

## ARE ANTI-BULLYING LAWS EFFECTIVE?

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*Since 2010, when several high-profile bullying-related suicides brought bullying and cyberharassment into the national consciousness, all fifty states have passed laws that address bullying among the nation's youth. This Essay is the first in a series of three projects on federal, state, municipal, and individual school approaches to bullying. There are only four published studies on the relationships between law and bullying rates. This Essay adds several features to the discourse. For the first time, it offers a comprehensive analysis of the contents of state anti-bullying laws, using a sixteen-item list of guidelines from the United States Department of Education as a frame. It then considers how effective these laws are at reducing the rates of bullying and cyberbullying among lesbian, gay, and bisexual (LGB) youth. This Essay shows that having an anti-bullying law alone—even a comprehensive one—is not sufficient to have a significant effect on rates of bullying, cyberbullying, and suicidal thoughts among LGB teenagers. Rather, states with more pro-equality laws, in general, reflecting a long-standing commitment to LGBTQ inclusion, are more likely to have lower rates of LGB bullying in schools. Anti-bullying laws have only a minor, enhancing effect on that relationship. This analysis has implications not just for state and local efforts to combat bullying and harassment, but also highlights the profound public safety benefits associated with social and legal commitments to equality.*

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### INTRODUCTION

Since 2010, when Phoebe Prince and Tyler Clementi committed suicide,<sup>1</sup> every state has enacted a law addressing bullying in schools. Some are specific and comprehensive, tracking a list of sixteen recommendations from the Department of Education (DOE).<sup>2</sup> Some are open-ended, leaving it entirely up to individual districts to craft plans. Given the laws' differences, and the significant and negative effects experienced by bullying victims,<sup>3</sup> this Essay asks: Are anti-bullying laws effective at reducing bullying rates? If so, are certain types of laws better than others?

Anti-bullying laws have not been on the books for too long. As such, we do not have enough data to evaluate their effects longitudinally, comparing bullying rates within a state before and after enactment. But we can start to study the impact of different approaches to bullying across states. For example,

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<sup>1</sup> See Emily Bazelon, *What Really Happened to Phoebe Prince*, SLATE (July 20, 2010, 10:13 PM), [http://www.slate.com/articles/life/bulle/features/2010/what\\_really\\_happened\\_to\\_phoebe\\_prince/the\\_untold\\_story\\_of\\_her\\_suicide\\_and\\_the\\_role\\_of\\_the\\_kids\\_who\\_have\\_been\\_criminally\\_charged\\_for\\_it.html](http://www.slate.com/articles/life/bulle/features/2010/what_really_happened_to_phoebe_prince/the_untold_story_of_her_suicide_and_the_role_of_the_kids_who_have_been_criminally_charged_for_it.html) [https://perma.cc/UP78-C9BD]; Lisa W. Foderaro, *Private Moment Made Public, Then a Fatal Jump*, N.Y. TIMES (Sept. 29, 2010), <http://www.nytimes.com/2010/09/30/nyregion/30suicide.html> [https://perma.cc/RQ39-P45R].

<sup>2</sup> VICTORIA STUART-CASSEL, ARIANA BELL & J. FRED SPRINGER, U.S. DEP'T OF EDUC., ANALYSIS OF STATE BULLYING LAWS AND POLICIES 21 (2011).

<sup>3</sup> See DANIELLE KEATS CITRON, HATE CRIMES IN CYBERSPACE 6–12 (2014); Adrienne Nishina & Jaana Juvonen, *Daily Reports of Witnessing and Experiencing Peer Harassment in Middle School*, 76 CHILD DEV. 435, 442 (2005) (anxiety, humiliation, school dislike, and anger); Michele L. Ybarra, *Linkages Between Depressive Symptomatology and Internet Harassment Among Young Regular Internet Users*, 7 CYBERPSYCHOL. & BEHAV. 247, 252 (2004) (finding that depression is significantly related to peer and online harassment).

we already know that different laws may have an impact on the frequency and effects of bullying, particularly of students who identify as lesbian, gay, or bisexual (LGB). Mark Hatzenbuehler and his colleagues recently showed that students in states that complied with at least one of the DOE's legislative recommendations were significantly less likely to report that they were victims of cyberbullying than students in states that failed to include any of the DOE's recommendations.<sup>4</sup> In related work, Hatzenbuehler also found that anti-bullying policies that explicitly included sexual orientation as a protected class may have a palliative effect on the mental health of LGB students.<sup>5</sup>

There is a pressing need for more research to determine if the laws we pass to protect our most vulnerable adolescents have any connection to improving their lives in schools and educational environments.<sup>6</sup> LGBTQ teens are almost twice as likely as the general student population to be bullied on school grounds,<sup>7</sup> nearly three times more likely than heterosexual teens to be harassed online, and twice as likely to receive threatening or harassing text messages.<sup>8</sup> And transgender teens face an even more dangerous landscape.<sup>9</sup>

Using data from the 2015 Youth Risk Behavior Survey (YRBS), a national survey of public school teenagers administered by the Centers for Disease Control and

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<sup>4</sup> Mark L. Hatzenbuehler et al., *Associations Between Antibullying Policies and Bullying in 25 States*, 169 JAMA PEDIATRICS, Oct. 2015, at 1, <http://jamanetwork.com/journals/jamapediatrics/fullarticle/2442853> [<https://perma.cc/CCT3-C68M>].

<sup>5</sup> Mark L. Hatzenbuehler & Katherine M. Keyes, *Inclusive Anti-bullying Policies and Reduced Risk of Suicide Attempts in Lesbian and Gay Youth*, 53 J. ADOLESCENT HEALTH S21, S23-S24 (2013).

<sup>6</sup> The school environment extends beyond "the schoolhouse gate." See Ari Ezra Waldman, *Triggering Tinker: Student Speech in the Age of Cyberharassment*, 71 U. MIAMI L. REV. 428 (2017).

<sup>7</sup> LAURA KANN ET AL., CTNS FOR DISEASE CONTROL & PREVENTION, SEXUAL IDENTITY, SEX OF SEXUAL CONTACTS, AND HEALTH-RELATED BEHAVIORS AMONG STUDENTS IN GRADES 9-12: UNITED STATES AND SELECTED STATES, 2015 104 (2016), <https://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf> [<https://perma.cc/KVX3-JGW7>].

<sup>8</sup> GAY, LESBIAN & STRAIGHT EDUC. NETWORK, OUT ONLINE: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH ON THE INTERNET 8 (2013), <http://www.glsen.org/sites/default/files/Out%20Online%20FINAL.pdf> [<https://perma.cc/L6D2-XKRU>].

<sup>9</sup> EMILY A. GREYTAK, JOSEPH G. KOSCIW, CHRISTIAN VILLENAS & NOREEN M. GIGA, FROM TEASING TO TORMENT: SCHOOL CLIMATE REVISITED 58 (2016), [https://www.glsen.org/sites/default/files/TeasingtoTorment%202015%20FINAL%20PDF%5B1%5D\\_0.pdf](https://www.glsen.org/sites/default/files/TeasingtoTorment%202015%20FINAL%20PDF%5B1%5D_0.pdf) [<https://perma.cc/K5V9-TEYG>] (reporting that teachers believe transgender teens are less safe in school environments than their LGB peers).

Prevention (CDC), this Essay compares frequency of LGB bullying, cyberbullying, and suicidal thoughts across states to determine what effect, if any, different state anti-bullying laws have on the health and safety of LGB youth.<sup>10</sup> In all states, LGB youth experience bullying at higher rates than their heterosexual peers, across a range of 25% in Connecticut to nearly 50% in Wyoming.<sup>11</sup> But many states with high rates of anti-LGB bullying comply with many of the DOE's legislative recommendations: Wyoming's law includes twelve out of sixteen; Oklahoma, with 47.2% of LGB students reporting being bullied,<sup>12</sup> follows fourteen.<sup>13</sup> Therefore, Hatzenbuehler's work on the relationship between state anti-bullying laws and cyberbullying rates marked just the beginning of a larger research agenda on the relationship between state law and bullying in schools.

This Essay shows that enacting an anti-bullying law alone has little significant impact on cross-state rates of LGB bullying, cyberbullying, and suicidal ideation. That should come as no surprise. Merely passing a law—any law—is rarely, if ever, sufficient to solve a complex social problem. That said, there is a role for law, in general, and anti-bullying laws, in particular, to play. States with a general commitment to LGBTQ equality, evidenced by enacting multiple laws that protect LGBTQ persons from discrimination, are far more likely to report lower rates of LGB bullying, cyberbullying, and suicidal thoughts than states that have passed laws that permit discrimination against the LGBTQ community. And although a broader commitment to equality is the strongest predictor of lower rates of LGB bullying across different states, states with more comprehensive anti-bullying laws notice a small, but statistically significant enhanced effect on lowering those numbers. Therefore, by highlighting the impact of a broad commitment to equality on the health and safety of vulnerable youth, this Essay offers a blueprint for state legislatures to help school districts combat harassment in schools.

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<sup>10</sup> See KANN ET AL., *supra* note 7. The YRBS did not identify sufficient numbers of transgender students to make any significant conclusions regarding rates of anti-transgender harassment. This poses a significant problem for broad based research on the state of transgender equality and access to rights.

<sup>11</sup> *Id.* at 103–04.

<sup>12</sup> *Id.* at 104.

<sup>13</sup> Compare WYO. STAT. ANN. § 21-4-312(a)(ii) (2018), with OKLA. STAT. tit. 70, § 24-100.3 to 100.5 (2018).

## I

## STATE ANTI-BULLYING LAWS: PATTERNS AND CONTRASTS

To date, all fifty states have enacted anti-bullying laws; Montana was the final state to do so, passing its law in 2015.<sup>14</sup> In 2010, as part of President Obama's anti-bullying initiative, the DOE issued a report that included a list of sixteen recommended components of state anti-bullying laws. According to the report, a law should include (1) a clear statement of purpose and findings, (2) the scope of schools' jurisdiction, (3) a specific definition that includes (4) a prohibition against bullying on the bases of certain characteristics, (5) a requirement that local districts develop their own policies, and (6) a regular compliance review process. Laws should also require that schools develop (7) definitions of bullying that conform to state law, (8) reporting procedures that are anonymous and protected against retaliation, (9) investigation protocols, (10) written record retention policies, (11) punishments for bullying, and (12) mental health resources for bullying victims. Finally, the DOE recommends that state laws include (13) procedures for communicating district policies, (14) provisions for training staff, (15) transparency and data reporting requirements, and (16) assurances that those who experience bullying are free to seek legal remedies against their harassers.<sup>15</sup>

According to the DOE, states complied with an average of 12.68 of the 16 recommendations.<sup>16</sup> But compliance varied wildly. Out of fifty states, only nine have enacted laws that followed all sixteen of the guidelines. Six of those states participated in the 2015 YRBS.<sup>17</sup> Anti-bullying laws out of Nebraska and Kansas, including only four and five of the

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<sup>14</sup> MONT. CODE ANN. § 20-5-208 to -209 (2018); *Bullock Signs Montana Anti-bullying Bill into Law*, BILLINGS GAZETTE (Apr. 21, 2015), [http://billingsgazette.com/news/government-and-politics/bullock-signs-montana-anti-bullying-bill-into-law/article\\_8b8fdd6f-8bd4-5e77-95fc-501caa251b63.html](http://billingsgazette.com/news/government-and-politics/bullock-signs-montana-anti-bullying-bill-into-law/article_8b8fdd6f-8bd4-5e77-95fc-501caa251b63.html) [<https://perma.cc/AEV6-VQ2S>].

<sup>15</sup> *Dear Colleague Letter Summarizing Examples of Department Key Components of State Bullying Laws*, U.S. DEP'T EDUC. (Dec. 16, 2010) [hereinafter *Dear Colleague Letter*], reprinted in STUART-CASSEL, BELL, & SPRINGER, *supra* note 2, app. A.

<sup>16</sup> Compliance average based on the DOE's assessment at StopBullying.gov. See *Laws & Policies*, STOPBULLYING.GOV, <https://www.stopbullying.gov/laws/> [<https://perma.cc/XUH4-3PP5>] (follow to individual states by clicking on map).

<sup>17</sup> The 2015 YRBS includes responses from students in Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wyoming.

DOE's recommendations, respectively, were the least comprehensive.<sup>18</sup> Hawaii (eight components) and Pennsylvania (nine components) were the least compliant of YRBS-participating states.<sup>19</sup> Among other things, this study seeks to determine if the differences in cross-state approaches to anti-bullying laws are associated with different rates of bullying, cyberbullying, and suicidal thoughts among LGB students.

#### A. State Compliance with DOE Anti-Bullying Recommendations

Building upon previous work on legal approaches to bullying,<sup>20</sup> the DOE approach represents one—but certainly not the only—path toward comprehensive anti-bullying legislation. In this section, I discuss several of the most important components of the DOE's approach and show how, if at all, states are implementing the DOE's suggestions.

*Definitions.* Forty-nine states include a definition of bullying in their statute. Wisconsin, the lone outlier, asks the state Department of Public Instruction to develop one on its own.<sup>21</sup> But the definitions are not fungible. In its original guidance, the DOE suggested that the best anti-bullying laws include ten components in its definition, from defining bullying and cyberbullying to including non-exhaustive lists of bullying behaviors and recognizing that bullying could be verbal or physical, direct or indirect.<sup>22</sup> Only seven states' definitions include all ten elements: California,<sup>23</sup> Connecticut,<sup>24</sup> Florida,<sup>25</sup>

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<sup>18</sup> Compare NEB. REV. STAT. ANN. § 79-267 (West 2018), with KAN. STAT. ANN. § 72-8256 (2018).

<sup>19</sup> Compare HAW. CODE R. § 8-19-2 (LexisNexis 2018), with PA. CONS. STAT. § 13-1303.1-A(e)(2) (2018).

<sup>20</sup> E.g., Susan P. Limber & Mark A. Small, *State Laws and Policies to Address Bullying in Schools*, 32 SCH. PSYCHOL. REV. 445 (2003) (comparing and contrasting state anti-bullying laws in place at that time); Jorge C. Srabstein, Benjamin E. Berkman & Eugenia Pyntikova, *Antibullying Legislation: A Public Health Perspective*, 42 J. ADOLESCENT HEALTH 11 (2008) (evaluating whether state anti-bullying laws adequately address public health concerns and protect the students for which the laws were designed).

<sup>21</sup> WIS. STAT. ANN. § 118.46(1)(a)(1) (West 2018).

<sup>22</sup> For the complete list, see *Dear Colleague Letter*, *supra* note 15, at 90.

<sup>23</sup> CAL. EDUC. CODE §§ 234.1(a), 48900.1(r) (West 2018).

<sup>24</sup> CONN. GEN. STAT. ANN. § 10-222d(a) (West 2018).

<sup>25</sup> FLA. STAT. ANN. § 1006.147(3) (West 2018).

Illinois,<sup>26</sup> Maryland,<sup>27</sup> Massachusetts,<sup>28</sup> and Nevada.<sup>29</sup>

*Scope: On Campus/Off Campus.* According to the DOE, the best statements of scope cover conduct on campus, at school-sponsored activities regardless of their location, on school-provided transportation (e.g., school buses), or through school-provided technology.<sup>30</sup> Twenty-five states explicitly limit school bullying policies along these lines.<sup>31</sup> But cyberbullying can take place entirely off campus. Its effects can linger, impacting the on-campus educational environment for both victims and bullies. And although every state but Alaska,<sup>32</sup> Kentucky,<sup>33</sup> and Wisconsin<sup>34</sup> include cyberbullying or online harassment in their definitions of prohibited conduct, only nineteen of them recognize explicitly that off-campus conduct can be punished.<sup>35</sup> For example, Arkansas prohibits cyberbullying “whether or not the electronic act originated on

<sup>26</sup> 105 ILL. COMP. STAT. ANN. § 5/27-23.7(b) (2018).

<sup>27</sup> MD. CODE ANN. EDUC. LAW § 7-424(a)(2)(i) (2018).

<sup>28</sup> MASS. GEN. LAWS ch. 71, § 37O(a) (2018).

<sup>29</sup> NEV. REV. STAT. ANN. §§ 388.122(1)-(2), 388.123 (2018).

<sup>30</sup> *Dear Colleague Letter*, *supra* note 15, at 89–90.

<sup>31</sup> ALA. CODE § 16-28B-4(a) (2018); ARIZ. REV. STAT. ANN. § 15-341(A)(36) (2018); DEL. CODE ANN. tit. 14, § 4164(b)(2)(a) (2018); IDAHO CODE ANN. § 18-917A(1) (West 2018); IOWA CODE § 280.28(3) (2018); KAN. STAT. ANN. § 72-8256 (2018); KY. REV. STAT. ANN. § 158.148(1)(a) (West 2018); MISS. CODE ANN. § 37-11-67(1) (2018); MO. REV. STAT. § 160.775(2) (2018); NEB. REV. STAT. ANN. § 79-267 (West 2018); NEV. REV. STAT. § 388.135 (2018); N.J. REV. STAT. § 18A: 37-15(a) (2018); N.Y. EDUC. LAW § 12(1) (McKinney 2018); N.C. GEN. STAT. § 115C-407.15 (2018); N.D. CENT. CODE § 15.1-19-18(1) (2018); OHIO REV. CODE § 3313.666(B)(1) (West 2018); OR. REV. STAT. ANN. § 339.351(2)(b) (West 2018); 24 PA. CONS. STAT. § 13-1303.1-A(e)(2) (2018); S.C. CODE ANN. § 59-63-120 (2018); TEX. EDUC. CODE ANN. § 37.0832(a) (West 2018); WASH. REV. CODE ANN. § 28A.300.285(5) (West 2018); W. VA. CODE § 18-2C-3(b)(1) (2018); WIS. STAT. § 118.46(1)(a)(8)–(10) (2018); WYO. STAT. ANN. § 21-4-312(a)(ii) (2018). New Mexico makes clear that the state’s otherwise ambiguous state anti-bullying law has a geographic or school-based trigger. See N.M. CODE R. § 6.12.7.7(A) (LexisNexis 2018).

<sup>32</sup> See ALASKA STAT. 14.33.250 (2018).

<sup>33</sup> See KY. REV. STAT. ANN. § 158.148.

<sup>34</sup> See WIS. STAT. ANN. § 118.46(1)(a)(1) (West 2018).

<sup>35</sup> ARK. CODE ANN. § 6-18-514(e)(2)(B)(ii)(b) (2018); CAL. EDUC. CODE § 234.1(a) (West 2018); CONN. GEN. STAT. ANN. § 10-222d(b)(16) (West 2018); FLA. STAT. ANN. § 1006.147(2) (West 2018); GA. CODE ANN. § 20-2-751.4(a) (2018); HAW. CODE R. § 8-19-2 (LexisNexis 2018); 105 ILL. COM. STAT. 5/27-23.7(a) (2018); IND. CODE ANN. § 20-33-8-13.5(b) (West 2018); LA. STAT. ANN. § 416.13(C)(2)(a)–(b) (2018); ME. STAT. tit. 20-A, § 6554(4)(B) (2018); MD. CODE ANN., EDUC. § 7-424.3(a)(2)(ii)(2) (West 2018); MASS. GEN. LAWS ch. 71, § 37O(b)(ii) (2018); MICH. COMP. LAWS § 380.1310b(10)(a) (2018); MINN. STAT. ANN. § 121A.031(a)(3) (West 2018); N.H. REV. STAT. ANN. § 193-F:4(I)(b) (2018); S.D. CODIFIED LAWS § 13-32-18 (2018); TENN. CODE ANN. § 49-6-4502(a)(3)(B) (2018); UTAH CODE ANN. § 53A-11a-201(2) (West 2018); VT. STAT. ANN. tit. 16, § 11(a)(32)(C)(ii) (2018).

school property or with school equipment” if it is “directed specifically at students or school personnel and [was] maliciously intended for the purpose of disrupting school and has a high likelihood of succeeding in that purpose.”<sup>36</sup>

*Scope: Public/Private Schools.* The DOE is silent on whether state anti-bullying laws should require private schools to develop bullying programs. However, only six states—Illinois,<sup>37</sup> Iowa,<sup>38</sup> Maryland,<sup>39</sup> Massachusetts,<sup>40</sup> Rhode Island,<sup>41</sup> and Vermont<sup>42</sup>—prohibit bullying in public as well as private schools. To the extent that anti-bullying mandates to nonpublic schools may raise legal questions, they have yet to be litigated.<sup>43</sup>

*Enumeration of specific characteristics.* Bullying and cyberbullying tend to affect certain marginalized communities more severely.<sup>44</sup> Therefore, the DOE recommends that

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<sup>36</sup> ARK. CODE ANN. § 6-18-514(e)(2)(B)(ii)(b).

<sup>37</sup> 105 ILL. COM. STAT. § 5/27-23.7(a) (including “non-public, non-sectarian elementary and secondary schools”).

<sup>38</sup> IOWA CODE § 280.28(3) (including “the authorities in charge of each accredited nonpublic school”).

<sup>39</sup> MD. CODE. ANN., EDUC. § 7-424.3(b) (including “nonpublic schools”).

<sup>40</sup> MASS. GEN. LAWS ch. 71, § 37O(c) (including “each school district, charter school, approved private day or residential school and collaborative school”).

<sup>41</sup> 16 R.I. GEN. LAWS § 16-21-34(a)(16) (2018) (including “[a]ll school districts, charter schools, career and technical schools, approved private day or residential schools and collaborative schools”).

<sup>42</sup> VT. STAT. ANN. tit. 16, § 570(e)(4) (2018) (instructing public “school board[s]” and the “board[s] of directors or other governing bod[ies] of . . . independent school[s]” to create anti-bullying policies).

<sup>43</sup> The state has authority to impose lawful restrictions on otherwise private entities receiving public funds. *See, e.g., Rust v. Sullivan*, 500 U.S. 173, 196 (1991) (holding that a private recipient of public funds for family planning purposes must follow otherwise constitutional conditions attached to receipt of those funds).

<sup>44</sup> Women, LGBTQ persons, racial and ethnic minorities, as well as the disabled are all harassed at rates significantly higher than the general population. *See, e.g., MOLLY O’SHAUGHNESSY ET AL., SAFE PLACE TO LEARN: CONSEQUENCES OF HARASSMENT BASED ON ACTUAL OR PERCEIVED SEXUAL ORIENTATION AND GENDER NON-CONFORMITY AND STEPS FOR MAKING SCHOOLS SAFER* 2, 13–15 (2004) (discussing high rates of harassment experienced by LGBT students); Jamilia J. Blake et al., *National Prevalence Rates of Bully Victimization Among Students with Disabilities in the United States*, 27 SCH. PSYCHOL. Q. 210, 216–17 (2012) (showing that disabled students in elementary, middle, and high schools experience bullying at significantly higher rates than the general population); Danielle Keats Citron & Helen Norton, *Intermediaries and Hate Speech: Fostering Digital Citizenship for Our Information Age*, 91 B.U. L. REV. 1435, 1448 (2011) (describing the use of cyber-activities to incite violence against African-Americans, Asian-Americans, and Jews); Chad A. Rose & Nicholas A. Gage, *Exploring the Involvement of Bullying Among Students with Disabilities Over Time*, 83 EXCEPTIONAL CHILD. 298, 304–09 (2017) (showing that high rates of bullying of the disabled continue over time).



anti-bullying laws prohibit bullying on the basis of ten characteristics: race, color, religion, ancestry or national origin, gender, sexual orientation, gender identity, socioeconomic status, physical appearance, and disability.<sup>45</sup> Twenty-one states include at least one of these characteristics.<sup>46</sup> Only nine of them—Arkansas, Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, and North Carolina—include all ten (or more) of the DOE’s recommendations.<sup>47</sup> Florida only references harassment on the basis of sex, religion, or race.<sup>48</sup> The most commonly omitted characteristics are socioeconomic status and physical appearance and, to a lesser extent, gender identity.

### B. Takeaways, Trends, and Questions

This high level, fifty-state review offers several takeaways for further exploration. First, there is great variance among state anti-bullying laws. According to the DOE, there are nine states that comply with all sixteen recommendations: Connecticut, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, and Oregon.<sup>49</sup> Nebraska (four), Kansas (five), and South Dakota (seven) are on the low end of compliance.<sup>50</sup> This leads to our first research question: Does greater compliance with DOE anti-bullying law recommendations correlate with lower rates of bullying in

<sup>45</sup> See *Dear Colleague Letter*, *supra* note 15, at 90–91.

<sup>46</sup> ARK. CODE ANN. § 6-18-514(b)(1) (2018); CAL. EDUC. CODE §§ 200, 210.2, 210.7, 212.1, 212.3, 212.5, 212.6 (West 2018); COL. REV. STAT. ANN. § 22-32-109(1)(ll)(l) (West 2018); CONN. GEN. STAT. ANN. § 10-222d(a)(1) (West 2018); DEL. CODE ANN. tit. 14, § 4164(b)(2)(f) (2018); FLA. STAT. ANN. § 1006.147(3)(a)(8) (West 2018); 105 ILL COMP. STAT. ANN. § 5/27-23.7(a) (West 2018); IOWA CODE § 280.28(2)(c) (2018); ME. STAT. tit. 20-A, § 6554(2)(B)(3) (2018); MD. CODE ANN., EDUC. § 7-424(a)(2)(i)(1) (West 2018); MASS. GEN. LAWS ch. 71, § 37O(d)(3) (2018); MINN. STAT. ANN. § 121A.031(2)(g) (West 2018); NEV. REV. STAT. § 388.122(1)(c)(1)-(2) (West 2018); N.J. REV. STAT. § 18A:37-14 (2018); N.Y. EDUC. LAW § 11(7) (McKinney 2018); N.C. GEN. STAT. § 115C-407.15(a) (2018); OR. REV. STAT. ANN. § 339.351(3) (West 2018); 16 R.I. GEN. LAWS § 16-21-33(a)(1)(v) (2018); VT. STAT. ANN. tit. 16, § 11(a)(26) (2018); WASH. REV. CODE ANN. §§ 28A.300.285(2), 9A.36.080(3) (West 2018). New Mexico state law does not list any groups, but regulations issued by the New Mexico Public Education Department do. N.M. CODE R. § 6.12.7.7(A) (LexisNexis 2018).

<sup>47</sup> ARK. CODE ANN. § 6-18-514(b)(1); CONN. GEN. STAT. ANN. § 10-222d(a)(1); 105 ILL COMP. STAT. ANN. § 5/27-23.7(a); IOWA CODE § 280.28(2)(c); ME. STAT. tit. 20-A, § 6554(2)(B)(3); MD. CODE ANN., EDUC. § 7-424(a)(2)(i)(1); MASS. GEN. LAWS ch. 71, § 37O(d)(3); MINN. STAT. ANN. § 121A.031(2)(g); N.C. GEN. STAT. § 115C-407.15(a).

<sup>48</sup> FLA. STAT. ANN. § 1006.147(3)(a)(8).

<sup>49</sup> Compliance based on the DOE’s assessment at [StopBullying.gov](http://StopBullying.gov). See *Laws & Policies*, *supra* note 16.

<sup>50</sup> *Id.*

schools?

But, as we have seen, measuring compliance is not so simple. According to the DOE's metric, a state is considered compliant with a statutory component recommendation if it does something—anything—to nod toward the guideline.<sup>51</sup> That treats compliance as an all-or-nothing variable, which, for some elements, is not the case. For example, the DOE lists Florida among those states that explicitly list protected characteristics.<sup>52</sup> But Florida's list—sex, religion, and race—is far less comprehensive than the one in Massachusetts's law, which lists every DOE-recommended category, and then some.<sup>53</sup> This requires a new metric that teases out extent of compliance with DOE recommendations at a granular level. And it raises a second research question: Is there a relationship between the extent of state compliance with each individual recommendation and school bullying rates in those states?

Finally, at least one trend is already suggested by a top-line view of the data. The nine fully compliant states on the DOE's metric are “blue,” or traditionally Democratic-voting, states; the least compliant states are “red,” or traditionally Republican-voting, states.<sup>54</sup> What's more, it should come as no surprise that most of the states that include a comprehensive list of protected characteristics—including California (eight out of ten), Connecticut (ten), Delaware (eight), Illinois (ten), Maine (ten), Maryland (ten), Massachusetts (ten), Minnesota (ten), New Jersey (nine), New York (eight), Oregon (nine), Rhode Island (eight), Vermont (eight), and Washington (eight)—are not only “blue” states, but also score high on other equality metrics. For example, these states prohibit public and private employers from discriminating on the basis of sexual orientation and gender identity, with the exception of New York, where only sexual orientation is protected.<sup>55</sup> It makes sense that similar protections would also be included in these

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<sup>51</sup> STUART-CASSEL, BELL & SPRINGER, *supra* note 2, at 8.

<sup>52</sup> *Id.* at 27–28.

<sup>53</sup> Compare FLA. STAT. ANN. § 1006.147(3)(a)(8), with MASS. GEN. LAWS ch. 71, § 37O(d)(3).

<sup>54</sup> See Jeffrey M. Jones, *Massachusetts, Maryland Most Democratic States*, GALLUP NEWS (Feb. 4, 2015), [http://news.gallup.com/poll/181475/massachusetts-maryland-democratic-states.aspx?utm\\_source=Politics&utm\\_medium=newsfeed&utm\\_campaign=tiles](http://news.gallup.com/poll/181475/massachusetts-maryland-democratic-states.aspx?utm_source=Politics&utm_medium=newsfeed&utm_campaign=tiles) [<https://perma.cc/R63R-KLB3>]; note 49 and accompanying text.

<sup>55</sup> See *Non-Discrimination Laws: State by State Information—Map*, ACLU, <https://action.aclu.org/maps/non-discrimination-laws-state-state-information-map> [<https://perma.cc/22HT-HSHC>].

states' anti-bullying laws. This leads to a final set of research questions: Is there a correlation between states with pro-equality laws generally and lower rates of bullying in schools? If so, are specific anti-bullying laws irrelevant? The balance of this Essay answers these questions.

## II

### STATISTICAL ANALYSIS OF STATE ANTI-BULLYING LAWS AND LGB BULLYING RATES

Studies measuring the impact of law on bullying rates are rare. In 2011, a group of Australian researchers showed that an anti-bullying law failed to reduce bullying rates in that country four years after enactment.<sup>56</sup> In 2013, Mark Hatzenbuehler and Katherine Keyes found that gay and lesbian youth living in jurisdictions with fewer schools with LGBT-inclusive anti-bullying policies were 2.25 times more likely to have attempted suicide in the last year than those living in districts with more LGBT-friendly approaches.<sup>57</sup> And in 2015, Hatzenbuehler showed that complying with at least one of the DOE's recommended anti-bullying law components was associated with decreased odds of bullying and cyberbullying in that state.<sup>58</sup> These studies represent a beachhead in a larger research agenda on the effect of law on bullying in schools. This study takes a further step. Using the latest data on self-reported adolescent bullying rates (data that was not available for the above studies), this Essay shows that anti-bullying laws alone have no significant effect on bullying rates of LGB youth. Rather, LGB students in states with a broad commitment to LGBTQ equality in general are significantly more likely to report lower rates of bullying, cyberbullying, and suicidal thoughts among LGB students than similarly situated youths in states without a general commitment to LGBTQ equality. A comprehensive anti-bullying law only has a small, but statistically significantly enhanced, effect on student health and safety in these areas. This Part discusses the data used for this study, summarizes the study design and statistical models used, and reports and discusses the results. I also discuss the study's

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<sup>56</sup> Donna Cross, Melanie Epstein, Lydia Hearn, Phillip Slee, Therese Shaw & Helen Monks, *National Safe Schools Framework: Policy and Practice to Reduce Bullying in Australian Schools*, 35 INT'L J. BEHAV. DEV. 398 (2011).

<sup>57</sup> Hatzenbuehler & Keyes, *supra* note 5, at S23.

<sup>58</sup> Hatzenbuehler et al., *supra* note 4, at 6.

limitations.

#### A. Data and Methods

Data on bullying rates were obtained from the 2015 Youth Risk Behavior Survey, or YRBS. The YRBS is a comprehensive study that measures student health on various metrics, including violence, smoking, drugs and alcohol, sex, diet, and physical activity.<sup>59</sup> Three questions are relevant for this study.

- (1) During the past 12 months, have you ever been bullied **on school property**?
- (2) During the past 12 months, have you ever been **electronically** bullied? (Count being bullied through e-mail, chat rooms, instant messaging, websites, or texting.)
- (3) During the past 12 months, did you ever **seriously** consider attempting suicide?<sup>60</sup>

Responses were dichotomous—namely, either “Yes” or “No.” A total of 167,856 students in grades 9 through 12 in schools across twelve states responded to the YRBS.<sup>61</sup> Due to unreported or missing information on bullying rates in Arizona and Vermont, 23,595 (14%) responses were eliminated for the purposes of statistical analysis, yielding a total sample of 144,261 students across twenty-three states.

State anti-bullying laws were coded by the DOE at StopBullying.Gov based on compliance (1) or noncompliance (0) with the sixteen legislative components discussed above. The DOE deemed laws compliant with a recommendation if it included all or any part of the guidelines. As shown in Figure 1, a Compliance Score (C-Score), denoting the percent of compliance, was then derived for each state.

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<sup>59</sup> See YRBSS *Methods*, CDC  
<https://www.cdc.gov/healthyyouth/data/yrbs/methods.htm>  
 [https://perma.cc/CT8J-B33Q] (last updated Aug. 9, 2018).

<sup>60</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, 2015 STATE AND LOCAL YOUTH RISK BEHAVIOR SURVEY 7, [https://ftp://ftp.cdc.gov/pub/data/yrbs/2015/2015\\_hs\\_questionnaire.pdf](https://ftp://ftp.cdc.gov/pub/data/yrbs/2015/2015_hs_questionnaire.pdf) [https://perma.cc/GV8J-QVNR].

<sup>61</sup> KANN ET AL., *supra* note 7, at 84.

Because this approach treated all components as all-or-nothing variables, even though several of them were not, the recommendations were also broken down into individual elements. States were given a percent score for compliance with each. For example, as discussed above, the DOE’s own guidelines suggest that states should explicitly note that bullying on the basis of ten characteristics is prohibited. States that included all ten were given a score of 1 for that component; states that included only race, religion, and sex received a score of 0.3. Under the DOE’s analysis, both of these states would have been given a score of 1. Extent of compliance was determined by three close readings of all state anti-bullying statutes.<sup>62</sup> A total percent Detailed Compliance Score (DC-Score) based on this more granular approach to all of the DOE recommendations was calculated based on the new total number of components (46). That score is also reported in Figure 1.

Finally, states were given an Equality Score based on their approaches to six categories of laws directly affecting the LGBTQ community: employment discrimination, gender marker change on identification documents, transgender healthcare, housing, public accommodations, and hate crimes. Based on information maintained by the Human Rights Campaign (HRC),<sup>63</sup> state laws in each category were coded for how far they went toward protecting LGBTQ equality. For example, with respect to employment discrimination,

State	C-Score*	DC-Score†	Eq. Score‡
AR	.8750	.7826	.000
CA	.9375	.8043	1.00
CT	1.000	.9783	.833
DE	.8750	.7607	.833
FL	.9375	.8043	.167
HI	.5000	.4783	.833
IL	1.000	1.000	.750
IN	.8750	.6739	.333
KY	.6250	.3913	.167
ME	.9375	.9565	.667
MD	1.000	.9783	.917
MA	1.000	1.000	.833
MI	.8125	.6304	.083
NV	1.000	.8479	.750
NM	.7500	.2174	.750
NY	1.000	.8696	.833
NC	.8125	.7174	.042
ND	.8125	.5435	.000
OK	.8750	.5652	.000
PA	.5625	.3696	.167
RI	.8125	.8043	.667
WV	.8750	.5652	.000
WY	.7500	.5000	.000

Figure 1

\*C-Score based on DOE analysis on 16 legislative components.  
 †DC-Score based on Author analysis on 46 legislative components.  
 ‡Equality Score based on Human Rights Campaign data.

<sup>62</sup> One was conducted by Dawn Neagle, the Author’s research assistant and a 2017 graduate of New York Law School. The second was conducted independently by the Author. A third reading by the Author addressed any disagreements.

<sup>63</sup> *State Maps of Laws & Policies*, HUMAN RIGHTS CAMPAIGN, [http://www.hrc.org/state\\_maps](http://www.hrc.org/state_maps) [<https://perma.cc/QU7L-HEXP>] (follow “Employment” hyperlink).

states scored on a range of 0/4 (=0) to 4/4 (=1). States that permit public and private employers to fire an employee because of her sexual orientation and/or gender identity received a 0 (=0). States that prohibited both received a 4 (=1). States that prohibited private and public employment discrimination on the basis of sexual orientation alone received a 3/4 (=0.75), and those that only protected gay public employees received a 1 (=0.25). States that protected only public employees from discrimination on the basis of both sexual orientation and gender identity received a 2 (=0.5). A similar coding system, with different ranges, was applied to each category based on extent of compliance categories created by HRC. A state's final Equality Score, also reported in Figure 1, was calculated by taking the mean of the state's score in each of the six categories. All statistical analyses were conducted in SPSS.

#### B. Results and Discussion

The dominant factor associated with lower rates of bullying, cyberbullying, and suicidal thoughts among lesbian, gay, and bisexual teenagers in certain states is the states' general commitment to LGBTQ equality. In fact, as illustrated in Figure 2, an additional point on a state's Equality Score is associated with a 12.74 point drop in LGB bullying rates (sig = .000,  $p < .05$ ).<sup>64</sup> What's more, this relationship accounts for 63.3% of the LGB bullying rate ( $r^2 = 0.633$ ).<sup>65</sup> The effect on suicidal thoughts and cyberbullying among LGB teenagers is notable but not as significant. Serious thoughts about suicide among LGB teenagers dropped 7.10 points for every increase in a state's Equality Score (sig = 0.31,  $p < .05$ ). And cyberbullying decreased by 5.74 points. However, that relationship has a p-value of just above the standard .05 (sig = .075,  $p > .05$ ), suggesting that state commitments to equality generally are only somewhat effective at explaining cross-state differences in LGB cyberbullying rates.

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<sup>64</sup> The  $p$ -value explains how close our model comes to explaining the data. All models start with a *null hypothesis*, or the idea that any variation in our data is coincidental and that there is no significant difference between two data sets. The  $p$ -value is the probability that our model's statistical output actually explains differences in rates of LGB bullying, cyberbullying, and suicidal ideation among states. Low  $p$ -values mean strong evidence against the null hypothesis.

<sup>65</sup> R squared ( $r^2$ ) is a statistical measure that refers to the percentage of the dependent variable that can be explained by a linear model. So, the higher the  $r^2$ , the better the model fits the data, or the more of our dependent variable (LGB bullying rates) is explained by our independent variable (Equality Scores).

C-Scores, the compliance metric based on the DOE’s analysis, had no significant relationship to rates of LGB bullying, cyberbullying, and suicidal thoughts. For the most part, neither did DC-Scores, the more detailed compliance metric. For cyberbullying and suicidal thoughts, greater DC-Scores had no significant relationship (cyberbullying: sig = .432,  $p > .05$ ; suicidal thoughts: sig = .477,  $p > .05$ ). With respect to LGB bullying rates, DC-Scores do better: a point higher on a state’s score is associated with a 10.70 point drop in LGB bullying rates. However, the statistical significance is weak (sig = .066,  $p > .05$ ) and the extent of compliance only accounts for 15.2% of the prediction ( $r^2 = .152$ ). This suggests that merely having an anti-bullying law, even a relatively comprehensive one, has little to no effect on differences in rates of LGB bullying, cyberbullying, and suicidal thoughts across states. Similar regression analyses were run to determine if any individual DOE legislative component had any impact on our dependent variables, but only one statistically significant relationship was found. States that included a more comprehensive list of characteristics specifically protected from bullying behavior also saw a 7.55 point drop in LGB

bullying rates (sig = .005,  $p < .05$ ).

Unsurprisingly, this component, is highly correlated with a state’s Equality Score. That is, states with a high Equality Score also included more protected characteristics.

Therefore, the relationship between a more comprehensive list of protected characteristics is reflected in a state’s Equality Score.

The relationship between higher DC-Scores and lower LGB bullying rates merited further investigation. A moderation model was run to determine if state compliance with DOE anti-bullying recommendations impacted the relationship between a state’s commitment to equality and LGB bullying rates. This analysis showed a small, but statistically

	LGB Bullying	LGB Cyberbullying	LGB Suicidal Thoughts
Equality Score	-12.74 <sup>****</sup>	-5.74 <sup>*</sup>	-7.096 <sup>****</sup>
C-Score	-10.782	-2.449	4.916
DC-Score	-10.696 <sup>**</sup>	-4.474	-4.202

Figure 2

Coefficients Showing Relationships Between Independent and Dependent Variables

<sup>\*\*\*\*</sup> Sig = .000,  $p < .05$ .

<sup>\*\*\*</sup> Sig = .031,  $p < .05$ .

<sup>\*\*</sup> Sig = .066,  $p < .1$ .

<sup>\*</sup> Sig = .075,  $p < .1$ .

significant effect. Although the change in  $r^2$  was small, only accounting for an additional 1.9% of the story,  $p$ -values were significant ( $p < .05$ ). In other words, greater DC-Scores enhanced the effect of state Equality Scores on LGB bullying rates. It did so up to a 91.1% compliance rating. This suggests that the effect that a state's greater commitment to LGBTQ equality has on LGB bullying rates may be slightly enhanced when that state enacts and implements more comprehensive anti-bullying legislation. That above 91.1% compliance, following additional DOE recommendations has no noticeable interaction effect on the relationship between Equality Scores and LGB bullying rates may suggest that some of the legislative components are redundant, too similar, impossible to enforce, or irrelevant. But that is an open question.

This analysis has several notable legal implications. First, although anti-bullying laws on their own appear to have little to no effect on LGB bullying rates, states should not repeal the laws they have passed. These laws do, after all, enhance the effect of a state's general commitment to equality. What's more, although the laws in place may have minor direct effects, they have important expressive value. As Cass Sunstein and others have argued, laws not only coerce specific behaviors, they also remind us what conduct is socially harmful and signal appropriate behavior.<sup>66</sup> State anti-bullying laws, not to mention the Obama Administration's strong anti-bullying message and initiative, serve to remind society that bullying is not a rite of passage that should be tolerated or, at worst, celebrated.<sup>67</sup> And anti-bullying laws are one part of a larger socio-legal approach to combatting bullying in schools and online. If anything, the lack of a strong association between types of anti-bullying laws and cross-state differences in LGB bullying rates suggests that legislators should do more, not less. Policymakers cannot pass an anti-bullying law and declare the problem solved. Their constituents must demand

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<sup>66</sup> See Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2022 (1996); see also Elizabeth S. Anderson & Richard M. Pildes, *Expressive Theories of Law: A General Restatement*, 148 U. PA. L. REV. 1503, 1571 (2000) (explaining that what the law establishes a set of agreed upon values); Deborah Hellman, *The Expressive Dimension of Equal Protection*, 85 MINN. L. REV. 1, 3 n.10 (2000) (explaining that law is coercive and expressive of norms).

<sup>67</sup> Nia-Malika Henderson, *Obama Speaks Out Against Bullying, Says, "I Wasn't Immune,"* WASH. POST (Mar. 11, 2011), [https://www.washingtonpost.com/blogs/44/post/obama-speaks-out-against-bullying-says-i-wasnt-immune/2011/03/10/ABTfMDQ\\_blog.html?utm\\_term=.f9ed3ef839e8](https://www.washingtonpost.com/blogs/44/post/obama-speaks-out-against-bullying-says-i-wasnt-immune/2011/03/10/ABTfMDQ_blog.html?utm_term=.f9ed3ef839e8) [https://perma.cc/SMZ5-2AM8].



that states go further to protect LGBTQ equality generally.

A second related implication of this research is that equality agendas are really public safety agendas. Treating people equally under the law does more than ensure equal access to, say, public accommodations, housing, and healthcare. Equality laws also have clear, demonstrable positive externalities, like including improving the health and safety of LGB schoolchildren. When these commitments are under attack, the health and safety of marginalized populations are also at risk. This is an acute problem in our increasingly regressive political environment. States are actively permitting discrimination against transgender individuals.<sup>68</sup> The Supreme Court recently voided important protections in the Voting Rights Act<sup>69</sup> that arguably contributed to the suppression of votes from racial minorities in the 2016 election.<sup>70</sup> And executive actions threaten to permit discrimination on the basis of religion.<sup>71</sup> With commitments to equality eroding, it is no wonder that reported incidents of identity-based harassment have increased.<sup>72</sup> This Essay's analysis would predict as much. Equality, as this

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<sup>68</sup> See, e.g., Sess. L. No. 2016-3, § 1.2, 2016 N.C. Sess. Laws 12, 12-13 (restricting public bathroom access to individuals whose "biological sex" matches the bathroom's gender classification).

<sup>69</sup> See, e.g., *Shelby Cty. v. Holder*, 133 S. Ct. 2612, 2631 (2013) (declaring unconstitutional a provision of the Voting Rights Act that protected racial minorities from strategies that suppressed minority voting in states with a history of racial discrimination).

<sup>70</sup> See Sarah A. Harvard, *How Did the 'Shelby County v. Holder' Supreme Court Decision Change Voting Rights Laws?*, MIC (July 29, 2016), <https://mic.com/articles/150092/how-did-the-shelby-county-v-holder-supreme-court-decision-change-voting-rights-laws#.UkozDOge5> [<https://perma.cc/PQ8W-BQD2>] (reporting on the results of a voting rights analysis by the Southern Coalition for Social Justice showing a negative impact on minority voting rights in North Carolina after *Shelby County*).

<sup>71</sup> See, e.g., Exec. Order No. 13,769, 82 Fed. Reg. 8,977 (Jan. 27, 2017) (banning for ninety days entry into the United States of individuals from seven Muslim-majority countries and ending indefinitely an ongoing Syrian refugee resettlement program).

<sup>72</sup> The Southern Poverty Law Center has documented dramatic increases in reported hate incidents since the 2016 Election. See Mark Berman, *Hate Crimes in the United States Increased Last Year, the FBI Says*, WASH. POST (Nov. 13, 2017), [https://www.washingtonpost.com/news/post-nation/wp/2017/11/13/hate-crimes-in-the-united-states-increased-last-year-the-fbi-says/?utm\\_term=.976688b9ec03](https://www.washingtonpost.com/news/post-nation/wp/2017/11/13/hate-crimes-in-the-united-states-increased-last-year-the-fbi-says/?utm_term=.976688b9ec03) [<https://perma.cc/B4A4-6MW3>] (noting that reports to the FBI of hate crimes have increased for two consecutive years); *Update: 1,094 Bias-Related Incidents in the Month Following the Election*, SPLC HATEWATCH (Dec. 16, 2016), <https://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-related-incidents-month-following-election> [<https://perma.cc/GX3H-HVDE>] (detailing a spike in reports of bias-related incidents surrounding the 2016 presidential election).

study shows, is strongly associated with public safety of marginalized groups in school. That any step back from our general commitment to equality may have an effect on the health and safety of our most vulnerable youth should, at a minimum, be part of the messaging against these discriminatory policies.

Third, this study suggests that the power of equality transcends technology. State Equality Scores had a statistically significant association with lower rates of LGB cyberbullying as well as face-to-face bullying. And like bullying in schools, cyberharassment is antithetical to democratic values. Cyberharassment contributes to discrimination and the silencing of women.<sup>73</sup> It forces victims to avoid certain online spaces for fear of attack.<sup>74</sup> And it contributes to the dehumanization of already vulnerable victims.<sup>75</sup> This study shows that in seeking tools to combat online victimization and harassment, states need not dive into misleading arguments about censorship and free speech and what platforms can or cannot do.<sup>76</sup> Rather, they can look first to strengthening their commitments to treat members of marginalized groups equally under the law. As this study shows, doing so may have a substantial positive effect on online and school culture.

### C. Limitations

This analysis is subject to several limitations. First, many factors can contribute to lower bullying rates, and many of those factors defy measurement. For example, greater education and awareness about the effects of bullying on teenagers may translate into greater parental involvement in their children's lives,<sup>77</sup> more comprehensive supervision of

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<sup>73</sup> See generally CITRON, *supra* note 3 (showing how online harassers use gender and sex to attack and dehumanize their victims); see also Danielle Keats Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 384–91 (2009) (discussing how cyberharassment uniquely harms women).

<sup>74</sup> See Mary Anne Franks, *Unwilling Avatars: Idealism and Discrimination in Cyberspace*, 20 COLUM. J. GENDER & L. 224, 229 (2011).

<sup>75</sup> See Ari Ezra Waldman, *A Breach of Trust: Fighting Nonconsensual Pornography*, 102 IOWA L. REV. 709, 714–19 (2017) (discussing how “revenge porn” contributes to a sense of hopelessness among women, gay men, and lesbians).

<sup>76</sup> Attempts to combat cyberharassment are often countered with homages to sacrosanct free speech principles. *But see* Citron, *Law's Expressive Value*, *supra* note 73, at 405–07.

<sup>77</sup> See, e.g., Jami-Leigh Sawyer, Faye Mishna, Debra Pepler & Judith Wiener, *The Missing Voice: Parents' Perspectives of Bullying*, 33 CHILD. & YOUTH SERVS. REV. 1795, 1798, 1800 (2011) (noting that many parents were surprised to learn

youth online behavior while at home,<sup>78</sup> and enhanced teacher and school attention to warning signs.<sup>79</sup> Not only can we not measure these factors, we cannot control for them either. But, as discussed above, laws have both direct (coercive) and indirect (expressive) effects. Laws contribute to greater awareness and understanding, and remind citizens what society considers morally wrong and culturally appropriate. To the extent that we pass laws to address social problems, these effects will be measured imperfectly. But it is important to develop a metric for evaluating their role nonetheless.

A second and related limitation is that there are many metrics upon which we can evaluate a law's effectiveness. The effect of state anti-bullying laws on LGB teenagers is just one of those metrics, and, arguably, not necessarily the best one. What's more, a given law can be effective at solving one problem but not another. However, given the unique harms experienced by LGBTQ victims of bullying, an analysis of law's

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that their children were the victims of bullying); *see also* Lucy Bowes et al., *School, Neighborhood, and Family Factors Are Associated with Children's Bullying Involvement: A Nationally Representative Longitudinal Study*, 48 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 545, 547–49 (2009) (describing the relationship between parental involvement and childhood involvement in bullying. For example, “[h]aving a mother with depression and spending few stimulating activities with mothers were uniquely associated with an increased risk for being bully-victims. Witnessing domestic violence and low maternal warmth remained associated with the risk for being bullies. Child maltreatment was uniquely associated with an increased risk for being victims of bullying, bullies, or bully-victims when considered simultaneously with other socioenvironmental factors.”).

<sup>78</sup> *See, e.g.*, Wanda Cassidy, Karen Brown & Margaret Jackson, “*Making Kids Cool*”: *Parents' Suggestions for Preventing Cyber Bullying and Fostering Cyber Kindness*, 46 J. EDUC. COMPUTING RES. 415, 425–26, 431–32 (2012) (noting that while parents may “acknowledge[] the need for the adults in their children's lives to play a key role in encouraging youth to be kinder and more respectful in the online world,” and have ideas of how to address the problem of cyberbullying, if parents are not aware of or “conversant with the extent of cyber victimization or bullying in which their children are involved, then they [will likely] not be overly concerned about cyber bullying in general”); *see also Prevent Cyberbullying*, STOPBULLYING.GOV (Sept. 8, 2017), <https://www.stopbullying.gov/cyberbullying/prevention/index.html> [<https://perma.cc/C4Q2-FBAL>].

<sup>79</sup> *See, e.g.*, Terry Diamanduros, Elizabeth Downs & Stephen J. Jenkins, *The Role of School Psychologists in the Assessment, Prevention, and Intervention of Cyberbullying*, 45 PSYCH. SCH. 693, 701–03 (2008) (noting that school psychologists are in a good position to address cyberbullying, especially if their resources are expanded); Rachel C. Vreeman & Aaron E. Carroll, *A Systematic Review of School-Based Interventions to Prevent Bullying*, 161 ARCHIVES PEDIATRIC ADOLESCENT MED. 78, 82–84 (2007) (concluding that whole-school multi-disciplinary systems to reduce bullying can be effective); Jina S. Yoon & Karen Kerber, *Bullying: Elementary Teachers' Attitudes and Intervention Strategies*, 69 RES. EDUC. 27, 31–33 (2003) (exploring teachers' involvement in interventions against bullying).

impact on that community's welfare is necessary and overdo.

A third limitation lies in the small sample size. Only twenty-five states reported data through the YRBS, and only twenty-three states' data could be used in this Essay's analysis. Small data sets make regression modeling imprecise: in trying to find the equation that best fits the data, more data is better. The small sample size also made it particularly difficult to answer questions about subsets of states. Notably, this problem plagues all statistical analyses of laws across states, where the maximum number of data points will be fifty. The small sample size might not be fatal to this Essay's analysis, but it should be noted while interpreting the data.

#### CONCLUSION

This Essay shows that merely enacting and implementing an anti-bullying law—even a comprehensive one, per the DOE's metrics—has little to no impact on LGB student health and safety. Rather, the most important factor explaining cross-state differences in rates of LGB bullying, cyberbullying, and suicidal thoughts among teenagers in school is a state's broader commitment to LGBTQ equality. States that have laws that, among other things, protect LGBTQ persons from discrimination on the basis of sexual orientation and gender identity in various corners of society tend to have lower rates of LGB bullying, fewer incidents of LGB cyberbullying, and fewer LGB students reporting that they have seriously considered suicide. To the extent they play any role at all, comprehensive anti-bullying laws interact with the pronounced and statistically significant relationship between a state's commitment to equality and LGB student safety. But their role is minor and they do not play a significant role on their own. This should come as no surprise: anti-bullying laws are just one part of a broader societal response to bullying in schools.