

**Legislative Update: Status of LGBTQ Rights  
Due to Recent State Laws Across the U.S.;  
Welcoming LGBTQ+ People in Our Courthouses**

**Presented by the  
National Association of Women Judges  
LGBTQ+ Committee**

June 30, 2023

**RELEVANT ARTICLES AND MATERIALS**

**LEGISLATIVE UPDATE: STATUS OF LGBTQ RIGHTS**

**RELEVANT ARTICLES AND MATERIALS**

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RIGHTS  
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# LGBTQ+ AMERICANS FIGHT BACK: A GUIDEBOOK FOR ACTION

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During the last several years, lawmakers across the United States have ramped up efforts to restrict the rights of LGBTQ+ individuals and families. These attempts have ranged from restricting access to restrooms for transgender people, to permitting discrimination against LGBTQ+ people by child welfare agencies, to banning what kinds of characters can be represented in books shared in elementary classrooms. In 2023, we entered a new phase of legislative attacks, with bills passing in many states designed to erase entire communities of people under the law. These new laws create dangerous situations and keep people from being able to participate in public life.

More than 525 anti-LGBTQ+ bills have been introduced in 41 states in 2023 alone, with 220+ specifically targeting transgender youth. 22 states have passed laws restricting how transgender children can participate in sports. 19 states have some kind of ban on gender-affirming healthcare for transgender and non-binary minors this year, with one additional bill on a governors' desks as of this report's publication. 10 states have restricted restroom access for transgender students, and Florida has additionally outlawed all transgender people from using restrooms in publicly-owned spaces, which includes airports, convention centers, government buildings and more. In 2 states, bans have been enacted to restrict drag shows and 4 additional states have passed laws that will likely have a chilling effect on drag performances as well as pride events. In 11 states, school personnel can either misgender transgender students, be forced to "out" them to their parents — even if that puts the student in danger at home — or be bound by "Don't Say LGBTQ+" laws that restrict their ability to even acknowledge the existence of LGBTQ+ people. Several states have combined administrative attacks on transgender youth and their families with legislative attacks, including Florida, Missouri, and Texas. Several of these laws have been enjoined by federal courts, and dozens of additional lawsuits have been filed in recent months.

For many LGBTQ+ individuals and families, living in these states has become untenable. They are no longer safe. New laws eliminate their rights under state law and even criminalize parents who help their transgender or non-binary child access care. People in more than two dozen states are now facing hard questions: Do I stay and try to fight or do I flee to safety? Do I even have the means to flee if I want to? What do I do if I have no option but to stay? These are very personal decisions. The right answer for one family may not be the right answer for another. This guide is designed to support all individuals and families regardless of their choices or options.



## KNOW THE LAWS

There is a dizzying array of anti-LGBTQ+ laws on the books today. The chart below details some of the most significant laws impacting LGBTQ+ people across the country. In addition, to learn more, HRC details specific laws across all 50 states at [State Maps - Human Rights Campaign \(hrc.org\)](https://www.hrc.org/state-maps). Be sure to use tools like this to learn more about the laws in your state, in states you're visiting and in states you or a young person in your family may decide to go to school.

STATES	NON-DISCRIMINATION LAW (GOOD)	CONVERSION THERAPY BAN (GOOD)	GENDER-AFFIRMING CARE BAN (BAD)	BATHROOM BAN (BAD)	SPORTS PARTICIPATION BAN (BAD)	LGBTQ+ ERASURE LAW (BAD)	"DON'T SAY LGBTQ+." LAW (BAD)	PRONOUN REFUSAL LAW (BAD)	FORCED STUDENT OUTING LAW (BAD)	ANTI-DRAG BAN (BAD)
AL	N	N	Y*	Y	Y	N	Y	N	Y	N
AK	Y	N	N	N	N	N	N	N	N	N
AZ	N	N	partial	N	Y	N	N	N	N	N
AR	N	N	Y*	Y	Y	N	Y	Y	N	N
CA	Y	Y	N	N	N	N	N	N	N	N
CO	Y	Y	N	N	N	N	N	N	N	N
CT	Y	Y	N	N	N	N	N	N	N	N
DE	Y	Y	N	N	N	N	N	N	N	N
DC	Y	Y	N	N	N	N	N	N	N	N
FL	N!	N	Y	Y**	Y	N	Y	Y	N	N
GA	N	N	Y	N	Y	N	N	N	N	N
HI	Y	Y	N	N	N	N	N	N	N	N
ID	N	N	Y	Y	Y*	N	N	N	Y	N
IL	Y	Y	N	N	N	N	N	N	N	N
IN	N	N	Y	N	Y	N	N	Y	Y	N
IA	Y	N	Y	Y	Y	N	Y	N	Y	N
KS	N	N	N	N	Y	Y	N	N	N	N
KY	N	N	Y	Y	Y	N	N	Y	Y	N
LA	N	N	N	N	Y	N	N	N	N	N
ME	Y	Y	N	N	N	N	N	N	N	N
MD	Y	Y	N	N	N	N	N	N	N	N
MA	Y	Y	N	N	N	N	N	N	N	N
MI	Y	N	N	N	N	N	N	N	N	N
MN	Y	Y	N	N	N	N	N	N	N	N
MS	N	N	Y	N	Y	N	N	N	N	N
MO	N	N	pending	N	pending	N	N	N	N	N
MT	N	N	Y	Y	Y	Y	N	Y	Y	Y
NE	N	N	Y	N	N	N	N	N	N	N
NV	Y	Y	N	N	N	N	N	N	N	N
NH	Y	Y	N	N	N	N	N	N	N	N
NJ	Y	Y	N	N	N	N	N	N	N	N
NM	Y	Y	N	N	N	N	N	N	N	N
NY	Y	Y	N	N	N	N	N	N	N	N
NC	N	N	N	N	N	N	N	N	N	N
ND	N	N	Y	Y	Y	Y	N	Y	N	N
OH	N	N	N	N	N	N	N	N	N	N
OK	N	N	Y	Y	Y	N	N	N	N	N

(continue on page 3)



OR	Y	Y	N	N	N	N	N	N	N	N
PA	N	N	N	N	N	N	N	N	N	N
RI	Y	Y	N	N	N	N	N	N	N	N
SC	N	N	N	N	Y	N	N	N	N	N
SD	N	N	Y	N	Y	N	N	N	N	N
TN	N	N	Y	Y	Y	Y	N	Y	N	Y*
TX	N	N	Y	N	Y	N	N	N	N	N
UT	partial	Y	Y	N	Y*	N	N	Y	Y	N
VT	Y	Y	N	N	N	N	N	N	N	N
VA	Y	Y	N	N	N	N	N	N	N	N
WA	Y	Y	N	N	N	N	N	N	N	N
WV	N	N	Y	N	Y	N	N	N	N	N
WI	partial	N	N	N	N	N	N	N	N	N
WY	N	N	N	N	Y	N	N	N	N	N
<b>totals</b>	<b>24</b>	<b>21</b>	<b>16</b>	<b>9</b>	<b>20</b>	<b>4</b>	<b>4</b>	<b>8</b>	<b>7</b>	<b>1</b>

**State non-discrimination law** affords non-discrimination protections to LGBTQ+ people. Note that Utah's law does not include places of public accommodation, and Wisconsin's law only explicitly covers sexual orientation, not gender identity. Enforcement authorities in Florida and Arizona have interpreted existing state law to have some implicit protections for sexual orientation and gender identity.

**Ban Conversion Therapy.** State law forbids the practice of discredited, abusive so-called “conversion therapy” for youth.

**Ban on gender-affirming healthcare.** This state has a law that bans the provision of best practice, age-appropriate health care for transgender youth. Several of these bans also forbid state employers and state health plans (including Medicaid) from being able to offer gender-affirming care as covered healthcare – denying transgender youth and adults from being able to access medically necessary health care simply because they are transgender. An \* indicates that the ban is currently enjoined by a court and therefore not in effect at this time.

**Prohibition of transgender people from using the restroom consistent with their gender identity.**

Largely these bills are tied to schools – meaning that transgender students and adult school employees, parents, or others are most impacted. However, Florida adopted a bill more in the style of NC’s reviled HB2, banning transgender people from using the restroom consistent with their gender identity in any government-operated facility, including airports, publicly funded convention centers, government buildings and public schools. This is indicated with an \*\*.

**Ban on transgender students in school sports.** Laws prohibiting transgender students from playing sports alongside peers sharing their gender identity, often effectively denying them the ability to participate in school sports at all. An \* indicates that the ban is currently enjoined by a court and therefore not in effect at this time.

**LGBTQ+ Erasure Law.** Laws adopting a discriminatory definition of sex that, in reducing people to their reproductive abilities, eliminates a broad array of protections for LGBTQ+ people and women embedded throughout state law.

**“Don’t Say LGBTQ+” Law.** Laws that censor curriculum by prohibiting and/or effectively prohibiting the acknowledgement of LGBTQ+ identity, history, curriculum, or people in the classroom, impacting students, parents, staff, and the ability of students to learn.

**Pronoun Refusal Laws.** Laws that allow or require school personnel to deadname or refuse to refer to a student using their correct pronouns.

**Forced Outing of Students Laws.** Bills that would require school personnel – including teachers, coaches, school nurses, guidance counselors, and others - to “out” students to their parents, regardless of whether that would put a student at risk at home.

**Anti-Drag Laws.** These bills would classify drag performance as inherently obscene, and limit the performance of drag to adult-only spaces regardless of the content of the performance. An \* indicates that the ban is currently enjoined by a court and therefore not in effect at this time.

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Jaclyn Diaz, *Florida's governor signs controversial law opponents dubbed 'Don't Say Gay.'* (March 28, 2022) NPR. Available online at: <https://www.npr.org/2022/03/28/1089221657/dont-say-gay-florida-desantis>

Katie Glueck and Patricia Mazzei, *Red States Push LGBTQ Restrictions as Education Battles Intensify.* (April 12, 2022) The New York Times. Available online at: <https://www.nytimes.com/2022/04/12/us/politics/transgender-laws-us.html>

Anthony Izaguirre and Brendan Farrington, *Florida expands 'Don't Say Gay'; House OKs anti-LGBTQ bills.* (April 19, 2023) AP. Available online at: <https://apnews.com/article/desantis-florida-dont-say-gay-ban-684ed25a303f83208a89c556543183cb>

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Casey Parks, *Activists face an avalanche of anti-transgender bills*. (March 21, 2022) The Washington Post. Available online at: <https://www.washingtonpost.com/dc-md-va/2022/03/21/alabama-trans-healthcare-bill-activists/>

Cullen Peele, *Roundup of Anti-LGBTQ+ Legislation Advancing In States Across the Country*. (May 23, 2023) Human Rights Campaign. Available online at: <https://www.hrc.org/press-releases/roundup-of-anti-lgbtq-legislation-advancing-in-states-across-the-country>

Kaleigh Rogers and Mary Radcliffe, *Over 100 Anti-LGBTQ+ Laws Passed In The Last Five Years – Half Of Them This Year* (May 25, 2023). FiveThirtyEight. Available online at: <https://fivethirtyeight.com/features/anti-lgbtq-laws-red-states/>

## **LEGISLATION-TRACKING RESOURCES**

*2023 anti-trans bills tracker*. Trans Legislation Tracker. Available online at: <https://translegislation.com/>

*Mapping Attacks on LGBTQ Rights in U.S. State Legislatures*. (June 23, 2023) ACLU. Available online at: <https://www.aclu.org/legislative-attacks-on-lgbtq-rights>

*State Scorecards*, Human Rights Campaign. Available online at: <https://www.hrc.org/resources/state-scorecards>

*Tracking the rise of anti-trans bills in the U.S.*, Trans Legislation Tracker. Available online at: <https://translegislation.com/learn>

## **WELCOMING LGBTQ+ PEOPLE IN OUR COURTHOUSES**

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# LGBTQ+ DEFINITIONS

## Foundational Definitions

- **Gender:** Social categories/constructs created to identify people with similar behaviors, norms, roles, and appearances; these vary over time and between societies.
  - “Man” and “woman” are two of the most common categories used today; however, the roles and behaviors associated with each have changed drastically over time.
  - Certain Native American tribes recognize two-spirit people as a third gender, neither man nor woman
- **Gender Binary:** The predominant social categorization of people as either “man” or “woman.” Strict adherence to this binary prevents people from identifying and expressing themselves as both man and woman, as neither, as both, or as another gender.
- **Sex:** A biological continuum that encompasses an individual’s genitalia, chromosomes, hormones, and secondary sex characteristics (breasts, facial hair, body hair, etc.)
- **Gender Identity:** An individual’s sincerely held core belief regarding their own gender, which may align or not align with the gender they were assigned at birth. Some people feel that they are either male or female. Some people feel like a masculine female, a feminine male, or a combination of male and female. Other people identify as, for example, non-binary, genderqueer, bi-gender, or gender fluid.
- **Gender Expression:** An individual’s external expression of gender, through such means as clothing, hairstyle, accessories, voice, behavior, and mannerisms. Gender expression may be traditionally masculine or feminine or may be androgynous or neutral.
- **Sexual Orientation:** A person’s emotional, romantic, or sexual attraction to other people. Sexual orientation is separate and distinct from gender identity and gender expression.

## Definitions Related to Sexual Orientation

- **LGBTQ:** An acronym that stands for Lesbian, Gay, Bisexual, Transgender and Queer/Questioning. This is an umbrella term for many other identities. Some people use the acronym LGBTQ+ to indicate additional identities.
- **Lesbian:** A female-identified person who is sexually and/or romantically attracted to other women
- **Gay:** A male-identified person who is sexually and/or romantically attracted to other men. Also may refer, generally, to a person attracted to those of the same gender and may be used as an umbrella term for the LGBTQ+ community.
- **Bisexual:** A person who is sexually and/or romantically attracted to two or more genders
- **Queer:** An umbrella term for sexual and gender minorities who are not heterosexual and/or not cisgender. This is a term particularly used by youth to describe the LGBTQ+ community.
  - Reclaimed from its earlier negative use, the term “queer” is valued by some because it can be inclusive of the entire community, and by others who find it an appropriate term to describe their more fluid identities.
  - Historically a negative or pejorative term for people who are gay, “queer” is still disliked by some within the LGBTQ community.
  - Important: Due to its varying meanings, the term “queer” should only be used when self-identifying or quoting someone who self-identifies as queer (i.e. “My cousin identifies as queer”).
- **Questioning:** A person who is in the process of figuring out their gender identity and/or sexual orientation
- **Ally:** A person who fully and actively supports the LGBTQ+ community and its members
- **Pansexual:** A person who is sexually and/or romantically attracted to people regardless of gender identity, sex, or gender expression
- **Asexual:** A person who experiences a lower level of or no sexual attraction

- **Aromatic:** A person who experiences a lower level of or no romantic attraction
- **Heterosexual:** A person who is sexually and/or romantically attracted to the opposite gender
- **Homosexual:** A person who is sexually and/or romantically attracted to the same gender. This term is generally disfavored within the LGBTQ+ community.

### **Definitions Related to Gender Identity**

- **Sex assigned at birth:** The assignment and classification of newborns as male, female, intersex, or another sex based on physical anatomy and/or chromosome testing.
  - **AFAB (assigned female at birth):** A gender-affirming acronym used to avoid phrases like “biologically female” or “born female”
  - **AMAB (assigned male at birth):** A gender-affirming acronym used to avoid phrases like “biologically male” or “born male”
- **Cisgender:** A person whose gender identity is aligned with the sex assigned to them at birth. “Cis” has a Latin origin meaning “same.”
- **Transgender or Trans:** An adjective used to describe people whose gender identity is different from the sex assigned to them at birth. Transgender should not be used as a noun.
  - **Transgender Man (Trans Man):** A person who was assigned female at birth and identifies as a man
  - **Transgender Woman (Trans Woman):** A person who was assigned male at birth and identifies as a woman
  - **Transsexual** is disfavored. As the gay and lesbian community rejected homosexual and replaced it with gay and lesbian, the transgender community rejected transsexual and replaced it with transgender. Some people within the trans community may still call themselves transsexual. Do not use transsexual to describe a person unless it is a word they use to describe themselves, and then use it as an adjective: transsexual woman or transsexual man.

- Generally, trans men should simply be referred to as men, and trans women should simply be referred to as women, unless there is a specific reason to reference their transgender status.
- **Non-Binary:** People whose gender is not male or female use many different terms to describe themselves, with non-binary being one of the most common. Other terms include **genderqueer**, **agender**, **bigender**, and more. None of those terms means exactly the same thing, but all speak to an experience of gender that is not male or female.
- **Intersex:** A term that refers to people who are born with one or more of a range of variations in sex characteristics that fall outside of traditional conceptions of male or female bodies. For example, intersex people may have variations in their chromosomes and/or anatomy. Some intersex characteristics are identified at birth, some intersex traits are not discovered until puberty or later in life, and some may never be known.
- **Genderqueer:** A person who does not identify as a man or a woman
- **Genderfluid:** A person whose identity shifts between two or more genders. This person may sometimes express themselves in a more feminine way, sometimes in a more masculine way, and sometimes in a more androgynous way.
- **Agender:** A person who does not identify as any gender
- **Gender Non-Conforming:** A person who does not conform to a traditional model of masculinity or femininity because of gender expression, gender identity, or both. This is also used as an umbrella term. A gender non-conforming person is not necessarily transgender; they may identify with the gender they were assigned at birth, but choose to express their gender identity in a non-conforming way.
- **Gender Expansive:** A term used to describe people who expand notions of gender expression and identity beyond what are perceived as the expected gender norms for their society or context. Some gender-expansive people identify as being either male or female, some identify as neither, and others identify as a mix of both. Gender-expansive people include those with transgender and non-binary identities, as well as those who express their gender in some way that is seen to be stretching society's notions of gender.
- **Gender Dysphoria:** Distress experienced by a person when the sex assigned at their birth does not align with their gender identity. This can manifest in many ways, including physical discomfort, depression, and social inhibition.

- **Transitioning:** This is the process through which some transgender people come to live consistent with their gender identity. The process may be social, legal, and/or medical. Everyone's experience differs; there is no one experience of transition. The ability to transition legally or medically may be limited by a person's financial resources and/or the laws of the state in which the person lives.
- **Transitioning socially** may include changing the name one uses socially, dressing consistently with one's gender identity, and using pronouns that match one's identity.
- **Transitioning legally** may include changing one's name and/or changing the listed sex on legal documents such as a birth certificate, driver's license, passport, Social Security card, or other documents.
- **Transitioning medically** may include taking hormones or gender confirmation surgery. Transitioning may or may not include medical intervention.

## COURT RULES ON PRONOUNS

### **Adopted:**

Massachusetts: [Rules and Orders of the Supreme Judicial Court Rule 1:08](#)

(1) All papers filed in connection with a new or pending case in any court in the Commonwealth shall bear the name of the court and the county, the title of the action, the designation of the nature of the pleading or paper, and provide the following information for each self-represented litigant or attorney filing the same:

...

(H) if the self-represented litigant or attorney elects, the self-represented litigant's or attorney's personal pronouns.

### **Proposed:**

Michigan and Washington are still proposals, but the commenting period has ended for both.

[Michigan Proposed Rule 1.109](#)

(D) Filing Standards. (1) Form and Captions of Documents. (a) [Unchanged.] (b) The first part of every document must contain a caption stating:

(i)-(vi) [Unchanged.]

Parties and attorneys may also include any personal pronouns in the name section of the caption, and courts are required to use those personal pronouns when referring to or identifying the party or attorney, either verbally or in writing.

Nothing in this subrule prohibits the court from using the individual's name or other respectful means of addressing the individual if doing so will help ensure a clear record.

[Washington's Proposed General Rule 43](#)

### GR 43 PERSONAL PRONOUNS

[NEW]

(a) Policy and Purpose. The purpose of this rule is to promote inclusive practices in courtrooms and court filing procedures.

(b) Scope. This rule applies to all courts of the State of Washington.

(c) Option to Indicate Personal Pronouns on Court Filings. Any person's personal pronouns may be indicated in the text of filed documents. A signing attorney or party may indicate their personal pronouns in the signature block and on the title page of filed documents.

Excerpt of the purpose: “The proposed rule change would provide a signing attorney or party the option to indicate their personal pronouns in the signature block of filed documents . . . . Under this proposed rule change, providing personal pronouns is not mandatory, but merely optional. A permissive rule such as this will provide opportunities for those who wish to disclose their personal pronouns without pressuring those who may be uncomfortable or not ready to disclose their personal pronouns. It also allows the person to write in their personal pronouns and does not limit a person to the more commonly used pronouns. If the person so chooses, they can list their personal pronouns along with their name, address, telephone number, and Washington State Bar Association membership number in the signature block of filed documents.”

Excerpt of a comment on the rule: “This new rule will increase precision and accuracy in court filings and promotes a sense of belonging in our courthouses by acknowledging and respecting the identity of the persons who appear before us.”

## EXAMPLES OF GENDER-NEUTRAL LANGUAGE IN COURT

- Use job/professional titles where possible instead of Mr. or Ms.

### Examples for Individuals:

Attorney Smith  
Counsel Hernandez  
Juror Jones  
Foreperson  
Clerk  
Court Officer  
Interpreter  
Officer Johnson  
Deputy Singh  
Plaintiff Adams  
Defendant Bowers  
Witness Chang

### Examples for Groups:

Members of the Bar  
Members of the Jury  
Parties  
Litigants  
Witnesses

- Lead by example to encourage others in the court to be mindful of gender identity. When introducing yourself, state your pronouns:

### Example:

- “My name is Judge Smith, and my pronouns are she/her/judge. You are welcome to tell me your pronouns and whether you prefer Mr., Mrs., Ms., Mx., or something else.”
- Make it a habit to ask everyone how they would like to be addressed, not just those who appear to be transgender or non-binary. Asking only those who you believe may be transgender or non-binary can spotlight them and make them feel awkward.

### Examples of how to ask how to address someone:

- “The court respects people’s gender identity. What pronouns should I use to address you?”

(If the person is confused, ask if they would like you to use the pronouns he/him, she/her, they/them, or some other pronouns.)

- “Please tell me what pronouns I should use when addressing you?”



- When discussing relationships, do not assume gender.

Examples:

- Refer to a spouse (or partner) until the person has told you if they have a husband or a wife or the gender of their partner.
  - Refer to a co-parent until someone has identified the gender of their co-parent.
  - If it is relevant to know who someone dates, instead of asking whether someone has a boyfriend or girlfriend, ask “Do you like men, women, both, or neither?” Or, “Do you have someone special in your life?”
- When discussing family relationships, do not assume gender.

Examples:

- If you do not know if a child has two parents, or who they are, you can say: “Tell me about your parents or the adults who take care of you?” Or, “Tell me about the parents or adults who take care of the child.”
- If you know the child has two moms or two dads, you can ask: “Are you one of [child’s] dads?” Or, “Are you one of [child’s] parents?”

## SAMPLE COURTROOM SIGN-IN SHEET

Docket No. \_\_\_\_\_ Case No. \_\_\_\_\_ Case Name: \_\_\_\_\_

Your name: \_\_\_\_\_  
 Plaintiff    Defendant    Attorney    Other

Preferred name: \_\_\_\_\_

Pronouns:    He/Him    She/Her    They/Them    Other \_\_\_\_\_

Preferred Prefix/Title:    Mr.    Ms.    Mrs.    Miss    Mx.    Other \_\_\_\_\_

## RELEVANT CASE LAW REGARDING PRONOUNS IN COURT

*People v. Gobrick*, No. 352180, 2021 WL 6062732 (Mich. Ct. App. Dec. 21, 2021).

In an opinion affirming a defendant's criminal conviction, the court noted in a footnote that it would use "they" pronouns to refer to the defendant. The court explained that, although the parties referred to the defendant as Mr. Gobrick during the trial court proceedings, defendant's appellate brief indicated that defendant identifies as female and prefers the nonbinary pronouns "they" and "them." The court noted that the prosecution used the nonbinary pronouns in its appellate brief. The court stated that it would honor the defendant's request as well, except when referencing parts of the record that used the pronouns "he" and "him." The court noted, "All individuals deserve to be treated fairly, with courtesy and respect, without regard to their race, gender, or any other protected personal characteristic. Our use of nonbinary pronouns respects defendant's request and has no effect on the outcome of the proceedings."

In an opinion concurring with the ruling on the merits, Judge Mark Boonstra wrote separately "only because this Court should not be altering its lexicon whenever an individual prefers to be identified in a manner contrary to what society, throughout all of human history, has understood to be immutable truth."

Judge Boonstra wrote:

While I respect the right of every person to self-identify however he or she may wish, it frankly should not be of interest or concern to the Court unless it somehow impacts the resolution of the case before us. We as a Court should be writing for clarity and focusing on legal issues, not spending our time making our opinions less clear, all so that we may conform to a particular litigant's predilections.

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Once we start down the road of accommodating pronoun (or other) preferences in our opinions, the potential absurdities we will face are unbounded. I decline to start down that road, and while respecting the right of dictionary- or style-guide-writers or other judges to disagree, do not believe that we should be spending our time crafting our opinions to conform to the "wokeness" of the day.

I decline to join in the insanity that has apparently now reached the courts.

*United States v. Varner*, 948 F.3d 250 (5th Cir. 2020).

A federal prison inmate who came out as transgender requested that the district court that sentenced her correct the judgment of confinement to reflect her new name, about six

years after she had been sentenced. The district court construed the letter request as a motion to correct the judgment and denied it. The inmate appealed, and the Fifth Circuit held that the district court lacked jurisdiction to consider the request as a motion to amend the judgment because it did not fall into any of the recognized categories of postconviction motions. In connection with the appeal, the inmate also had filed a motion requesting that the court refer to her by her new name and female pronouns. The Fifth Circuit denied the motion, holding that:

[N]o authority supports the proposition that we may require litigants, judges, court personnel, or anyone else to refer to gender-dysphoric litigants with pronouns matching their subjective gender identity. Federal courts sometimes choose to refer to gender-dysphoric parties by their preferred pronouns. . . . But the courts that have followed this “convention” have done so purely as a courtesy to parties. None has adopted the practice as a matter of binding precedent, and none has purported to obligate litigants or others to follow the practice.

*Id.* at 254-255 (citations omitted). The court also noted that “if a court were to compel the use of particular pronouns at the invitation of litigants, it could raise delicate questions about judicial impartiality” because courts are asked to decide cases that turn on hotly debated issues of sex and gender identity:

In cases like these, a court may have the most benign motives in honoring a party’s request to be addressed with pronouns matching his “deeply felt, inherent sense of [his] gender.” Yet in doing so, the court may unintentionally convey its tacit approval of the litigant’s underlying legal position.

*Id.* at 256 (citations omitted). The court also found that “ordering use of a litigant’s preferred pronouns may well turn out to be more complex than at first it might appear” because of the variety of pronouns available beyond he/him, she/her, and they/them. *Id.* at 256-257.

Circuit Judge James L. Dennis dissented, finding that the majority erred in deciding that the district court lacked jurisdiction to entertain the inmate’s motion to correct the judgment under Federal Rule of Criminal Procedure 36, and noting that he would affirm the district court’s denial of the motion. *Id.* at 258-259. Judge Dennis also found that the majority overbroadly construed the inmate’s motion seeking the use of feminine pronouns and erred in denying the inmate’s request to refer to her using female pronouns:

In my view, Varner is simply requesting that this court, in this proceeding, refer to Varner using her preferred gender pronouns. Not only is this the most faithful interpretation of her motion given the language she uses, it is also the narrowest. Because I would affirm the district court for the reasons it assigns without writing

further, I think it is not necessary to use any pronoun in properly disposing of this appeal.

If it were necessary to write more and use pronouns to refer to Varner, I would grant Varner the relief she seeks. As the majority notes, though no law compels granting or denying such a request, many courts and judges adhere to such requests out of respect for the litigant's dignity.

\*\*\*

Ultimately, the majority creates a controversy where there is none by misinterpreting Varner's motion as requesting "at a minimum, to require the district court and the government to refer to Varner with female instead of male pronouns," when she in fact simply requests that this court address her using female pronouns while deciding her appeal.

*Id.* at 260.

*Kosilek v. Spencer*, 740 F.3d 733, 737 n.3 (1st Cir. 2014) ("We will refer to Kosilek as her preferred gender of female, using feminine pronouns.")

*Cuoco v. Moritsugu*, 222 F.3d 99, 103, 103 n.1 (2d Cir. 2000) ("We ... refer to the plaintiff using female pronouns" because "[s]he [is] a preoperative male to female transsexual.")

*Pinson v. Warden Allenwood USP*, 711 F. App'x 79, 80 n.1 (3d Cir. 2018) ("Because Pinson has referred to herself using feminine pronouns throughout this litigation, we will follow her example.")

*Farmer v. Circuit Court of Md. for Baltimore Cty.*, 31 F.3d 219, 220 n.1 (4th Cir. 1994) ("This opinion, in accord with Farmer's preference, will use feminine pronouns.")

*Murray v. U.S. Bureau of Prisons*, 106 F.3d 401, 1997 WL 34677, at \*1 n.1 (6th Cir. 1997) ("Murray uses the feminine pronoun to refer to herself. Although the government in its brief used the masculine pronoun, for purposes of this opinion we will follow Murray's usage.")

*Farmer v. Haas*, 990 F.2d 319, 320 (7th Cir. 1993) ("[T]he defendants say 'he,' but Farmer prefers the female pronoun and we shall respect her preference.")

*Smith v. Rasmussen*, 249 F.3d 755, 756 n.2 (8th Cir. 2001) ("As did the parties during the proceedings in the district court, we will refer to Smith, in accordance with his preference, by using masculine pronouns.")

*Schwenk v. Hartford*, 204 F.3d 1187, 1192 n.1 (9th Cir. 2000) (“In using the feminine rather than the masculine designation when referring to Schwenk, we follow the convention of other judicial decisions involving male-to-female transsexuals which refer to the transsexual individual by the female pronoun.”)

*Qz’etax v. Ortiz*, 170 F. App’x 551, 553 (10th Cir. 2006) (“[W]e have no objection to Appellant’s motion for the continued usage of proper female pronouns and will continue to use them when referring to her.”)

## ETHICS AND ADVISORY OPINIONS

New York Advisory Committee on Judicial Ethics, Op. 21-09 (Jan. 28, 2021). Available online at: <https://nycourts.gov/legacyhtm/ip/judicialethics/opinions/21-09.htm>

- Summary: Where a party or attorney has advised the court that their preferred gender pronoun is “they,” a judge may not require them to instead use “he” or “she.”

New York Advisory Committee on Judicial Ethics, Op. 21-114(A) (Sept. 9, 2021). Available online at: [https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/21-114\(A\).htm](https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/21-114(A).htm)

- Summary: A judge may disclose the judge’s own preferred gender pronouns in the judge’s email signature block and during a virtual proceeding in which the judge presides.

California Judges Association Judicial Ethics Committee, Formal Ethics Opinion No. 79 (June 2022). Available online at: <https://caljudges.org/docs/Ethics%20Opinions/Opinion%2079.pdf>

- Summary: (1) It is ethically permissible for California judicial officers to be members of judicial organizations that resolve to prohibit conferences and other activities in states that discriminate against members of the LGBTQ+ community. (2) It is ethically permissible for California judicial officers to remain members of national organizations that do not discriminate against members of the LGBTQ+ community but that conduct conferences in states that have enacted laws that do so discriminate.

Florida Supreme Court Judicial Ethics Advisory Committee, Op. 2021-11 (Aug. 5, 2021). Available online at: <https://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2021/2021-11.html>

- Summary: (1) A judge who is a member of the National Association of Women Judges may express an opinion among the association’s membership as the association deliberates a proposed resolution calling for what appears to be a boycott against states whose laws, according to the resolution, have “voided or repealed protections against discrimination on the basis of sexual orientation, gender identity or gender expression, or have enacted laws that authorize or mandate [such] discrimination.” (2) A judge’s continued membership in an organization that issues a resolution calling for a boycott based upon state legislation may pose ethical problems under the Florida Judicial Canons.

## LEGAL ARTICLES/PAPERS

*Fifth Circuit Holds that Courts Cannot Compel Use of Preferred Pronouns – United States v. Varner*, 948 F.3d 250 (5th Circ. 2020), 134 Harv. L. Rev. 2275 (Apr. 12, 2021). Available online at: <https://harvardlawreview.org/2021/04/united-states-v-varner/>

James L. Hyer, Sherry Levin Wallach and Kristen Prata Browde. *Examining Judicial Civility in New York Courts for Transgender Persons in the Wake of United States v. Varner*. New York State Bar Association. (Aug. 18, 2020). Available online at: <https://nysba.org/examining-judicial-civility-in-new-york-courts-for-transgender-persons-in-the-wake-of-united-states-v-varner-2/>

*Judges' Bench Guide on the LGBTQ Community and the Law*, prepared by QLaw Foundation of Washington & QLaw Association: The LGBT Bar Association of Washington, for the Washington State Supreme Court's Gender & Justice Commission (2017). Available online at: <https://www.courts.wa.gov/committee/pdf/LGBTQ%20Bench%20Guide.pdf>

Chan Tov McNamarah, *Some Notes on Courts and Courtesy*. 107 Va. L. Rev. Online 317 (Dec. 31, 2021). Available online at: <https://www.virginialawreview.org/articles/some-notes-on-courts-and-courtesy/>

*Protected and Served?* Lambda Legal (2012). Available online at: <https://www.lambdalegal.org/protected-and-served>; section on Courts available at: <https://www.lambdalegal.org/node/30526>

- This is a national survey exploring discrimination by police, courts, prisons and school security against lesbian, gay, bisexual, transgender (LGBT) people and people living with HIV in the United States, conducted by Lambda Legal.

Francesco G. Salpietro, *R-E-S-P-E-C-T: Transgender Pronoun Preference and the Application of the Model Code of Judicial Conduct*. (2017). *Court Review: The Journal of the American Judges Association* 590. Available online at: <https://digitalcommons.unl.edu/ajacourtreview/590>

*Transgender Litigants in the Court System: Providing Equal Access and Impartial Justice*. New York State Judicial Institute (October 2013). Available online at: <https://nycourts.gov/ip/judicialinstitute/transgender/220A.pdf>



## NEWS & OPINION ARTICLES

Devin-Norelle, *Gender-Neutral Pronouns 101: Everything You've Always Wanted to Know* (May 22, 2020) Them. Available online at: <https://www.them.us/story/gender-neutral-pronouns-101-they-them-xe-xem>

*LGBTQ+ Organizations Respond to Judge Boonstra in "People vs. Gobrnick"* (Jan. 30, 2022) Outfront Kalamazoo. Available online at: <https://www.outfrontkzoo.org/news/judgeboonstra>

Merriam-Webster.com, *'They' Is Merriam-Webster's Word of the Year 2019* (2019). Available online at: <https://www.merriam-webster.com/words-at-play/woty2019-top-looked-up-words-they>

Wamsley, Laura, *A Guide to Gender Identity Terms* (June 2, 2021) NPR. Available online at: <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq>

## RESOURCES

*Gender Inclusivity in the Courts: How to Treat Everyone with Fairness, Dignity, and Impartiality*, National Center for State Courts. Available online at: [https://www.ncsc.org/\\_data/assets/pdf\\_file/0028/84916/Gender-Inclusivity-in-the-Courts.pdf](https://www.ncsc.org/_data/assets/pdf_file/0028/84916/Gender-Inclusivity-in-the-Courts.pdf). See attached.

# RESOURCES FOR PARENTS OF LGBTQ+ YOUTH

## General Resources

**PFLAG** – <https://pflag.org/about-us/>

As a youth comes out as LGBTQ+, parents take their own journey around the youth's coming out. Many parents benefit from support from other parents who have gone through the same experience. The local chapter of PFLAG is a great place to go and get support and advice.

**Family Acceptance Project** – <http://familyproject.sfsu.edu/>

The Family Acceptance Project has some terrific video clips and statistics explaining how accepting a child will lead to a happier, healthier child, whereas children with families who are “neutral” or rejecting engage in risky behaviors at much higher rates.

**True Colors United** – <https://truecolorsunited.org/>

LGBTQ+ young people are 120% more likely to experience homelessness than all other youth. Through a wide array of advocacy, training and education, youth collaboration, and technical assistance programs, True Colors United implements innovative solutions to youth homelessness that focus on the unique experiences of LGBTQ young people.

## Religious Resources

Some parents have **religious concerns** about how to accept their LGBTQ+ children for who they are. There are many resources, including movies, organizations, blogs (including blogs written by parents who rejected their children and came to regret that), and student-to-student organizations, including from religious colleges and universities.

### Movies/Documentaries

- For the Bible Tells Me So (<http://www.forthebibletellsmeso.org/>)
- Before God: We are All Family (<https://www.youtube.com/watch?v=3M8KYZszyNA>)
- God and Gays: Bridging the Gap (<https://www.youtube.com/watch?v=kTrD8LCbz60>)
- Love Free or Die (<https://www.youtube.com/watch?v=PSNH5COHULo>)
- Taking a Chance on God (<https://www.thefilmcollaborative.org/films/takingachanceongod>)
- I Am Gay and Muslim (<https://www.imdb.com/title/tt2188912/>)
- A Jihad for Love (<http://ajihadforlove.org/home.html>)

## **Organizations**

- The Institute for Welcoming Resources [The Taskforce] (<http://www.welcomingresources.org/>)
- Heartstrong (<http://www.heartstrong.org/>)
- The Human Rights Campaign Faith Positions resource webpage: (<https://www.hrc.org/resources/faith-positions>)

## **Religion-Specific Organizations**

### **Catholic**

- DignityUSA – LGBT Catholics (<http://www.dignityusa.org/>)
- Fortunate Families: Catholic Families with Lesbian Daughters and Gay Sons (<http://www.fortunatefamilies.com/>)
- New Ways Ministry – LGBT Catholics (<http://www.newwaysministry.org/>)

### **Christian Denominations**

- Association of Welcoming and Affirming Baptists (<https://awab.org/>)
- Room for All – Reformed Church in America (<http://www.roomforall.com>)
- TransEpiscopal (<https://www.transepiscopal.org/>)
- United Church of Christ Coalition for Lesbian, Gay, Bisexual, and Transgender Concerns (<http://ucccoalition.org/>)
- No Longer Silent: Clergy for Justice (<http://nolongersilent.org/>)
- Many Voices: A Black Church Movement for Gay & Transgender Justice (<http://www.manyvoices.org/>)

### **Mormon**

- Affirmation: Gay & Lesbian Mormons (<http://www.affirmation.org/>)
- Families Are Forever (see trailer at <http://familyproject.sfsu.edu/family-videos>)

### **Jewish**

- The World Congress of Gay, Lesbian, Bisexual, and Transgender Jews (<http://gltjews.org/>)
- Keshet (<http://www.keshetonline.org/>)
- Jewish Queer Youth (<http://www.jqyouth.org/>)

### **Quaker**

- Friends for Lesbian, Gay, Bisexual, Transgender and Queer Concerns (<https://www.flgbtqc.org/>)

### **Muslim**

- Affirming mosques (<https://www.nbcnews.com/feature/nbc-out/affirming-mosques-help-gay-muslims-reconcile-faith-sexuality-n988151>)
- Muslim Alliance for Sexual and Gender Diversity (<https://www.themasgd.org/>)
- LGBTQ Muslim Resource List (<https://masjidalrabia.org/lgbtq-muslim-resource-list-local-n-american-orgs>)

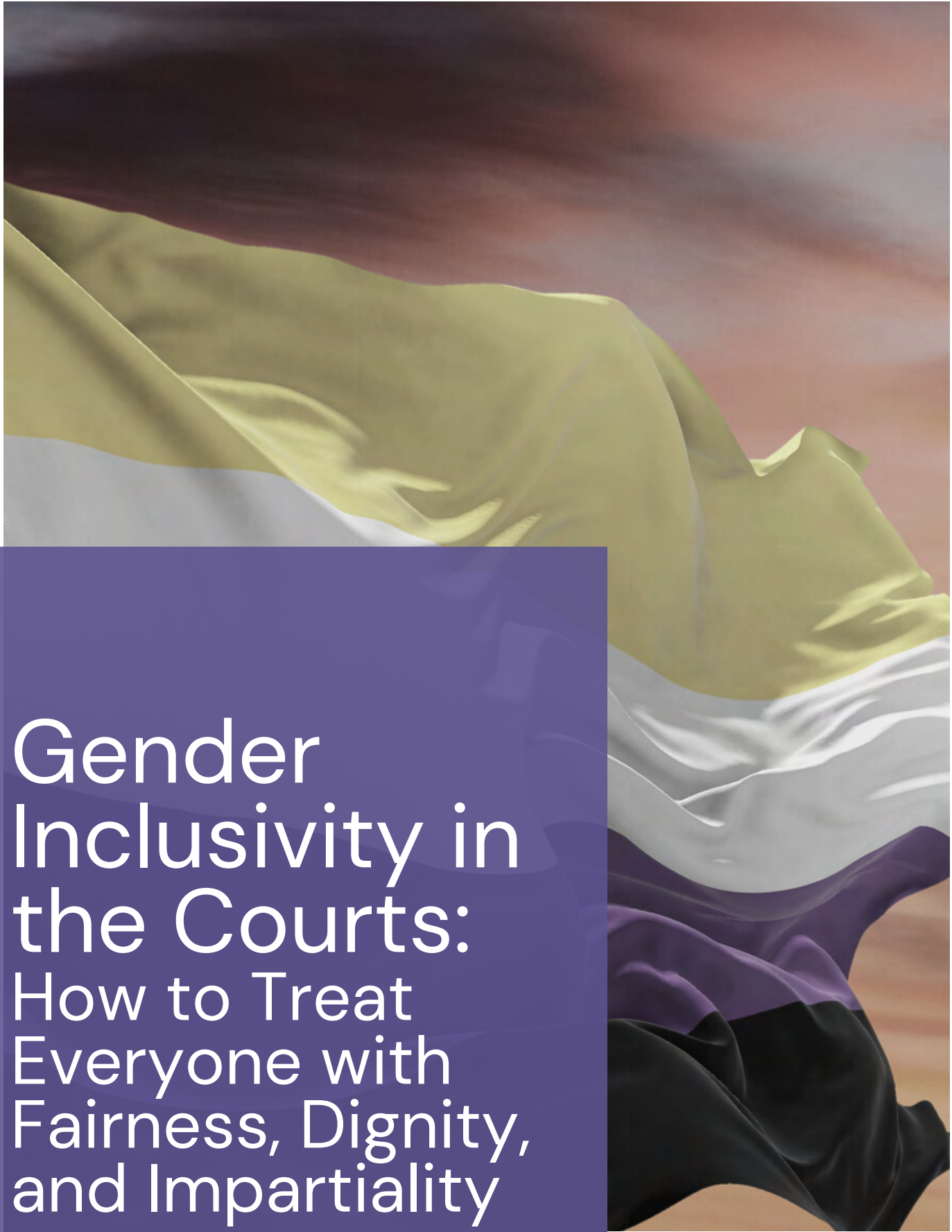
- Muslims for Progressive Values (<https://www.mpvusa.org/lgbtqi-resources/>)

### **Guides/Curricula**

- Spanish language resources (<https://www.hrc.org/es/resources>)
- A La Familia: A Conversation About Our Families, the Bible, Sexual Orientation and Gender Identity (<https://www.thetaskforce.org/new-bilingual-guide-on-sexual-orientation-gender-identity-and-the-bible-for-latinoa-families-and-churches/>)

### **Parent-to-Parent Blogs**

- Just Because He Breathes (<http://justbecausehebreathes.com>)
- FreedHearts (<http://freedhearts.wordpress.com/2013/06/10/to-the-parents-of-gay-children/>)
- Tres Gotas de Agua (<https://www.youtube.com/watch?v=HLtHcbmvjAg>)



# Gender Inclusivity in the Courts: How to Treat Everyone with Fairness, Dignity, and Impartiality

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## Readers' Guide

The **Mustard** roman numerals are endnotes.

Anything Underlined is a hyperlink.

Sentences in **Purple** are main themes/ideas/concepts.

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# Introduction





The legal profession has long valued grammatical precision and celebrates the wordsmithing ability of its field. Anecdotally, it is common for first-year law students to be told in their legal writing courses that cases have been won or lost on a comma. Contract drafting, briefs, and memoranda require exactness to hold legal authority and persuade parties to your viewpoint. Why then, has the legal field not taken the lead on gender inclusivity in all its writings?

Gender inclusivity is not a new concept for the courts and is something that they are already doing. **Now is the time to expand the work that has already happened within the binary genders and include all genders. This is a necessary step for courts to be able to be impartial, accurate, and precise triers of the law.**

"Instead of allowing language to construct how we view the world, we could push in the other direction, questioning how we can reflect our world through our choice of language."  
**[i] Using correct pronouns is a matter of accuracy and precision, two values that the legal community holds in high priority. Courts should consider this as they update materials for accuracy.**

**At a minimum, when judges, court and clerk staff, and other justice system partners communicate with court users, they should use gender-inclusive language as much as practicable. Courts should make it common practice in both oral and written communications.**

**\* Use they/them unless you are aware of one's specific gender preferences. (It is okay to ask someone for their pronouns).**

**\* Consider adding a pronouns field in standardized forms.**

**\* Make writings more accurate by being inclusive and be responsive to legal changes.**

**\* Consult with native language speakers to reflect inclusivity in translated court communications.**



[1] This phenomenon is known as the English Metaphorical Gender, which you can read more about [here](#).

Gender is something that is all around us and engrained in our society, culture, and language. We name and gender everything from hurricanes to ships and nations. [1] For many Americans who question how to express their gender, or are not comfortable with how others gender them, gender is something they must confront regularly. Using someone’s correct pronouns has a measurable effect on how they interact with someone and their mental well-being. It also makes a difference in society’s perception of courts.

The history of misgendering does not exclusively apply to nonbinary and transgender communities. Concerted efforts have been made to ensure that the traditionally masculinized words in English become gender-neutral to reflect an evolving world where women are increasingly represented in every field. Historically, the masculinization of society has been the norm and is even reflected in the way we talked about humans, referring to them as man or mankind. The masculine bias was also prevalent in the positions and occupations that historically were only open to men such as policeman, chairman, fireman, etc. [ii]

Say	Not
Police Officer	Policeman
Chair	Chairman
Humankind	Mankind
Staffing	Manpower
Congressperson	Congressman
Artificial	Man-made
Representative	Spokesman

Gender identity is tied to an individual's sense of being. Names and pronouns are two ways that people express this. Words have power and using the right terms can "affirm identities and challenge discriminatory attitudes," while the wrong terms can "disempower, demean, and reinforce exclusion." [iii]

"Pronouns are words that take the place of a noun and tend to correlate to gender identity in the third person: he, she, they, ze..."

Misgendering is disrespectful, causes embarrassment and humiliation, expresses social subordination, deprives individuals of privacy, threatens their safety, is dehumanizing, deflates credibility, obscures understanding, and infringes and curtails the autonomy of gender minorities. [iv] Misgendering causes a host of psychological and physiological injuries and is a form of microaggression.

The anxiety that misgendering causes when it happens builds into extreme stigmatization and causes psychological and emotional distress over time. [iv] Misgendering causes lower self-esteem and increased negative views of self, including increased rates of hopelessness, apathy, depressive symptomology, and suicidal ideation. [iv] Not using the correct pronouns trivializes a person's experience and attempts to invalidate the internal experiences one may have. This constant invalidation by way of misgendering causes emotional distress, depression, and PTSD, and is considered a form of psychological abuse. [iv]

Microaggressions are defined as "subtle forms of discrimination that communicate hostile or derogatory messages particularly to and about members of marginalized groups." [iv]

**Using the wrong pronoun for somebody is just as incorrect as using the wrong name to accurately identify an individual.**

Linguists deem English a “natural gender” language, meaning that there are gendered pronouns, but our nouns are not gendered as in other languages. [v] The introduction of gendered language into the lexicon reflects gendered biases.

The gender bias leads to a favoring of the “masculine.” In a recent study, researchers found that Americans are significantly more likely to perceive an illusory face (like the outlet pictured here) as male. [vi]



These associations begin to form from a young age and are reflected in English literature. In a study about the gendering of inanimate characters in children’s books, researchers found that inanimate objects were frequently masculinized unless the object had perceived “feminine” qualities. [vii] **It is important that courts do not unnecessarily gender nouns, and that they use proper pronouns.**

**Because English does not naturally have gendered nouns, usage of gender-neutral nouns decreases gender bias and sexism. [viii]**

**The issue is not that we should never use gender/gendered pronouns. The issue is when we assume the gender of a known or unknown person. In general, “they” is a great pronoun to start with. When speaking to someone who has clearly and expressly indicated they use certain gendered pronouns, use those gendered pronouns.**

Courts, as finders of fact and appliers of law, must concern themselves with the proper way to address and serve all Americans, regardless of gender. **Attorneys and judges are bound by ethical rules requiring them to treat all participants with respect and dignity.** With the multitude of state laws and approaches to gender identity, it is increasingly important that courts have a unified way to address and discuss these issues. This toolkit will inform courts on what they can do now to make all court users feel safe, seen, and heard in court proceedings.



# Definitions





# Definitions

For the purposes of this toolkit, we use the following definitions. However, these definitions are not all-inclusive, and some people may use words not included here to define their gender identity.

**Cisgender:** An adjective used to describe a person whose gender identity is aligned with the sex they were assigned at birth. [ix] Sometimes shortened to cis, but only after the use of cisgender.

**Gender:** The social and cultural differences rather than biological ones that are also used more broadly to denote a range of identities that do not correspond to established ideas of male and female. [x]

**Gender Binary:** Gender distinctions divided into two categories, namely women and men or feminine and masculine. [xi] Also referred to in shorthand as “the binary.”

**Genderqueer:** Denoting or relating to a person who does not subscribe to conventional gender distinctions but identifies with neither, both, or a combination of male and female genders. [x]

**Gender Expression:** External manifestations of gender, often expressed through a name, pronouns, clothing, haircut, voice, and/or behavior. [ix]

**Gender Identity:** A deeply held knowledge of one’s own gender. Gender identity is not visible to others. [ix]

**Gender-Nonconforming:** Denoting or relating to a person who has a gender outside the binary. [i]

**Man:** An encompassing adjective to describe both cisgender and transgender men.

**Nonbinary:** An adjective used to describe a person who experiences their gender identity and/or gender expression as falling outside the binary gender categories of “man” and “woman.” Sometimes nonbinary is shortened to enby. [ix]

**Sex:** The main categories that humans and most living things are divided into on the basis of their reproductive functions. [x]

# Definitions

**Sex Assigned at Birth:** The sex assigned to an infant at birth based on their external anatomy. [i]

**TGNC:** An umbrella term for transgender and gender-nonconforming people. [i]

**Transgender:** An adjective to describe people whose gender identity differs from the sex they were assigned at birth. [ix] Sometimes shortened to trans, but only after the use of transgender.

**Transgender Man:** Can be used to describe a man who was assigned female at birth. [ix]

**Transgender Woman:** Can be used to describe a woman who was assigned male at birth. [ix]

**Woman:** An encompassing adjective to describe both cisgender and transgender women

# Part 1:

# Using Inclusive Language with the Public & Internally

HELLO

MY PRONOUNS ARE







# HOW TO MAKE GENDER-AFFIRMING LANGUAGE PART OF YOUR COURT'S ETHOS

1. Make it common practice to ask everyone for their pronouns on the first encounter.
2. Never assume someone's gender.
3. When writing about or to an unknown individual or group of individuals, use gender-neutral pronouns and nouns.

# 1. ASKING FOR PRONOUNS

In English, pronouns can be a signifier of gender, and as such, are often a vehicle for misgendering, particularly during a first interaction. **It is always okay to ask someone what pronouns they use. It is a sign of respect and shows that you will honor their gender identity.** [xii] Do not only ask this question to people you assume do not use traditional binary pronouns. This may make a person uncomfortable, be offensive, or be discriminatory.

**Whether on the phone, over zoom, or in person, ask “What are your pronouns?” or “What pronouns do you use?”** Do not ask “What are your preferred pronouns?” Calling pronouns “preferred,” minimizes their validity and can erase people’s experience with gender. [xii]

Make it common practice to ask everyone for their pronouns on the first encounter, so you don't single anyone out.

**One way you can make asking for someone’s pronouns less uncomfortable is by introducing yourself with your pronouns. You can also include your pronouns in your zoom display name and in your email signature. You should do this regardless of what pronouns you use.** It signals safety for others to express their gender and eliminates the possibility of someone misgendering you. Note that some people may be exploring their gender identity and may not be ready to share their pronouns. That's okay too! Use they/them pronouns until they tell you what they are comfortable with.

**HELLO**  
my name is

**NAME**  
(Pronouns)

Introduce yourself by saying, for example, "Hi, my name is Andy and I use he/him pronouns. What's your name?"

# Pronouns

Remember that there are many pronouns. Some people who do not identify along the gender binary use “they.” [2] For a great discussion on why this matters, check out [this tiny chat](#) featuring Chief Justice Gonzalez and Chief Justice Robinson on creating a shared language. Others may use neopronouns. Neopronouns include ze/hir (pronounced zee/heer) and xe/xem (pronounced zee/zem). Some people use multiple pronouns. For example, he/they, also known as rolling pronouns, which may be used interchangeably. [xii] Use these pronouns in the same way you would use “she/her” or “he/him” when speaking and in writing.

Remember: someone’s pronouns are never preferred, but rather just are. You should say someone “uses she/they pronouns” not that they “prefer she/they pronouns.” Want to learn more about pronouns? Check out, [Practice with Pronouns](#)

SHE	HER	HERS
HE	HIM	HIS
THEY	THEM	THEIR
ZIE	ZIM	ZIR
XE	XEM	XIR

As you get familiar with and make correct pronouns part of your normal practice, do not be ashamed if you mess up. **If you do make a mistake or notice that someone is being misgendered by your coworkers, politely correct the error and then move on.** Do not dwell on it or excessively apologize, as this can be uncomfortable for the misgendered individual. [xiii]

[2] Some grammarians have balked at the use of “they” as a singular pronoun, however, the **Merriam-Webster Dictionary** has included the use of they as a singular pronoun since 2019. Additionally, **writing experts** say “they” may be used to; “(1) replace he or she, (2) refer to collective nouns, and (3) respect gender identities.” These uses of they have also been recommended by the American Psychological Association, including in their writing and citation guide. [i]

## 2. NEVER ASSUME GENDER

**Never assume someone's gender. Gender identity is not something you can see.**

Some members of the TGNC community use gendered pronouns, and others prefer the gender-neutral they/them. The purpose of using gender-neutral pronouns is to accurately reflect the spectrum of gender identities that people have. **Remember, lawyers and courts need to be precise and accurate in their writing and communication, and making assumptions that lead to inaccuracy is an avoidable mistake. Don't assume gender based on the way a person's voice sounds or on their appearance.** Frontline staff, such as clerks, bailiffs, and attorneys are often the first point of contact a court user has. They set the precedent.

One reason it is important to do this early is that if you assume someone's gender and use gendered pronouns to refer to them to your colleagues, it will be even harder to break that habit. **Remember that gender-affirming language does not remove gender from everything, but honors everyone's gender.** This means once you know someone's pronouns, it is not inappropriate to use their identified pronouns.

Never make assumptions about someone's gender. When you meet someone, use they/them pronouns until you know which pronouns they use. [i]





## 3. USING GENDER-NEUTRAL LANGUAGE IN COMMUNICATIONS

Whether the court is communicating with the public, or they are sending information internally, it is important that their communications are inclusive of all genders. When addressing a group of people, it is common to hear someone start by saying, “ladies and gentlemen.” While this has been considered a respectful way to address people, it is exclusionary of the TGNC community and reinforces the binary. Courts should be conscious of this as well as any other language that refers to the “opposite sex” or further emphasizes the binary.

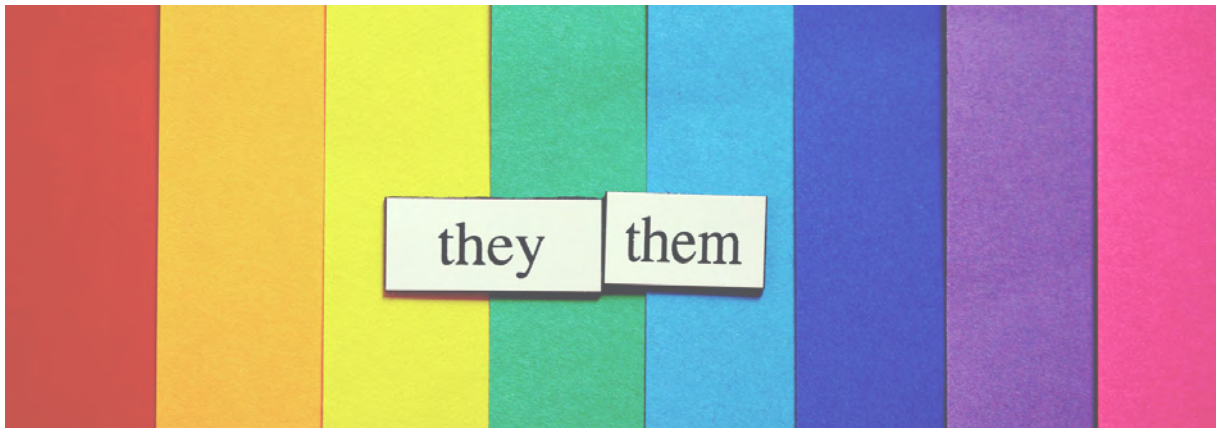
When addressing someone whose gender is unknown, use the title Mx (pronounced mix) before their name. [\[xiv\]](#) **Changing habits of addressing someone with a new title should not be an unfamiliar practice as Ms. has widely replaced Mrs. over the past few decades.** In email salutations and at the start of calls there are many ways to make people feel welcome without using gendered language, such as “Hey All,” “Hey team,” or “Hello everyone”, which encompasses all the genders in the group email or phone call. Do not say “Hey Guys,” which is less inclusive.

# Part 2:

## Gender-Affirming Language in Court Practices & Proceedings







Gender-Affirming language should be used in all stages of the ethical practice of law.

### 1. *Drafting Inclusive Legal Documents*

When writing legal documents, consider the level of specificity that is needed when describing a person. Is gender relevant? If not, do not mention it. If it is necessary, use modifiers to be as specific as possible. [i] In legal drafting, there are three easy things that can be done.

1. First, simply repeat the noun (defendant on first and second reference),
    - a. "The defendant argues the bill was paid by the defendant on the last day of September."
  2. Second, pluralize the noun (saying defendant and then "they" on the second reference), or
    - a. The defendant argues that they paid the bill on the last day of September."
  3. Third, use paired pronouns (saying defendant first and then using that person's pronouns on the second reference). [xv]
    - a. The defendant argues that she paid the bill on the last day of September."
- NOTE: This version should only be used if the defendant's gender identity is known.**



To see how other countries are doing this click on them below



Canada



The UK



When drafting a form, communication, or written material that describes a group of people, consider the labels to use and the amount of specificity needed. **Do not use adjectives as nouns to label people (e.g. “the gays”).** [i] For a comprehensive style guide that addresses this and other issues, check out, [Language Please.](#)

In the fields of contract and form drafting, misgendering someone is a form of inaccuracy that could make the document void. [xvii] It is good business practice and is the future of legal drafting to use gender-affirming language, so simply ask individuals which pronouns they use in your first contact with them.

Say, “Gay men are at higher risk of eviction...”  
Not: “The gays are at higher risk of eviction”  
Say, “Transgender individuals face many challenges...”  
Not: “The transgenders face many challenges...”



## 2. Respecting Gender in the Adversarial Practice of Law

According to ethical rules, which guide the practice of law, attorneys are instructed to treat their clients with respect and provide effective assistance of counsel. Attorneys do neither if they misgender their clients or other participants in the procedure. Judges should correct this behavior. [3]

Gloucester County v. G.G. is an excellent case study of how an attorney can respect a party's pronouns while not conceding any point of law. This 2016 case sought to address whether a transgender boy could use the boy's bathroom. The attorney for the school board used the pronoun "he" to refer to the boy in question in all his briefs and arguments. In a footnote, the attorney wrote that the use of male pronouns did not "concede anything on the legal question of sex for purposes of Title IX." [xvii] This attorney was able to reference the Defendant correctly and accurately while still providing the best arguments for their client.

[3] Three separate circuits have heard cases about pronoun issues, and all three have found that there is no constitutional obligation to use the correct pronoun. <https://www.virginialawreview.org/articles/some-notes-on-courts-and-courtesy/> (DEC 31, 202, 107 Va. L. Rev. Online 317) In the 5th circuit case, the issue is whether judges were required to compel lower courts to change a pronoun in a judgment and the court decided it was not necessary. <https://harvardlawreview.org/2021/04/united-states-v-varner/> However, two lawyers who submitted amicus briefs for the Supreme court case Gloucester County v. G.G., were rebuked by the court for using the wrong pronoun in the caption of the case. <https://www.edweek.org/education/a-supreme-court-rebuke-over-use-of-proper-pronouns-in-transgender-case/2017/03> They were told to refile with the correct pronoun as their briefs were inaccurate. Additionally, in the recent Bostock decision by the Supreme Court, the majority opinion authored by Justice Gorsuch used the correct pronouns for the party. This is the first time that the Supreme Court has used the correct gendered pronouns rather than gender-neutral pronouns in a decision about Transgender rights and signals to lower courts that respect and correctness should always come before personal bias. <https://www.virginialawreview.org/articles/some-notes-on-courts-and-courtesy/>

# Part 3:

# Gender-Affirming Language in Court Forms, Rules, and Orders

# INCLUSIVITY




# 1. BACKGROUND

There are many steps that courts can take to make their forms, rules, and orders more inclusive. These steps are necessary to ensure the accuracy of court documents and further provide inclusion for the TGNC community. While much of the revision of statutes, codes, and constitutions will need to be done by the legislature, courts can do their part to ensure forms, documents, and orders are gender-affirming. Courts must also be prepared to reflect the changes that are being made to statutes and constitutions.

States and some federal agencies have taken steps to recognize the full spectrum of gender identity. On March 31, 2022, the federal government announced that it will issue gender-neutral passports and Social Security Cards with the "X" gender marker. [xviii] California, Colorado, Connecticut, Illinois, Maine, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, and Washington, the District of Columbia all issue US birth certificates with a "3rd gender" category, or X marker for those that don't identify on the binary. ] [xix] There are currently 24 states that allow individuals to select an "X" gender marker on their driver's license or state ID. [xix]

For interactive maps and great information about the status of laws that affect the TGNC community check out, [lgbtmap](#) and the Transgender Law Center's "[Equality Map.](#)"

You can also check out the Human Rights Campaign's State Equality Index, found [here](#).



Currently, Oklahoma is the only state that forbids nonbinary gender markers on birth certificates [xix]



Many states have recognized the need to address these inaccuracies and are modifying their codes. According to the National Conference of State Legislatures, roughly half of the states have taken some steps already to ensure that their legal language is gender-neutral. These changes are happening at all levels of government and in all forms of legal documents.

New York and Rhode Island have amended their state constitutions to be gender-neutral, and states like Florida and Washington have done expansive revisions to remove gender-biased words from their laws. As of November 3, 2021, Oakland, Berkeley, Boston, Portland, Oregon, and San Diego have all passed city laws that require inclusive language in all laws and rules. The United States House of Representatives recently passed a resolution to make codes and rules gender-neutral. And, on January 20, 2021, President Biden issued an Executive Order mandating governmental agencies eliminate gender-biased language in their rules and prohibit sex discrimination.

For a closer look, in July 2021 Governor Newsom signed Senate Bill 272 (SB272) which will update parts of the California code to eliminate gender-specific references to various positions and titles within the legislature. The bill was prompted when CHP Commissioner Amanda Ray was the first woman to be appointed to the position, which was described with only masculine terms. To read more, click on California.



## 2. EXAMPLES OF NECESSARY REVISIONS

One area of law that has a particular need for revision is family law. When LGBTQ+ marriage was federally legalized in 2015, states that had not already legalized it had to revise marriage licenses, parenting plans, and other court materials to reflect the spectrum of couples getting married. Revising these legal documents was necessary because it was no longer accurate to only represent heterosexual cisgender couples.

**The courts had to update and revise their materials to be responsive to this change in the law, as they would with any other change. This is not a new obligation for the judiciary, yet when it comes to gender inclusivity, this is an area where courts are lagging behind.**

Similarly, many current court documents and forms include inaccuracies surrounding gender identity and traditional gender roles. **When describing a person's relationship with someone else, use the gender-neutral "partner," "sibling," "child," etc. instead of wife, brother, girl, etc. until you know the term the parties use. In general documents and laws, default to gender-neutral terms.**

**In parenting plans and child custody matters rather than saying the "mother and father," you should default to "parents."** If there is any reason to specify the role of the parent you should not assume the traditional roles of "wife," "husband," "father," "mother," etc. Instead, you can say "spouse," "partner," "parent," "parent giving birth," etc. **Once parties have self-identified, you should use the terms they have identified with.**

In July of 2021, Wisconsin passed a law that allows parents to identify simply as "parent" or "parent giving birth" on a child's birth certificate. [xix]

**While family law is an obvious area of law in need of updating, all areas of the law should be revised to be inclusive and eliminate gender discrimination.**

**New York and California both have employment laws that mandate that employers must use an employee's pronouns and name that the employee uses. [xx]**



# 3. PROACTIVE STEPS FOR COURTS

Courts should use plain language. All court communications, including forms and instructions, should be written in plain language. Plain language helps court users understand the purpose of the form and helps them fill out the forms more accurately. For resources on plain language, as well as a plain language glossary, visit this [NCSC site](#).

When writing about an unknown group of individuals, avoid the use of “he/she” and “he or she” because it implies a gender binary, and instead use the singular “they.” [i]

Courts should give participants an opportunity to identify their pronouns so that they are not inaccurately referred to by other participants or by the court. One approach Utah uses is to offer parties a chance to include a “Notice of Pronouns” in their court filing documents.

**Say:** “The defendant must bring their signed copy of the form...”  
**Not:** “The defendant must bring his signed copy of the form...”  
**Say:** “The defendant must bring their signed copy of the form...”  
**Not:** “The defendant must bring his/her signed copy of the form...”

Courts should consider the right way to receive this notice in their jurisdiction, which could include providing a notice of pronouns on all court forms, not as a separate notice. Additionally, courts may wish to provide an opportunity for parties to circle their title and pronouns on forms.

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Email \_\_\_\_\_

**Check your email.** You will receive information and documents at this email address.

I am  Plaintiff/Petitioner  Defendant/Respondent  
 Plaintiff/Petitioner's Attorney  Defendant/Respondent's Attorney (Utah Bar #: \_\_\_\_\_)  
 Plaintiff/Petitioner's Licensed Paralegal Practitioner  
 Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #: \_\_\_\_\_)

In the  District  Justice Court of Utah  
 \_\_\_\_\_ Judicial District \_\_\_\_\_ County

Court Address \_\_\_\_\_

---

Plaintiff/Petitioner \_\_\_\_\_  
 v. \_\_\_\_\_  
 Defendant/Respondent \_\_\_\_\_

**Notice of Pronouns**  
 She / her / Ms.  
 She / her / Mrs.  
 He / him / Mr.  
 They / them / Mx.  
 \_\_\_\_\_

Case Number \_\_\_\_\_  
 Judge \_\_\_\_\_

# Part 4:

## A Note on Translation and Gender-Affirming Language

**TOLERANCJA**

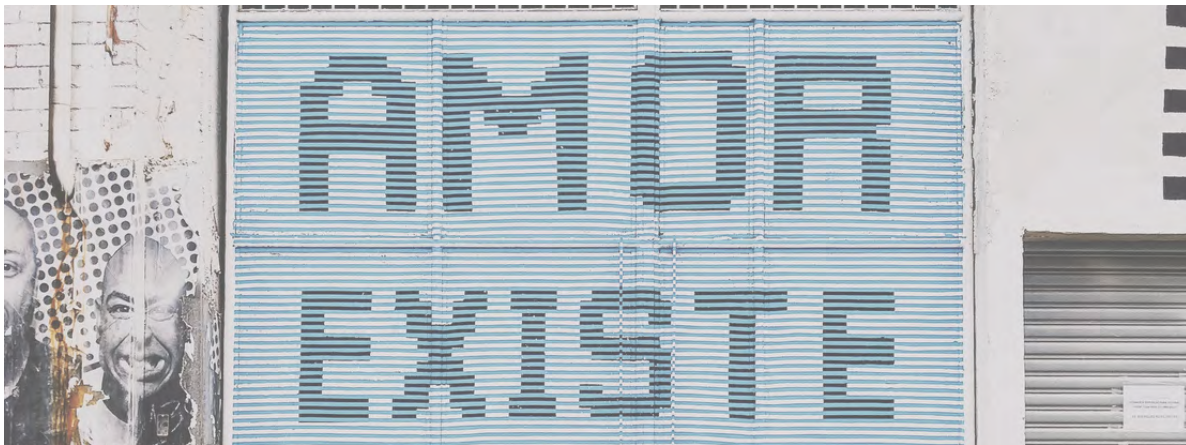


**Languages all have unique structures and formatting, some of which make gender-affirming language a challenge.** Many of the challenges stem from languages not having a gender-neutral set of pronouns and corresponding nouns. However, because courts should be using gender-affirming language in their English content, there is an imperative to keep the language inclusive when it is translated into various languages.

**There are three main language types,**

- 1. Gendered languages, like Spanish with gendered nouns and pronouns.**
- 2. Genderless languages, like Mandarin with no marked gender for nouns and pronouns, and**
- 3. Natural gender languages, like English with gendered pronouns and genderless nouns. [v]**

**All languages approach gender-affirming vocabulary differently and it is essential that courts consult with native language speakers to understand the best way to be inclusive in any given language.** Additionally, courts should be cognizant of the colonization of language. Colonization of language occurs when cultural nuances around gender are either lost or intentionally destroyed in translation. This occurred with the erasure of identities like indigenous Two Spirits and Samoan Fa'afafine, to name only two. [v] **Courts should do their best to respect these gender identities and be mindful of them as they work on creating gender-affirming language, and as they translate documents into languages where these identities exist.**







For gendered languages, creating gender-affirming language is more difficult to achieve because their words are naturally gendered and have matching gendered pronouns. The four most spoken gendered languages are Hindi, Spanish, French, and Arabic. These languages all use the masculine form of nouns as the default grammatical gender. This means that when addressing a group, or if the gender of an individual is unknown, speakers will default to the masculine.

English is not the only language undergoing a change to be gender-inclusive and it is important that courts be aware of the proper forms of address in other languages. Sweden has created a gender-neutral pronoun of “hen.”

For example, in Spanish, the word for friend is “amigo.” If your friend is a man they are your “amigo.” If your friend is a woman, then you change the ending, and it becomes “amiga.” However, if you are addressing a group of friends with men and women in the group you use “amigos.” Only when you are addressing a group of all female friends can you say “amigas.”

The introduction and use of this pronoun have been shown to reduce gender bias according to a 2015 study. [xxi] They call this a “gender-fair language (könsmässigt spark)” and the neutral pronoun can be used instead of the “hon (feminine)” and “han (masculine)” pronouns. [xxii]

Spanish speakers have been trying to confront this issue as well, with different countries having different approaches. Young Spanish speakers in the United States have pushed for a genderless “x” ending to gendered nouns, activists in Spain are trying to get the constitution rewritten with an “@” ending to gendered nouns, and teens in Argentina are advocating for a genderless e ending for gendered nouns. [v] Issues arise with these solutions, however, because with both the x and @ endings, there is no clear or easy way for Spanish speakers to pronounce these words when speaking. **For this reason, the Real Academia Española, which is the official institution for the stability of the Spanish language, has added the genderless pronoun “elle” to its dictionary.** [xxiii] Youth in Argentina have enthusiastically adopted this change and used it for inclusion. [xxiv]

Courts should be careful, however, that they do not turn true gendered nouns genderless. Additionally, some words that are gender-neutral have colloquially been assigned a gender, so courts should be aware of that as they select the ending for the root word that is most correct. **It is always best to consult a native language speaker to know what is most appropriate.**

Following the same example above, amigo would become amige for the generic definition, a nonbinary individual, or for someone whose gender is unknown. It would also mean that you would use amigas for a group of friends, regardless of the gender of friends within that group.

The word for chicken in Spanish is gallina. This would never become gallino or galline, because there is a different word for rooster which is gallo. An example of a word that has been assigned a gender, when in reality the root is genderless, is the word for president. The official word for president is “presidente.” Spanish speakers have begun using the word “presidenta” to signal a female president. These words have been considered masculine because of gender biases and historical usage of only having presidents who are men, but in reality, should be used regardless of gender. (Some Spanish-speaking feminists argue that it is important to add the feminine ending to these genderless nouns to increase visibility, however, this erases the nonbinary and gender-non-conforming experience). [xxv]

# Conclusion





## CONCLUSION

**Using gender-inclusive language is a matter of correctness, as much as it is a matter of respect, both of which the courts have a duty to concern themselves with.**

Considering how to accurately and respectfully address court users must be incorporated into all court communication. Further, courts have an obligation to update forms, communications, and other writings to be in line with laws drafted by the legislature, which include the changing landscape of laws surrounding the TGNC community. In addition, courts should be mindful of the language they use and the perception that it gives. By continuing to make these simple changes to verbiage the courts will have the most precise language which is of paramount importance in the practice of law.



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