup> this means that transgender individuals will be especially susceptible to some of the more intense negative effects of climate change. Essentially, by taking legislative actions that will increase a vulnerable population's likelihood of homelessness, we will also be increasing their likelihood of climate change related mortality.

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<sup>97</sup> Paul Chakalian, *Homeless are Dying at an Alarming Rate Because of Climate Change*, MOTHER JONES (Jun. 25, 2018) <https://www.motherjones.com/environment/2018/06/homeless-people-are-dying-at-an-alarming-rate-because-of-climate-change/>.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Chakalian, *supra*, note 92.

<sup>103</sup> U.S. EPA, HEAT ISLAND EFFECT (2019).

<sup>104</sup> *Id.*

<sup>105</sup> MOVEMENT ADVANCEMENT PROJECT, WHERE WE CALL HOME: LGBT PEOPLE IN RURAL AMERICA 7 (2019).

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D. ALLOWING WORKPLACE DISCRIMINATION ENCOURAGES ACTS  
THAT EXACERBATE CLIMATE CHANGE

There is a long standing, and often noticeable trend in LGBT people migrating to large cities. There are many conceivable reasons for this trend, from searching for a larger LGBT community, moving to areas where dating scenes are vaster, and most importantly, moving to areas where LGBT have more civil rights in both public accommodations and in workplaces. In a recent Gallup study, San Francisco was found to have the highest concentration of people who identify as LGBT, likely due to the history of LGBT movements and civil rights in the area.<sup>106</sup> While on its face this may not seem alarming, it is concerning that such high numbers of LGBT feel the need to move from where they grew up, away from family, often in order to find both societal and legal acceptance.

However, what is even more alarming is the impact this may have on global climate change. While clearly not all LGBT people migrate from one community to another, and LGBT people only account for a small number of total people migrating to new areas, migration itself is a factor in global climate change.<sup>107</sup> In fact, increasing urbanization can detrimentally affect biodiversity, wildlife habitats, and carbon emissions as cities grow larger, destroying local habitats, increasing fossil fuel use, and pollution becoming more highly concentrated.<sup>108</sup> While the LGBT community is clearly not to blame for climate change, it is concerning there is an additional man- made contributor to this, which is a lack of legal protections. It is possible the high rates of LGBT migration to large cities would decline should LGBT individuals enjoy the same legal protections in every state, especially in terms of employment.

Should the Supreme Court legalize discrimination against transgender people, they will be further increasing the likelihood of the transgender population experiencing an early death due to climate change and create circumstances that bolster the effects of climate change. Thus, the Supreme Court will also be exposing local communities to the residual trauma, pollution, and public health impacts of preventable death and environmental destruction. Regardless of how the Supreme Court feels

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<sup>106</sup> Frank Newport and Gary Gates, *San Francisco Metro Area Ranks Highest in LGBT Percentage*, GALLUP (Mar. 20, 2015), <https://news.gallup.com/poll/182051/san-francisco-metro-area-ranks-highest-lgbt-percentage.aspx>.

<sup>107</sup> *Environmental Impact of Immigration*, MIGRATION WATCH UK (Dec. 27, 2010) <https://www.migrationwatchuk.org/briefing-paper/215/environmental-impact-of-immigration>.

<sup>108</sup> *Id.*

about transgender people and their rights under the law, the public policy implications of this decision are far too dire to ignore.

V. DETRIMENTAL EFFECTS ON CISGENDER PEOPLE SHOULD SEX STEREOTYPING NO LONGER BE CONSIDERED PROHIBITED SEX BASED DISCRIMINATION

Based on the logic set forward by the DOJ, which narrowly construes sex discrimination, if an employer fired a cisgender woman for not being stereotypically feminine, this may not be discrimination on the basis of sex, if the same employer would also fire a cisgender man for not being stereotypically masculine.<sup>109</sup> This is significant because not only would a ruling in favor of the DOJ's interpretation impact the transgender community by legalizing discrimination against this community, but also it would have the potential to impact anyone who falls outside of their employer's perceived appropriate sex presentation. Thus, it would set back the clock on rights previously won in order to protect both women and men from sex stereotyping as a form of sex discrimination.<sup>110</sup>

Indeed, Justice Ruth Bader Ginsberg recognized the detrimental impacts of sex stereotyping as a form of sex-based discrimination, long before transgender identities became a part of modern political vernacular. In her brief to the court on behalf of plaintiff Sally Reed, a woman who lost partial control of her son's estate to her ex-husband despite being the sole caretaker, Ginsberg wrote: "Whatever differences may exist between the sexes, legislative judgments have frequently been based on inaccurate stereotypes of the capacities and sensibilities of women." Further, Ginsberg argued for a higher level of scrutiny than rational basis review for sex-based laws, stating;

[T]he traditional division within the home—father decides, mother nurtures—is reinforced by diverse provisions of state law. Yet, however much some men may wish to preserve Victorian notions about woman's relation to man, and the 'proper' role of women in society, the law cannot provide support for obsolete male prejudices or translate them into statutes that enforce sex-based discrimination.<sup>111</sup>

<sup>109</sup> Melissa Gira Grant, *A Critical Threat to Sex Discrimination Protections*, THE NEW REPUBLIC (Sep. 19, 2019), <https://newrepublic.com/article/155127/supreme-court-roll-back-sex-discrimination-protections>.

<sup>110</sup> *Id.*

<sup>111</sup> Bornstein, Stephanie, *The Law of Gender Stereotyping and the Work-Family Conflicts of Men*, *Hastings Law Journal* Volume 63, 2012, quoting *Reed v. Reed*, 404 U.S. 71, 72 (1971), Brief for Appellant at 5-7, note 34, at 17.

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By focusing on the detrimental impacts of sex stereotyping on both men and women, Ginsberg set the stage for the EEOC interpretation of the Title VII prohibition on sex stereotyping. The very basis of her arguments have also been the foundation of the EEOC arguments for protection of transgender individuals in the workplace.<sup>112</sup> Ginsberg succinctly pointed out that enforcing stereotypical assumptions about one's sex often leads to the legal codifying of prejudice.<sup>113</sup> This is not to say that men and women now live free from prejudice in the workplace, but they currently have legal recourse for their grievances. However, depending on the state the individual lives in, the same may not be said regarding transgender individuals in the workplace.

The impacts of discrimination, and more specifically workplace discrimination, have vast and devastating impacts on the lives of transgender individuals, which precipitates into broader detrimental impacts on their local environment and communities. Thus, a ruling against the rights of transgender individuals could mean the legal codifying of many previously recognized forms of sex-based discrimination against anyone an employer chooses to target. The environmental shadow cast by the mistreatment of transgender individuals, thus would be amplified by widening the scope with which discrimination would be legalized.

VI. NECESSARY INTERVENTIONS AT THE COURT, CONGRESSIONAL,  
AND LOCAL/GRASSROOTS LEVELS

A. SCOTUS SHOULD UPHOLD THE EEOC INTERPRETATION OF TITLE  
VII

At ground zero of this fight is the case — *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission*. In order to preserve the current scope of Title VII rights as enforced by the EEOC, the Supreme Court must reject the intervening arguments posed by the Trump Administration's DOJ. It is essential that the Supreme Court affirm the EEOC's common sense interpretation of the harassment/discrimination based on sex prohibition to impliedly include harassment/discrimination due to not conforming to the stereotypes based on one's biological sex.

In October 2019, the Supreme Court heard oral arguments for Aimee Stephens case, and prior to the outbreak of COVID-19, a decision

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<sup>112</sup> Gira Grant, *supra*, note 104.

<sup>113</sup> *Id.*

was expected by about June 2020.<sup>114</sup> However, even with this possible affirmation by the Supreme Court, Congress should also take action to explicitly prohibit workplace discrimination on the basis of gender identity and gender expression to prevent a potential future court from overturning these protections. This is especially true concerning the recent makeup of the court, which includes two Trump administration appointees who have not expressed how they will rule on the recognition of transgender rights.

B. CONGRESS SHOULD EXPLICITLY PROTECT WORKERS ON THE BASIS OF GENDER IDENTITY, SEXUAL ORIENTATION, AND GENDER PRESENTATION

In order to preserve and ensure continued protection of transgender people in the workplace, Congress must also adopt explicit protections against this form of discrimination by recognizing gender identity and expression as protected categories under Title VII. Congress could easily model its updates to Title VII off of the 22 state laws that already recognize gender identity and expression as protected categories.<sup>115</sup>

One example is California's Fair Employment and Housing Act ("FEHA").<sup>116</sup> Since 2011, under FEHA, California includes a broader collection of protected categories, including gender identity, gender expression, and sexual orientation. Further, effective January 1, 2018, all California employers with more than 50 employees are required to post a "Transgender Rights in the Workplace" poster, and include gender identity in their workplace harassment trainings, in order to ensure employees are aware of their protections under FEHA.<sup>117</sup>

However, it is possible that conservative organizations will fight back against Congress affirming workplace protections for transgender individuals. Thus, individuals as well as local organizations should also prepare to fight for these protections. For example, Out for Sustainability is an organization specifically dedicated to mobilizing LGBT people for environmentally sustainable policies.<sup>118</sup> Organizations such as this should be at the forefront of fighting for transgender workplace protections, in recognition of their rippling effect on the environment.

<sup>114</sup> Katelyn Burns, *The Supreme Court is Finally Taking on Trans Rights*, VOX (Oct. 7, 2019), <https://www.vox.com/latest-news/2019/10/7/20903503/trans-supreme-court-decision-employment-discrimination-aimee-stephens>.

<sup>115</sup> *Non-Discrimination Laws, Employment*, MOVEMENT ADVANCEMENT PROJECT (2020).

<sup>116</sup> Christopher B. Nolan, *Protections Against Gender Identity*, SF WEEKLY (Sep. 19, 2018, 10:52 AM), <https://www.sfweekly.com/sponsored/protections-against-gender-identity-harassment/>.

<sup>117</sup> *Id.*

<sup>118</sup> *Purpose*, OUT FOR SUSTAINABILITY, <https://out4s.org/purpose/> (last visited May 8, 2020).

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C. LOCAL GOVERNMENTS, ENVIRONMENTAL GROUPS, AND PUBLIC  
HEALTH INTEREST GROUPS SHOULD SUPPORT AND  
ADVOCATE FOR THESE CHANGES

As highlighted throughout this article, local environments and public health suffer as a consequence of poor workplace protections for vulnerable populations. It is for this reason that local environmental groups and public health groups should also support Congressional legislation that affirms workplace protections locally and nationally. The overall impact due to increases in homelessness, such as spread of disease and litter, are minute in comparison to the effects of global climate change created by corporate pollution and fossil fuel emissions. But by taking action now to prevent the furthering of local pollution and declining public health, positive impacts will be felt drastically in local communities, and will help to minimize the suffering caused by global climate change of vulnerable populations. Moreover, by attacking the epidemic of homelessness, both a source and a sufferer of global climate change, communities will not only be preventing exacerbation of global climate change impacts but will also be minimizing the suffering caused by it. This means cleaner and safer streets and less communicable disease in our communities, as well as generally less suffering caused by the discriminatory laws that create and enforce these issues.

It is imperative, regardless of what decision the Supreme Court makes on Aimee Stephen's case, that everyday people hold lawmakers accountable for their decisions. Lawmakers who choose to wreak havoc on the lives of transgender people, and the communities in which they reside, must be voted out, impeached, and removed from office. This will look different for each community member, depending on their state and who their representatives are, but every person must call their representatives, voice their opinions in the voting booth and in the street, and continue the fight for workplace equality for all people. The future quite literally depends on it.

VII. CONCLUSION

Essentially, one's likelihood of becoming homeless increases during a job loss, and an increase in homelessness will not only detrimentally affect the individual person made homeless, but also their surrounding community. This becomes especially poignant for transgender people, and those who may be affected by the Supreme Court of the United States reversing prior precedent by excluding transgender people from anti-discrimination workplace protections. Transgender people who are

currently employed would potentially feel the effects of legalized discrimination in their workplace, by making them more vulnerable to discriminatory harassment and even termination.

Furthermore, the reversal of anti-discrimination protections would also place a hurdle between a newly unemployed person and the securing of a new job, by legalizing discrimination in the hiring process. This places transgender people at a crossroads wherein they must choose between living as their authentic selves or living on the street. As illustrated in the already incredibly high rates of suicide among this population, living as a transgender individual comes with many struggles, and increasing those struggles, as opposed to minimizing them, could result in not just increased homelessness, but increased suicide rates, and ultimately, deaths.

No one will benefit if the court rules against these workplace protections. Transgender people will suffer more, their families will suffer more, and their local communities will suffer more. The breadth of this suffering is almost immeasurable. Transgender people will be more susceptible to death, violence, and disease. Their family and friends will be forced to suffer through the loss of loved ones, and local communities will be further exposed to the trauma of death and disease brought about by their marginalization. Finally, local environments and communities will experience higher rates of both pollution and disease. The Supreme Court legalizing the workplace discrimination of transgender people leaves no winners, and only furthers human suffering and environmental degradation in its wake. It is a deplorable legacy that could affect many generations to come.

We must also bear in mind the true reach of overturning the *Price Waterhouse v. Hopkins* precedent. The wide breadth of this potential ruling becomes more detrimental for the public and environment, because while transgender people make up a minority of employees in the United States, the effect of this Supreme Court decision could arguably reach any employee, as any employee who does not conform to their employer's gender expectations could be at risk of losing their job. Depending on the circumstances, this could mean women who wear pants to work, men who take on the brunt of child rearing, and any other host of non-stereotypical gender presentations and experiences. Thus, the impacts of discrimination on the transgender community, and the correlated environmental impacts, are multiplied by the potential to negatively impact any and all workers. Ultimately, the increase in transgender discrimination that would result from a Supreme Court ruling adopting the DOJ's interpretation of sex discrimination will lead to more homeless-

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ness, more local pollution, increases in the spread of communicable disease and infection, and generally more suffering for both the transgender community and the communities in which they reside.<sup>119</sup>

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<sup>119</sup> This article was drafted for publication prior to the June 15, 2020 landmark Supreme Court decision that sexual orientation and gender identity are protected under Title VII. Thus, this article explores the detrimental environmental and public health impacts of workplace discrimination through the lens of the transgender experience.