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Cyberbullying and the Victims of Modern Technology

Wafeek Elaffi

Many states have attempted to prevent cyberbullying by enacting anti-bullying statutes. Some of the highest courts in the nation, however, are leaving many Americans without any protection by holding these statutes unconstitutional.¹ Even though the United States has taken major strides concerning LGBT equality, 49 percent of the LGBT youth are cyberbullied.² The Federal Government has ignored this issue, even though nearly half of a single demographic are victimized by individuals behind a screen.³

THE ANTI-BULLYING STATUTES AND ITS IMPACT

As of 2016, 23 states have enacted some sort of anti-bullying statute relating to cyberbullying.⁴ Even with statutes in place, there has not been a meaningful impact on cyberbullying for several reasons. First, in drafting these statutes, many legislatures have used very broad and generic terms that have led some of the highest courts in the nation to hold the statutes overly broad and infringing on the first amendment.⁵ Second, the statutes have had an adverse effect.⁶ For example, the State of Illinois has enacted an anti-bullying statute, 105 ILCS 5/27-23.7, “which is pure fluff, and has no bite.”⁷ The Illinois Anti-Bullying statute “creates a pretty liberal environment for the school, as it requires a school to make anti-bullying policies, but does not prescribe what happens if a school does not comply with its own policy.”⁸ The Illinois Anti-Bullying Statute could “allow a proactive school district to go after a perpetra-

¹ *E.g. People v. Marquan M.*, 19 N.E.3d 480, 488 (N.Y. 2014); *State v. Bishop*, 787 S.E.2d 814, 822 (N.C. 2016).

² Joseph G. Kosciw et. al., *The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools*, GAY, LESBIAN & STRAIGHT EDUCATION NETWORK (2016), available at http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf.

³ Federal Laws, STOPBULLYING.GOV (Mar.31, 2014), available at <https://www.stopbullying.gov/laws/federal>.

⁴ Sammer Hinduja et al. *State Cyberbullying Laws: A Brief Review of State Cyberbullying Laws and Policies*, CYBERBULLYING.ORG (Jan. 2016), available at <http://cyberbullying.org/Bullying-and-Cyberbullying-Laws.pdf>.

⁵ See *Marquan M.*, 19 N.E.3d at 488; *Bishop*, 787 S.E.2d at 822.

⁶ Interview with Sheldon Minkow, Co-Founder, The Law Offices of Minkow Domin (Oct. 10, 2016).

⁷ *Id.*

⁸ *Id.*

tor off the school's premises, but it does not force a school to do so."⁹ As a result of the harsh consequences attached to bullying, schools are hesitant to punish perpetrators out of the fear of possibly ruining a child's future.¹⁰ Contrary to expectations, the percentage of public schools reporting bullying at least once a week decreased from 29 percent in 1999-2000, to 16 percent in 2013-2014.¹¹ Additionally, the government is hesitant to enact and enforce any sort of meaningful and effective anti-bullying statute "because schools do not like bullying cases."¹² In bullying cases, "schools feel like they are caught in the middle" and "face legal repercussions from both sides."¹³ If the school does not enforce the anti-bullying statute and policy, "they are in a position to get sued by the victim; if they enforce the anti-bullying statute too heavily, then they are in the position to get sued by the perpetrator."¹⁴ As a result, schools suspend both the perpetrator and the victim to seem "fair".¹⁵

Currently, there is no federal law that directly addresses bullying, "but in some cases, bullying overlaps with discriminatory harassment which is covered under federal civil rights laws enforced by the U.S Department of Education and the U.S. Department of Justice."¹⁶ Again, these remedies are ineffective.¹⁷ Specifically, "Title IX does not allow you to bring a lawsuit against someone discriminating against you for being gay; if people are discriminating against you for being openly gay, there is no claim."¹⁸ Additionally, "pursuing a Title VI or IX claim is extremely expensive."¹⁹ As Minkow states, "even if an individual does successfully bring forth a Title VI or IX claim "what kind of remedy are you going to get? The Department of Justice to come in and tell the bully they are being bad? Who can afford that? Are you going to go against the school board and their \$500 an hour attorneys? No child wants to be the

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Report: Bullying is a serious public health problem*, Chicago Tribune (May 10, 2016) available at <http://www.chicagotribune.com/news/nationworld/ct-bullying-public-health-problem-report-20160510-story.html>.

¹² Minkow, *supra* note 6.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Supra* note 3.

¹⁷ Minkow, *supra* note 6.

¹⁸ *Id.*

¹⁹ *Id.*

poster child for that type of litigation.”²⁰ Consequently, federal laws are impracticable and ineffective.

THE EFFECTS OF CYBERBULLYING

With state statutes having little meaningful impact, the Federal Government forcing individuals to rely on discrimination laws, and the ability to do and say whatever one wants on social media, it is easy to see why 49 percent of the LGBT youth are still victims of cyberbullying.²¹ Victims of cyberbullying may suffer from depression, anxiety, a constant feeling of being afraid, being unable to concentrate, and social anxiety.²² Children who are victims begin hurting themselves, struggle academically, and begin suffering from emotional, physical, and mental issues.²³ Victims of cyberbullying are also more likely to have an increased risk of engaging in dangerous behavior, like substance abuse, and are more likely to contemplate suicide.²⁴ The American Association of Suicidology indicates that LGBT youth are twice as likely as their heterosexual peers to attempt suicide.²⁵

CONCLUSION

Our Federal Government continues to ignore the real issues of cyberbullying, as state courts of the highest levels are striking down anti-bullying statutes, and leaving 49 percent of the LGBT community victims to cyberbullying. Since this behavior has become completely normalized, children and teens will continue to suffer until the Federal Government implements a meaningful and effective policy.

²⁰ *Id.*

²¹ Kosciw *supra* note 2.

²² Mishna Faye et. al, *Motivations for cyberbullying study: A longitudinal and multi-perspective inquiry* 2-3 (2015)

²³ Interview with Sheldon Minkow, Co-Founder, The Law Offices of Minkow Domin (Oct. 10, 2016).

²⁴ Faye, *supra* note 22.

²⁵ *Suicidal Behavior Among LGBT Youth*, AMERICAN ASSOCIATION OF SUICIDOLOGY (2014) available at <http://suicidology.org/Portals/14/docs/Resources/FactSheets/2011/LGBT2014.pdf>.