

# WHY CAN'T WE ALL JUST GET ALONG: HOW THE U.S. AND NETHERLAND GOVERNMENTS RESPOND TO SOCIAL ISSUES AND CHANGE – THE TRANSGENDER COMMUNITY

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## I. INTRODUCTION

For the first time in the history of the United States, a President spoke the word “transgender” during a State of the Union Address.<sup>1</sup> The speech was not geared towards LGBTQ (Lesbian, Gay, Bi-sexual, Transgender, Questioning) rights. However, by inserting the transgender community into a national speech, the President raised awareness of the issues surrounding transgender Americans.<sup>2</sup> “Transgender” is a term used to describe “people with gender identities” that differ from sex at birth, while the term “gender identity” refers to “maleness” or “femaleness” rather than a binary concept of being male or female.<sup>3</sup> A tipping point for awareness of the transgender community came when TIME Magazine placed a well-known transgender actress, Laverne Cox, on its cover.<sup>4</sup>

Yet, even with this heightened visibility in the entertainment sector, transgender individuals still face discrimination from “employers, housing agencies, medical providers, and the military.”<sup>5</sup> The U.S. Census only allows for either a choice of male or female when it comes to gender markers, making it all but impossible to account for a transgender individual.<sup>6</sup> The transgender community is at a disadvantage when it comes to lobbying for federal funding for support programs because there is no data to back up their assertions, which is just one of the issues facing the transgender community.<sup>7</sup>

Transgender individuals are at risk for suicide attempts, domestic violence,

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1. Danielle Paquette, *8 Critical Facts About the State of Transgender America*, WASH. POST (Jan. 22, 2015) <https://www.washingtonpost.com/news/wonk/wp/2015/01/22/the-state-of-transgender-america-massive-discrimination-little-data/> [https://perma.cc/F3W6-8AL7].

2. *Id.*

3. Ann P. Haas, et al., *Suicide and Suicide Risk in Lesbian, Gay Bisexual, and Transgender Populations: Review and Recommendations*, 58 JOUR. OF HOMOSEXUALITY 10, 14 (Jan. 4, 2011) <http://www.tandfonline.com/doi/full/10.1080/00918369.2011.534038?scroll=top&needAccess=true> [https://perma.cc/Y677-7MLE].

4. *25 Transgender People Who Influenced American Culture*, TIME (May 29, 2014) <http://time.com/130734/transgender-celebrities-actors-athletes-in-america/> [https://perma.cc/Y4WT-TJY3].

5. Paquette, *supra* note 1.

6. *Id.*

7. *Id.*

and homelessness.<sup>8</sup> The reality is that transgender individuals are at a higher risk of attempting suicide, than other individuals, due to rejection from family and friends, victimization, or violence.<sup>9</sup> Additionally, a high prevalence of suicide attempts were found in those transgenders who had experienced homelessness.<sup>10</sup> Even though a large percentage of the transgender community has experienced homelessness, a greater majority have experienced harassment, including sexual assault, at a shelter or have been turned away from a shelter altogether.<sup>11</sup> In 2015 alone, most of the murders associated with trans-women in the United States were due to domestic or intimate partner violence.<sup>12</sup> In fact, by August of 2015, 13 transgender women of color had been murdered, and the FBI had only started to track crimes based on gender identity in that year.<sup>13</sup> Even though the transgender community has made ground-breaking gains in the legal and cultural realms, which has changed perceptions about who transgender persons are, the changes have neither been fast enough nor effective enough to prevent violence and truly change the daily lives of transgendered individuals.<sup>14</sup>

This Note discusses prevalent issues facing the transgender community, specifically concerning access to housing and homelessness, suicide risk, and domestic violence, in both the United States and the Netherlands. This Note focuses on the social issues surrounding transgender discrimination and how the laws of the United States and the Netherlands are addressing this discrimination. Despite more widespread visibility of transgender persons in general, the United States has not yet attained a level in which members of the transgender community feel safe in being who they are. After outlining some of these issues, this Note will explore some of the issues facing the transgender community, and their prevalence in both countries, as well as the responses from the respective governments to provide a commentary on a possible solution to combating transgender disparity in the United States. A comparison of the United States' approach to combating these specific issues of the transgender community to the approach taken by the Netherlands may lead to a tolerance-focused solution for the transgender community.

Section II of this Note will discuss the history and the background of social change issues in the United States by looking at histories of societal change with

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8. *Id.*

9. *Id.*

10. Ann P. Haas, Phillip L. Rodgers & Jody L. Herman, *Suicide Attempts Among Transgender and Gender Non-Conforming Adults*, THE WILLIAMS INST. (Jan. 2014) <http://williamsinstitute.law.ucla.edu/research/suicide-attempts-among-transgender-and-gender-non-conforming-adults/> [<https://perma.cc/TGX8-8WDR>]; See also Paquette, *supra* note 1.

11. Paquette, *supra* note 1.

12. *Ending Trans Domestic Violence Murders*, FORGE (Mar. 5, 2015) <http://forge-forward.org/2015/03/05/ending-trans-domestic-violence-murders/> [<https://perma.cc/HJ6F-YDTY>].

13. *Gender-Based Violence Against Trans Women Claim More Lives*, NAT'L. CTR. FOR TRANSGENDER EQUALITY (Aug. 12, 2015) <http://www.transequality.org/blog/gender-based-violence-against-trans-women-claims-more-lives> [<https://perma.cc/XY6E-26F8>].

14. *Id.*

respect to racism and gay marriage, and governmental adaptation both in general and specific to the transgender community. Additionally, this section will look at the prevalence of rates pertaining to homelessness, suicide, and domestic violence within the transgender community. Section III of this Note will discuss the history and background of these issues in the Netherlands by discussing how that government has adapted to changing societal views historically, and how a tolerance-focused approach is taken to controversial issues. Section IV of this Note will compare the United States, and its growing trend toward tolerance, to the Netherlands' tolerance-based approach in order to analyze if a tolerance-based approach, or something similar, could ever come to fruition in the United States. Section V of this Note provides a recommendation to help solve the United States government's challenges with addressing problems surrounding the transgender community. Overall, this Note will provide a background on specific issues relating to the transgender community in both the United States and the Netherlands, analyze how the governments in these respective countries have dealt with these changing societal issues, and offer a possible solution to combat disparity in the United States.

## II. SOCIETAL CHANGE IN THE UNITED STATES

The United States has cultural anxiety about “rapidly growing minority populations in the United States.”<sup>15</sup> The government's lack of response to this primarily stems from a lack of evidence which in turn stems from a stagnant approach to recognizing and combating these changes.<sup>16</sup> Historically, the United States has an aversion to foreigners coming into the country, and racism has been the most prevalent outcome of this aversion.<sup>17</sup> A brief look at the history of racial discrimination and the Civil Rights Movement in the United States provides insight into how the United States reacts to social change.

### *A. Racism and Intolerance - A Foundational History*

When settlers first came to the Americas from England, they brought with them the perception that “Negroes” were black, and thus inherently different and directly opposite to whites.<sup>18</sup> Ideas of personal freedom “tended to run ahead of and behind actual social conditions” during this time period.<sup>19</sup> It appeared as though both statute and the common law were “considerably more than a century” out of tune with common belief and actual practice concerning notions

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15. John Tirman, *The Origins of Intolerance in America*, HUFF. POST (Dec. 2016) [http://www.huffingtonpost.com/john-tirman/the-origins-of-intolerance\\_b\\_8812476.html](http://www.huffingtonpost.com/john-tirman/the-origins-of-intolerance_b_8812476.html) [<https://perma.cc/2EWN-MBC2>].

16. Paquette, *supra* note 1.

17. Tirman, *supra* note 15.

18. WINTHROP D. JORDAN, *THE WHITE MAN'S BURDEN: HISTORICAL ORIGINS OF RACISM IN THE UNITED STATES* 6 (1974).

19. *Id.* at 29.

of servitude.<sup>20</sup>

Racism, much like transgender discrimination, stems from a process known as “othering,” in which people are classified based on perceived attributes that make up a group.<sup>21</sup> Placing people into social and hierarchical categories based on these attributes allows society to “justify structures of inequality, differential treatment, and subordinate status,” while still not providing for a solid understanding of what these categories actually mean.<sup>22</sup> In fact, similar to racism, the LGBTQ community as a whole is grouped together and marginalized based on being the “other” in society.<sup>23</sup>

In 1952, and for the first time in 71 years of reporting, the Tuskegee Institute found that no lynchings of African Americans in the United States had occurred.<sup>24</sup> Three years later, Rosa Park refused to give up her bus seat, and a 14-year-old boy named Emmett Till was beaten and lynched in Mississippi for saying “hello” to a white woman.<sup>25</sup> In 1963, after years of protests and violence in the streets of the United States all in the name of equal rights, President John F. Kennedy worked to call off the famous March on Washington for fear of losing supporters.<sup>26</sup> These historical set-backs could have resulted in a loss of hope for equality.

Then, hope was re-awakened when President Johnson signed the Civil Rights Act of 1964 into law and created the EEOC, ending job discrimination.<sup>27</sup> Three years later, the Supreme Court ruled that a state may not criminalize an individual for marrying interracially and could not discriminate based on race as it is violative of the 14th Amendment’s Equal Protection Clause.<sup>28</sup>

While there has been significant change in the laws that protect against discrimination based on race, empirical data surrounding incarceration rates and health care access leads to the conclusion that racism is still just as prevalent today as it was in the 1950s and before.<sup>29</sup> However, many people believe that the

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20. *Id.*

21. MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 105 (3rd ed. 2015).

22. *Id.*

23. Claudia Davidson, *Gender Minority & Homelessness: Transgender Population*, IN FOCUS: A Q. RES. REV. OF THE NAT’L HCH COUNCIL, Sept. 2014, at 1. [http://www.nhchc.org/wp-content/uploads/2014/10/in-focus\\_transgender\\_sep2014\\_final.pdf](http://www.nhchc.org/wp-content/uploads/2014/10/in-focus_transgender_sep2014_final.pdf) [https://perma.cc/RFA8-GDS4].

24. *Civil Rights 101: Civil Rights Chronology*, THE LEADERSHIP CONFERENCE (2016) <http://archives.civilrights.org/resources/civilrights101/chronology.html> [https://perma.cc/LLM9-WYDH].

25. *Id.*

26. *Id.*

27. James T. Patterson, *The Civil Rights Movement: Major Events and Legacies*, HIST. NOW: J. OF THE GILDER LEHRMAN INST. OF AM. HIST. <https://www.gilderlehrman.org/history-by-era/civil-rights-movement/essays/civil-rights-movement-major-events-and-legacies> [https://perma.cc/4VWV-8FUJ].

28. *Loving v. Virginia*, 381 U.S. 1, 2 (1967).

29. Jordan, *supra* note 17, at 1.

goals of the Civil Rights Movement have been accomplished and that racial discrimination is truly a thing of the past.<sup>30</sup> After the early 1970s, some Americans believed a myth that “systemic racism disappeared,” when in fact racism remained in a more covert form.<sup>31</sup> Now, “new racism” exists, but it is getting more attention because of access to social media, and which in turn means society is now beginning to pick up “on patterns that scholars have long discussed.”<sup>32</sup> While discrimination based on race is gaining more attention in the media, there is still a cultural divide between racial minorities and those in the majority, which leads to a lack of understanding in that racism is not a “personal thing” but a “system of advantage based on race.”<sup>33</sup>

### *B. Slow Adaptation to Legal Recognition*

Following the enactment of the Civil Rights Act of 1964, it was widely assumed that “tolerance and diversity would win the day.”<sup>34</sup> Individuals who were subjected to discrimination had more hope in the system, which included those members of the LGBTQ community. In particular, significant strides in the homosexual, as opposed to the transgender, community have been made in terms of their legal rights.

#### *i. Regulation and Societal Change - Homosexuality*

One of the first major victories for the LGBTQ community in the United States came in 1973 when the Board of Trustees of the American Psychiatric Association unanimously voted to strike homosexuality as a mental illness.<sup>35</sup> Six years later, the first Gay and Lesbian Civil Rights March on Washington drew a crowd of only 100,000 people.<sup>36</sup> Even the 1970s, members of the LGBTQ community were fighting for equal protection. For example, in 1986, the United States Supreme Court upheld a Georgia statute that criminalized homosexual sodomy because the Court would not recognize a fundamental right to privacy for homosexuals to engage in consensual sodomy in their own home.<sup>37</sup> The Court noted that in 1986, 24 states still had laws on their books that criminalized sodomy performed in private and between consenting adults.<sup>38</sup> *Bowers v.*

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30. *Id.* at 2.

31. Catherine E. Schoichet, *Is Racism on the Rise? More in U.S. Say it's a "Big Problem"*, CNN (Nov. 25, 2015) <http://www.cnn.com/2015/11/24/us/racism-problem-cnn-kff-poll/> [<https://perma.cc/MSJ9-UHF6>].

32. *Id.*

33. John Blake, *The New Threat: 'Racism Without Racists'*, CNN (Nov. 27, 2014) <http://www.cnn.com/2014/11/26/us/ferguson-racism-or-racial-bias/> [<https://perma.cc/9MH9-EDME>].

34. Tirman, *supra* note 14.

35. *Civil Rights 101: Civil Rights Chronology*, *supra* note 23.

36. *Id.*

37. *Bowers v. Hardwick*, 478 US 186, 195-96 (1986).

38. *Id.* at 194-94.

*Hardwick* was not explicitly overturned until 2003, seventeen years later. In *Lawrence v. Texas*, the Supreme Court held that state statutes criminalizing intimate conduct between persons of the same sex were unconstitutional, thus overturning *Bowers*.<sup>39</sup> The Court noted that societal views had changed to show an emerging awareness that “liberty gives substantial protection to adult persons in deciding how to conduct their private matters,” including that of sexual relations between persons of the same sex.<sup>40</sup>

Prior to *Lawrence v. Texas*, Congress instituted the Defense of Marriage Act (DOMA) in 1996, which defined marriage for all federal-law purposes as only between one man and one woman.<sup>41</sup> It was not until almost ten years later that the Supreme Court, in *United States v. Windsor*, invalidated this law as a “deprivation of the equal liberty of persons that is protected” by the Constitution of the United States.<sup>42</sup> Two years later, in *Obergefell v. Hodges*, the Supreme Court reaffirmed this constitutional right of the LGB (Lesbian, Gay, Bi-sexual) community and held that state statutes prohibiting persons of the same sex to marry were unconstitutional as violating an individual’s fundamental right to marry protected by the 14th Amendment.<sup>43</sup> While these victories were massive wins for the homosexual community in the United States, it took over thirty years for their constitutional rights to be recognized by the Supreme Court. People were protesting in the 1970s, but legally, their rights were still subject to abuse and discrimination until 2015. However, many studies show that the rejection and negative attitudes towards transgender individuals is still “significantly harsher” than the negative attitudes towards the LGB community.<sup>44</sup>

#### *ii. Societal Views Specific to the Transgender Community*

Society continues to treat the transgender community as lesser and different by discriminating against them based on misconceived biases about transgender gender identity.<sup>45</sup> There is “persistent societal, economic, cultural, and institutional discrimination and stigmatization” towards the transgender community, which is a large factor contributing to the risks of housing instability and inequalities in other needs.<sup>46</sup> In fact, it is society’s fear and hatred towards gender variance that is “often more disruptive to transgender” individuals’ lives than any type of internal, psychological struggle with gender identity.<sup>47</sup> However,

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39. *Lawrence v. Texas*, 539 US 558, 578-79 (2003).

40. *Id.* at 597.

41. Pub. L. No. 104-199, 110 Stat. 2419 (codified at 1 U.S.C. § 7 (1996) and declared unconstitutional in 2013).

42. *United States v. Windsor*, 133 S.Ct. 2675, 2680 (2013).

43. *Obergefell v. Hodges*, 135 S.Ct. 2584, 2604-05 (2015).

44. Eve Glicksman, *Transgender Today*, APA: MONITOR ON PSYCHOL., VOL. 44 No. 4 (Apr. 2013) <http://www.apa.org/monitor/2013/04/transgender.aspx> [<https://perma.cc/5HVD-2E4Q>].

45. *Id.*

46. Davidson, *supra* note 22.

47. HCH Clinicians’ Network, *Crossing to Safety: Transgender Health and Homelessness*,

it is this very social stigma surrounding these perceived differences that has led to increased depression or anxiety within the transgender community.<sup>48</sup> The marginalization from society that transgender individuals are subject to continues to have “a devastating effect on their physical and mental health.”<sup>49</sup> When a transgender individual fails to conform to societal expectations of gender identity, they are ostracized and socially imprisoned because of their different nature.<sup>50</sup>

Though there are signs that society is recognizing being transgender as a “part of the human condition,” many studies show that transgender individuals continue to face challenges in their communities.<sup>51</sup> A study by professors at the University of California, Davis, found that “rejection transgender people encounter is significantly harsher” than that experienced by LGB people, suggesting that society still views transgender individuals as different even from LGB individuals.<sup>52</sup> This negative attitude towards and rejection of transgender individuals is having a detrimental effect on their quality of life. The Institute of Medicine, in a 2011 report, found that “marginalization of transgender people from society is having a devastating effect” on both their physical and mental well-being.<sup>53</sup> These conclusions are not simply a one-time thing. In a survey of nearly 6,450 transgender individuals, the National Center for Transgender Equality and the National Gay and Lesbian Task Force found that:

As many as 60 percent of respondents experienced some form of discrimination due to bias about their gender identity, including the loss of a job, bullying, and even physical and sexual assault. As many as 41 percent of respondents reported they had attempted suicide – a rate 25 times higher than the general population.<sup>54</sup>

Most recently, a lot of attention has been placed on the right to access a bathroom associated with one’s gender identity. In Virginia, a young transgendered boy was petitioning his school to use the boy’s bathroom, but Virginia law was preventing him to do so because he was born a female, so a lower court issued an order allowing him to use the boy’s bathroom.<sup>55</sup> However,

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HEALING HANDS VOL. 6 (2002).

48. Walter O. Bockting, et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, AM. PUB. HEALTH ASS’N 103, 5 (Jan. 6, 2013) <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2013.301241> [<https://perma.cc/3FSY-JP3M>].

49. Glicksman, *supra* note 43.

50. Anthony Reeves, *Sexual Identity as a Fundamental Human Right*, 15 BUFF. HUM. RTS. L. REV. 215 (2009).

51. Glicksman, *supra* note 43.

52. *Id.*

53. *Id.*

54. *Id.*

55. Ariane de Vogue, *Supreme Court Temporarily Blocks Order on Transgender Bathroom Use*, CNN (Aug. 3, 2016) <http://www.cnn.com/2016/08/03/politics/supreme-court-transgender->

the Supreme Court blocked that order in an effort to “preserve the status quo” temporarily, which implies push-back at the federal level against change to transgender rights.<sup>56</sup>

Another case regarding transgender bathroom rights involves the Justice Department suing North Carolina over its bathroom law on the basis of sex discrimination under Title IX, stating that “banishing transgender students from using the restrooms of their peers unquestionably” violates their right to equal education opportunities.<sup>57</sup> In *Johnston v. University of Pittsburgh of the Commonwealth System of Higher Education*, a federal court stated that it was not discriminatory to deny a transgender individual the right to use a locker room of their sexual and gender identity if it did not match their biological sex.<sup>58</sup> These cases demonstrate a lack of understanding when it comes to transgender gender identity as well as a lack of support for transgender rights in some United States courts.

Recently, the Obama Administration had issued a broad set of guidelines that would allow transgender access to bathrooms, but several states sued the federal government, and a federal court blocked any litigation over these guidelines.<sup>59</sup> The Administration stated the following regarding the guidelines:

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex...Schools are not allowed to segregate based on broad generalizations or stereotypes about the differences between transgender students and other students of the same sex.<sup>60</sup>

The Texas judge stated that the guidelines are impermissibly overstepping the federal government’s bounds as it attempts to regulate an area permissibly left to the states: school policy.<sup>61</sup> An attorney representing the state of Texas was pleased with the injunction as “a response to the administration attempting to rewrite laws” enacted by representatives of the people.<sup>62</sup> From the Administration’s statement and from many studies, it can be seen that “growing familiarity with the ‘other’” is leading to more tolerance, yet states are adversely

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bathroom/ [https://perma.cc/6B5W-DFCP].

56. *Id.*

57. *Id.*

58. *Johnston v. Univ. of Pitt. of the Commonwealth Sys. Of Higher Educ.*, 97 F. Supp. 3d 661 (U.S. Dist. W. Penn. 2015).

59. Christian Farias, *Judge Blocks Federal Government From Enforcing Transgender Guidance In Schools Nationwide*, HUFF. POST (Aug. 22, 2016), [https://www.huffingtonpost.com/entry/judge-blocks-transgender-bathroom-law\\_us\\_57b4932fe4b04ff88399dd0d](https://www.huffingtonpost.com/entry/judge-blocks-transgender-bathroom-law_us_57b4932fe4b04ff88399dd0d) [https://perma.cc/2SX7-VKT6].

60. Tyler Kingkade, *Obama Administration Warns Schools to Allow Transgender Access to Bathrooms*, HUFF. POST (May 13, 2016) [http://www.huffingtonpost.com/entry/obama-transgender-bathrooms\\_us\\_57353d73e4b060aa7819eea4](http://www.huffingtonpost.com/entry/obama-transgender-bathrooms_us_57353d73e4b060aa7819eea4) [https://perma.cc/4YRQ-ZTNQ].

61. Farias, *supra* note 58.

62. *Id.*



affecting how change is occurring and preventing more protective laws from being enacted.<sup>63</sup>

Yet another example of how states are preventing federal change when it comes to transgender rights is House Bill 2, which was passed in March of 2016 by the North Carolina General Assembly, that sought to “strike down an anti-discrimination provision” in an ordinance and to require transgender individuals to use the bathrooms consistent with their sex at birth.<sup>64</sup> In passing this law, the North Carolina government acted in “direct opposition to federal laws preventing discrimination against transgender individuals,” especially when it comes to engaging in “the most private of functions.”<sup>65</sup> That day, the Department of Justice filed a federal civil rights lawsuit against the state of North Carolina stating that:

This action is about a great deal more than just bathrooms. This is about the dignity and respect we accord our fellow citizens and the laws that we, as a people and as a country, have enacted to protect them – indeed, to protect all of us. And it’s about the founding ideals that have this country – haltingly but inexorably – in the direction of fairness, inclusion, and equality for all Americans.<sup>66</sup>

The Department of Justice then laid out how this is a trend in the United States. It is not the first time that discriminatory responses to moments of progress in U.S. history have occurred, stating that it was seen in the Jim Crow laws that followed the Emancipation Proclamation, resistance to *Brown v. Board of Education*, and in state bans on same-sex unions.<sup>67</sup> Even when the right to marry was stated as an embedded constitutional right in the United States, states continued to put forth bill after bill specifically aimed at the LGBT community and a diminishing of their rights.<sup>68</sup>

### *iii. Institutional Discrimination Against Transgender Individuals*

Institutional discrimination results when the government fails to provide protections against sexual orientation-based discrimination.<sup>69</sup> Studies have examined the effects of bans on same-sex marriage on the mental health of those individuals who identify as homosexual, and the results found that there were

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63. Tinman, *supra* note 14.

64. Attorney General Loretta E. Lynch Delivers Remarks at Press Conference Announcing Complaint Against the State of North Carolina to Stop Discrimination Against Transgender Individuals, The United State Department of Justice (May 9, 2016) <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-press-conference-announcing-complaint> [<https://perma.cc/B6SA-DCDP>].

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. Haas, et al., *supra* note 3.

increases in generalized anxiety disorders, substance abuse, and mood disorders.<sup>70</sup> When Congress enacted DOMA, same-sex couples' marriages were de-legitimized and devalued to the point that federal tax provisions did not apply nor did same-sex partners qualify for health insurance on their partner's plans.<sup>71</sup> This is just one example of how the United States government has enabled institutional discrimination against this particular group of individuals.

Recent research on mental disorders in the LGB community has found that there is a link between public policies that discriminate against sexual minorities and elevated rates of mental disorders.<sup>72</sup> There is a well-established association between mental disorders and suicide attempts in some LGBT groups, which is a red flag that advocacy for policy change is needed in order to prevent LGBT suicide--yet no policy change has come.<sup>73</sup>

LGBT advocacy groups have spoken out against discriminatory laws and policies that are linked with negative mental health outcomes in LGBT groups, such as advocating for repealing the "Don't Ask, Don't Tell" law that prevented homosexual individuals from serving openly in the military.<sup>74</sup> While this law was successfully repealed, it had been in effect for 17 years, all the while sending a message that "discrimination was acceptable."<sup>75</sup> More specifically, in demonstrating that discrimination is acceptable:

The United States has had a significant history of mistreatment of LGBT people by law enforcement, including profiling, entrapment, discrimination, and harassment by officers; victimization that often was ignored by law enforcement; and discrimination and even blanket exclusions from being hired by law enforcement agencies.<sup>76</sup>

The Department of Justice outlined this history of discrimination in its brief to the Supreme Court in *Windsor v. United States*, stating:

The federal government, state and local governments, and private parties have all contributed to a regrettable history of discrimination against gay and lesbian people in a variety of contexts...By the 1950s, based on Presidential and other directives, the federal government investigated its civilian employees for "sexual perversions, i.e., homosexuality...The same was true on the state and local government

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70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Repeal of "Don't Ask, Don't Tell,"* HUMAN RIGHTS CAMPAIGN (2017), <http://www.hrc.org/resources/the-repeal-of-dont-ask-dont-tell> [<https://perma.cc/65SF-7DEC>].

76. Christy Mallory, Amirea Hasenbush & Brad Sears, *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community*, WILLIAMS INST. (Mar. 2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>.

level, and pervasive employment discrimination persists to this day.<sup>77</sup>

Such discrimination, and the fact that there is no true federal protection against it, has “weakened community trust” in law enforcement, reduced the number of crimes reported by the LGBT community, and led to complaints given to police never being fully addressed.<sup>78</sup>

Institutional discrimination and fear of violence often leads many in the transgender community to avoid seeking help after an assault, because they fear those who are supposed to help are “outright prejudiced or hostile at worst.”<sup>79</sup> In fact, discrimination and harassment by law enforcement based on sexual orientation and gender identity is such a pervasive problem that it is leading to ineffective policing in these communities.<sup>80</sup> This discrimination and prejudice leads to a breakdown of trust, which inhibits communication and prevents officers from protecting these communities.<sup>81</sup> Specifically, while some states have laws that provide some sort of small protection against certain forms of discrimination, “there is no nationwide federal statute that comprehensively and consistently prohibits discrimination based on actual or perceived sexual orientation or gender identity.”<sup>82</sup>

#### *B. Effects of these Matters on Transgender Individuals*

One of the more prevalent and significant problems facing the transgender community, aside from access to restrooms, is the heightened suicide risk associated with gender identity discrimination. Even though the LGBTQ community has reported higher risks of attempted suicide for over four decades, there has been little research conducted related to prevention and intervention.<sup>83</sup> The current suicide rate in the United States for the transgender community is 11.5 suicides per 100,000 people.<sup>84</sup> Institutional discrimination has led to increased risk of anxiety and depression, which are factors associated with suicide attempts.<sup>85</sup> Additionally, transgender youth have reported parental rejection as a predominant stressor associated with suicide attempts, and transgender adults have reported “frequent experiences with discrimination” as an associated factor.<sup>86</sup> Even though studies have been done to try and discover the factors associated with increased suicide rates, gaps in knowledge regarding this group

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77. *Id.*

78. *Id.*

79. *Victim Issues: Mistrust of Professionals*, Ofc. For Victims of Crime, OFC. FOR VICTIMS OF CRIME, OFC OF JUST. PROGRAMS (Jun. 2014), [https://www.ovc.gov/pubs/forge/tips\\_pro.html](https://www.ovc.gov/pubs/forge/tips_pro.html) [<https://perma.cc/442W-GZK5>].

80. Haas, et al., *supra* note 3.

81. *Id.*

82. *Id.*

83. *Id.* at 10.

84. *Id.* at 27.

85. *Id.* at 23.

86. *Id.* at 27.

of individuals and these high suicide attempt rates still exist.<sup>87</sup> More specifically:

Gaps in current knowledge about LGBT suicidal behavior and suicide risk result from a confluence of many factors, including the low priority and historically sparse funding given to the study of sexual minority populations . . . and the omission of sexual orientation and gender identity from sociodemographic characteristics that are routinely assessed in most suicide and mental health studies.<sup>88</sup>

Aside from a higher risk of suicide attempts, the transgender community suffers from a lack of protection in the United States when it comes to domestic violence.<sup>89</sup> A large portion of transgender individuals “[experience] emotional, physical, and/or sexual abuse” in their own homes and “at the hands of people whom they know.”<sup>90</sup> A 2012 report on intimate partner violence by the National Coalition of Anti-Violence Programs found that transgender individuals were some of the most impacted by intimate partner violence.<sup>91</sup> In fact, thirty to fifty percent of transgendered persons will experience some type of intimate partner violence during their lifetime.<sup>92</sup> Transgender individuals were found to face increased violence “because of their gender identity and transphobia within intimate partnerships.”<sup>93</sup> Domestic violence occurs as a way of maintaining power and control over an intimate partner by reinforcing gender norms, and transgender individuals are especially vulnerable because of their lack of gender conformity.<sup>94</sup>

Many factors can contribute to a transgender individual not reporting domestic violence, but typically law enforcement officers will fail to arrest or prosecute once it is discovered the victim is transgendered.<sup>95</sup> As Aaron Eckhardt, the Training and Technical Assistance Director of BRAVO (Buckeye Regional Anti-Violence Organization), stated:

To really address the needs of transgender survivors, we need to address transphobic laws, policies, and institutions while also providing supportive programs that address transgender people explicitly and that

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87. *Id.* at 28.

88. *Id.*

89. *Id.*

90. Davidson, *supra* note 22.

91. Darrick Ing & Tiffany Woods, *Why Talking About Domestic Violence in the Transgender Community Matters*, TRANSGENDER L. CTR., (Nov. 6, 2013), <http://transgenderlawcenter.org/archives/9392> [<https://perma.cc/T6F5-4K4K>].

92. Megan Dottermusch, *Domestic Violence in the Transgender Community*, NOMORE (Apr. 29, 2016), <http://nomore.org/domestic-violence-transgender-community/> [<https://perma.cc/L3WX-UFDG>].

93. Haas, et.al. *supra* note 3. (citing Aaron Eckhardt, the Training and Technical Assistance Direction at BRAVO).

94. *Id.*

95. *Id.*

engage transgender survivors in preventing this violence.<sup>96</sup>

Transgender individuals face more barriers to reporting intimate partner violence than those outside of the LGBTQ community.<sup>97</sup> Typically, transgender individuals will lack “avenues for assistance,” meaning that they do not have supporting family or friends or even law enforcement to turn to, which makes them an easy target for abuse.<sup>98</sup> Fearing negative reactions from medical and social service providers, many transgender individuals loathe coming forward to disclose the abuse in their relationship.<sup>99</sup> In the typical case of domestic violence, victims are welcomed by medical staff and told that they “did nothing to deserve this,” but transgender individuals are often met with a hostile environment posing more towards “you had it coming” than any type of support.<sup>100</sup>

Most transgender individuals who are victims of domestic violence will choose homelessness or shelters as the safer alternative.<sup>101</sup> However, only a total of sixty-six shelters across the United States are listed as providing a safe place for transgender individuals to go in the face of domestic violence, and several states do not have even one shelter available to these vulnerable populations.<sup>102</sup> The number of organizations that serve homeless, transgender individuals has increased, but there are still several types of barriers to service, including:

Personal barriers, which include reticence to disclose gender identity out of fear of rejection and compromising safety, internalized transphobia, and perceptions that providers lack transgender-specific knowledge . . . Structural/systematic/legal barriers which include a lack of appropriate accommodations such as gender neutral restrooms, limited gender choice in legal documents and service records, and limited or no access to spousal or partner benefits. Functional barriers stem from a high prevalence of unemployment and on-the-job discrimination within the transgender population.<sup>103</sup>

The enormous amount of social disparity that transgender individuals face on a daily basis is due to “pervasive stigma and discrimination” that is encountered both in culture and in societal structures.<sup>104</sup>

Among youth in the United States, homelessness is an alarming issue, with

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96. *Id.*

97. Haas, et.al, *supra* note 3.

98. *Id.*

99. *Id.*

100. *Id.*

101. Davidson, *supra* note 22.

102. *Listing of Inclusive Shelters*, SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS (2016), <http://www.saveservices.org/inclusive-vawa/shelter-listings/> [<https://perma.cc/F42S-LAK7>].

103. Haas, et.al. *supra* note 3. (citing Aaron Eckhardt, the Training and Technical Assistance Direction at BRAVO).

104. *Id.*

about 1.6 million to 2.8 million homeless youth across the United States.<sup>105</sup> However, even more alarming, is the fact that of these homeless youth, about 300,000 to 400,000, identify as gay or transgender.<sup>106</sup> In fact, around 1 in every 5 transgender persons is without stable housing or is in need of some kind of shelter services.<sup>107</sup> Over fifty percent of these homeless youth who are gay or transgender have reported that they have been sexually assaulted, and over sixty percent have reported discrimination from their families and attempted suicide.<sup>108</sup> Even more alarming is the path into homelessness that most transgender individuals face. The increased risk for homelessness in this particular community stems from a variety of contextual factors, which include:

Family rejection and conflict, running away from or aging out of the foster care system, violence and victimization, and institutional discrimination from schools, housing, and workplaces. In a study of 381 LGBT youth service providers, three of the top reported reasons for LGBT youth becoming homeless were: running away due to family rejection, being forced out by their parents, and aging out of the foster care system.<sup>109</sup>

As if being homeless and under the age of eighteen were not enough, only \$195 million are budgeted for homeless youth from the federal government's total budget of \$4.2 billion, so shelters do not have the funds to accommodate the needs of transgender individuals.<sup>110</sup> More often than not, homeless shelters in the United States fail to culturally and appropriately serve transgender individuals.<sup>111</sup> Shelters will often deny a transgender individual entry because of their gender identity or, if they allow them access, place a transgender individual in a gendered space with which they do not identify.<sup>112</sup> As with the issues surrounding domestic violence and attempted suicide, many homeless, transgender individuals are facing a multitude of co-occurring problems such as violence or discrimination, and the homeless shelters are ill-equipped to address these problems.<sup>113</sup>

Just recently, the Department of Housing and Urban Development has issued

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105. *Gay and Transgender Youth Homelessness by Numbers*, CTR FOR AM. PROGRESS (Jun. 21, 2010), <https://www.americanprogress.org/issues/lgbt/news/2010/06/21/7980/gay-and-transgender-youth-homelessness-by-the-numbers/> [<https://perma.cc/G768-GJK8>].

106. *Id.*

107. Haas, et.al. *supra* note 3. (citing Aaron Eckhardt, the Training and Technical Assistance Direction at BRAVO).

108. *Id.*

109. Haas, et.al. *supra* note 3. (citing Aaron Eckhardt, the Training and Technical Assistance Direction at BRAVO).

110. Haas, et.al. *supra* note 3. (citing Aaron Eckhardt, the Training and Technical Assistance Direction at BRAVO).

111. *Issues: Housing and Homelessness*, NAT'L CTR FOR TRANSGENDER EQUALITY (2015), <http://www.transequality.org/issues/housing-homelessness> [<https://perma.cc/EMB2-AYLK>].

112. *Id.*

113. *Id.*

a final rule that is supposed to ensure equal access to shelter for transgender individuals.<sup>114</sup> This rule is intended to require single-sex shelters that receive HUD funds to provide all individuals, including transgender persons, access to all the benefits and services provided in accordance with preferred gender identity.<sup>115</sup> HUD specifically stated in a press release:

HUD's new rule will require a recipient, sub-recipient, or provider to establish, amend, or maintain program admissions, occupancy, and operating policies and procedures (including policies and procedures to protect individual's privacy and security), so that equal access is provided to individuals based on their gender identity.<sup>116</sup>

This new rule was expected to take place beginning on October 21, 2016, and it applies to all recipients of funds, including the Emergency Solutions Grant and the Housing Trust Fund program.<sup>117</sup>

### III. SOCIAL CHANGE IN THE NETHERLANDS

The Netherlands has adopted a completely different model of social control than the United States, and this can most easily be seen in their well-known drug policies. In 1976, the Netherlands revised their Opium Act as part of a “Dutch drug policy framework that includes tolerance for non-conforming lifestyles.”<sup>118</sup> The Dutch believe that a “deterrence model of social control,” which is more “aimed at isolating” deviance, is less effective than a “normalizing model of social control,” which is “aimed at . . . integrating” deviance.<sup>119</sup> With this 1976 revision, illegal drugs were no longer seen as some kind of “alien threat” being forced upon an “innocent society,” but rather drugs were seen as a “manageable social problem.”<sup>120</sup> The revision of the Opium Act led to reductions in penalties for possession, as well as increases in penalties for hard drug trafficking, which represents the Dutch government’s compromise with society as “soft drugs” became less of a threat.<sup>121</sup>

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114. Jeff Dillman, *HUD Issues Final Rule to Ensure Equal Access to Housing & Services Based on Gender Identity*, FAIR HOUSING PROJECT (Sept. 23, 2016), <http://www.fairhousingnc.org/2016/hud-issues-final-rule-on-to-ensure-equal-access-to-housing-services-based-on-gender-identity/> [<https://perma.cc/6ZUR-X4WV>].

115. *Id.*

116. *Id.*

117. *Id.*

118. E. Leuw, *Drugs and Drug Policy in the Netherlands*, NAT'L CRIM. JUST. REFERENCE SERV. (1991), <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=134076> [<https://perma.cc/2PVW-XR8H>]. See also *Toleration Policy Regarding Soft Drugs and Coffee Shops*, GOV'T. OF THE NETHERLANDS <https://www.government.nl/topics/drugs/contents/toleration-policy-regarding-soft-drugs-and-coffee-shops> [<https://perma.cc/8CQ8-STFR>].

119. *Id.*

120. *Id.*

121. *Id.*

The Dutch government soon learned that decriminalizing certain drugs does not lead to increased drug use.<sup>122</sup> However, the United States continues to lead an international drug control effort which prioritizes criminalization and that has not lead to any measurable decrease in consumption or trafficking.<sup>123</sup> The Dutch government has found that a more tolerant law, together with “honest education,” is proving to be more effective than simple criminalization of drug use.<sup>124</sup> The Netherlands’ drug policies are driven by a commitment to public health, which has led to more control over their hard drug problem and to one of the “lowest rates of hard drug use in the European Union.”<sup>125</sup>

#### *A. Law and Views Toward the Transgender Community*

Behind both the drug policies and the laws surrounding anti-discrimination of transgender individuals is the Dutch government’s goal of harm reduction as well as a reduction in social and individual risks.<sup>126</sup> The Dutch government spends a lot of time and money investing in “research, policy, and projects” that are “aimed at combating discrimination” on the basis of sexual orientation or gender identity.<sup>127</sup> In June of 2014, the Dutch government passed a law on legal gender recognition that no longer required any type of surgical procedure.<sup>128</sup> When a child is born, and the sex is not immediately clear, the law allows an exception for the parents to leave the gender marker blank, but this is still rarely used.<sup>129</sup>

In general, transgender individuals are protected from discrimination in the Netherlands by both the constitution and the General Equal Treatment Act (ETA), which prohibits both direct and indirect differential treatment on the basis of religion, belief, sexual orientation or civil status.<sup>130</sup> The scope of the ETA is broad by its own terms because it uses the term “differential treatment” instead of discrimination, so an intent to discriminate is not necessary for differential

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122. Christopher Soda, *American, Take Note: Three Lessons the Netherlands Learned After Decades of Evolving Its Drug Policy*, DRUG POL’Y ALLIANCE (Oct. 7, 2013), <http://www.drugpolicy.org/blog/america-take-note-three-lessons-holland-learned-after-decades-evolving-its-drug-policy> [<https://perma.cc/JN6X-V83H>].

123. *Global Reform*, DRUG POL’Y ALLIANCE (2016), <http://www.drugpolicy.org/global-reform> [<https://perma.cc/U4CY-DJNE>].

124. Dillman, *supra* note 113.

125. *Id.*

126. Benjamin Dolin, *National Drug Policy: The Netherlands*, LIBR OF PARLIAMENT (Aug. 15, 2001) <https://perma.cc/MTT5-RJRN>.

127. COC Netherlands, *The Rights of LGBTI Children in The Netherlands: A Shadow Report to the UN Committee on the Rights of the Child*, NNID & TNN 1, 3 (2013).

128. *Id.* at 4.

129. *Id.* at 5.

130. Janny Dierx & Peter Rodrigues, *The Dutch Equal Treatment Act in Theory and Practice*, EUR ROMA RIGHTS CTR. (May 10, 2013), <https://perma.cc/QR4A-U82N>.



treatment to be considered unlawful.<sup>131</sup> The ETA is in line with the European Community's legislation on equal treatment because it prohibits indirect discrimination, which includes when seemingly neutral acts have a disparate impact on a group of protected individuals.<sup>132</sup> This concept of indirect discrimination is intended to address systemic forms of discrimination, and cases from the European Court of Justice (ECJ) have found indirect discrimination in situations when language requirements for employment have a "disparate impact on minorities," for example.<sup>133</sup>

Aside from the broad protections the ETA offers, the law also provides for the establishment of the Equal Treatment Commission (ETC), which gives victims of discrimination with an avenue for redress.<sup>134</sup> The ETC's main objective is to implement anti-discrimination legislation and to conduct investigations into allegations of discrimination.<sup>135</sup> The ETA allows for both individuals, as well as organizations, to bring cases to the ETC, which creates a path for prevention because employers or other organizations can be sure their practices are in accordance with the law.<sup>136</sup> This avenue for redress is even more accessible to individuals because all proceedings before the ETC are free, and legal assistance is "neither required nor necessary" since the ETC is the main actor in the investigations of complaints.<sup>137</sup> One limit to this particular course of action is that the rulings of the ETC are not legally binding, but instead the ETC must bring a case before a court to receive injunctive relief to prohibit the discriminatory practice.<sup>138</sup>

The Council of Europe, an international human rights governmental organization, advocates for the protection of minorities and promotes human rights through international conventions and monitoring of member states' progress in these areas.<sup>139</sup> In a committee meeting on equality and non-discrimination, the Council of Europe has called upon member states, including the Netherlands, to act to prevent discrimination against transgender individuals.<sup>140</sup> The Council documented that information regarding the situations transgender people face is widely unavailable to the general public, which is a factor that leads to increased prejudice and hostility.<sup>141</sup> The Council recognized that violations of fundamental rights occur when a transgender individual is faced

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131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. Dierx & Rodrigues, *supra* note 129.

137. *Id.*

138. *Id.*

139. *Values: Human Rights, Democracy, Rule of Law*, COUNCIL OF EUR. IN BRIEF (2017) <https://perma.cc/9LCZ-F378> (The Council is made of 47 member states).

140. Eur. Consult. Ass'n, *Comm. on Equality and Non-Discrimination*, 15th Sess., Doc. No. 13742 (2015).

141. *Id.*

with barriers for applying for a legal gender recognition change.<sup>142</sup> Transgender people in Europe are faced with severe and widespread gender identity and expression discrimination, and the Council has called upon its member states to start enacting legislation that will eliminate restrictions to legal gender recognition and implement human rights standards based on the European Court of Human Rights case law to defend against gender identity discrimination.<sup>143</sup> The reforms proposed by the Council indicate Europe's, and the Dutch's, respect for transgender identity and the need to legislate against discrimination.

Even before this call from the Council of Europe, the Dutch government's Ministry of Education, Culture, and Science implemented an "LGBT and Gender Equality Policy Plan of the Netherlands," which outlines the Dutch government's involvement in implementing equality among LGBT groups.<sup>144</sup> In this plan the Ministry states that:

Everyone has the right to a life without violence and a right to equal opportunities to participate. Discrimination will therefore be combated and more severely penalized. Equality under the law and equality of men and women and of homosexuals and heterosexuals should be a matter of course...The balance of basic rights is one of the core values of the Dutch society.<sup>145</sup>

The Ministry stated that the aim of this policy was to "increase safety of...transgender people," as young people should be able to "come out of the closet" safely.<sup>146</sup> With the implementation of this policy change, the Ministry and its cabinet began to make legal changes to ensure the safety of the LGBT community as well as to strengthen and support several organizations working toward LGBT and gender equality.<sup>147</sup>

Before this policy was implemented, the social situation for LGBT individuals in the Netherlands had drastically improved, specifically because the ETA banned discrimination on the grounds of sexual orientation; however, the Ministry recognized that even further legal action was needed to prevent the ongoing unequal treatment.<sup>148</sup> While the majority of Dutch nationals socially accept homosexuality and LGBT groups, there is still violence directed towards this community. Recognizing this, the Ministry laid out a policy to actively promote to victims a willingness to report and to require more harsh punishment for discrimination.<sup>149</sup> Additionally, the Ministry recognized a need for LGBT youth to feel safe in their social environments and thus implemented a plan to

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142. *Id.*

143. *Id.* at 2, 3, 6.

144. MINISTRY OF EDUCATION, CULTURE, AND SCIENCE, LGBT AND GENDER EQUALITY POLICY PLAN OF THE NETHERLANDS 2011-2015 (2011).

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

work with local authorities to establish safe meeting places and provide training to youth workers on how to address this type of discrimination.<sup>150</sup>

However, even while the government and most of the Dutch population have increased their acceptance of the LGBT population, there are still factions within the Netherlands that perceive LGBT individuals in a negative light.<sup>151</sup> This is common in most other sectors of the world, but what sets the Netherlands apart is the fact that the government recognized how severe this discrimination is and implemented a transgender policy aimed at providing support to transgender individuals in work, care, and education.<sup>152</sup>

### *B. Laws Surrounding Domestic Violence*

The Dutch Ministry of Education, Culture, and Science has put into place several mechanisms, such as control over funding, intended to decrease the use of gender stereotypes when it comes to gender-based violence.<sup>153</sup> Furthermore, the Constitution in the Netherlands specifically bans gender identity-based discrimination.<sup>154</sup> An important goal of the Dutch government has been to eradicate gender-based violence, and this can be seen as a “core theme in emancipation policies.”<sup>155</sup> The Dutch government faced issues with underreporting of domestic violence, but reported cases have increased because of these policies which encourage individuals to report this kind of violence.<sup>156</sup> However, the Netherlands does not have a specific law that generally bans domestic violence per se, but instead provides for a Criminal Code which criminalizes gender-based violence in terms of different articles not just specific to domestic violence nor specific only to women.<sup>157</sup> Essentially, the Dutch policy on inter-dependent violence is gender neutral, which allows for protection of men, women, or transgenders.<sup>158</sup>

In 2015, a new project began that focused on “a gender sensitive approach to deal with domestic violence.”<sup>159</sup> The Dutch government and law enforcement place a high priority on “combating anti-LGBTQ violence, specifically police have a ‘pink in blue’ unit ‘dedicated to protecting the rights of LGBTQ persons.’”<sup>160</sup> Gender stereotypes are a known cause of discrimination, and the

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150. MINISTRY OF EDUCATION, CULTURE, AND SCIENCE, *supra* note 143.

151. *Id.*

152. *Id.*

153. *Netherlands*, SOCIAL INST. INDEX: GENDER INDEX 1, 1 <http://www.genderindex.org/sites/default/files/datasheets/NL.pdf>

154. *Id.* (citing Constitution of the Kingdom of the Netherlands, 2002. Article 1).

155. Janneke Plantenga & Chantal Remery, *The Policy on Gender Equality in the Netherlands*, UTRECHT UNIV. SCH. ECON. 5, 16 (2015).

156. *Id.*

157. MINISTRY OF EDUCATION, CULTURE, AND SCIENCE, *supra* note 143.

158. Eur. Consult. Ass’n, *supra* note 139, at 16.

159. *Id.* at 17.

160. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, THE NETHERLANDS HUMAN

Netherlands has a long tradition of promoting “equal rights, equal opportunities” and equal liberties in their emancipation policies.<sup>161</sup> Moreover, the law provides a higher penalty for bias related violence, and schools are required to address diversity as part of the government’s agenda to increase awareness regarding the LGBTQ community.<sup>162</sup> Thus, this new project and the policies surrounding gender equality in the Netherlands are more inclusive and specifically aimed at protecting the LGBTQ community.

### C. Suicide Risk and Homelessness

While little information is available regarding actual deaths from suicide among the transgender community in the Netherlands, one clinical study did report that there was a “disproportionate number of suicide deaths” among Dutch transsexual women compared to that of the general population.<sup>163</sup> Similar to the causes associated with suicide in the United States, victimization at school is significantly related to suicide attempts in young LGBTQ individuals.<sup>164</sup> Despite a general acceptance and positive attitude towards gays and lesbians in the Netherlands, studies suggest that suicidality among this group of individuals is significantly higher than heterosexual youths in particular.<sup>165</sup> Other studies have found that suicide attempt rates in the transgender community are likely not connected to identifying as transgender in itself, but rather to how people “are being treated for being transgender.”<sup>166</sup> Though suicide attempts for LGBTQ children in the Netherlands is still alarmingly high at twelve percent, the government has taken notice and has responded to reports signaling that a change is needed.<sup>167</sup>

The Dutch government has forty-eight regional authorities that are tasked with responding to homelessness, and each receives governmental subsidies to use as they see fit.<sup>168</sup> In 2007, the Netherlands implemented the Social Support Act, which provides the legal framework for emergency shelter and assures that

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RIGHTS REPORT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015 (2015) <https://perma.cc/DX92-RKMG>.

161. Eur. Consult. Ass’n, *supra* note 139, at 22. (Emancipation policies are those that the Dutch Government implements in order to promote equality. Emancipation policies are simply what the Dutch call certain legislation regarding equality).

162. *Supra* note 153.

163. Haas, et. al. *supra* note 3.

164. Diana van Bergen, et al., *Victimization and Suicidality Among Dutch Lesbian, Gay, and Bisexual Youth*, 103 AM. J. PUBLIC HEALTH 1, 1 (2013).

165. *Id.*

166. Zack Ford, *No, High Suicide Rates Do Not Demonstrate That Transgender People Are Mentally Ill*, THINKPROGRESS (Jun.22, 2015) [<https://perma.cc/JP5D-BSWD>].

167. Leuw, *supra* note 117 at 5.

168. *Homelessness in Holland*, SHARE INT’L ARCHIVES (Jun. 1999) <http://www.share-international.org/archives/homelessness/hl-Holland.htm> [<https://perma.cc/4NGW-9UHN>].

local governments are providing adequate support to the homeless.<sup>169</sup> In 2006, the Netherlands sought to address the issue of homelessness in four of its major cities by seeking to provide eligible homeless persons with income, accommodations, support, and care.<sup>170</sup> Central to this plan was a “person-oriented approach” for individualized care.<sup>171</sup>

There are still issues with combating homelessness in the Netherlands as access to shelters in most municipalities depends on if a person has a “local connection” to the geographical area.<sup>172</sup> However, the Association of Netherlands Municipalities created a *Toolkit Nationwide Access and Local Connection*, which promoted the Dutch government’s principle of “nationwide access.”<sup>173</sup> Two years after this “strategy plan” was introduced, thirty-nine municipalities adopted it, and many municipalities continue to devote a lot of their own budgets towards problems associated with homelessness.<sup>174</sup> The policies surrounding homelessness in the Netherlands suggest that access to shelters for LGBT individuals may be more readily available than in the U.S., and the personal care approach may be more suited to helping these individuals with associated issues of discrimination and unemployment than in the U.S.

#### IV. ANALYSIS

The United States and the Netherlands each have a history and approach to the law that are distinct and unique. While there are differences between the two countries when it comes to the approach taken in addressing transgender issues, there are also similarities in the cultures of the two countries which provide a ground for adaptation. The Dutch government has focused on preventing discrimination based on sexual orientation, and the United States government has slowly adopted legislation to prevent this type of discrimination as well. However, it could be that the future of the United States’ trend toward tolerance is unknown with the new Trump Administration.

##### *A. The United States - A Trend Toward Tolerance?*

While the United States has been resistant to changing laws based on shifting positions of social issues in the past, the country has “shifted its stated drug control policy toward a comprehensive approach.”<sup>175</sup> The United States had a “War on Drugs” era in the 1980s that promoted a zero-tolerance policy for

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169. Michel Planije & Mithijs Tuynman, *Homelessness Policy in the Netherlands: Nationwide Access to Shelter under Pressure from Local Connection Criteria?*, 7 EUR. J. HOMELESSNESS 183, 183 (Dec. 2013).

170. *Id.* at 184.

171. *Id.*

172. *Id.* at 183.

173. *Id.* at 184.

174. *Id.* at 186.

175. LISA N. SACCO, CONG. RES. SERV., R43749, DRUG ENFORCEMENT IN THE UNITED STATES: HISTORY, POLICY, TRENDS (Oct. 2, 2014).

drugs.<sup>176</sup> However, now there is wide public support for changing government drug policies, and the federal drug policy is undergoing a conceptual shift away from the zero-tolerance view.<sup>177</sup> There has been a massive shift in how Americans view drug users. For example, a Pew Research Center report stated that sixty-seven percent of people said the focus should be on treatment not prosecution as compared to the seventy-three percent of Americans who favored a mandatory death penalty for drug traffickers in 1990.<sup>178</sup> This shows how the United States is trending toward acceptance of previously controversial issues. However, as is tradition in the United States, there is push-back from a large majority of the lawmakers that are urging the government to continue “to do more of the same,” which includes reiterating the same arguments for incarceration as have been stated for decades when it comes to drug reform.<sup>179</sup>

Opposite the change in drug policies, some states are actively resisting change at a federal level regarding laws and protections aimed at the LGBTQ community. This is possibly due to “human fear of the unknown and a discomfort with the uncertainty of change.”<sup>180</sup> Some state governments continue to manufacture problems that do not exist as “a pretext for discrimination and harassment,” instead of incorporating national ideals of “inclusivity, diversity, compassion, and open-mindedness” into LGBTQ legislation.<sup>181</sup> While states are setting forth arguments for these laws based on prevention of violence and to protect safety, especially when it comes to debates over bathroom laws, the American Civil Liberties Union states that there is “no statistical evidence of violence to justify these laws.”<sup>182</sup> Instead, organizations like the American Civil Liberties Union argue that these laws “are irrational, conflict with federal law, and veritably endanger trans people.”<sup>183</sup>

However, it is not just the states that are at a divide when it comes to transgender rights. The American people are also divided with fifty-one percent reporting that transgender individuals should be able to use their identified gender bathroom and forty-six percent taking the opposite position.<sup>184</sup> However, young

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176. Drew Desilver, *Feds May be Rethinking the Drug War, but States Have Been Leading the Way*, PEW RES. CTR. (Apr. 2, 2014), <http://www.pewresearch.org/fact-tank/2014/04/02/feds-may-be-rethinking-the-drug-war-but-states-have-been-leading-the-way/> [https://perma.cc/U5GG-WHKL].

177. *Id.*

178. *Id.*

179. Dillman, *supra* note 113.

180. Farias, *supra* note 58.

181. *Id.*

182. Alia E. Dastagir, *The Imaginary Predator in America's Transgender Bathroom War*, USA TODAY (Apr. 28, 2016, 5:34 P.M.), <http://www.usatoday.com/story/news/nation/2016/04/28/transgender-bathroom-bills-discrimination/32594395/>.

183. *Id.*

184. Michael Lipka, *Americans are Divided Over Which Public Bathrooms Transgender People Should Use*, PEW RES. CTR., Oct. 3, 2016, <http://www.pewresearch.org/fact-tank/2016/10/03/americans-are-divided-over-which-public-bathrooms-transgender-people-should-use/>

adults aged 18-29 overwhelmingly, at sixty-seven percent, believe transgender individuals should be allowed to use their identified gender restroom.<sup>185</sup> While LGBT adults generally believe that society is more accepting, many still state that they are the victims of discrimination and rejection.<sup>186</sup>

Much like the Netherlands, the United States faces backlash from certain groups of individuals – namely particular religions, ages, genders, and political views – when it comes to transgender rights.<sup>187</sup> A majority of Americans who attend religious services – especially white evangelicals – say that “transgender individuals should be required to use the bathrooms of their birth gender,” while those who, “do not identify with any religion,” take a more liberal position.<sup>188</sup>

This disparity could also be attributed to the fact that only thirty percent of Americans report knowing someone who is transgender compared to the eighty-seven percent who say they know someone who is gay.<sup>189</sup> Americans have historically been averse to any type of LGB rights, as shown in DOMA and the history of change when it came to LGB rights. However, Americans have had a tremendous change of heart, and have become more accepting of homosexuality.<sup>190</sup> Common reasons associated with this change, and trend toward acceptance, include: having a friend who is gay, generally becoming more accepting and open-minded, and accepting homosexuality because societal views have become more accepting.<sup>191</sup> Society as a whole has become more accepting of gays and lesbians.<sup>192</sup> Additionally, there has been a significant decline in the number of Americans who believe that gays and lesbians raising children would be a bad thing for society, and most Americans now say they would not be upset if a child came out as gay.<sup>193</sup> However, similar to the resistance towards transgender acceptance, those who are less than accepting of homosexuality cite religious beliefs as the most common reason.<sup>194</sup> About forty-five percent of Americans believe that engaging in homosexual behavior is a sin, and this substantial opposition stems from religious beliefs.<sup>195</sup>

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[<https://perma.cc/5JCH-QRUY>].

185. *Id.*

186. Bruce Drake, *How LGBT Adults See Society and How the Public Sees Them*, PEW RES. CTR. (Jun. 25, 2013), <http://www.pewresearch.org/fact-tank/2013/06/25/how-lgbt-adults-see-society-and-how-the-public-sees-them/> [<https://perma.cc/97NK-DVZQ>].

187. Desilver, *supra* note 175.

188. *Id.*

189. *Id.*

190. *Vast Majority of Americans Know Someone Who is Gay, Fewer Know Someone Who is Transgender*, PEW RES. CTR. (Sept. 28, 2016), <http://www.pewforum.org/2016/09/28/5-vast-majority-of-americans-know-someone-who-is-gay-fewer-know-someone-who-is-transgender/> [<https://perma.cc/MED9-55DL>].

191. *Id.*

192. Desilver, *supra* note 175.

193. *Id.*

194. Dastagir, *supra* note 181.

195. Desilver, *supra* note 175.

Even though there is a trend toward tolerance, especially in young adults, the transgender community is still faced with resistance when it comes to changes in the law. Courtroom victories for the LGBTQ community are sometimes criticized as “going too far, too fast.”<sup>196</sup> This resistance to any change in laws regarding the LGBTQ community has dire effects, and according to Shawna Virago, a program director for the San Francisco advocacy group Community United Against Violence, until the “root causes of bias towards LGBTQ people” are addressed, this community of people will “continue to have hate perpetuated against” them.<sup>197</sup>

Society’s resistance to acceptance in the legal realm is simple: “the public doesn’t like anti-LGBTQ laws.”<sup>198</sup> When North Carolina instituted House Bill 2, which stripped rights away from the LGBTQ community in choice of restroom by preferred gender identity, there was backlash at a cultural level: PayPal cancelled an expansion, Bruce Springsteen and Maroon 5 cancelled concerts, and the NCAA moved all of its championships out of North Carolina.<sup>199</sup> North Carolina soon gained a reputation as a place “more focused on excluding people than on creating...humane conditions.”<sup>200</sup> Even in light of this political and social backlash, the state government, and the governor in particular, stood behind and defended the discriminatory law, and now members of the LGBTQ community must wait for the federal court system “to do their job” in order to feel safe again in their own state.<sup>201</sup>

While it appears the federal government is markedly advocating for change and more protection for the LGBTQ community, Congress still proposed an amendment in the annual defense bill that would fund discrimination by allowing persons to be fired for being transgender, among other things.<sup>202</sup> Hundreds of thousands of individuals signed petitions to reject this amendment stating that:

The Russell Amendment is one of the most significant threats to LGBT people, women, religious minorities, and others we have seen in Congress in years. Congress needs to act now to ensure that all of us are

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196. Thomas M. Keck, *Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights*, 43 L. & S. 151 (2009).

197. *Confronting the New Faces of Hate: Hate Crimes in America 2009*, LEADERSHIP CONF. ON CIV. RIGHTS ED. FUND (Jun. 2009) [http://www.protectcivilrights.org/pdf/reports/hatecrimes/lccref\\_hate\\_crimes\\_report.pdf](http://www.protectcivilrights.org/pdf/reports/hatecrimes/lccref_hate_crimes_report.pdf) [<https://perma.cc/RA4F-6RCF>].

198. James Esseks, *North Carolina May Have Stuck with Discrimination, but Make No Mistake: Hate Doesn’t Sell*, AM. CIV. LIBERTIES UNION (Dec. 22, 2016), <https://www.aclu.org/blog/speak-freely/north-carolina-may-have-stuck-discrimination-make-no-mistake-hate-doesnt-sell> [<https://perma.cc/UEK5-58RG>].

199. *Id.*

200. *Id.*

201. *Id.*

202. *Over 340,000 Signatures Delivered to Congress Rejecting Discrimination in Defense Bill*, AM. CIV. LIBERTIES UNION (Nov. 15, 2016), <https://www.aclu.org/news/over-340000-signatures-delivered-congress-rejecting-discrimination-defense-bill> [<https://perma.cc/RUJ3-DBFR>].



protected from discrimination. Freedom, equality, and fairness are at stake.<sup>203</sup>

Society, no longer is a proponent for discrimination, and individual relationships as well as leadership from well-known public figures is fostering social acceptance among the LGBTQ community.<sup>204</sup>

There is fear for the future of this trend toward acceptance with the Trump Administration's new policies surrounding transgender rights.<sup>205</sup> While the Obama Administration made it clear that Title IX should be interpreted as prohibiting sexual discrimination against transgender individuals in public schools, the Trump Administration effectively rescinded this guidance by declaring it does not.<sup>206</sup> While this does not change Title IX as a law, this withdrawal gives states more flexibility in how they interpret Title IX when it comes to accommodating transgender students.<sup>207</sup> Social institutions, such as the American Academy of Pediatrics, have responded to this opinion of the current administration by stating that:

Transgender children are already at increased risk for violence, bullying, harassment and suicide. They may be more prone to depression and engaging in self-harm . . . Policies excluding transgender youth from facilities consistent with their gender identity have detrimental effects on their physical and mental health.<sup>208</sup>

The backlash from the public associated with the administration's rescinding of this guidance has been substantial.<sup>209</sup> Several senators from several states have responded to this decision negatively, including Senator Kamala Harris of California who stated that this decision is targeting kids because of who they are, which is shameful.<sup>210</sup> Ellen DeGeneres, a well-known lesbian television host, stated that this removal is not about politics, but it is about human rights, and it

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203. *Id.*

204. Desilver, *supra* note 175.

205. Joe Davidson, *Trump Brings Fear, Anxiety, and some Hope to the Federal Workplace*, WASH. POST (Jan. 23, 2017), [https://www.washingtonpost.com/news/powerpost/wp/2017/01/23/trump-brings-fear-anxiety-and-some-hope-to-the-federal-workplace/?utm\\_term=.a5964a553f69](https://www.washingtonpost.com/news/powerpost/wp/2017/01/23/trump-brings-fear-anxiety-and-some-hope-to-the-federal-workplace/?utm_term=.a5964a553f69) [<https://perma.cc/FB7R-BMLB>].

206. Anya Kamenetz & Cory Turner, *Trump And Transgender Rights: What Just Happened*, NPR-ED (Feb. 23, 2017), <http://www.npr.org/sections/ed/2017/02/23/516837258/5-questions-about-the-trump-administrations-new-transgender-student-guidance> [<https://perma.cc/7XNB-8JWN>].

207. *Id.*

208. *Id.*

209. *Id.*

210. Madeleine Perkins, *People are Ripping the Trump Administration for Withdrawing Obama-era Guidance on Transgender Protections*, BUS. INSIDER (Feb. 2017), <http://www.businessinsider.com/transgender-bathroom-rights-trump-administration-2017-2> [<https://perma.cc/59VM-HKY2>]

is not okay.<sup>211</sup> Even the Senate Minority Leader, Chuck Schumer, called this decision “just plain wrong” stating that it “cuts directly across the American drive and yearning for equality.”<sup>212</sup> While it may seem as though this trend towards tolerance is waning in light of the recent decisions by the Trump Administration, key players in politics as well as those in the entertainment industry are pushing back, which suggests that the momentum gained from the Obama-era protections could continue.

*i. Why a Trend Toward Tolerance?*

To begin to understand political or social behavior of any particular group of persons, the dominant values of the culture must be examined.<sup>213</sup> Most people tend to view the United States as a “melting pot” of different cultures without one dominant culture.<sup>214</sup> Americans tend to assume everyone is equal in status and should be given an equal “opportunity to achieve status through hard work.”<sup>215</sup> Instead of identifying themselves in terms of who they are, Americans will identify themselves based on what they do, which reflects the strong cultural dominance of independence and personal achievement.<sup>216</sup> These notions of personal freedom could stem back to the 1500s, when personal freedom had become the normal status of Englishman, and any type of dependence on a “lord” meant “deprivation of all social and legal rights.”<sup>217</sup>

There is a shift in how Americans view their culture, and the “melting pot” is no longer readily accepted.<sup>218</sup> Now, the metaphors used to describe American culture reflect an acceptance of one’s differences while still allowing that individual to be a part of the overall society.<sup>219</sup> The world has become increasingly more interdependent, and the new millennium of Americans is striving to balance this emphasis on individualism with collectivism and cooperation.<sup>220</sup> The trends in acceptance of homosexuality and drug legality could be attributed to this movement toward a more collectivist rather than individualistic view of society, and the United States could use this momentum to enact change in the laws surrounding transgender rights.

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211. *Id.*

212. *Id.*

213. Gary R. Weaver, *American Cultural Values*, KOKUSAL BUNKA KENSHU (INTERCULTURAL TRAINING), 1-2 (1999).

214. *Id.* at 3.

215. *Id.* at 6.

216. *Id.* at 9.

217. Tirman, *supra* note 14, at 29.

218. *Over 340,000 Signatures Delivered to Congress Rejecting Discrimination in Defense Bill*, *supra* note 201, at 9.

219. *Id.*

220. *Id.* at 11.

*B. The Netherlands -- Pragmatic Tolerance*

The Dutch government would not consider itself a progressive organization, but rather a more pragmatic one. They “call it pragmatic tolerance.”<sup>221</sup> The Dutch government approaches social problems in a way that is practical: prostitution is going to happen anyway, so it might as well be regulated it legally to keep it under control.<sup>222</sup> Socially, individual freedom and equality are the norms associated with the social democrats in the country, and the government responded by “legally tolerating” certain aspects of the law that reflect a more realistic approach.<sup>223</sup> These ideas of personal freedom are similar to those found in the United States.

This tolerance-based approach stems from a history in the Netherlands where the Dutch had to be able to “associate with different cultures . . . and accept differences.”<sup>224</sup> Specifically, Amsterdam is traditionally a city of immigrants and a city in which trade has always “been more important than ideology or religion” because any type of overly strong view would “hamper relations.”<sup>225</sup> One example of this includes when the Dutch government adopted a public health approach to drugs in 1976, which is in line with the more general attitude the government takes towards non-conforming behavior: “promoting compassion, peace, safety, and the mental and physical well-being of individuals.”<sup>226</sup> It would seem as though the U.S. people, like the Dutch, are moving towards more acceptance for reasons associated with public health; for example, marijuana being legalized for medical purposes in most states is more accepted.<sup>227</sup> Around seventy-seven percent of Americans support legalizing marijuana for medical purposes, which suggests that the tolerance-focused approach the Dutch government employs could help fuel a drug revolution in the United States if adopted.<sup>228</sup>

Specifically referring to the transgender community, the Dutch have been increasingly more positive in changing the laws to ensure more protection. One positive reaction specific to new transgender legislation came when the Dutch Senate approved a bill which allows transgender individuals to change their gender marker on their official documents to their preferred gender.<sup>229</sup> Boris

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221. Yasha Lange, *Live and Let Die is New Dutch Religion*, BBC News (Apr. 2001), <http://news.bbc.co.uk/2/hi/europe/1271571.stm> [<https://perma.cc/Q7FV-BHKX>].

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. Dillman, *supra* note 113.

227. Dr. Sanjay Gupta, *It's Time for a Medical Marijuana Revolution*, CNN (Apr. 2015), <http://www.cnn.com/2015/04/16/opinions/medical-marijuana-revolution-sanjay-gupta/> [<https://perma.cc/9HQW-PE72>].

228. *Id.*

229. *The Netherlands: Victory for Transgender Rights*, HUMAN RIGHTS WATCH (Dec. 2013) <https://www.hrw.org/news/2013/12/19/netherlands-victory-transgender-rights>

Dittrich, an advocacy director in the LGBTQ Rights Program at Human Rights Watch stated:

The new law is an important step toward equality for transgender people in the Netherlands. It puts people in a much stronger position to change their gender identity without intrusive and abusive medical requirements.<sup>230</sup>

The Netherlands was among the first of the European nations to adopt legislation that would allow legal recognition of gender identity for transgender individuals back in 1985.<sup>231</sup> However, while the Netherlands did have an edge to progressive change regarding this community, this law still required hormonal procedures and irreversible surgery to allow a change on an official document.<sup>232</sup> Many transgendered individuals would feel public humiliation and vulnerability to discrimination because their documents did not match their “deeply felt gender identity.”<sup>233</sup> It was no longer that transgender people were “trapped in the wrong bodies,” but they were “trapped by the law.”<sup>234</sup>

While it did take years for change to occur, the government recognized how this law was violating the rights of the transgendered community and instituted a change, and in fact the government listened to and used the report put together by the Human Rights Watch to institute this change.<sup>235</sup> Aside from changing this specific law, the Dutch constitution also protects rights to “personal autonomy and physical integrity,” and the government has ratified several international human rights instruments to protect transgender rights, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights.<sup>236</sup> More specifically, the ETA is a broad avenue for redress for transgender individuals to seek recourse for acts of discrimination.<sup>237</sup>

Not only has the Dutch government responded positively to growing numbers of transgender individuals in the Netherlands, society as a whole has also responded with overwhelming inclusiveness. It was in Holland that Lamers won “Holland’s Next Top Model,” making her the first transgender winner in the entire “Top Model” franchise.<sup>238</sup> Lamers had reportedly kept her background a

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[<https://perma.cc/UWE2-NERW>].

230. *Id.*

231. *Id.*

232. *Controlling Bodies, Denying Identities: Human Rights Violations against Trans People in the Netherlands*, HUMAN RIGHTS WATCH (2011) <https://www.hrw.org/sites/default/files/reports/netherlands0911webwcover.pdf> [<https://perma.cc/RB9Q-VY3N>].

233. *Id.*

234. *Id.*

235. Tirman, *supra* note 14.

236. *Id.*

237. Dierx & Rodrigues, *supra* note 129.

238. Nadya Agrawal, *Transgender Model Wins “Holland’s Next Top Model,”* HUFF. POST (Oct. 2015), [http://www.huffingtonpost.com/entry/transgender-model-wins-hollands-next-top-model\\_us\\_562fb47ae4b0c66bae59ab27](http://www.huffingtonpost.com/entry/transgender-model-wins-hollands-next-top-model_us_562fb47ae4b0c66bae59ab27) [<https://perma.cc/S573-23HG>].

secret during auditions, and then when the episodes aired and started rumors, she talked publicly about her transition on the show.<sup>239</sup> In line with Dutch values about acceptance, people in Holland responded to this with an “overwhelmingly positive response.”<sup>240</sup>

This is not a new response for the people in the Netherlands. In fact, when asked if gay individuals “should be free to live their own lives as they wish,” the Netherlands, Denmark, and Sweden “take turns to head the rankings in their positive response to this statement,” but it is always the Netherlands who has the highest proportion of the public endorsing that view.<sup>241</sup> Studies conducted by The Netherlands Institute for Social Research show that the greatest social acceptance of homosexuality in Europe is in the Netherlands, and this extends to transgender individuals as well.<sup>242</sup> In fact, acceptance of the LGBTQ community by the Dutch is high, “making the Netherlands one of the most LGBTQ-friendly countries in Europe.”<sup>243</sup>

While the Netherlands has had a long tradition of equality in terms of the law and political support for both LGBTQ and straight citizens, there are still groups, whether religious, ethnic, or political, that are still “failing to keep pace” with a heightened trend towards acceptance by the general public.<sup>244</sup> More often than not, the degree of church affiliation, or religiosity more broadly, leads to the greatest difference in acceptance rates.<sup>245</sup> This is substantially similar to the reasons associated with transgender and LGBTQ discrimination in the United States where, “with increasing frequency,” individuals and institutions are claiming a right to discriminate “based on religious objections.”<sup>246</sup>

Additionally, in the Netherlands, there are clear differences “between supporters of different political parties,” with the most negative being supporters of the right-wing PVV.<sup>247</sup> The PVV is the Party for Freedom and is most known for its increasingly “ethno-nationalist discourse,” which combines “nativism, authoritarianism, and populism.”<sup>248</sup> Geert Wilders, the leader of the PVV party, has made his support of Donald Trump known, and similar to Donald Trump, has

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239. *Id.*

240. *Id.*

241. Saskia Kuezenkamp & Lisette Kuyper, *Acceptance of Lesbian, Gay, Bisexual, and Transgender Individuals in the Netherlands 2013*, THE NETHERLANDS INST. FOR SOC. RES. – THE HAGUE 10 (May 2013) [<https://perma.cc/5WBQ-SR9F>].

242. *Id.* at 15.

243. *Id.*

244. *Id.* at 7.

245. *Id.* at 20.

246. *End the Use of Religion to Discrimination*, Am. Civ. Liberties Union, <https://www.aclu.org/feature/end-use-religion-discriminate?redirect=feature/using-religion-discriminate> [<https://perma.cc/D9LT-T7WY>].

247. Gupta, *supra* note 226.

248. Cas Mudde, *The PVV at 10! Writing Dutch Political One Insult At a Time*, HUFF. POST (2017), [http://www.huffingtonpost.com/cas-mudde/the-pvv-at-10-writing-dut\\_b\\_9292590.html](http://www.huffingtonpost.com/cas-mudde/the-pvv-at-10-writing-dut_b_9292590.html) [<https://perma.cc/H8UP-M542>].

gained support from those in the Netherlands for his call to close the borders for fear that “Islamic invasion” will threaten the country’s identity.<sup>249</sup> This is similar to the strife and disparity of acceptance in the United States as the Republican National Convention, the right-wing party of the United States, set forth an “extreme anti-LGBTQ agenda by adopting a platform that promotes...rolling back historic advances” for this group of individuals.<sup>250</sup> The platform supports the First Amendment Defense Act, which would allow housing discrimination for LGBTQ people and exclude same-sex spouses from grief counseling programs funded by taxpayers.<sup>251</sup> Specifically, it was noted that this platform is “dangerously out of step with the majority” of Americans who believe that the LGBTQ community deserves equal treatment, and this is strikingly similar to how specific parties or groups of individuals in the Netherlands are also out of line with the majority’s view on social acceptance of the LGBTQ community.<sup>252</sup>

#### V. RECOMMENDATION

The Dutch government approaches social change and the law with a tolerance-based governmental attitude. This approach has led to a much more progressive way of life when it comes to controversial issues such as drug legalization, prostitution, and the transgender community. The United States government, on the other hand, continues to limit the growth in the law with institutional discrimination and a reluctance to change the law in accordance with how society feels towards certain social issues, such as the Civil Rights Movement and racism. Progress takes years in the United States while the Netherlands has been a leader in progressive change since the early 1970s. However, society as a whole in the United States has been on an upward trend toward tolerance, which suggests that change for transgender protections could be implemented.

The United States should adopt a similar type of tolerance-based approach as the Netherlands to prevent transgender discrimination. A government that realizes it is more beneficial to regulate a behavior than outlaw it provides society as a whole with a better way of life. The Netherlands chose to legalize prostitution in order to regulate the behavior and prevent disease to better society as a whole. The Netherlands also chose to legalize certain types of drug use so that it can be regulated to prevent overdose or a flood of unknown substances into the market. The Netherlands further recognized the dangers in transgender and vulnerable population discrimination and how this discrimination is damaging to their lives,

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249. Pieter Stockmans, *Trump Brings the European New Right into the White House. To be Continued in 2017?*, MONDIAAL NIEUWS (Dec. 2016), <http://www.mo.be/es/node/51009> [<https://perma.cc/JC62-XUKZ>].

250. HRC Staff, *Republican National Convention 2016 Platform Takes Harsh Stance Against LGBTQ Issues*, HUMAN RIGHTS CAMPAIGN (Jul. 2016), <http://www.hrc.org/blog/republican-national-convention-2016-platform-takes-harsh-stance-against-lgb> [<https://perma.cc/E49M-ZRM3>].

251. *Id.*

252. *Id.*

and instituted specific laws, such as the ETA, to govern and prevent this type of discrimination. These changes developed because the government approaches social issues with tolerance instead of hesitation and judgment. The United States, while progressive in certain fields, has never been at the forefront of progressive law. This is due in part to an institutionalized discrimination against certain behaviors or certain types of people.

The transgender community in the United States is among the most disenfranchised groups of persons, and the law encourages this type of marginalization. Transgender individuals are afraid to seek help from law enforcement for domestic violence for fear of being discriminated against. Additionally, the constant battle in both state and federal courts over the use of preferred gender restrooms has left the community with a sense distrust in the legal recourse available to them. Most recently, the Trump Administration's withdrawal of the Obama-Era guidance on the applicability of Title IX has left the transgender community with a major battle to overcome at the Supreme Court.

However, society as a whole in the United States has been consistently moving toward acceptance, especially regarding the rights of homosexual individuals to marry. Those in the entertainment industry have put transgender issues into the spotlight, and it seems as though those in the United States are paying more attention to the discrimination transgenders face. Even in light of the Trump Administration's setbacks, political figures are speaking out against this change in the law as opposite to American values of equality. The United States government should embrace diversity and celebrate it, just like the Netherlands Ministry of Education has, which would provide these groups of individuals a better way of life. Instead, the United States government approaches diversity with a cold shoulder, which continues the process of "othering" that has been a part of our history for decades upon decades.

The government is supposed to protect its peoples from discrimination, but in the United States a lot of the discrimination is coming directly from the governmental entities themselves by not instituting laws to protect the transgender community, and making it more difficult for them to be themselves in a nation which prides itself on diversity. If the United States would approach social issues with a tolerance-based approach similar to that of the Netherlands, and if the government would work to protect rather than marginalize its people, then communities like those in the transgender population would be provided with a better and safer way of life in general. The United States government should embrace this recent trend towards tolerance and acceptance, and implement laws which reflect the attitudes of the American people. Even though the United States is deeply divided during this time of political unrest, the government should still work to enact laws that would protect transgender individuals and remedy the effects that discrimination has on this community.

## VI. CONCLUSION

While the United States has progressed in terms of the law when it comes to social changes, the progress is still limited by institutional discrimination. The

U.S. government has been hesitant to institute any changes in the laws surrounding transgender discrimination, bathroom use, domestic violence, and housing discrimination, even when the American people are speaking out against these types of discriminatory laws being put into place. The Dutch government has listened to its people and instituted laws and policies, such as those surrounding drug use and protection from discrimination, that reflect the tolerance and acceptance of Dutch society.

Transgendered individuals in the United States are faced with hatred and violence on a daily basis, and this leads to an increase in mental health issues and suicide rates. Individuals in this vulnerable population are more likely to face domestic violence and less likely to report it because of a fear of authority figures' lack of understanding or prejudice. Homelessness rates among transgender youth are the highest in the United States, and a huge factor in this is due to parental and familial rejection. The United States has no educational program to combat this prejudice and misunderstanding nor does the law protect against this type of discrimination in any substantial way. In fact, the laws in the United States work against transgendered individuals in more detrimental ways by preventing them from changing their gender or fully expressing themselves at work or school. The United States should be implementing laws that protect against discrimination rather than enable it. The recent Trump Administration push-back on the scope of Title IX is but one example of how the United States government is reducing protections for transgendered individuals.

On the other hand, the Netherlands has instituted a governmental policy aimed towards protecting the LGBTQ community. This policy reflects an understanding at the governmental level that this community is especially vulnerable to discrimination and prejudice on a daily basis. The Dutch government recognizes that it is a part of their duty to provide security and safety to this vulnerable population, and this policy of understanding, education, and acceptance is intended to do just that. When a government takes steps towards progressively changing how the law and society are to treat the LGBTQ community, those in that community start to trust in the government and its authority figures, which leads to a better standard of living in general.

If the United States hopes to change how its LGBTQ community is being treated, then the government must take steps towards protecting them. It is up to the government to set the standard of behavior for all of society, and the discrimination and prejudice will continue to a drastic level unless the government institutes a change. The government in the United States should be promoting tolerance, not institutionalized discrimination. The government should address the detrimental effects of this discrimination and work to educate authority figures on how to address violence or hate towards the LGBTQ community, especially law enforcement officers who are often the first responders. The government should begin listening to its people to see how society's views are changing towards LGBTQ protection. There is a trend toward tolerance and acceptance that is flowing through the American people, and the laws implemented by the government should be reflective of this trend.