

# *Queer Bioethics*

## LGBTQI Medical History & Contemporary Ethics

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Ethics Grand Rounds at University of Texas Southwestern Medical Center

9 January 2018



# **THEMES FOR THIS TALK**

**On the legacy and ethics of LGBTQ health**

- Historicity**
- Ethical complexity**
- Pathological legacy**
- Political legitimacy**
- Biomedical necessity**
- Narrative sensitivity**

# QUEER BIOETHICS

## 1. Looking Backward

**Homosexuals in the History of Medicine**

## 2. Recent History

**Federal and ADA Protections for Cis-Gender and Trans**

## 3. Looking Forward

**Some Further Issues to Consider**

# How do we do Queer Bioethics?

1. **WHAT:** Attentive to the above concerns  
the “**queer**” as a *noun*
2. **HOW:** Employ a methodology of queer  
activism, queer theory, and queer identity AND  
put it into ethical practice!  
the **queer** as a *verb* (“to queer”)



# 1. Looking Backward

**Homosexuals and the Third Sex in  
the History of Medicine**

# Timeline: Looking Backward on LGBT Health

- |            |   |
|------------|---|
| 1869       | "Homosexuelle" is coined by Karl Maria Kertbeny; in the same year Carl Westphal introduces the phrase "die conträre Sexualempfindung"   |
| 1890 -1965 | The medical fields of sexology, psychoanalysis, and hormonal studies solidify the pathologization of "homosexuality"  |
| 1965-1973  | With the rise of the gay rights movements in America and abroad, pressure is placed on medical organizations by LGBT persons to remove "homosexuality" from the lists of mental and somatic aberrations |

# THE BIRTH OF THE HOMOSEXUAL

"Homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy into a kind of interior androgyny, a hermaphrodism of the soul. The sodomite had been a temporary aberration; the homosexual was now a species."

- Michel Foucault, *The History of Sexuality*, vol. 1

# THE SODOMITE v. THE HOMOSEXUAL

Religion

Law

Science

**Practice vs. Personhood?**

## Same-sex Affection

### Juridical Model 1: SIN

Leviticus 20:13

If a man lies with a male as with a woman, both of them have committed an abomination; they shall surely be put to death; their blood is upon them.

# Same-sex Affection

## Juridical Model 2: CRIME

### **The Buggery Act of 1533 (England):**

“Forasmuch as there is not yet sufficient and condign punishment appointed and limited by the due course of the Laws of this Realm for the detestable and abominable Vice of Buggery committed with mankind of beast: It may therefore please the King’s Highness with the assent of the Lords Spiritual and the Commons of this present parliament assembled, that it may be enacted by the authority of the same, that the same offence be from henceforth a judged Felony and that such an order and form of process therein to be used against the offenders as in cases of felony at the Common law. And that the offenders being hereof convict by verdict confession or outlawry shall suffer such pains of death and losses and penalties of their good chattels debts lands tenements and hereditaments as felons do according to the Common Laws of this Realme. And that no person offending in any such offence shall be admitted to his Clergy, And that Justices of the Peace shall have power and authority within the limits of their commissions and Jurisdictions to hear and determine the said offence, as they do in the cases of other felonies. This Act to endure till the last day of the next Parliament.”

Thomas Cromwell, House of Commons

## Juridical v. Diagnostic Models on Same-sex Affection

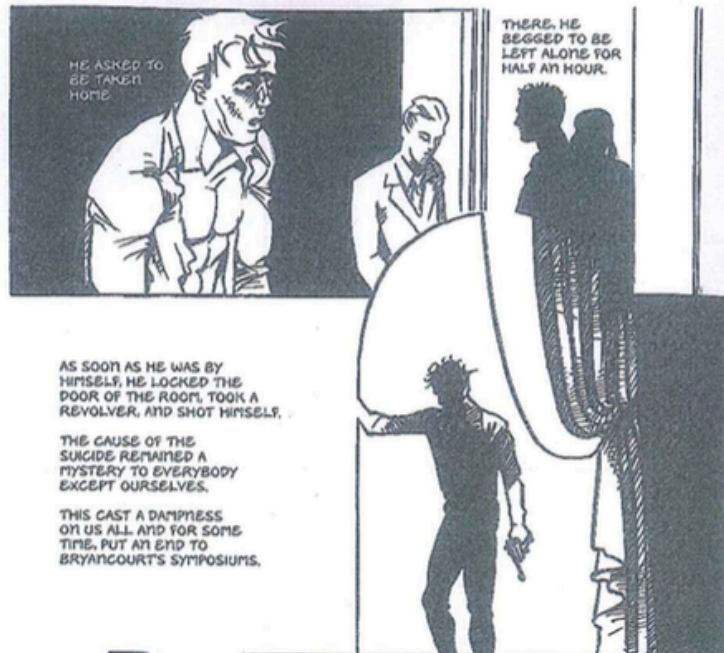
JURIDICAL	DIAGNOSTIC
"Sodomy"	"Homosexuality"
Religion / Law	Science and Medicine
Sin / Crime	Sickness
Offense	Pathology
Penance / Punishment	Cure
Temporary	Entrenched
"What I did"	"What I am"
Practice	Personhood



*Teleny, or the Reversal of the Medal*  
 attributed to Oscar Wilde and others  
 c. 1885

Images from Jon Macy  
*Teleny and Camille: Based on the Novel*  
*"Teleny" by Oscar Wilde and Circle*  
 (San Francisco: Northwest P, 2010)





# Sex / Sexual Types in Sexology Historically

## THE FIRST SEX

male

heterosexual

cis-gender

## THE SECOND SEX

female

heterosexual

cis-gender

## THE THIRD SEX

ALL OTHERS

# Historical Sexology Terms Still with Use

## THE THIRD SEX

homosexual

bisexual

transsexual

transvestite

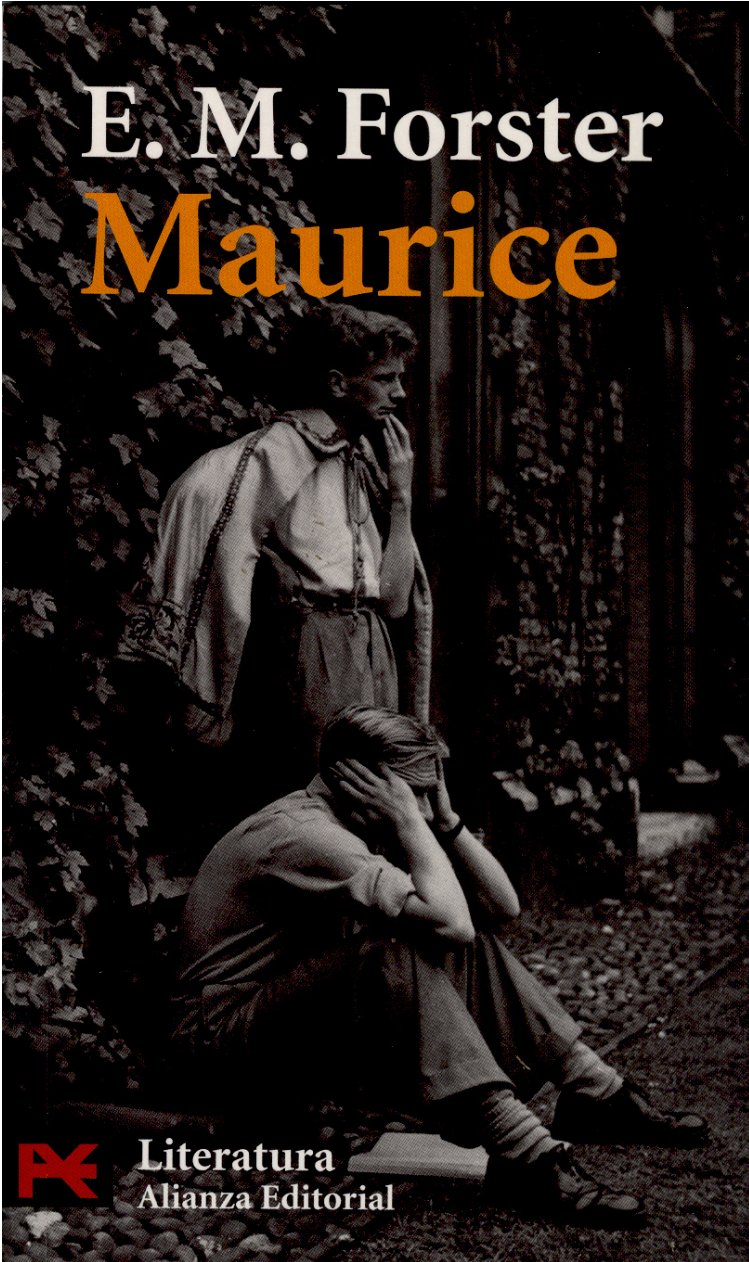
sadist

masochist

exhibitionist

fetishist

etc...

The book cover features a sepia-toned photograph of two young men in a garden. One man stands in the background, looking down with a pensive expression, his hand near his face. The other man sits in the foreground, hunched over with his head buried in his hands, suggesting a state of despair or distress. The background is filled with dense foliage and a wooden trellis.

# E. M. Forster

# Maurice

He loathed the idea of a doctor, but he had failed to kill lust single-handed. As crude as in his boyhood, it was many times as strong, and raged in his empty soul. He might “keep away from young men”, as he had naïvely resolved, but he could not keep away from their images, and hourly committed sin in his heart. Any punishment was preferable, for he assumed a doctor would punish him. He could undergo any course of treatment on the chance of being cured, and even if he wasn’t he would be occupied and have fewer minutes for brooding (Forster 1971, 155–159).



Literatura  
Alianza Editorial

“Dr. Barry, I can’t have explained—”

“Now listen to me, Maurice, never let that evil hallucination, that temptation from the devil, occur to you again.”



The voice impressed him, and was not Science speaking?

“Who put that lie into your head? You whom I see and know to be a decent fellow! We’ll never mention it again. No—I’ll not discuss. I’ll not discuss. The worst thing I could do for you is to discuss it.”

“I want advice,” said Maurice, struggling against the overwhelming manner. “It’s not rubbish to me, but my life.”

“Rubbish,” came the voice authoritatively.



“I’ve been like this ever since I can remember without knowing why. What is it? Am I diseased? If I am, I want to be cured, I can’t put up with the loneliness anymore, the last 6 months specially. Anything you tell me, I’ll do. That’s all. You must help me.

# Timeline: Looking Backward on LGBT Health


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1965-69 First "Annual Reminders" LGBT marches held in Philadelphia

1969 Stonewall Riots in Greenwich Village (NYC)

1971 First "non-patient homosexual" panel at the APA

1972 Testimony by "Dr. Anonymous" (John Fryer) at the APA

1973 Removal of "homosexuality" as mental aberration in the DSM



# “THE PAINFUL REUNION”

L. Wahlert. 2012. "The Painful Reunion: The Remedicalization of Homosexuality and the Rise of the Queer," *The Journal of Bioethical Inquiry* 9:3.

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| 1973       | “Homosexuality” is deleted from the DSM-II as a classification of mental disorder   |

The “divorce” between homosexuality and medicine was to begin

- |      |   |
|------|---|
| 1981 | The first reported cases of “gay cancer” occur – or what would subsequently be called GRID, AIDS, and HIV. Gay etiology studies are renewed by the end of the decade. |
|------|---|

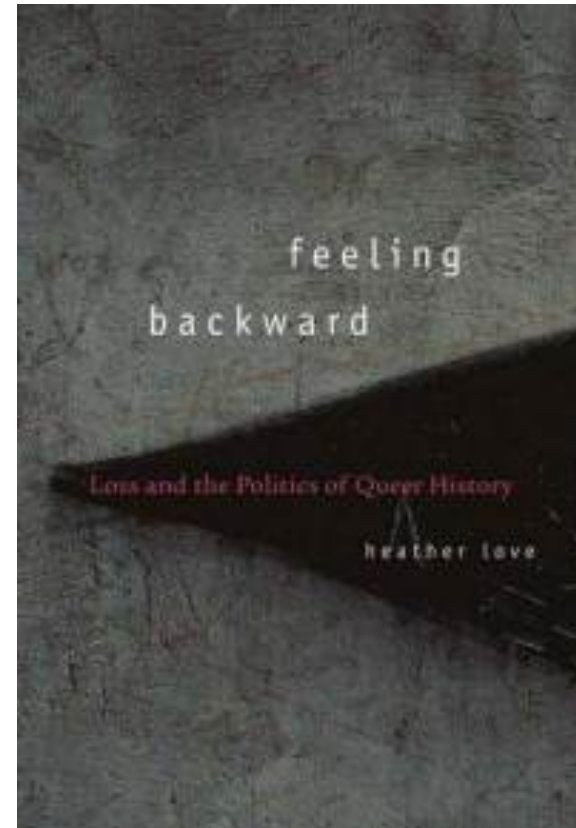


## From Edmund White's "Esthetics and Loss" (1987)

To have been oppressed in the 50s, freed in the 60s, exulted in the 70s, wiped out in the 80s is a quick itinerary for a whole culture to follow. For we are witnessing not just the death of individuals, but a menace to an entire culture. All the more reason to bear witness to this cultural moment (White 1987, 69).

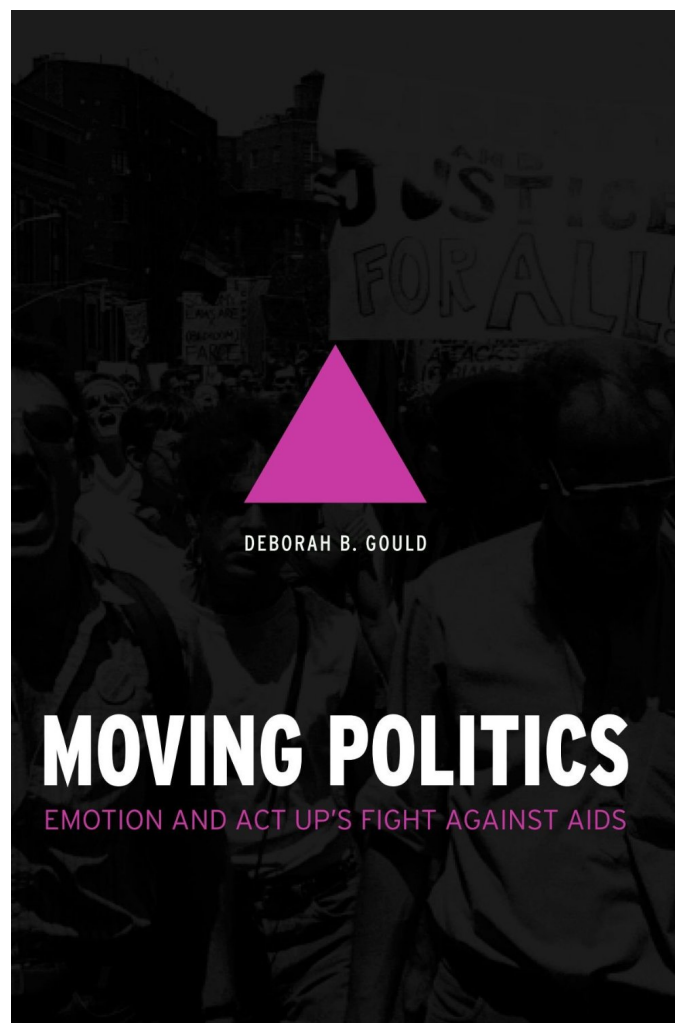
# What is “backward”?

- **The “invert”**
- The deficient
- The reflexive gaze
- The archive and the inventory of the self
- The commitment to the past (however painful)



# What is a “healthy” LGBT emotional state?

- Pride
- Shame
- Inhibition
- Resignation
- Loneliness
- Jubilation
- Abjection
- Fear
- Anger



## 2. Recent History

**Federal (EEOC) and ADA Protections  
for Trans and the Gender-Non-Cis**

# HIV, Gender Non-Cis, Disability: Some Issues

- The dilemma of “counting” or not counting under protective legislation
- The endurance of stigma in conversations attached to pathology
- The intimidation of the medical realm

# Equal Employment Opportunity Commission of 1965



# Civil Rights Act of 1964

**TITLE VII** established the Equal Employment Opportunity Commission

- 5 Presidential Appointees
- Enforce laws to combat workplace discrimination



# Title VII - Then

**It shall be an unlawful employment practice for an employer...**

- To fail or refuse to hire or to discharge any individual;
- to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities;
- or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment

**because of such individual's**

**Race**

**Color**

**Religion**

**Sex**

**National origin**



# Title VII - Now

It is unlawful to discriminate based on  
**Race** | **Color** | **Religion** | **Sex** | **National Origin** and...

- **Age**
- **Disability**
- **Pregnancy**
- **Genetic Information**
- **Sexual Orientation**
- **Gender Identity**

# Equal Employment Act of 1972

- Gave the EEOC litigation authority to back up administrative rulings
- Expanded protections by including Federal, State and Local governments and educational institutions
- Increased efficiency
- Paved the way for future inclusion and protection of additional subpopulations

# EEOC into ADA | Major Milestones

- **1965** – Implementation of Title VII and EEOC
- **1967** – **Age** Discrimination in Employment Act (ADEA)
- **1972** – **Equal Employment Opportunity Act**
- **1973** – Rehabilitation Act (Rehab Act)
  - discrimination based on **disability** in the federal workforce only
- **1978** – **Pregnancy** Discrimination Act (PDA)
- **1990** – Americans with **Disabilities** Act (ADA)
- **2008** – **Genetic Information** Nondiscrimination Act (GINA)

# Recent (Controversial) Expansions of the EEOC

Included in “discrimination based on sex”

- 2012: **Gender identity** discrimination
- 2015: **Sexual orientation** discrimination

# The Road to the ADA

- Nixon signs H.R. 8070 'Rehabilitation Act' in 1973
  - Trouble enforcing because of limitations on the scope of the Health, Education and Welfare department (HEW)
- 1976 - American Coalition of Citizens with Disabilities (ACCD)
- 1979 - UC Santa Cruz begins academic accommodations
- 1988 - Congressional Committee to investigate status of the disabled in education and labor

# Americans with Disabilities Act of 1990

## Section 12102. Definition of “disability”

- The term "disability" means, with respect to an individual
  - (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
  - (B) a record of such an impairment; or
  - (C) being regarded as having such an impairment (as described in paragraph (3)).

# The ADA on HIV-Positive Persons

- **1990**: Americans with Disabilities Act passed
- **1993**: Federal court of appeals states that a person symptomatic with AIDS “could be” protected from discrimination under the ADA
- June 25, **1998**: the Supreme Court held in *Bragdon v. Abbott* that an individual who is HIV positive but asymptomatic has a disability within the meaning of the ADA and is entitled to the protections of the statute
- **2008**: Congress amended the ADA, making it easier for people with HIV/AIDS to demonstrate that they are persons with disabilities who are covered by the statute

# The ADA on LGBT Persons

## Section 12211. Definitions

- (a) Homosexuality and bisexuality

For purposes of the definition of "disability" in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

- (b) Certain conditions

Under this chapter, the term "disability" shall not include

- (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) compulsive gambling, kleptomania, or pyromania; or
- (3) psychoactive substance use disorders resulting from current illegal use of drugs.



# Recent LGBT-Related Expansions of the EEOC

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# Federal Protections for HIV-Positive and Trans/Non-Cis Persons

	<u>Title IX</u>	<u>EEOC</u>	<u>ADA</u>
HIV-positive	X	X	X
Trans/Non-Cis	X	X	

# 'Bathroom law' puts North Carolina governor in crossfire of GOP civil war

A



3838



Save for Later



Reading List

See supporters and opponents of the controversial 'bathroom bill' rally in N.C.



View Photos

## Most Read

- 1 Democratic Party and Clinton campaign to sue Arizona over voting rights



- 2 'Bathroom law' puts North Carolina governor in crossfire of GOP civil war



- 3 Inside Ted Cruz's novel strategy for winning from behind



- 4 Donald Trump isn't even the best presidential candidate in his family



- 5 Aboard the Staten Island Ferry, a snapshot of Donald Trump's New York







## Transgender students

The Trump administration [rescinded guidance](#) from the Obama administration that protected the right of transgender students in public schools to use bathrooms corresponding with their gender identities.

In 2016, the [Department of Education](#) said there were 50.4 million students in public schools, but as [The New York Times noted](#), the number of transgender children has been "elusive" -- in that no official data or agreed-upon measure exist.

The Williams Institute at UCLA released [a study in 2016](#) that found about 0.6% of US adults identified as transgender; another study from the institute [in January 2017](#) estimated 0.7% of people ages 13 to 17 years old identified as transgender. However, these estimates may not be reflective of the population of transgender children in public schools.

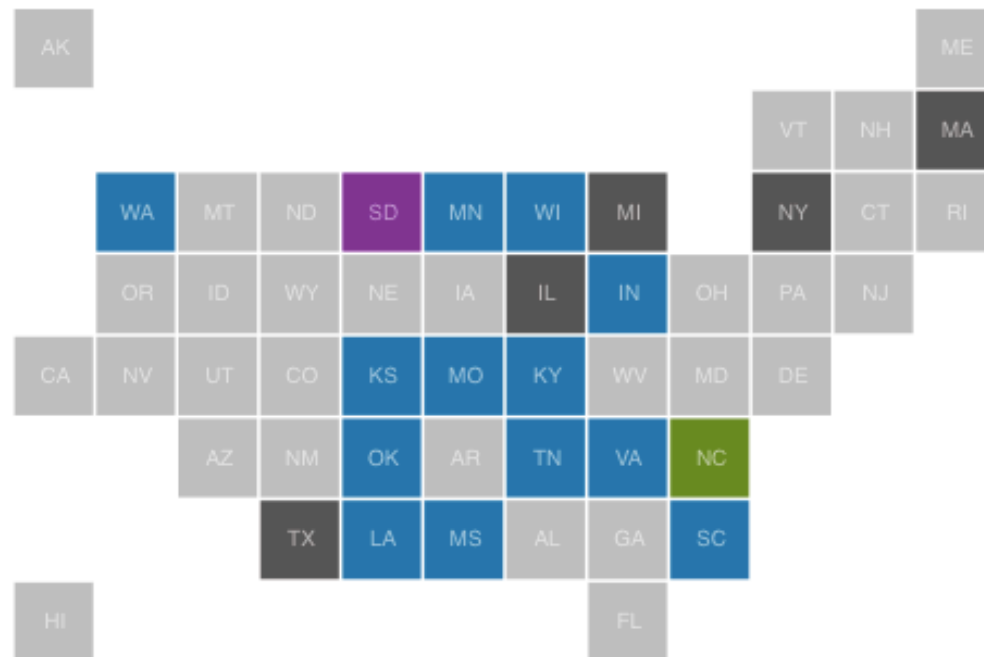


## Status of State Sex-Segregated Facilities Legislation



States that have considered legislation in 2016 that would restrict access to sex-segregated facilities on the basis of biological sex. Most recent data available as of January 5, 2017.

■ No current legislation ■ Pending ■ Failed ■ Signed into law ■ Vetoed



Source: National Conference of State Legislatures. [Show details](#)

[See more details](#)

GRAPHIQ

# LGBT employees protected from workplace discrimination, appeals court rules

**(CNN)** — The Civil Rights Act prohibits workplace discrimination against LGBT employees, a federal appeals court ruled Tuesday.

"We conclude today that discrimination on the basis of sexual orientation is a form of sex discrimination," Judge Diane Wood wrote for the 7th Circuit Court of Appeals.

The ruling is a victory for Kimberly Hively, who sued Ivy Tech Community College, arguing that the school violated Title VII of the Civil Rights Act of 1964 when it denied her employment.

"Any discomfort, disapproval, or job decision based on the fact that the complainant --

woman or man -- dresses differently, speaks differently, or dates or marries a same-sex partner, is a reaction purely and simply based on sex," Wood wrote.

"That means that it falls within Title VII's prohibition against sex discrimination, if it affects employment in one of the specified ways," Wood added.

"This decision is (a) game-changer for lesbian and gay employees facing discrimination in the workplace and sends a clear message to employers: it is against the law to discriminate on the basis of sexual orientation," said Greg Nevins of Lambda Legal, the group that brought the case.

## Dissent: Sex and orientation are different

Judge Diane Sykes, a top contender for the Supreme Court under President Donald Trump, wrote the dissent for three members of the court, calling the majority opinion "momentous".

She said that if Hively was denied a job because of her sexual orientation, she was "treated unjustly."

**\*\* LAST WEEK**

"But Title VII does not provide a remedy for this kind of discrimination. The argument that it should must be addressed to Congress," Sykes wrote. She said that classifying people by sexual orientation is "different" than classifying them by sex.

"The two traits are categorically distinct and widely recognized as such," she said.

## Next stop, Supreme Court?

"Federal anti-discrimination laws were always going to be the next battleground after the Supreme Court's gay marriage decision," said Steve Vladeck, professor of law at the University of Texas and CNN legal analyst. "And in some respect, these laws are even more important, because they also apply to private parties -- such as employers."

Tuesday's ruling conflicts with a different appellate court ruling -- in the 11th Circuit Court of Appeals -- from last month that found that Title VII does not bar claims of discrimination based on sexual orientation, possibly teeing the issue up for Supreme Court review.

# Federal Protections for HIV-Positive and Trans/Non-Cis Persons

	<u>Title IX</u>	<u>EEOC</u>	<u>ADA</u>
HIV-positive	X	X	X
Trans/Non-Cis	X	X	

Lance Wahlert and Sabrina Gill, "Pathological, Disabled, Transgender: The Ethics, History, Laws, and Contradictions in Models that Best Serve Transgender Rights," *Kennedy Institute of Ethics Journal* 27:2 (2017).

Health & Science

## CDC gets list of forbidden words: Fetus, transgender, diversity



The Trump administration is prohibiting HHS agencies from using certain words and phrases in official documents being prepared for the 2018 budget. (Monica Akhtar, Juliet Eilperin, Lena Sun/The Washington Post)

By **Lena H. Sun** and **Juliet Eilperin** December 15, 2017

The Trump administration is prohibiting officials at the nation's top public health agency from using a list of seven words or phrases — including “fetus” and “transgender” — in official documents being prepared for next year's budget.

Policy analysts at the [Centers for Disease Control and Prevention](#) in Atlanta were told of the list of forbidden words at a meeting Thursday with senior CDC officials who oversee the budget, according to an analyst who took part in the 90-minute briefing. The forbidden words are “vulnerable,” “entitlement,” “diversity,” “transgender,” “fetus,” “evidence-based” and “science-based.”

In some instances, the analysts were given alternative phrases. Instead of “science-based” or “evidence-based,” the suggested phrase is “CDC bases its recommendations on science in consideration with community standards and wishes,” the person said. In other cases, no replacement words were immediately offered.

### 7 forbidden words:

**Diversity**

**Vulnerable**

**Transgender**

Entitlement

Fetus

Evidence-based

Science-based

# 3. Looking Forward

**Further Illuminating Examples of  
LGBTQI Bioethics**

## SOME CLOSING EXAMPLES

1. Access to reproductive technologies for *transgender persons*
2. Pediatric ethics re: clinical interventions for *intersex children*
3. Blood and organ donation policies for *MSM persons*
4. Gender testing in sports for *intersex and trans athletes*
5. Hospital visitation and surrogate decision-making rights for *queer couples and families*
6. Equally-invested study of sexual health practices especially those who self-identify or qualify as *bisexual persons*
7. Enduring commitment to the stigmatizing effects of pathology for *all parties in the LGBTQ panoply*

# **THEMES FOR THIS TALK**

**And for this day-long symposium on LGBTQ health**

- Historicity**
- Ethical complexity**
- Pathological legacy**
- Political legitimacy**
- Biomedical necessity**
- Narrative sensitivity**

# CLOSING QUESTIONS:

- What OFFERS JUSTICE for LGBTQ persons in medicine?
- What best MORALLY SERVES LGBTQ persons in bioscience?
- What HONORS AND HEALS the history of LGBTQ medicine?
- What *both* OCCASSIONS AND LIBERATES the unique place of LGBTQ persons in biomedical discourse?
- LASTLY: HOW DO WE MAKE THIS QUEER BIOETHICS REAL?



# *Queer Bioethics*

## LGBTQI Medical History & Contemporary Ethics

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