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Is the United States Judicial System Failing Transgender Women? 
A Critical Overview

Taylor J. House

INTRODUCTION

The Lesbian, Gay, Bisexual, Transgender, Queer, and Asexual community has made amazing strides in the modern civil rights movement of today.\(^1\) Although there have been gains within the LGBTQA movement, the T referenced in LGBTQA seems to have been ignored.\(^2\) The judicial system is consistently ignoring the needs of the transgender community because of transphobia within our society—specifically transgender women of color. In October 2015, a female transgender student from Temple University, Keisha Jenkins, was robbed and murdered by five men in a residential area of North Philadelphia.\(^3\) The Philadelphia Police Commissioner claimed, “[i]t’s a high-

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1. Throughout the paper, I will refer to Lesbian, Gay, Bisexual, Transgender, Queer, and Asexual community as LGBTQA.
risk behavior [sic] and people who engage in that type of activity are more at risk to have something bad happen to them.”

The Philadelphia Police stated the crimes of robbery and murder had nothing to do with Jenkins’ gender. The tone of the statement reeks of victim blaming, which is prevalent within minority communities. The underlying rationale was Ms. Jenkins should have been aware of the risk that she could be murdered because of her profession. In response to such victim blaming, Nellie Fitzpatrick, the LGBTQA liaison to the Mayor of Philadelphia, stated, “[n]obody’s life is less because of who they are, how they died, or where they were.”

Just months earlier in May of 2015, London Chanel, another transgender woman, was allegedly stabbed in the neck and back by her roommate. The Philadelphia police did not think that Chanel’s murder was connected to her gender identity, but rather a domestic dispute between two roommates. London Chanel and Keisha Jenkins were the first and second transgender women murdered in Philadelphia, but Ms. Jenkins was also the twentieth transgender woman to be murdered nationwide. In 2015, there were nineteen American transgender women of color who were murdered.

These developments beg a question that deserves an answer: Is the United States’ judicial system failing transgender women? The answer is, absolutely. There seems to be a problem with American society failing to recognize the humanity of transgender women. For example,

5. Id.
11. Id.
12. Tan, supra note 3.
Keisha Jenkins’ family consistently mis-gendered her by calling her “him” and by her former name, “Stephen.”

The larger issue is that the legal system, which is intended to serve and protect, falls short when it fails to require investigation into whether these murders should be classified as hate crimes. Nellie Fitzpatrick, Philadelphia’s LGBTQA liaison for Mayor Nutter, stated,

[t]he violence against the trans community, specifically trans women of colour [sic], is an absolute, widespread national problem. . . . ‘And the problem isn’t solved by solving each homicide after it happens. The solution is in our society — making sure that any level of stigma or lack of access is completely eliminated for everyone.’

This paper will discuss the rise of the transgender civil rights movement, the problems in the judicial system, and the rights that should be afforded to transgender women. In part one, I will address the LGBTQA civil rights movement led by transgender women. In part two, I will address the transphobia in the prison system. In part three, I will address the lack of visibility of black transgender issues in the current black civil rights movement. In the fourth part, I will address whether there should be certain fundamental rights given to transgender women. In the fifth part of this paper, I will address the lack of adequate health care for transgender women. Lastly, I will address discriminatory housing practices towards transgender women.

I. The Start of the LGBTQA Civil Rights Movement Led by Transgender Women

According to journalist Claire-Renee Kohner, the first pride month started with a bisexual woman and a transgender woman, one of whom was involved with the Stonewall movement. Kohner credits transgender women for bringing visibility to the LGBTQA community. The three movements that have become the focal point for the LGBTQA movement are the Cooper’s Donuts “Riots,” Compton Cafete-

17. Id.
ria “Riots,” and Stonewall Inn “Riots.”18 Though the first modern day LGBTQA resistance is thought to be the Stonewall Movement, the first documented transgender resistance was actually the Cooper’s Donuts Movement.19 Cooper’s Donuts was a place in downtown Los Angeles, California where members of the LGBTQA frequented.20 On the particular history-making occasion, in May of 1959, police started arresting members of the LGBTQA for simply congregating in the cafe.21 As the police started arresting individuals, transgender women and others started throwing donuts and other items at the police.22 The police then came with back up, which instigated an uprising that closed down Main Street for a day.23

Several years later, in 1966, drag queens and transgender women were arrested in Compton’s Diner in San Francisco, California, where drag queens and transgender women met to ensure that other members of their community were safe – that they were not arrested and successfully survived the drugs that they had taken after a night of sex work.24 Compton’s management did not like the fact that drag queens and transgender women frequented the establishment, and routinely removed them from the diner.25 On this particular day in 1966, police came to the diner to routinely remove the transgender women and drag queens, and a police officer grabbed a transgender woman by her arm to pull her out of the establishment.26 In reaction to the police officer’s brutality, the transgender woman threw a hot cup of coffee at him.27 A small uprising ensued that later spilled into the

18. The use of quotation marks around the word riot signifies that whenever there is resistance, uprising, or protest brought on by an oppressed group, history always paints it as a riot.


22. Id.

23. Id.


25. Id.

26. Id.

27. Id.
streets, where transgender women and drag queens fought back by trashing police vehicles and burning newsstands.\textsuperscript{28}

Three years later, in New York, the monumental Stonewall Riot occurred.\textsuperscript{29} Stonewall Inn was only one of a couple of bars that allowed the LGBTQA community in without police harassment, because the bar allegedly had Mafia ties.\textsuperscript{30} On June 28, 1969, police raided the Stonewall Inn to arrest and harass transgender individuals and drag queens.\textsuperscript{31} The state of New York used the fact that LGBTQA bars were “disorderly houses” as an excuse to not serve the community and to raid the bars.\textsuperscript{32}

Marsha P. Johnson, a black transgender woman at the bar, is the person alleged to have started the resistance and allegedly threw a brick at the police.\textsuperscript{33} Sylvia Rivera, a Puerto Rican drag queen also present at the bar, is alleged to have yelled “[i]t’s the revolution!”\textsuperscript{34} The Stonewall Movement, which lasted several days, is known to be the monumental start of the LGBTQA movement.\textsuperscript{35} The transgender community, especially transgender women of color, are often left out of conversations discussing police brutality, hate crimes, and civil rights. It was not until the year 2000 that the transgender community flew its first flag.\textsuperscript{36} Monica Helms, the person who flew the flag, described the details of the flag:

The stripes at the top and bottom are light blue, the traditional color for baby boys. The stripes next to them are pink, the traditional color for baby girls. The stripe in the middle is white, for those who are intersex, transitioning, or consider themselves having a neutral or undefined gender. The pattern is such that no matter which way you fly it, it is always correct, signifying us finding correctness in our lives.\textsuperscript{37}

\begin{itemize}
\item[28.] Pasulka, \textit{supra} note 24.
\item[31.] Id.
\item[34.] King, \textit{supra} note 30.
\item[35.] Id.
\item[36.] Kohner, \textit{supra} note 16.
\item[37.] Id.
\end{itemize}
II. THE PRISON SYSTEM AND TRANSPHOBIA

Medically, gender identity disorder is a term used to define individuals who are "cruelly imprisoned within a body incompatible with their gender identity." Modernly, the medical community now defines individuals who identify as transgender as being "gender dysphoric." However, the transgender community does not recognize their identity as an illness so, to remove the stigma created by the medical community, individuals went from calling themselves transsexual to transgender to acknowledge that there is nothing wrong with their identity.

The replacement of sexual with gender was to direct the transgender community to deeply examine the definition of gender and to reject the medical definition with its combined focus on sex and gender. Though the medical community made strides in recognizing that being transgender is not an illness, the courts are reluctant to follow suit.

In 2002, a transgender teen girl, just seventeen years of age, was brutally beaten and murdered at a house party. At the murder trial, the defendant argued homosexual panic as a defense, which is defined as an "uncontrollable, violent reaction by a latently homosexual defendant to a verbal or physical signal from the victim." The defendant thus attempted to show that he lost the ability to distinguish right from wrong when exposed to the teen's "illness," or homosexuality. Unfortunately, the courts have often used "homosexual panic" as a provocation or heat of passion defense.

There is a lingering problem of getting transgender murder cases defined as hate crimes, because the media and police will often inaccurately assign a gender to transgender women and men. Keisha Jenkins' family has said that she was just a man dressed up as a woman.

39. Id.
40. Id. at 507.
41. Id. at 507-08.
43. Id. at 125.
44. Id.
45. Id. at 125-26.
man. Other transgender women who have been murdered this year, have also fallen to the same fate of being mis-gendered. Labeling transgender women is one of the major issues within the judicial system today. Prisons have been reluctant to properly assign transgender women to women prisons. As portrayed on Netflix's original show, Orange is the New Black, transgender women are often met with hostility and violence in prison, and thereafter placed in solitary confinement for their own protection. These inmates are often denied hormone medication, which disrupts their ability to transition smoothly. The denial of hormone treatment prompted a transgender woman to file a lawsuit against the state of Georgia, arguing that her Eighth Amendment rights were violated when the state decided to deny her hormone therapy.

In support of Diamond and other transgender individuals, the Department of Justice released a statement saying:

> Prison officials have the obligation to assess and treat gender dysphoria just as they would any other medical or mental health condition. Freeze-frame policies can have serious consequences to the health and well-being of transgender prisoners, who are among the most vulnerable populations incarcerated in our nation's prisons and jails.

By denying the right to hormone therapy, it gives the police officers that believe in gender normality the authority to place transgender women and men in the "correct" prison and have power over their gender identity.

47. Tan, supra note 3.
48. See e.g. Kellaway & Brown, supra, note 46. Keysha Blige was mis-gendered as a male victim who was shot in her car and Jasmine Collins' gender was not accurately announced until three months after her murder. Id.
By putting these policies in place, transgender women and men are subject to rape and harassment. Transgender women in male prisons are thirteen times more likely than the general prison population to be sexually assaulted while incarcerated. Nearly two-thirds of transgender inmates report sexual assault. And often, assaults go unreported in part because the perpetrators are prison guards, wardens, and staff. The only way for transgender women to escape some of the abuse is to have begun hormone therapy prior to incarceration. However, this solution ultimately creates a class problem because some transgender women cannot afford hormone treatments prior to being incarcerated.

Some states have a policy that to receive hormone treatment, the women will have to show that they have been already going through hormone treatment prior to arriving at the prison. In trying to correct the problem, California has become the frontrunner for a new policy of paying for the sexual reassignment surgery for inmates. California is the only state taking the steps to create a safe space for transgender women. In San Francisco, transgender women can now be placed in programs that will put them into female prisons. By allowing transgender inmates to identify themselves and pick the prisons they belong to, this option now gives them a degree of power over their sentences, instead of being oppressed in a system that is known for being wildly transphobic.

Though progressive and needed, this more progressive policy just puts a bandage on the issue at hand. California is a state that assigns transgender individuals to their gender at birth; instead of the gender with which they identify. This still assigns authority to cisgender individuals to make decisions for those that are transgender,

55. John & Stipe, supra note 51.
56. Id.
57. Id.
58. Libaw, supra note 54.
63. Id.
64. Id.
instead of dealing with the problematic issues that involve: not sending inmates to the prison of the gender they identify with; ineffectively addressing sexual violence and harassment against transgender women in prisons; and punishing transgender women who have themselves been assaulted, simply for being who they are, with solitary confinement. A transgender woman was awarded five-thousand dollars in damages after having her rights violated in a Maryland prison. After being put into solitary confinement because of her identity, she was sexually harassed by guards while she showered and was often told to commit suicide. Because of this case, Maryland prisons now have a policy governing how they treat transgender women. Moreover, transgender women can now choose which gendered officer can search them. Likewise, in Pennsylvania, it is now policy that guards cannot send a transgender inmate to solitary confinement simply based off the fact that they are transgender.

When considering the frequent violations of transgender women’s constitutional rights, the high influx of transgender women of color in the justice system, and the ever-present numbers of LGBTQ juveniles in the system, we are obliged to ask whether our system is working equitably. The answer is that it is not. If society cannot acknowledge the humanity in these women, how do we expect the judicial system to treat these women as human?

Transphobia within the prison system disproportionately affects transgender individuals of color because of the higher rates of minorities in prison. In 2014, a study by the National Center for Transgender Equality and the National LGBTQ Task Force released a study on ethnic and national disparities of transgender women in

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67. Id.
68. Id.
69. Id.
prison. It was determined that from a sample size of 3,878 transgender women, only nineteen percent have ever been incarcerated. Of that nineteen percent, forty-seven percent of the transgender women who have been incarcerated were transgender women of color. Of those women, forty-seven percent stated that they have been abused and mistreated in prison. Dr. Reisner concluded:

The disproportionate prevalence of incarceration among transgender women, especially those of color, is ultimately the product of larger issues of social marginalization and the intersectionality of racism, transphobia, sex-ism, and classism. Any system that enforces strict gender segregation will push transgender people to the margins . . . .

This disparity is part of society's problem in the negative or non-recognition of transgender women of color, attributable to institutionalized racism, strict gender norms, and the lack of intersectionality in feminist perspectives.

The rates of incarceration of transgender juveniles of color do not differ from the disproportionately higher rates of adult transgender women of color in the adult prison system. Of the 300,000 minors that are imprisoned, sixty percent are Hispanic and Black. Though the LGBTQA community makes up only about seven percent of the minor-aged national population, they are at the highest fifteen percent of the population in juvenile prisons. The study attributes harsh school suspensions and overall racial and sexual bias to the high number of incarcerated LGBTQA individuals of color.

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72. Sari L. Reisner et al., Racial/Ethnic Disparities in History of Incarceration, Experiences of Victimization, and Associated Health Indicators Among Transgender Women in the U.S., 54 WOMEN & HEALTH 750 (2014), http://europepmc.org/articles/PMC5441521; jsession id=1B92BF5A487AD41ACF4349712E406966.
73. Id.
74. Id. at 751.
75. Id.
76. Id. at 764.
78. Id.
79. Id.
80. Id.
III. SAY HER NAME: THE ERASURE OF BLACK TRANS-WOMEN FROM THE "BLACK LIVES MATTER" MOVEMENT

Black Lives Matter is an organization that was started by three women: Opal Tometi, Alicia Garza, and Patrisse Cullors. The women established the movement after George Zimmerman was acquitted in the killing of a Black male, Trayvon Martin. The creators of Black Lives Matter had as their goal to bring attention to the basic human and civil rights that Blacks are denied because of systematic racism. The creators stated that the movement was also established to make sure that

It goes beyond the narrow nationalism that can be prevalent within some Black communities, which merely call on Black people to love Black, live Black and buy Black, keeping straight cis Black men in the front of the movement while our sisters, queer and trans and disabled folk take up roles in the background or not at all. Black Lives Matter affirms the lives of Black queer and trans folks, disabled folks, Black-undocumented folks, folks with records, women and all Black lives along the gender spectrum. It centers those that have been marginalized within Black liberation movements. It is a tactic to (re)build the Black liberation movement.

While Black Lives Matter was formed to highlight and protest the disenfranchisement of all Blacks, the movement somehow became extremely focused on men. How is it that a movement created by Black women make Black women invisible when it comes to their civil rights? MSNBC stated it perfectly when they asked, “Which #BlackLivesMatter?” There has been an ongoing cry from Black women for Black men to become involved in the protests that are specifically about Black women. The movement has become inherently miso-

82. Id.
83. Id.
84. Id.
85. Id.
86. This is an ongoing epidemic within the black community. Women who were involved in the Civil Rights Movement of the 1950-1970s are forgotten while the men are remembered.
gynistic, homophobic, and transphobic. The irony in the misogyny of the movement is that the organization was created by three black women in the LGBT community, whose goal was to also bring to the forefront the disenfranchisement of Blacks in the LGBTQ community.

With the increasing invisibility of Black women in the Black Lives Matter movement, transgender women are becoming even more invisible because of the Black community’s bias against Black members in the LGBTQ community. The brutal murders of eighteen Black transgender women and the suicides of Black transgender individuals have fallen on cisgender deaf ears. Transgender women of color make up to just five percent of the national population. Transgender people of color face higher levels of homelessness, higher rates of HIV/AIDS, poverty, hate crimes, and police brutality than their cisgendered counterparts. Some are even unjustly profiled as sex workers or drug addicts.

With all that is happening to Black Trans-Women, not one of their deaths has ever received national attention like the deaths of Trayvon Martin, Mike Brown, or Tamar Rice. The creator of Trans Women of Color Collective, Lourdes Ashley Hunter, stated:

I think the black community needs to acknowledge the fact that they are being completely silent about the murders that have been happening in our community. Just last year, 12 trans women of color were murdered with no response from the black community. When folks scream, ‘Black Lives Matter,’ they’re not talking about black trans women. Most of the time, they’re not even talking about [cis] black women.

How is it that Black men can watch Black women from all communities sit on the front lines for them, but rarely show up when

89. Kruger, supra note 88.
90. Garza, supra note 81.
92. Margolin, supra note 87.
93. Id.
95. Margolin, supra note 87.
96. Starr, supra note 91.
needed for the attention of cis-gender and LGBTQA women? Religion seems to be a significant factor that obstructs the increasing acceptance by the Black community of any issue that is not cis-gender. There are a number of misogynistic themes that are in place in Black Christian denominations that have oppressive effects on women and anyone who does not identify as straight.

There has been an additional organization, Say Her Name, that in conjunction with Black Lives Matter, works to keep Black women’s names in the media concerning Black Lives Matter and police brutality that they face. Trans Women of Color Collective and Black Lives Matter creators have teamed up to encourage the Black community to recognize the humanity of transgender women and to be extremely vocal for the enfranchisement of Black women who the Black [male] community has conveniently and inherently rendered as invisible. For Black Lives Matter to truly be effective, Black men must pay attention to the Black women who also are harmed by a system of institutionalized racism. Cis-gender Black men and women must also listen to the stories and the voices of transgender women and men who are silenced by misogyny and oppressive gender norms.

Everyone remembers the death of Leelah Alcorn. The cast of Transparent who won an Emmy and Golden Globe also remembered Leelah Alcorn by dedicating their award to Leelah Alcorn. But who will take care of the Black transgender teens like Blake Brockington who committed suicide because our community is failing the Black LGBTQA community?

IV. SHOULD THIS BE A RIGHT?

The Fourteenth Amendment has set forth that no state shall deprive an individual to life, liberty, and property without due pro-

98. Starr, supra note 91.
100. Starr, supra note 91.
The Fifth Amendment has set forth that on a federal level, an individual shall not be deprived of life, liberty, and property without due process. There are certain rights that are inalienable by being an American through these Amendments and the Bill of Rights. Though the law is progressive, it has not progressed far enough to include basic rights to which transgender individuals should be entitled to.

The Supreme Court has often used rational basis when discussing any type of rights that may be restricted by the state or federal government, because the LGBTQ community is not a suspect class. There have been states that have fully recognized the LGBTQ community as a suspect class. By the Supreme Court not recognizing the LGBTQ community as a suspect class, they are failing this group.

A suspect class is generally a group of individuals who have been “saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” The LGBTQ community as a whole has been subjected to historical purposeful unequal treatment by not being allowed to identify as a third gender, to still be receiving inadequate medical treatment, and only just recently being able to marry. The United States judicial system is incredibly behind other countries when it comes to asserting rights of transgender individuals.

A. Transgender Acceptance Using Cis-Gender Bathrooms

One of the prominent issues currently being debated by politicians aspiring to become the next president is whether or not transgender individuals should be allowed to use the bathroom of the gender with which they identify. There have been states that have vowed to make laws banning transgender individuals from using the

103. U.S. Const. amend. XIV.
104. U.S. Const. amend. V.
107. Suspect class is usually race, alienage, religion, etc.
bathroom that they identify with. Some states have actually taken the initiative to establish gender neutral bathrooms. When women have been arrested for using the bathroom or have been kicked out of school for using a bathroom, isn’t it time for the Supreme Court to seriously look into whether a transgender person using the bathroom of their gender identity is a right?

Cis-gender individuals have made the argument that sharing a bathroom with someone who is transgender infringes upon their right to privacy. The hate tactics of transphobic individuals have generated this fear in cis-gender individuals that someone whom is transgender will harass them in the bathrooms.

Transgender individuals should have a right to privacy to use a public bathroom without states passing legislation barring them from using a bathroom of the gender that they identify with. Even if the argument would fail on the right to privacy, these bills are still discriminatory on its face. The states have no legitimate governmental purpose for proposing these bills except to be discriminatory.

A transgender woman whose driver’s license and social security identify her as female—should not be pulled from her college class and instructed that she can only use the bathroom in the storage room, rather than the several women bathrooms on campus. A transgender woman should not be harassed by six security guards after using the women’s bathroom and subsequently told that she will be

117. Id.
suspended but reenrolled only if she agrees to only use the gender neutral bathrooms exclusively and not the women’s bathroom.\textsuperscript{119} There should not be a need for a transgender woman to create an app called “Refuge Bathrooms” to avoid the harassment she typically experiences from people who are not transgender.\textsuperscript{120} It is time for the United States judicial system to take notice of these practices that intentionally exclude transgender individuals from performing a basic human function in public areas. Numerous countries, such as Thailand, have adopted transgender bathrooms in schools after acknowledging a large population of students who consider themselves to be transgender.\textsuperscript{121}

V. ADEQUATE HEALTH CARE FOR TRANSGENDER WOMEN

Healthcare for all citizens should be a fundamental right. However, the United States is still incredibly behind on health care for all citizens compared to healthcare provided in other industrialized countries.\textsuperscript{122} Transgender individuals are often faced with discrimination and harassment concerning their healthcare.\textsuperscript{123} Transgender women also contract HIV at high rates due to inadequate health care and are forty-nine times more likely than the general population to contract HIV.\textsuperscript{124}

Contributing to the factors of inadequate health care is the pervasive discrimination experienced in the everyday lives of transgender individuals.\textsuperscript{125} A report done in Massachusetts revealed that sixty-five


\textsuperscript{121} Matthew Van Atta, Thai School Introduces Transgender Bathroom, ADVOCATE (June 19, 2008, 12:00 AM), http://www.advocate.com/news/2008/06/19/thai-school-introduces-transgender-bathroom.


percent of transgender individuals have experienced some discrimination in a public setting. Of that sample size, eighty-four percent of transgender individuals have physical symptoms from the discrimination they face and ninety-nine percent of such individuals have shown emotional symptoms. Twenty-nine percent of transgender individuals had to teach their physicians about transgender-specific health care issues, while twenty-eight percent of transgender individuals have not seen a physician at all.

Because transgender women are often discriminated against in hiring practices, they are often forced into sex work. By being forced into sex work, these women do not have employment that comes with health insurance. By not having health insurance and being forced into work where the pay is meager, these women then cannot afford to purchase health insurance by themselves. With the federal government refusing to identify transgender individuals as a suspect class and by states furthering their discriminatory laws, these societal responses have a discriminatory effect on transgender health which furthers this “us” v. “them” dichotomy established by the dominate cisgender majority.

Transgender individuals are also regularly denied health care from physicians. One of the problems stems from physicians not having adequate education on transgender health care. Some transgender men still have some reproductive organs that are associated with being female and may need a pap smear, but are routinely denied by physicians. Some insurance firms will bar transgender individu-
als from health care citing their gender identity as a “pre-existing condition.”

A study has shown that when transgender women are denied breast implants accompanied by the required hormone treatments, they are more likely to commit suicide because these women are not living day to day with the gender they identify with. In efforts to correct this problem based on discrimination, a federal court in Minnesota expanded President Obama’s Affordable Care Act such that it now protects transgender individuals from discriminatory practices in health care. The case started with a transgender man who claimed that a hospital in Minnesota, mis-gendered him and provided him inadequate health care service based on the fact that he is a transgender male. In New York, a wellness program for the LGBTQA community started providing hormones to transitioning transgender individuals and providing health care to those in the LGBTQA community who would not be able to afford health care otherwise.

On a global scale, during the World Medical Association’s annual assembly, it was decided that individuals who have “gender dysphoria” have a right to affordable and non-discriminatory medical practices. In India, as well as in other countries, transgender communities are legally defined as “third gender,” and are currently on the forefront of breast cancer awareness and women health issues with respect to these communities.

137. Gillespie, supra note 136.
VI. HOUSING THAT IS NOT FAIR

One in five individuals who identify as transgender have been homeless or have been evicted from their homes based on the fact that they are transgender.\textsuperscript{144} Under current housing and discrimination laws, the transgender community still does not have the basic right to not be discriminated against when it comes to housing.\textsuperscript{145} A transgender woman has been turned down from receiving two years of housing from the Salvation Army based on the fact that she has not undergone gender reassignment surgery.\textsuperscript{146} This is unacceptable because it completely undermines the fact some transgender women cannot afford reassignment surgery or have adequate medical help to complete gender reassignment surgery because of their gender identity.\textsuperscript{147}

Some housing landlords want transgender women to produce a driver’s license with the gender that they identify with along with medical history signed by a doctor claiming that they have had gender reassignment surgery.\textsuperscript{148} These policies put in place by landlords and shelters are clearly meant to be discriminatory. The gender identity of a tenant should not matter, because if it did they would typically request of those who are cis-gender to produce a birth certificate and license to confirm that they were born the sex that they identify as.

By asking transgender women to produce documentation that they are, in fact, “real women” or have had sex reassignment surgery, such discriminatory practices reinforce the never-ending cycle of homelessness the transgender community faces. There are only nineteen states, including Washington D.C., that completely prohibit discriminatory practices from landlords and public homeless shelters against the transgender community.\textsuperscript{149}


\textsuperscript{146} Trudy Ring, Trans Woman Claims Housing Discrimination by Salvation Army, Advocate (May 4, 2015, 8:59 PM), http://www.advocate.com/politics/transgender/2014/05/04/trans-woman-claims-housing-discrimination-salvation-army.


\textsuperscript{148} Kia Gregory, Doors Often Closed to Transgender Tenants Searching For Housing, Al Jazeera America (Sept. 25, 2015, 5:00 AM), http://america.aljazeera.com/articles/2015/9/25/doors-often-closed-to-transgender-tenant-searching-for-housing.html.

\textsuperscript{149} Id.
Even with the protection from nineteen states and Washington D.C., such protections are insufficient, if not enacted and enforced at the federal level. There should be revisions in the Fair Housing Act to include gender identity. Not specifying sexual orientation or sexual identity sustains these discriminatory practices. The absence of these legal protections is the reason why forty percent of twenty million LGBTQA youth are homeless.

Georgia’s senate has recently passed a bill which would make it legal to allow religious groups to refuse to “rent, lease, or otherwise grant permission for property to be used by another person for an event which is objectionable to such religious organization.” Large companies are putting pressure on Georgia’s governor to completely veto the discriminatory bill. Disney, one of the biggest corporations behind this protest, has threatened to pull projects from filming in Georgia if the governor did not veto the bill. Georgia’s governor, Nathan Deal, has stated “he would reject any bill that ‘allows discrimination in our state in order to protect people of faith.’”

The United States judicial system owes it not only to the transgender community, but also the entire LGBTQA community to include them in the Fair Housing Act to reduce the state of homelessness. Additional to identifying the transgender community as a suspect class relative to equal protection and due process. There should not be states still trying to pass anti-LGBTQA legislation when it comes to housing or renting property. By denying the transgender community their status as a suspect class and thereby insinuating that they have not faced any type of discrimination is completely absurd and transphobic.

150. Gregory, supra note 149.
152. Housing & Homelessness, supra note 144.
154. Id.
157. Id.
158. The issue with not making LGBTQA has overwhelmingly been linked to “morality” in the Supreme Court cases dealing with homosexuality.
CONCLUSION

To completely ignore that transgender women face a heightened level of police brutality and sexism, because of their gender identity is a complete disservice to the transgender community. The United States’ judicial system needs to take responsibility for the fact that they are failing these women daily by denying them their basic rights.

It is also the responsibility of society not to just care about the transgender community only when it comes to Caitlyn Jenner and Laverne Cox. We need to realize that celebrities are anomalies, and that some transgender women are not only divided by the sexism established by this patriarchal society, but also have to deal with classism and systematic racism. By finally accepting the gender pronouns used by Olympian runner Caitlyn Jenner and actress Laverne Cox, society and the United States’ judicial system may finally be able to see the humanity in transgender women and make the “T” in LGBTQA un-silent.


160. Meaning that the only time the major American news corporations talk about transgender women is when it has to do with entertainers and not the realities that transgender women are facing because of the American judicial system.

161. Some Transgender women use the pronouns she/her and they/them when referencing themselves. Some transgender women still use the he/him pronouns.