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A Legal Analysis: The Transgender Bathroom Debate

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This article examines the current legal battles over transgender bathroom, locker room, and employment rights. In the recent years, there has been a major uproar surrounding the rights of transgender individuals; concurrently, our country is witnessing a shift in the ways in which individuals understand their gender outside of the binary male and female classification. While the word transgender can serve as an “umbrella term encompassing a wide array of identities,” transgender rights have steadily grown across numerous areas (Buck, 2016, p. 465). However, there have been contentious legal issues that have put transgender individuals’ rights in the spotlight.

*The author examines Title IX of the Education Amendment of 1972, Title VII of the Civil Rights Act of 1964, and the Fourteenth Amendment. Additionally, the sociocultural risk factors, mental health issues, and medical concerns that transgender individuals face are examined. An ethical analysis is conducted to better understand the ethical quagmire of bathroom, locker room, and employment discrimination for transgender individuals. Lastly, four legal cases are expounded upon: *Price Waterhouse v. Hopkins* (1989), *Johnston v. University of Pittsburgh of the Commonwealth System of Higher Education* (2015), *G.G. v. Gloucester County School Board* (2016), and *Whitaker v. Kenosha Unified School District* (2017). While enormous progress has been made, transgender people continue to traverse many complex systems in order to navigate everyday life. As we witness evolving social and legal strides for transgender individuals, further legislation involving transgender rights is warranted. Implications for social work practice are discussed.*

Keywords: transgender, bathroom, locker room, employment, discrimination, law

Problem & Issue Identification

Transgender people face numerous challenges as members of a historically marginalized and stigmatized group. While definitions of transgender vary across the scholarly literature, a common theme is that the term *transgender* serves as an “umbrella term” that encompasses any individual who identifies as a gender or a sex different than the one they were assigned at birth (Buck, 2016, p. 465). Transgender individuals include a broad range of non-cisgender people including gender queer, gender non-conforming, transsexual, gender fluid, transgender male-to-female or female-to-male folks, bigender, agender, or pangender individuals (Buck, 2016). While we assume that a person’s sex and gender are the same, this is not accurate; one’s gender identity is not always the same as the gender they were assigned at birth. An individual’s gender identity refers to a person’s internal gender identification, which is self-defined by each person and cannot be defined by others (Aleshire, 2016). In other words, gender is how individuals *see* themselves, including their own personal sense of identity. One’s gender expression refers to the external display of one’s gender, through behaviors, actions, or style. One’s sexual orientation is described as the nature of a person’s sexual, romantic, or physical attraction to others (Aleshire, 2016). Lastly, *queer*, a term that will be referenced throughout this paper, was historically used as a slur against members of the LGBTQ community but has been reclaimed and is now often used as an umbrella term for those who identify outside of dominant social gender and sexuality pressures (Drescher, 2010).

While our country is currently witnessing a major shift in the way individuals understand gender outside of the Western, historical binary construct of male and female, transgender individuals continue to experience various forms of oppression. This oppression exists in numerous areas of society including the political, social, economic, educational, medical, and mental health arenas (Coleman et al., 2012). As legal barriers for transgender individuals are changing, there has been an increased community awareness of transgender individuals. For example, in a survey of the San Francisco, California school district, it was found that “1.6 percent of high school students and...one

percent of middle-school students identified as transgender” and that “kids are coming out as trans earlier than ever...The struggles that increasingly younger and younger children are facing with gender identity has speedily brought the trans-rights movement to a new arena” (Cruz, 2017, pp. 92–93). Furthermore, transgender rights are steadily gaining ground across a number of areas, including health care and employment rights, and access to public spaces. More recently, the movement for greater civil rights for transgender people has become exceedingly charged as the transgender community seeks access to public spaces that, until now, have acknowledged only the historical binary definition of gender and sex. The issue has manifested itself in a heated debate regarding access to public bathrooms, locker rooms, and employment rights.

This article will examine recent disputes over transgender public restrooms, locker rooms, and employment rights, with the purpose of assessing how ideas about transgender individuals have changed over time. I will examine institutional attitudes and legal shifts that have impacted transgender individuals’ rights, as well as ideas about the future of transgender equality.

Transgender individuals generally prefer to use the bathroom or locker room that matches their gender identity rather than the facility that accords with the gender that they were assigned at birth. According to the National Center for Transgender Equality, hundreds of cities and 18 states allow transgender people to use the bathrooms and locker rooms that accord with their gender identity (Archibald, 2017). However, at least 15 states have enacted legislation that blocks transgender individuals from using the bathroom of their choice (Archibald, 2017). There are a multitude of mental health problems, especially life-threatening ones, with which transgender individuals struggle. Approximately forty-one percent of transgender individuals have attempted suicide at one point in their lives (Awad, 2013). Having said that, by blocking access to the correct bathroom or locker room, and by failing to provide equal employment rights to transgender individuals, heightened stigma, discrimination, and mental health issues remain.

Background

While public restrooms, locker rooms, and employment rights have more recently been under national scrutiny, bathrooms have long been a contentious barrier and symbol of social injustice in our country. The social and legal strides of marriage equality and state anti-discrimination legislation protecting people from discrimination based on sexual orientation brought gender identification issues to the forefront of the equal rights movements as transgender and queer people sought the same rights. Specifically, in June 2015, the United States Supreme Court ruled to extend marriage equality nationwide to all 50 states (Archibald, 2016). While this was a historic milestone for the United States, what ensued was an increase in transgender individuals demanding their rights, too. Disputes over access to public restrooms have grown and transgender activism has become increasingly more mainstreamed. Additionally, while legislative battles regarding transgender rights have been heavily focused on school bathroom usage, the issue of transgender student athletes' access to locker rooms also applies.

Historically, the concept of gender has been rooted in the male/female gender binary of the 19th century (Fausto-Sterling, 2012). Schilt and Westbrook (2015) explain that during the Victorian era, men and women shared outhouses, and only when indoor plumbing and water closets were available did bathrooms become segregated by gender. This was in part to support the growing Victorian ideals of female modesty (Schilt & Westbrook, 2015). By the 1920s, several laws were put into place across the country mandating gender segregation in restrooms (Schilt & Westbrook, 2015). It is important to note that while individuals share restrooms in private homes, the logic behind gender segregated bathrooms in public spaces is "exacerbated by the placement of open urinals in men's rooms and the private stalls found in women's rooms. Such separation, then, is not biologically necessary but rather socially mandated" (Schilt & Westbrook, 2015, p. 28). While many people have become accustomed to separate bathrooms in public spaces based on the gender binary, this is extremely problematic for transgender individuals; exclusionary policies require transgender individuals to live in contradiction with their gender identity.

Legal Issues

This paper will examine the most significant federal statutes, as well as legal milestones at the state level, including the Fourteenth Amendment, the Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendment of 1972. The Fourteenth Amendment to the United States Constitution, which was ratified in 1868, includes the Equal Protection Clause, which states that “no State shall...deny to any person within its jurisdiction the equal protection of the laws” (USCS Const. Amend. 14). The Supreme Court has affirmed that the Equal Protection Clause protects individuals from identity-based discrimination such as race or gender (Archibald, 2016).

Title VII of the Civil Rights Act of 1964 is a federal law that prohibits employers from discrimination on the basis of sex (Archibald, 2017). As discussed by Twing and Williams (2010), when Title VII was enacted by Congress “it was well-accepted that the term ‘sex’ as it is used in the Act referred to a female and a male” (p. 174). Since the passage of the Act, speculation over what constitutes “sex” under Title VII has been up for debate. The Seventh, Eighth, and Tenth Federal Circuit Courts have rejected the inclusion of transgender individuals under Title VII (Twing & Williams, 2010). Arguments for inclusion of transgender individuals were born out of *Price Waterhouse v. Hopkins* (1989), a case which will be further explored later in this paper. Under Title IX of the Education Amendment of 1972, sex discrimination is prohibited in educational institutions that receive federal funding, which includes the vast majority of schools (Archibald, 2016). Title IX guidelines allows individuals to be provided with “separate toilet, locker room, and shower facilities on the basis of sex” so long as the facilities offered to “students of one sex” are “comparable; to the facilities provided for students of the other sex” (Archibald, 2016, p. 3). In other words, Title IX further protects students and seeks to eliminate sex discrimination in institutions receiving federal funds by seeking to equalize the facilities on the basis of sex.

The word *gender* originally represented a binary, traditional construction of only two genders, either male or female, based solely on biology (Buck, 2016). Kessler (2000) emphasizes that Western societies endorse this binary as being invariant, and

base one's gender on the genitals of the individual. However, since the 1960s, feminist theory has argued that gender is a socially constructed concept and suggested that gender exists on a spectrum (Biever, Cashion, & Franklin, 1998). Proponents of feminist and queer theory believe that the stereotypical, binary gendered behaviors that exist in Western society oppress individuals by focusing on patriarchal narratives and narrow gender roles. As more individuals began to publicly identify as something other than male or female, legal questions and concerns emerged and generated many legal challenges.

In 2013, protections for transgender individuals began to expand in schools and places of employment. In 2013, the Colorado Civil Rights Division was the first governmental body to declare that a student must be permitted to use the school bathroom that correlates with the student's self-declared gender identity when it ruled in favor of a 6-year-old transgender girl (*Mathis v. Fountain-Fort Carson School District 8*, 2013). In 2014, California passed Assembly Bill No. 1266, which enabled transgender youth to partake in sex-segregated sports as well as use the locker room that matched their gender identity (Agee-Aguayo, Bloomquist, Savage, & Woitaszewski, 2017). In January 2015, U.S. Department of Education (DOE) released an opinion letter affirming a child's right to use the bathroom and locker room based on their gender identity (Archibald, 2016). In November 2015, as Archibald (2016) explains, a "political and legal backlash" against transgender people took place in Texas when "voters in Houston...voted to repeal a local anti-discrimination ordinance that forbade discrimination based on gender identity" (p. 5). Shortly thereafter, in March 2016, North Carolina adopted the North Carolina Public Facilities Privacy and Security Act (HB2) which required individuals to use the bathroom that matched the biological sex on their birth certificates. Two lawsuits were filed in North Carolina challenging HB2, one brought by the American Civil Liberties Union (ACLU) and another by the U.S. government. North Carolina elected officials filed three lawsuits to protect HB2: North Carolina's governor Pat McCrory "challeng[ed] the U.S. government's request for the repudiation of HB2; members of the North Carolina legislature challenged the government's request for the repudiation of HB2;" and another was brought by a "nonprofit group called North

Carolínians for Privacy challenging the U.S. government's request for the repudiation of HB2" (Archibald, 2016, p. 5).

Title IX, which forbids gender-based harassment, is addressed in the 2010 "Dear Colleague Letter" on Harassment and Bullying (Dear Colleague Letter, 2010). This letter addresses discriminatory behavior and bullying, and clarifies how institutions should respond to issues of harassment and bullying behavior (Dear Colleague Letter, 2010). In April 2011, the U.S. Department of Education's "Dear Colleague Letter," was a milestone effort to compel schools to address long-standing problems related to violence and sexual assault (Dear Colleague Letter, 2011). The document addressed sexual harassment and violence, which "interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime" (Dear Colleague Letter, 2011, p. 1). The letter also reinforced Title IX regulations and standards to help prevent sexual harassment and violence and detailed procedures schools should adopt to address and end harassment and violence.

In 2016, "Dear Colleague Letter on Transgender Students" was released by the U.S. DOE in an effort to clarify the rights of transgender students under Title IX of the Education Amendments of 1972 (Dear Colleague Letter, 2016). This was the first legal document to specifically address the role of Title IX with regards to transgender individuals. The letter explains that K-12 schools and colleges are required to protect the rights of transgender students by providing them safe and nondiscriminatory environments, respecting student's chosen names and pronouns, and ensuring that the use of restrooms and locker rooms are consistent with the students' gender identity (Dear Colleague Letter, 2016).

Extensive litigation resulted after the DOE's 2016 letter, and less than one year later, President Trump's Administration rescinded the 2016 "Dear Colleague Letter on Transgender Students." Archibald (2017) states, "The Trump Administration asserts that it should be up to individual states to decide what bathrooms transgender children may use in schools," and that the 2016 letter lacked sufficient legal analysis (p. 242). This withdrawal of the Obama-era guidance has led to a shift in how schools treat transgender children, resulting in jurisdictional inconsistencies and uncertainty for all parties, as well as questions about how

to close the human rights gap for transgender individuals on a more long-term basis.

Scientific and Clinical Background Implicated by this Issue

The sociocultural risk factors, mental health issues, and medical concerns that transgender individuals face are enormous. Approximately forty-one percent of transgender individuals have attempted suicide at one point in their lives (Awad, 2013). Archibald (2016) describes discrimination and harassment that transgender individuals experience when they are unable to use the restroom they are most comfortable in and avoid using the bathroom at school. This can lead to severe adverse health issues, including “urinary tract infections, kidney infections, and constipation,” as well as deliberate dehydration/food deprivation to avoid the bathroom, difficulty focusing in class, and increased mental health issues (Archibald, 2016, p. 16). Transgender individuals are subject to discrimination and may face homelessness, difficulty accessing healthcare, bullying, poverty, and multiple placements in the child welfare system (Winter, 2011). Many transgender individuals might involve themselves in sex work or other risky situations such as hormone abuse, drug abuse, self-harming behaviors, and harassment (Winter, 2011). Further, as a result of stigma, many transgender individuals experience “poor mental health and well-being, social anxiety and low self-esteem, depression, helplessness and hopelessness” (Winter, 2011, p. 148).

Ethical Analysis

To better understand the ethical quagmire of bathroom and locker room discrimination for transgender individuals, we must first examine its relationship to bioethical principles. According to Powell and Foglia (2014), “bioethics has only rarely examined the ways in which law and medicine have defined, regulated, and often oppressed sexual minorities” (p. S2). As a result, transgender issues do not attract much bioethical attention and have seemingly become clustered with LGBTQ issues. Notably, however, transgender individuals’ health care and bioethical concerns do intersect with those of the LGBTQ

population. According to the Institute of Medicine (U.S., 2011), “‘otherness’ is the basis for stigma and its attendant prejudice, discrimination, and violence, which underlie society’s general lack of attention to [transgender individuals’] health needs” (p. 13). Moreover, there is a void in the literature and research specifically regarding transgender issues and bioethics.

Hann, Ivester, and Denton (2017) put forth the bioethical fundamental ethical framework for working with transgender individuals, which includes autonomy, beneficence, nonmaleficence, and justice. Patient autonomy is a primary ethical principle in health care decision making. By creating a mandate that forces individuals to use facilities that negate their gender identity, a transgender individual’s autonomy is intrinsically violated. This fundamental right to gender autonomy is at the heart of the social, political, and legal conflict regarding transgender protections.

The concept of beneficence stipulates that a clinician has an obligation to keep the best interests of the patient in mind. Given the alarming disparities and increased mental health risks among transgender individuals compared with the cisgender population, it is clear that upholding the principle of beneficence is essential to the well-being of transgender individuals. Previous research has shown transgender individuals are often rejected by caregivers and other support systems and have less access to social support due to their gender identity (Sevelius, 2012). However, more recent evidence shows that by adopting policies that are gender-affirming, the rates of mental illness become equal to that of the general population (Crall & Jackson, 2016). For transgender individuals, having a welcoming place to go to the bathroom would clearly “do good” and prevent harm. Nevertheless, the bathroom and locker room debate serves as a constant reminder to transgender individuals that even their most basic bodily functions are subjugated, devalued, and discriminated against.

Nonmaleficence implies “a commitment to medical competence by minimizing harm to patients. In healthcare, harm is seen in barriers to access care, perpetuation of stigma and discrimination, and omission of risks” (Hann et al., 2017, p. 144). Discrimination by gender violates the ethical principal of non-maleficence, also known as “do no harm.” Lastly, the bioethical

principle of justice verifies transgender individuals' entitlement to fair and equal treatment (Hann et al., 2017).

Murphy (2015) illuminates the crucial role LGBTQ individuals are playing in the field of bioethics. Outside of the traditional male/female binary found in Western civilization, transgender individuals challenge the conventional biological, philosophical, and religious views of humanity. Transgender people play an important role in the current conversation of bioethics "because people queer in their sexual interests and identities... challenge misconceived concepts of health and disease, challenge obstacles to access and equity in healthcare, and forced attention to professional standards in clinical care, among other things" (Murphy, 2015, p. 1).

The National Association of Social Workers (NASW) Code of Ethics (2017) states that "professional ethics are at the core of social work. The profession has an obligation to articulate its basic values, ethical principles, and ethical standards" (n.d.). As stated in NASW Code of Ethics, social work's core values include values of service, social justice, dignity and worth of a person, importance of human relationships, integrity, and competence. In the context of transgender individuals' use of public spaces such as restrooms, NASW recognizes and asserts gender diversity. Social workers have a responsibility to understand, appreciate, and respect all individuals, and are obligated by the Code of Ethics to "serve oppressed and vulnerable populations, eliminate discrimination based on sex, and seek social change to ensure the well-being of all people" (Burdge, 2007, p. 88). The core values of social work address the impact of marginalization, working towards social justice, and the importance of advocating for equal rights, respect, access, support, and recognition for individuals who identify as transgender.

Legal Analysis

In *Price Waterhouse v. Hopkins* (1989), the Supreme Court held that employment discrimination based on sex stereotypes was unlawful sex discrimination under Title VII. Ann Hopkins, a senior manager for five years at the accounting firm Price Waterhouse, was denied a promotion despite her being held in high regard by her colleagues and her accomplishments. In

part, partners at the firm commented on Hopkins' "interpersonal skills," stating that she was abrasive and aggressive at times and that her chances for partnership could be improved if she "walk[ed] more femininely, talk[ed] more femininely, w[ore] make-up, ha[d] her hair styled, and w[ore] jewelry" (Price Waterhouse v. Hopkins, 1989, pp. 8–9). Hopkins resigned and sued Price Waterhouse, filing a federal lawsuit before the District Court for the District of Columbia Circuit, alleging that the firm violated her Title VII Rights against sex discrimination. The District Court and the Court of Appeals held that the employer's denying her a partnership did constitute sex discrimination under Title VII of the Civil Rights Act of 1964.

This landmark case was significant for two major reasons. First, it set a precedent that gender biases and stereotypes in the workforce violate Title VII and can be actionable as sex discrimination. Secondly, the court further outlined and expanded the definition of what a motivating factor would be for gender discrimination, which would include stereotypes based on sex. While Price Waterhouse v. Hopkins (1989) is not a case regarding transgender issues, it lays the groundwork for how transgender individuals can argue for protection under Title VII. While Hopkins was discriminated against for displaying behavior that did not fit societal norms and gender stereotypes of a cis-gendered woman, and Title VII applies to sex and not gender, for the first time, the court deemed that gender stereotyping was a form of sex discrimination. Importantly, this ruling can be applicable to transgender individuals whose gender identity is incongruent with the sex they were assigned at birth. Because transgender people do not conform to stereotypical norms of gender identity and expression, this case is especially relevant and acted as a turning point for inclusivity in the workplace. Furthermore, this case has the potential of acting as a milestone for inclusivity in other arenas, too. The case of Price Waterhouse v. Hopkins (1989) set the precedent for future cases that sex discrimination does, in fact, include gender identity discrimination.

In the case of Johnston v. University of Pittsburgh of the Commonwealth System of Higher Education (2015), plaintiff Seamus Johnston, a transgender male, applied to the University of Pittsburgh at Johnstown (UPJ) in 2009, listing his sex as "female" on his application. However, when he enrolled and began classes,

Johnson was living as a male and “requested that UPJ change the gender marker to male in his school records” (Johnston v. University of Pittsburgh of the Commonwealth System of Higher Education, 2015, p. 662). In compliance with school policies, Johnston provided the school with his name change documentation and continued to consistently use the men’s bathroom. In 2011, things took a turn for the worse when Johnston enrolled in a men’s weight training class and was informed by UPJ that he could no longer use the men’s locker room unless he provided a new birth certificate or court order that reflected and confirmed his current male gender. Despite this mandate, Johnston continued to use the men’s locker room, where he felt most comfortable. Campus police cited him several times for his violations, until he was expelled from the university and lost his scholarship to the school.

In 2014, Johnston sued UPJ on several grounds, including, among other things, that the school violated the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Act of 1972. The District Court for the Western District of Pennsylvania ruled against Johnston and found that “‘transgender’ is not a suspect classification under the Equal Protection Clause and thus, UPJ did not violate these rights by prohibiting entrance into the male locker room” (Johnston v. University of Pittsburgh of the Commonwealth System of Higher Education, 2015, p. 6). In other words, the Court refused to extend the same protections afforded by Title VII to individuals under Title IX. In arriving at its decision, however, the Court gave great weight to the legitimate interest of UPJ of protecting the privacy of students to disrobe and shower outside the presence of members of the opposite sex. The court made it clear that its decision was premised upon “the unique contours” of the case, which required balancing the rights asserted by the transgender student against the competing interests of the public university to offer “safe and appropriate facilities for all of its students” (Johnston v. University of Pittsburgh of the Commonwealth System of Higher Education, 2015, p. 23). This language appears to signal that the position asserted by the transgender community may prevail in other environments, just not in a public university. In summary, the Court found that a policy separating the bathrooms by birth sex at the UPJ did not violate Title IX because sex

discrimination does not include discrimination against transgender individuals. While the Court dismissed the action, UPJ nevertheless later reevaluated its position and agreed to reverse its policy and allow its students to use facilities consistent with their gender identity. Significantly, although the case was lost, it resulted in a later win for transgender students.

The case of *G.G. v. Gloucester County School Board* (2016) is a pivotal action which not only brought the issue of the rights of transgender students into the public domain but also illustrated the psychological and social challenges that transgender students face on a daily basis. In June 2015, Grimm, a 16-year-old transgender male high school student from Gloucester, Virginia, brought a lawsuit in federal court asserting that he had a constitutional right to use the male bathroom facilities in conformity with his gender identity.

While Grimm was initially able to use the men's restroom, his school's administration enacted a policy that prohibited transgender individuals from using their identity-correct bathroom. The American Civil Liberties Union (ACLU) filed suit on behalf of Grimm against the Gloucester County School Board in June 2015, arguing that the school discriminated against him on the basis of sex, in violation of Title IX and the Equal Protection Clause of the Constitution. They sought a preliminary injunction to allow Grimm access to the boys' restroom when the school year resumed and while the case was proceeding. The district court denied the injunction and dismissed the action, but Grimm appealed to the U.S. Court of Appeals for the Fourth Circuit, which granted Grimm the injunction. The School Board then petitioned the U.S. Supreme Court to hear the case and, in October 2016, certiorari was granted. However, the Supreme Court never got to hear the case, as it rescinded certiorari in March 2016 in light of the Trump administration's having rescinded the Obama-era May 2016 guidelines that directed public schools to accommodate transgender students under federal law. By the time the case returned to the Fourth Circuit and back down to the District Court, Grimm had graduated from high school and thus consented to dismiss his action in June 2017.

Lastly, in the recent landmark case of *Whitaker v. Kenosha Unified School District* (2017), for the first time the Court upheld the rights of transgender students to use the restroom

that corresponds with their gender identity. Ash Whitaker, referred to as "Ash" in all Court documents, a transgender male 17-year-old student from Wisconsin, brought an action in federal court in September 2016 seeking a preliminary injunction permitting him to use the boys' restroom at his school (KUSD) during his senior year of high school. Ash argued that denying him bathroom access was causing him medical harm, such as an exacerbated vasovagal syncope, along with educational and emotional harm, including suicidal ideations (*Whitaker v. Kenosha Unified School District*, 2017, p. 5). Agreeing that Ash was harmed by the school's discriminatory practices that forbade him such use, the District Court granted the injunction and KUSD appealed the decision.

In a lengthy decision, the Circuit Court explained that while Title IX prohibits discrimination on the basis of sex by any federally-funded institution, the law is silent as to the definition of the term "sex." Rejecting KUSD's argument that the word "biological" should be read into the statute to modify the term "sex," the Court turned to the definitions of "sex" in case law interpreting other laws, such as Title VII, which prohibits discrimination in the workplace based on sex. The Court relied on guidance provided by *Price Waterhouse v. Hopkins* (1989), in which the U.S. Supreme Court held that sex discrimination under Title VII includes discrimination based on the failure to conform to sex-stereotypes. In arriving at an expansive definition of sex as it pertains to Title IX, the Court rejected the claim that the legislative drafters of the law did not contemplate "sex" to mean anything other than male or female, stating, "statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed" (*Whitaker v. Kenosha Unified School District*, 2017, p. 11). Thus, the Court reasoned, many district courts have upheld the rights of transgender individuals to bring an action under Title VII, and the same definition should be applied under Title IX. Thus, the Court upheld Ash's claim, holding that "a policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX," and subjects this transgender student to different treatment than non-transgender students, in

violation of Title IX (*Whitaker v. Kenosha Unified School District*, 2017, p. 13).

Resolution

While there has been increased sensitivity in the courts regarding transgender issues, there is much room for further protection of transgender rights. In looking back at human progress over the last century, specifically with regard to gay rights, public and legal action is progressing for transgender issues at a much faster rate, which gives rise to a cautious optimism. To date, many courts have noted the similarity between Title VII, which “prohibits employment discrimination ‘because of... sex’...[and] Title IX’s prohibition of discrimination ‘on the basis of sex’” (Archibald, 2017, p. 262). *Price Waterhouse* (1989) is the most famous case in American transgender law, despite the fact that no transgender individuals were involved in the case. Since *Price Waterhouse* (1989), the definition of sex discrimination has expanded, and many courts now recognize that discriminating against transgender individuals constitutes sex stereotyping.

In *Johnston v. Univ. of Pittsburgh of the Commonwealth Sys. of Higher Educ.* (2015) and *G.G. v. Gloucester County School Board* (2016), both Johnston and Grimm sought to use the bathroom and locker room that corresponded with their gender identity. In the case of Johnston, the court concluded that Title IX did not encompass discrimination against transgender identities, stating that “[o]n a plain reading of the statute, the term ‘on the basis of sex’ in Title IX means nothing more than...one’s birth or biological sex” (*Johnston v. University of Pittsburgh of the Commonwealth System of Higher Education*, 2015, p. 13). Even though the Supreme Court did not have an opportunity to decide the Grimm case on its merits, the importance of this case in advancing equality for the transgender community cannot be understated. It brought the issue of gender identity to the forefront of national awareness and served to educate members of the public on the challenges and hardships faced by those seeking equality. While the nation waits for the next case in which the Supreme Court will be called upon to decide the rights of transgender individuals, such recognition is gaining momentum both with the public and in the judicial arena.

Significantly, however, the Ash Court displayed great sensitivity in setting forth and educating the public of the psychological, medical and social challenges that Ash and other transgender youth face in society. The Court stated that there was “no denying that transgender individuals faced discrimination, harassment, and violence because of their gender identity...78% of students who identify as transgender or gender non-conformant report being harassed while in grades K–12...[with] 35% reporting physical assault and 12% reporting sexual assault” (Whitaker v. Kenosha Unified School District, 2017, p. 14). Finding that the school’s action violated both Title IX and the Equal Protection Clause of the Fourteenth Amendment, Ash had a likelihood of success on the merits, and the granting of his preliminary injunction was affirmed. Ash graduated high school a few days after the decision was reached, and in January 2018 entered into a monetary settlement of \$800,000 in a civil discrimination lawsuit against KUSD (Whitaker v. Kenosha Unified School District, 2017). The Seventh Circuit decision will stand, as it was agreed not to seek certiorari to the U.S. Supreme Court.

The National Association of Social Work Code of Ethics includes “social justice” and “dignity and worth of a person” in its stated values. In the context of transgender bathroom and locker room rights, these values speak to the rights of individuals to feel supported by educational and employment stakeholders. As social workers, we must instigate and encourage a shift in school and workplace climates towards gender inclusion and gender diversity. The larger political perspective of fostering social change speaks to core values of social work. Informing support for client autonomy, recognizing discrimination and resilience in lived experience, and maintaining a commitment to advocacy with clients, agencies, and policy are all core aspects of social work in action.

In summary, the dignity and worth of all individuals, specifically transgender individuals, has become more fully recognized with an understanding and prioritization of gender diversity versus biological sex, and has been reflected in individual practices, institutional structures, and policies. The cases presented in this paper speak to the unique challenges of integrating a progressive conceptualization of gender into personal understandings, organizational structures, and ethical and legal paradigms.

Additionally, the current disputes regarding transgender rights are taking place at a moment of enormous cultural, political, and social change for transgender people. Without a thorough understanding of gender, gender identity, gender expression, and gender diversity, stakeholders may continue to find it difficult to support transgender individuals. Thus, heightening awareness and understanding about gender identity through activism and psychoeducation may assist in creating safer climates for transgender people. While progress has been made, transgender people continue to traverse many complex systems in order to navigate everyday life. While the cases presented in this paper underscore the progress, visibility, and evolving social and legal strides for transgender individuals, further legislation involving transgender rights is warranted.

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