

With bathroom bills, the state is telling people who they are

By [Alex Myers](#)

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Bathroom bills. The phrase's bouncy, alliterative nature, plus just the word *bathroom*, makes it somehow seem light, frivolous . . . oh, it's just about the bathroom.

It's not. And the bathroom conversation is not a new one. Massachusetts legislated sex-segregated restrooms in 1887. Most states enacted similar laws by the 1940s. Bathroom laws such as the 1887 one empowered the Jim Crow South's legislative argument for keeping (black) men from using such public space, in fear they would prey on white women.

Those championing bathroom bills in North Carolina and seven other states also claim to be interested in protecting the privacy and safety of those in public restrooms, specifically women and girls. The bills' defenders claim that if transgender people were allowed to use the restroom of their choice—were allowed to claim to be a man or a woman and to use the corresponding restroom—then men would go into women's restrooms and prey upon girls and women.

There are many angles from which to pry apart this paternalistic, fear-mongering assertion. One is the compelling fact that when attacks do happen in public restrooms, transgender people are far more likely to be victims than perpetrators. A more central one is to look at what is actually being contested here.

This is about who gets to determine identity: the state or the individual? This is the fundamental civil right that is at stake in considering bathroom bills.

Conservative champions of bathroom bills want to assert control over people's bodies and to inextricably link identity to biology. Traditionalists view gender identity as given, rather than self-determined, and therefore see transgender people as deviants perverting the natural order.

Yet other core identity markers—religion, race, ethnicity—are often mutable and self-adapted. I routinely hear statements such as these from friends and students:

*I'm from a Catholic family, but I don't go to church anymore.*

*My parents came from Nigeria, and I was raised in the Bronx, where there's a big Nigerian-American community, but once we moved to the suburbs, I became just black.*

*Both my parents are Chinese American, and their parents didn't teach them Chinese, so they wouldn't have an accent, but I want to learn the language and travel back to China.*

All of these examples demonstrate that we might be born one way but come to understand ourselves as something different.

The transgender community threatens mainstream conservative America because we destabilize identity, questioning the notion that biology is destiny. We cast doubt upon assertions made about the capabilities, capacities, and roles of men vis-à-vis women.

What bathroom bills are asserting is that if you are declared by medical authorities to be born male, you are circumscribed to using men's spaces. Bathroom bills sweep aside the notions of gender identity and gender expression, restricting identity to biological sex.

There are many problems with this. On a legal level, there's the disparity across the states as to how or whether a person can change the sex listed on their birth certificate. Some states allow for the sex to be changed with a letter from a medical professional that attests to "gender reassignment." Other states require proof of sex reassignment surgery (definitions of this vary). And some states don't allow for a change of sex on the birth certificate at all.

But our public restrooms are designed *not* to reveal biological sex—women's rooms in particular and men's rooms if used discreetly. We go into these spaces based on outward projection of self: what we are wearing, how our hair is cut, how we walk and move. Nobody arbitrates entrance to a restroom based upon biological sex.

Yet that is what bathroom bills seek to do. These bills dismiss the idea that gender is real, that gender expression and gender identity are just as pertinent as biological sex—if not more so—in establishing social identity. Instead, the bathroom bills promote the concept that gender expression is as easy as a man putting on a dress,

while the only constant determining factor in identity is biological sex.

Of course, the ideology isn't articulated this way. Instead, the pundits focus on the threat: a mythical man in a dress who will go into women's rooms and assault young girls. Anything to take the focus away from the real battle that is being waged, the battle against an individual's ability to determine who they really are.

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