

## [Transcript] The Ezra Klein Show / If You Read the G.O.P.'s Anti-Trans Policies, You'll See What It Really Wants

I'm Ezra Klein, this is the Ezra Klein Show.

So the 2023 Conservative Political Action Conference wrapped up this past Saturday.

And this conference, if you don't follow it, it's a big deal every year because it is the clearest window into the id of modern conservatism.

It brings together its politicians and media figures and influencers.

And what we saw at this year's CPAC was it even as conservatism is on many issues at this moment of unusual internal division, what to do about economic policy and health care in Ukraine, about Trump.

It is finding unity and purpose in attacking trans people.

There is absolutely no subtext here.

Michael Knowles, a popular right-wing podcaster at the Daily Wire said, and I quote, there can be no middle way in dealing with transgenderism.

It is all or nothing.

He went on to say, and again, I quote, transgenderism must be eradicated from public life entirely. Eradicated entirely.

Tom Fiddin, president of Judicial Watch, said gender-affirming care is, quote, a demonic assault on the innocence of our children, demonic.

It would be one thing if this were all just rhetoric, but it's action.

What we're hearing at CPAC is what we're seeing in Republican legislatures and Governor's Mansions all across the country.

Over the past few years, we've seen hundreds, literally hundreds of bills introduced to regulate, to ban, to criminalize the lives of and the care needed by trans people.

I think people who follow politics have a sense this is happening, but perhaps not of the scale and cruelty of these policies.

I think in a lot of the mainstream press, there's more attention to the hard edge cases.

What should be the rules around NCAA swimming meets?

What about the rare but real cases where somebody transitions and regrets it?

What kind of medical assessment and parental involvement should you need to access as kind of care as a minor?

And I don't think those questions are fake, and I don't think they're easy, and I don't pretend to have the answers to them.

But I think it's important that we don't lose sight of the overwhelming political and material reality here, which is that trans people already face now terrible discrimination and difficulty, higher rates of poverty and homelessness and violence, workplace discrimination, just living their lives.

And the right is now making trans people their political target, and the most ambitious conservatives are competing not just in rhetoric, but in policy to make their lives harder, to try to push them out of the boundaries of public life.

Individually, these policies, they have various rationales.

A lot of them have conflicting rationales.

But I think collectively, if you look at them, you see that what Noel said was true.

The rights aim is to use the power of the state to eradicate the ability of trans people to live as themselves in public, or to be able to become themselves.

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And again, this is policy.

It is not just rhetoric, it is not just tweets.

And so I wanted to have a conversation looking closely at these policies.

Jillian Brandstetter is a communication strategist at the ACLU's Women's Rights Project and the LGBTQ NHIV project, and the ACLU has been very involved in tracking and fighting these policies.

So Brandstetter has an unusually specific and global sense of how all this is coming together on the ground.

As always, my email as a recline show at nytimes.com.

Jillian Brandstetter, welcome to the show.

Thank you so much for having me.

So I want to begin in Texas, where we've seen Governor Abbott attempt to classify or reclassify certain kinds of gender care as literally child abuse.

So tell me about the letter to the Texas Department of Family and Protective Services in February of 2022.

What did it say?

What was Abbott trying to do there?

This letter was a directive to the Texas State Child Welfare Agency to begin proceedings to investigate parents with transgender youth who have accessed gender-affirming care. It does not include counseling.

It does include puberty lockers hormone therapy and surgery.

This followed a failure by the state legislator to codify the definition of child abuse by adding gender-affirming care to it.

A bill was introduced in the state legislator in Texas in 2021 and ultimately failed.

Governor Abbott's primary opponents took him to task for this.

So he began sort of a long rolling process to apply political pressure and basically set the tone that this care and its provision in Texas was going to be the next focus of his target.

In February of 2022, about a week before he and Attorney General Ken Paxton faced a primary, they issued this letter, which was directive to the State Child Welfare Agency, to begin classifying the provision of age-appropriate gender-affirming care for transgender youth as child abuse.

And that does a few things.

One, it mobilizes the state family policing agency.

So child welfare agencies have a, advocates have been complaining for quite some time, that they have a lot of unchecked power and this power often gets used in very discriminatory ways and in particular against poor, black, indigenous, immigrant families, queer youth especially are overrepresented in our nation's foster care system.

The first impact that directive has is in mobilizing that agency to begin investigating and one of the first people they target is actually client of ours, who we are representing alongside the ACLU of Texas and Lambda Legal and one of two challenges to this directive, who is the DFPS employee themselves.

This immediately begins terrorizing families across the state of Texas.

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We're talking about thousands of families who have transgendered youth, who are now suddenly faced with the idea that state agents could literally walk in their door and escort their children away from them.

And this means young trans people being pulled out of class and interviewed about their healthcare or even about their anatomy and attempting to really nail them down as transgender and build out a case that if we can prove that you've accessed gender-affirming care, we're going to remove you from your parents' custody.

The other thing this does is anyone who's ever worked in a field with kids, right?

If you've ever been a teacher or an educator or a childcare provider, you know that you've probably signed some paperwork making you a mandatory reporter, meaning that if you have reason to suspect that a young person is being abused as the law defines it, then you must turn them in.

And because of this directive from the governor and the attorney general attempting to say, you know, we are interpreting the stage child abuse statute to include this care, that means that nurses, counselors, guidance counselors in schools, teachers, assistant teachers, childcare providers, this entire network of folks who work with youth across the state of Texas are then drafted into governor Abbott's war on transgender youth.

Well, the term gender-affirming care is going to be not just a big part of this conversation, but it's obviously central to a lot of the debate in Texas elsewhere.

What is gender-affirming care and which parts of that care package or structure did Abbott try to get classified as child abuse?

Sure.

So gender-affirming care is an umbrella term for a broad range of medical interventions which vary greatly based on the age and needs of the person presenting with gender dysphoria. Gender dysphoria is a term for a discomfort felt between your gender identity, your internal sense of your gender, and your gender as it was assigned at birth.

And gender-affirming care is a individualized form of healthcare that includes counseling, sort of talking people through their identities, helping them get a sense of who they are and who it is that they want to be, helping them move past the internalized shame that so much of our culture pushes on to transgender people and assessing whether they might be ready or a good candidate for other medical interventions.

So when we're talking about young kids, young, prepubescent kids who have maybe started wearing a dress at school or growing their hair out if they're a transgender girl, right?

Young kids like that are never really accessing any sort of permanent healthcare.

When young people start to enter puberty particularly when they've been presenting as their lived gender for quite some time, they're more likely to access puberty blockers.

And these are, you know, doctors usually describe them as a pause button, functionally pausing the signals that the body sends to begin developing some of these secondary sexual characteristics ranging from breast and wider hips to facial hair and a deeper voice.

Even in older adolescents and adults, you begin talking about hormone replacement therapy, which if you're looking for feminizing effects to reflect your gender identity will include a testosterone blocker and some form of estrogen, and if you're looking for masculinizing effects that usually includes testosterone.

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And then surgical care, which for anyone under 18 tends to be pretty rare and very much based around the needs of that patient.

They can range from what's often colloquially referred to as top surgery, which are mastectomies, for example, if somebody has breasts that they don't want, or down to bottom surgery, which while hard to access is usually a vaginoplasty, so reconstructive surgery, creating a vagina or a number of surgeries that create a penis.

And in this order under the governor's letter, he bans pretty much everything but counseling, pretty much everything but the idea that somebody could be talking to a therapist and get diagnosed with gender dysphoria.

Now what that means, of course, is that all of those healthcare treatments, most people who express a need for them, have a very long road ahead before they can actually obtain them.

It's already very difficult to access and especially in rural areas like those across Texas.

I want to hold on before we go into that piece of it on this idea of child abuse.

What Abbott is saying, what many in the conservative movement are saying is that he's very worried about these children, wants to make sure no harm comes to them.

What do we know about what happens when children who have been presenting as their live gender for some time, who want with their doctor and their family to seek care, what do we know about what happens when they don't get it?

So gender dysphoria carries with it a number of other symptoms and especially when untreated and that can range from depression and anxiety to low self-esteem down to poor academic performance,

struggling to build healthy relationships with friends or their family, all the way up to suicidality.

According to a vast array of research, transgender youth have a significantly higher rate of suicidality than their peers.

Just to put some numbers on that, so we saw one study where 56% of transgender youth reported previous suicidal ideation that was compared to 20% of cisgender youth, 31% of transgender youth reported a previous suicide attempt versus 11% of cisgender youth.

How does access to care change that?

Foundationally.

So when I sat in a courtroom in Arkansas where we were challenging that state span on gender affirming care, there was a long line of medical experts and doctors who work with transgender youth who took the witness stand and spoke to the efficacy and the impact that this care has on young people's lives.

It's very abstract.

I think it'd be very hard for a lot of cisgender people to understand what dysphoria is and how much it can impact your life and sort of stunt your emotional development and your emotional growth.

And one of the biggest themes that I heard in that testimony was one, not just that it sort of relieved dysphoria, but you also suddenly see that when young trans people do have this degree of bodily autonomy, they begin to improve in many other ways.

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So for example, if they're on antidepressants, they find that they can go off of them.

If they're on anti-anxiety medications, they find that they can go off of them.

They improve in their mental health overall.

They improve in oftentimes even just their extroversion, their willingness to participate in the community, their excitement about school.

And the number one thing that you hear from a lot of parents with transgender youth and medical professionals who work with transgender youth and from transgender youth themselves is that before accessing this care, they really struggle to imagine a future with them in it.

They really had zero impulse to sort of plan towards their future or to dream or to have ambitions.

And you find that when you give young trans people this degree of autonomy over their own body and help them relieve off this massive weight that they're carrying around, that suddenly they have ambitions, suddenly they have goals, suddenly they're not just building friendships and being active in their schools and in their family.

But they're thinking through, well, gee, what do I want to do with my life?

What artistic ambitions do I have?

What creative ambitions do I have?

What would I want to do professionally?

What problems does the world have that I could help solve?

And I think that sense of possibility is something that any parent would want for their young person.

And the at times cartoonishly vile rhetoric around this care is very much meant to obscure that positive impact that it has on people and very much meant to obscure the pain of being denied it, particularly when you know that it's an option that you could pursue.

And that is what a lot of young people are facing right now as, you know, the number of these bands grows, is that they actually know what better life is awaiting them.

And they have, you know, politicians who've never met them, politicians who've never talked to anybody like them, who's experienced what they're experiencing, writing and passing laws, taking away this critical aspect of the story they want to write for themselves.

I want to hold on this for a minute because I think there can be, including I would say for me, a bit of an empathic chasm to clear when it comes to gender dysphoria, that if you don't have it, it's what it means to have it and to feel it is very hard to put yourself in.

And my friend, Emily St. James, who I worked with back in box, she wrote a great piece and she wrote in it something that I always find helpful to think about here.

She wrote, if you are a cis person, imagine for a moment that all evidence to the contrary, everyone in the world becomes convinced your gender is not what it is.

If you're a man, everyone starts using she or her pronouns for you and calling you by a woman's name.

One day you start insisting to the world you are who you are, and the world insists otherwise. And that sense of, for my trans friends, that sense of unbelievable wrongness between how you are seen and how you feel, that I don't exactly have a question here, but I just think

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it's worth stopping for a minute that the intensity of it from everyone I know who has gone through it, is I just think really hard to grasp if it's not something that you've held yourself.

I think it can be hard.

You know, a colleague of mine, Rebecca Klang, has this metaphor of this giant bag of rocks that you're carrying around your entire life.

And after a certain point, you kind of tire out, and you either put down the bag of rocks or you stop going forward.

And I think the word that comes to mind when I'm usually trying to describe what dysphoria is like to cisgender people is a deep sense of inauthenticity, a deep sense that you were playing a role for other people.

And I think that's something that most people can relate to because we all sort of have to do that in one degree or another.

We all have to navigate and meet people's expectations.

And gender, because gender is assigned to you over the course of your entire life, because your family and your friends and strangers and institutions and everything from our economic order to police and our laws are assigning you gender.

When that assignment doesn't feel honest to who you are, it is a very inescapable sense. It's an all-consuming sense.

And I think a lot of folks, there are a lot of trans folks who it may be long into adulthood before they even begin asking themselves this, right?

And I've met trans people who've come out into their 50s, 60s, 70s, 80s, right?

And I think it's a bit like if you had lived your entire life next to a waterfall and you heard the roaring, crushing sound of the water your entire life.

And the moment you realized that you could up and walk away, that you didn't have to shout over this, suddenly you realized that your entire life, you've been screaming.

And you've been begging to be heard.

And when a trans person comes out at whatever point in their life that they do, it's fundamentally about a demand to be heard.

There's an artist that I love named Girl Swords on Instagram who does this sort of like Jenny Holter style slogans.

And one of them she has is that it is a blessing to have a transgender child.

And why is it a blessing to have a transgender child?

Because I think any parent would agree that it is a blessing to have a child who is strong enough to tell the truth when the whole world wants them to tell a lie.

So how then does Abbot or Paxton, the attorney general, in these letters and opinions, make the argument?

What is the foundation of the argument that it is child abuse to use puberty blockers or hormone therapy?

To the degree that there's much logic to it at all, he, and I've seen this and, you know, I saw this in Arkansas too, and they're a defense of this band, they're very much hunting for basically any potential risk or any potential excuse, no matter how small, that they can attach to this care.



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And it's very clear that what a lot of these lawmakers, including Paxton and Abbot, are doing is starting from the position of needing to ban all gender affirming care and sort of working backwards from there and then looking for justification to do that.

And certainly, like all forms of health care, gender affirming health care does carry risks.

And I think something that a lot of trans people who access this care now is that those risks tend to loom very large in the cisgender imagination.

And one reason is, I think, because they struggle to conceive of that agonizing feeling of being forced to live an authentic life, that in fact, your own body is betraying you.

So what are some of those risks, speaking not here about the surgical interventions, which are, I think, pretty rare for minors, but the hormone and puberty blockers?

So some of the risks they cite include, for example, prolonged use of synthetic estrogen, like the kind that many transgender girls and women take, can gradually increase your risk for blood clots or for breast cancer.

And as we sort of talk through these risks, it's important to understand these aren't surprises to anyone that goes on them.

They aren't surprises to the parents who sort of talk through them.

And there is very much a need to measure the risks of these interventions versus the risks of doing nothing, which for transgender youth, gender dysphoria, tend to be very, very grave as we discussed.

He also looks into testosterone as a controlled substance and has some low-level risk for misuse and for abuse.

In the rare instance that somebody goes on from puberty blockers directly to hormone therapy, it may gradually increase their risks for osteoporosis.

As a New York Times report found, it will gradually increase the risk for experiencing osteoporosis in their 50s instead of their 60s.

And I think to most trans people, we take these risks seriously.

Nobody's not attuned to these.

Even in the informed consent model of providing this care.

So for young transgender people for people under 18, there's sort of a long road of mental health counseling and assessment and making sure this care is right for them.

In the space for medical care for transgender adults, there's been an increasing move towards informed consent, which basically means that as long as this person is informed about the risks and effects of this care, we should trust their autonomy to access it.

And when you really feel like your own personhood is on the line and somebody says, but wait, you could experience osteoporosis in your 50s instead of your 60s, we'll cross that bridge when I get to it, I guess.

It would be so amazing to live into my 50s.

So I think, like I said, a lot of these arguments are generally in bad faith because all healthcare carries risks and there's lots of healthcare which these bands don't touch, which carry these or worse risks and are not the subject of legislation or litigation or much less accusations of childhood abuse.

So when we were working on this episode, we talked with Dr. Jason Rafferty, who authored the American Academy of Pediatrics Guidelines for this Care in 2018.

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And one point he kept making is that this kind of care is a very, very highly individualized process.

Yes.

You look at the standards for it, you look at the structure and sequencing.

It's built on a lot of discussions between the patient, between the doctors, if it's a minor with their families.

And one thing that is very striking to me about Texas's policy here, but not just their policy, I mean, you see this in a bunch of different states, is they're trying to short circuit.

They're putting literally the government, conservatives putting the government, which I know the charge of hypocrisy here has lost a lot of force over the years, but take it for a minute, into this process.

It would otherwise be an individualized weighing of risks and questions and the person's individual needs with the doctor who knows what they're doing and possibly mental health professionals and families.

And instead, Texas is saying, no, no, no, we don't just know better.

We know so much better that if anybody engages in this in any real way, going down the path on it towards puberty blockers or other pharmaceutical interventions, we're going to functionally criminalize it.

It's a pretty striking assertion of, yeah, I mean, functionally, government knows best.

In terms of their willingness to just sweep aside the existing body of evidence and the actual reality of what this care is like, there's a lot to learn here from how the anti-abortion movement has framed abortion care.

And you've seen very much the similar process of sort of hunting around for any tail end risk or any hypothetical in which this care might have any kind of negative consequence at all.

And then using that to justify banning it.

And you can very much see that they're running the same playbook on gender affirming care.

And something to keep in mind is it's very easy to imagine them running this playbook on birth control.

In fact, you can already sort of see them laying the groundwork.

And anyone who's accessed birth control, particularly hormonal birth control, knows that it's very individualized and it can carry side effects and it can carry risks.

And people hopefully trust you to manage those risks and to weigh them against your desire to not get pregnant, which, depending on who you're talking to, is you rejecting your gender assignment in the same way that a transgender person is.

I don't think anyone would describe the process of having an IUD inserted in joyful terms, but people still do it because they want that degree of autonomy over their own body and over their own ability to write their life story for themselves.

Well, let me ask you where this particular directive stands now.

You mentioned that the ACLU is in court on this, the ACLU of Texas is Lambda Legal.

What is the current status of the rule?

There are two lawsuits that were filed against the directive and against DFPS.



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Both of them were filed joint by ACLU of Texas and Lambda Legal.

We went back and filed a second lawsuit on behalf of yet more families and PFLAG National.

For folks that don't know, PFLAG is one of the oldest LGBTQ rights organizations in the country and they specifically work with parents of young queer people.

And they were one of the first organizations to really have to mention gender identity and their official policies to protect transgender youth.

They have hundreds and hundreds of chapters across the country and I've gone to these and they're usually a lot like support groups.

They're usually parents talking through what it means to have a young queer person, not just sort of protecting them from discrimination and advocating for their rights, but also changing their own expectations for what life their child is going to lead based on their queer identity.

So we file on behalf of PFLAG National and receive an injunction on behalf of PFLAG National so that if a family is a member of PFLAG National, they are protected under that injunction, which in Texas, last I heard was somewhere around 600 families.

Now, of course, what that means is that thousands of families are still exposed to this directive. In truth, what we know is that the actual number of cases that have been opened is luckily relatively small.

Last I heard it was under 20.

And in each instance that a case was opened, the case was closed.

And that's enormously relieving in that it means whatever accusation Greg Abbott wants to make against them, these folks are being exonerated by the state agency.

That said, even just the process of the investigation is a major invasion into a family's life.

And particularly when we're talking about young people who are really, like I said, struggling to imagine a future world with them in it, when the state is threatening them with removal from their family and threatening to put them in to a foster care system where one, transgender youth are already overrepresented and two, they're frequently subjected to physical abuse, sexual abuse, and conversion therapy in attempts to make them cisgender.

That's an extremely threatening blade to hold over these young people's heads.

I'm Kim Barker, host of the Coldest Case in Laramie, a show from serial productions in the New York Times.

In 1985, I was a high school sophomore in Laramie, Wyoming, when a woman was brutally murdered there.

The victim was just a few years older than I was.

The killing stuck with me all these years, partly because of how violent it was, partly because of how emblematic it was of my time in Laramie, a town I'd always thought of as the meanest place I'd ever been, but mostly because the crime was never solved.

And then a few years back, the police arrested someone for the murder, a former Laramie cop.

His DNA was found at the crime scene, but then prosecutors dropped the charges.

Temporarily, they said, but they still haven't refiled the charges, and it's never been clear why.

How did a case that seemed this open and shut fall apart was such a whimper?

I decided I had to head back to Laramie to find answers.

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In the coldest case in Laramie, listen, wherever you get your podcasts.

So what you'll often hear is this is just about children.

We're trying to protect children as a special class.

Maybe they don't know who they are yet.

Maybe they're influenced by something they saw on TikTok, but a bunch of these bills target adults too.

And in fact, there's one that has been introduced in the Texas Senate, SB 1029.

It would effectively ban these treatments for minors, but it would also effectively banned gender-affirming hormone therapy and surgery for adults.

So tell me a bit about the relationship between the legislation targeting children and the legislation we've seen in a bunch of different jurisdictions that includes adults.

So one thing that I think is important to understand is that these bills aren't really responding to any sort of like grassroots demand for these bills.

They are coming at the behest of a group of organizations within the right wing that have at the core of their worldview this very binary and rigid understanding of gender.

And one of them is the American Principles Project.

And over the course of the last few years has tried to warm politicians on the right up to the idea of going after transgender people.

Since there was a report that Maggie Astor in the New York Times did, which she called up Terry Schilling, this group's president, and he said, we do in fact want to ban this care for anyone of any age.

And in his words, the purpose in going towards young people was, quote, going where the consensus is.

Now, one, I would challenge the idea that there is a consensus.

And two, I think that belies just a sort of bad faith, a lot of these discussions are that most of these groups, Alec, these organizations that are really well known in right wing circles for basically acting as billmills for sort of printing off this legislation and distributing them across states, they are not going to tolerate medical transition at all.

So tell me about how intersex people play into this.

Can you say what intersex means and where these conservative groups and some of these bills tend to stand on healthcare for that population?

Intersex people are those born with non-normative sexual characteristics.

Intersex conditions can range from hormonal sensitivities down to people born with what might be called anomalous sexual characteristics, or maybe the presentation of sexual material that is associated with one sex right next to sexual material that is associated with another sex.

And often when an infant is born and is presenting his intersex, the doctors will go to the parents and say, well, we can create a, quote, normal genitalia for them.

And we find it's best to do it now because later in life, who would want to grow up with a non-normative body?

And a big target of human rights activists and of the intersex rights movement is getting hospitals to drop that default setting of launching towards performing these surgeries on literal infants.

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Lori's Children's Hospital dropped this to default.

There's been sort of growing inclusion amongst the American Medical Association and other groups.

There is an exemption for those surgeries forced onto literal infants with very little concern for who they may grow up to be, very little concern for their long-term well-being, but strictly about making sure that they look normal.

And I became very curious, how is it possible that all of these lawmakers and all of these legislators came to agree on the need to force intersex children into these surgeries?

So I began looking around for how the right-wing has encountered intersex people because think about it.

If you are telling people that there is a biological binary and these roles are inevitable, they're complementary, they are designed for these explicit purposes and for providing these explicit forms of labor.

And some tellings are godly.

Right.

Exactly.

And I found the bill that was passed in law in Arkansas banning gender-affirming care for transgendered youth that we have sued and blocked in federal court.

And you find that across, not just in folks in the family, but across how the right-wing regards intersex folks, they say, well, of course, we want to show them compassion.

But really, these children are the result of a fallen society that something about the amoral condition of modern life is producing intersex children, which has extremely dark echoes across the history of not just medicine, but theology and what was often referred to as monstrous births.

These were a major focus of the witch hunts of the Middle Ages and the Renaissance, a sort of targeting mothers who gave birth to, quote, monstrous births.

It's very shocking to see that in modern political language.

And it's even more shocking to realize that what they're looking for in these bills is not to end these treatments.

They aren't trying to end these treatments for everybody.

They're specifically trying to end them for people who are seeking them in order to rewrite their gender assignment, in order to actually make sure their gender assignment reflects who they know themselves to be.

And yet they're protecting these other treatments.

So I want to go back to something you were saying about the politics of this a minute ago, which is that the way I've been thinking about the increasing centrality of anti-trans bills and rhetoric to the right, because it's something that you're seeing in the 2024 primary field for Republicans, it's a big issue for DeSantis, it's of course now a big issue for Donald Trump, and we can talk about his administration on this, which is very telling.

But it's also every right-wing legislature more or less across the country is now full of these bills.

And it's been a pretty quick move to the center of their agenda.

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And one of the ways I understand politics in this era is that we've been watching or living through this transition from, because politics is always changing as to what the core cleavages really are, what people will compromise on and what they won't. And I think the broad understanding of the Republican Party 15 years ago, and I think it was true, is that they talked to social conservatives, they talked to social conservatism, but they governed economic conservatism.

The actual non-negotiable was tax cuts for corporations, and then they would tell the evangelicals what they needed to hear to turn out the vote.

And that over this period, that's more or less flipping.

And you now have the post-Trump Republican Party.

There's a lot of people who are kind of confused and often opportunistic on economics.

But these questions of, I would call it sort of social, gender, hierarchical change, right?

This question of the traditional hierarchies of American society have become really fundamental.

And there's been a search for what is the issue that cracks this open.

And I think that there was a view that it was immigration, right?

That was Donald Trump's sort of initial play, and it worked for him to a degree, but it's actually not popular to be highly anti-immigrant in this country.

And then practically post-George Floyd, when there were the protests that had riot elements in them, you had a kind of backlash on Black Lives Matter, and that failed in 2020 Joe Biden wins the election.

And it seems since then that the ideas to crack open the sort of progressive coalition around trans issues, that this has become the kind of edge of the spear in the sort of Republican Party's backlash to social change.

That's been my kind of working theory of it.

But I'm curious, because you're obviously much more read in on this, and I am, and think about it much more, how you've understood this transition to the center of the Republican agenda for this set of issues.

It's interesting that you tease out sort of this existing divide in the right between more economic concerns versus social conservative concerns.

One, I think they have more similarities than they differ.

Conservative economics tend to produce socially conservative outcomes.

Two, there's been an interesting turn in right-wing politics over the course of just about the last decade, where there's been a lot of motivation and energy around the social conservative wing, this sort of wing that's devoted towards a explicit construction of what it means to be American along racial, gender, and class lines.

And one of the dividing points for this was in 2016 in North Carolina, where you had the state legislator and Pat McCrory pass one of the first bathroom bills, so basically a law requiring transgender people to use the bathroom that aligns with what was on their original birth certificate.

And this was really one of the first major tests for transgender rights in the political sphere.

There were some previous fights around like hero, and we could sort of talk to that history if you want, but this was definitely sort of the largest conflagration that gender rights

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had had in some time.

And the bill was signed into law, and you quickly saw a number of corporations and large institutions like the NBA and performers like Bruce Springsteen begin pulling events out of North Carolina and begin saying, well, we're not going to spend money in a state that would endorse this hate.

And according to one analysis, this costs the state of North Carolina's economy around \$3 billion.

In no small measure, Pat McCrory lost reelection because he decided to focus on this issue at the expense of the rest of the state.

And this caused a deep sense of frustration within the conservative movement.

And I think it was the dawning of what you often hear now described as woke capitalism, the idea that the culture has left our values and they've taken corporations with them.

So therefore, we can no longer trust the Chamber of Commerce crowd to act in defense of socially conservative actions.

It's almost the end of what has been called fusionism, this idea of the libertarian-minded economic rate, and its ties to often more evangelical, more socially concerned rate.

And over the course of the Trump administration, you see this frustration begin to grow because while the Trump administration leaves no stone unturned when it comes to rolling back transgender rights, whether rolling back protections for transgender students, rolling back protections for transgender people accessing health care, really repealing what is occasionally be called the quiet trans revolution of the second Obama term, social conservatives begin to feel a bit left behind.

And particularly because the legislative agenda of the Trump administration was pretty much dominated by the Trump tax cuts, which as far as they're concerned, don't move them towards their goals of sort of rewiring the back ends of American culture to reflect these deeply conservative values.

And an inflection point for this comes in 2020.

2020 was a busy year, you might remember it, but I remember in June of 2020, the Supreme Court issued a decision in Boston, Clayton County, which was actually a trio of cases.

On behalf of LGBT people who had been fired because of their sexual orientation or gender identity, the ACLU represented Amy Stevens.

She was a transgender woman in her fifties, she worked at a Michigan funeral home.

She came out as transgender.

She wrote this impassioned letter explaining that this was very important for her.

And the funeral home turned around and fired her two weeks later.

And what was up for debate in this case was not whether they were discriminated against because Amy was trans or the other workers are gay.

What was up for debate is whether by discriminating against these employees on that basis, the workplaces were in violation of Title VII of the 1964 Civil Rights Act, which prohibits sex discrimination.

And really since the Civil Rights Act has been passed, sex discrimination has been expanded as a definition.

So it now covers lots of pregnancy discrimination and covers lots of sexual harassment.

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It covers what's called sex stereotyping and basically judgments that you make based upon how you think somebody should behave based on their quote unquote biological sex. Since the Supreme Court finds in a 6-3 decision in June of 2020 that these protections extend to queer workers, that if you fire somebody because they are transgender or because they are queer, then you are exhibiting sex discrimination.

You are in violation of the Civil Rights Act.

This is greeted as an apocalyptic event in right-wing spaces.

I find in liberal and progressive spaces, I often have to remind folks that this happened.

I remember seeing a poll before that case was issued that some 80% of the country thought it was already illegal to fire somebody because they're gay or transgender.

So I often have to remind people in liberal progressive spaces that this case even happened.

But soon after that, you have folks like Josh Hawley thumping their fists on the table and saying, this represents the end of the conservative legal movement, that if an employer can't fire somebody because they're transgender, that this represents an existential threat.

And I think one of the reasons you see this massive reaction is because a lot of the legal victories on behalf of LGBT rights up to this point had very much hinged on the private life, so Obergefell and the right to marry, for example.

As much as you're running into the issues of does a fake need to make a wedding cake or does a website need to make a website for a gay couple that's getting married, the foundational right to marry is about a right to privacy and as well as just equal protection clause under the 14th Amendment.

And likewise, before that in 2004 in Lawrence v. Texas, when the Supreme Court found that the state could not criminalize same sexual relations, that was very much also founded in this private life, in this private space.

It's about making sure the government isn't looking in on what consenting adults are doing behind closed doors.

In contrast, Bostock was very much about your public life.

Now suddenly, we're in the workplace.

Now suddenly, somebody has the right to be trans in the workplace, around other people even, Ezra.

And there is the logic that the opinion, which was written by conservative Golden Boy Justice Neil Gorsuch, the logic of his opinion, it doesn't take a whole lot of thinking to then apply it to all other laws which prohibit sex discrimination, including Title IX, which prohibits sex discrimination in education, or Section 1557 of the Affordable Care Act, which prohibits sex discrimination in healthcare.

So the right-wing legal movement walks away from this case with an enormous amount of egg on their face, and I think a lot of outrage, because they just walked away from four years of a Trump administration where they didn't feel like any of their needs were being met, which is laughable as somebody who was working in trans advocacy at that time.

And they are feeling cheated even by the Supreme Court itself.

And it's the legislative session right after that case, so the 2021 legislative session, where you really start to see the total number of these bills take off.

I want to get at something that you touched on there, which is that as part of what has



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changed in the politics of this one in a way that maybe progressives don't realize or admit, you mentioned the sort of quiet revolution here in the Obama administration, where policy became much more equal in this area.

You mentioned some very, very important cases that pushed forward sort of non-discrimination. And some of the backlash actually was a response to the fact that the sort of equilibrium on this was being pushed forward.

It was being pushed towards justice, and that created a kind of opposite counter-reaction. And there's also the feeling that many people have, and I think is to the extent we have data on it, seen as true, that we are seeing a rise, whether it's because more people are coming out as trans and they would have suppressed it and not told anybody at another point or because something is changing, but that we are seeing a rise in the number of trans kids. And so the other way of thinking about the sort of centrality of it in our politics is that it's a response to, on the one hand, actual progressive victories on this point, and on the other hand, an actual change in the sort of on the ground reality of particularly how many trans children we're seeing.

How do you think about those as explanations?

In your book, *Why We're Polarized*, available in stores now, you reflect on how polarization is not inherently a negative thing, that in fact polarization is a necessity when moving forward on important progressive issues.

In fact, over the course of American history, when there's been consensus around an issue, it's usually around an issue based on discrimination or an issue that we now look back on are very glad that we had a controversy on and changed.

And I think one way to think about the second term of the Obama administration and what is often been referred to as the trans tipping point, right, Laverne Cox.

It's a cliché in writing on this topic that within the first two paragraphs, you have to mention Laverne Cox on the cover of *Time Magazine* in 2014.

And I think a good way to think about that is as the end of the consensus that was regarding trans rights as ludicrous and unnecessary, that there was a cultural and political consensus regarding trans life as unlivable, regarding trans bodies as unlovable, and regarding trans people as untrustworthy.

And over the course of decades of advocacy and public education campaigns and meeting with lawmakers sort of building a degree of power, you begin to see that slowly creep open over the course of the early 2010s.

And it's one reason why if you're over 30, you were raised in a culture which saw our existence as if not an avid threat, then as pathetic in a culture which portrayed us as alternately as sickly eunuchs or decadent perverts, and I know that because I'm over 30.

And I was raised to believe those things about myself.

And transgender people are taught how to hate ourselves.

I think that there is a lot of institutional memory that still exists within a lot of even nominally liberal institutions in American life that still try to tell that exact same story about trans lives as unlivable and still rely on a lot of the same tropes.

And you know, I'm a *New York Times* subscriber, and that sort of gives me access to the *New York Times* archive.

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And one thing I've been doing over the last few months is looking across the media coverage of an institution like the New York Times and finding the history of how the paper has regarded transgender people.

And not just using the language of today of transgender and sort of finding these early examples in the 1990s, you can find things like that, but using the old language of transvestite and transsexual.

And what you find is not very pretty.

And I don't think that's specific to the New York Times at all.

I think a lot of institutions across American life, including mainstream political organizations, have that same history.

I want to go back then also to something else that happened in this period that you kind of touched on right around North Carolina, which is the North Carolina bathroom bill was not the only bill and not the only kind of social justice question, but I do think it was one of the first that began to open a sort of wedge that is still not at all closed between the Republican Party and particularly like major parts of corporate America.

So, I mean, we're talking in a week where Governor DeSantis sort of succeeded in taking away some sort of special autonomous privileges that Disney had in Florida, I mean, Disney, which is one of the big namesake Florida employers.

And that was over Disney's criticism response to what gets called the don't say gay bill, which among other things is very targeted, I think it's fair to say a trans people.

And I think there's been a particular important dimension in our politics right here at this line where you've had the sort of woke corporations fight around Black Lives Matter, but in an ongoing way you really have it around these issues.

And it does seem to me to be forcing a weird sort of realignment in the Republican Party, where a party that was known very much as the big business party, now at least in some cases, right, obviously not in every and there's still plenty of deregulatory efforts and corporate tax cuts and all the rest of it swirling around the Republican agenda.

But Ron DeSantis is going to run for president bragging about how he used the power of the state to punish a corporation for its speech.

And I think it goes to show sort of how intense the commitment on the set of issues is in the Republican Party right now, but too, I'd just be curious to reflect on the way it is slightly altering some of the Republican Party's traditional alignments and forcing members of it within it to choose sides.

Sure.

So the don't say gay law, as it's properly known, the parental rights and education bill prohibits discussion of sexual orientation or gender identity and kindergarten through the third grade.

Although, as we're talking, a version which just introduced in the Florida Bill House that would extend it up to the eighth grade, it's funny how that happens.

And this has resulted in queer teachers feeling like they need to hide who they are at school, to the pulling down of just basic symbols of LGBT pride, like the rainbow flag, right down to the banning of books that mention queer people.

So Tether's Two Mommies and Tango Makes Three, which is literally a book about gay penguins.

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And it very much is part and parcel with this goal of sort of regarding queer identities as an ideology that's being forced on to people.

I think the right recognizes that most people don't know a transgender person in their daily life.

The numbers I see usually flow between like a quarter to like a third of people actually know somebody who is transgender.

So when you're railing against transgender people every day from your bully pulpit or on Fox News or wherever else, they don't have an actual person to conceive of that you're talking about.

All they have is the abstract or whatever cartoonish caricature you're painting for them.

So that means that the realities of transgender life are being mediated through these institutions which range from either hostile or indifferent to our existence.

And I think one of the reasons that he begins to pick this fight with Disney is that it allows him to keep telling that story.

So instead of the young queer kids, he's demonizing or the parents who are now afraid their kid might mention that they have two moms and will get them in trouble or the teachers that you've read about who now feel like they have to leave the state altogether.

Instead of those real people who are being scared, now the story is Ron DeSantis takes on woke capital and Disney forcing its ideology on our children.

And I think by picking that fight, DeSantis is sort of selecting the frame for himself.

And he's sort of positioning himself as the David against this Goliath when it is in fact he himself who is the empty headed bully wandering around the playground and smashing kids face into the dirt.

One question I have about it is whether or not it's getting worse and better at the same time, which is to say we've been talking about practically red states where a lot of I think quite terrible legislation is being proposed and where the rhetoric has gotten very vicious. And I don't think that can be discounted.

But there are also blue states that have been I think it's some of them trying to move in the opposite direction.

So are there places that are brighter to you that at the same time we're seeing not just backsliding but actual literal demonization and scapegoating?

Are there places that are looking more like there's no bottom that there's also you can look up towards, I don't exactly want to say no top, I'm not sure that metaphor works, but a different kind of future.

Are there places that are more hopeful to you right now that if you're just following the places things are getting worse, you might not see?

So you referenced that the number of openly trans people and the word openly is important here has been rising and particularly in younger generations.

And I think that matches the rise in LGB identification over the decades.

People are fond of citing this chart around left-handedness and that once public schools stopped hitting children for writing with their left hand, suddenly there was a huge surge in left-handedness identification.

I see a lot of encouragement in that because it means that more trans people feel safe

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that they feel that they will at the very least find a community of people like them. When you talk with transgender people over a certain age, you hear a similar refrain that I thought I was the only one, that they had no concept that there were other people in the world who felt like they did.

And when you start to see this crack is really with the introduction of mass media and the sort of peering curiosity in the transgender lives and it's one reason why over the course of the history of mass media, including the news media, there was this consistent demonization of transgender people because it was very much telling closet to trans people, well, you can't come out because look how grim your future will be or we will make sure you are punished for rejecting your gender assignment, we will mock you, we will shame you, we will put you on reality TV and make you a laughing stock.

Then as the internet grows and social media grows, I know that there's a lot of anxiety that there are young people sort of like self-diagnosing themselves with gender dysphoria and rushing

off and getting their breasts removed because they saw it on a TikTok video or whatever else, right?

That's not what I see when I see trans people gathering online, I see the breaking of geographic boundaries that used to separate us, that trans people are of course very naturally gravitating towards people who are like-minded, who have similar experiences.

Because believe it or not, the world still doesn't greet transgender people with absolute joy and it's very hard to find people who share that experience, especially in a lot of rural areas across the country.

The internet has this interesting place in trans history as this ultimate gathering space where we can share experiences, share wisdom because one of the ways that trans life is deemed unlivable and impossible is we are all isolated from one another.

And I think that's what really threatens a lot of folks is that suddenly trans life is looking a little possible and the fact that the number of people who are willing to be openly trans is increasing is a really good sign for that reason, at least for my work.

I think that's a good place to begin to come to an end.

So always our final question, what are three books you'd recommend to the audience?

Sure.

Anyone who knows me knows this was an exceedingly impossible question to answer. I'm going to start with a book by Gregory Woods called Hummington and it is a history of queer life and culture pre-Stonewall from the trial of Oscar Wilde up to just really right before the sexual revolution and it is this incredibly rich, entertaining, vibrant history of people making space for themselves when as many people who grew up queer did, they thought they were the only one, including finding community before they even really had the language to describe queer identities.

And it's a fantastic history told through, I mean, love notes and cocktail napkins and police reports and gossip and it's very juicy in parts and it's just fascinating to think like how did the arrest of Oscar Wilde, one of the world's most famous playwrights, change how the media and politics regarded gay people?

What was Josephine Baker learning from the drag queens of Harlem and Washington?

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How did George Orwell reckon with his own homophobia?

The second book is Caliban and the Witch by Sylvia Federici.

Sylvia Federici is a really seminal feminist thinker, was a major figure in the Wages for Housework movement and Caliban and the Witch is about a pandemic followed by a labor shortage, followed by a revanchist movement to assign rigidly strict gender norms on to people that targets queer people and women especially.

And the pandemic was the Black Death and the movement to enforce these redistrict gender norms were the Witch hunts this long period of time in Europe when women and queer people were hunted and killed because they did things like offer abortions or offer contraceptives or cross-dressed.

And then third, I'm going to recommend a little book called Can the Monster Speak by Paul Parshado, he's a transgender man and this book Can the Monster Speak is a lecture he gave in front of this esteemed group of psychoanalysts and what he's asserting in this book is he's trying to illustrate and challenge all the ways in which transgender people's voices are not taken seriously by the medical establishment, by the media, by the culture that what we demand that what we challenge in this world is so threatening to some of the foundational myths of this world that we are told we must be confused or we are told to wait and pass a million tests and go through all these levels of gatekeeping because who knows, we might regret it later.

Jillian Branstetter, thank you very much.

Thank you so much, Ezra.

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