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## Educating for Equality: A Symposium on Combating Anti-LGBTQ+ Legislation: A Roundtable Discussion

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## EDUCATING FOR EQUALITY: A SYMPOSIUM ON COMBATING ANTI-LGBTQ+ LEGISLATION: A ROUNDTABLE DISCUSSION<sup>1</sup>

### I. PREFACE BY COLTON RAGSDALE<sup>2</sup>

Hello everybody. It is 9:15, so we are about to commence. First and foremost, before we begin, I'd like to thank everyone for being here today. My name is Colton Ragsdale, and I am the Symposium Co-Editor for *The Tennessee Journal of Race, Gender & Social Justice*. We are happy to welcome you to our symposium, titled "Educating for Equality: A Symposium on Combating Anti-LGBTQ+ Legislation."

The purpose of our journal, born in 2011, thanks to a small group of law students at the University of Tennessee College of Law, is to inform the community of injustices that occurred and are still occurring in America against minorities, groups of race, gender, religion, poverty, ethnicity, etc.

This purpose naturally leads us to our current symposium today. Anti-LGBTQ+ rhetoric is on the rise in the United States. Per Human Rights campaign, record breaking levels of anti-LGBTQ bills have been introduced into State legislatures in 2023, at over 520 bills. Over 70 of them passed into law. In particular, these bills tend to target the areas of education and healthcare, denying resources and medical care to the vulnerable LGBTQ+ population and resulting in harm in their personal and professional lives.

This symposium, therefore, aligned with the purpose and goals of our journal, will explore some of the many facets of this nationwide anti-LGBTQ+ legislative project, provide insight into how these laws operate, outline the responses and challenges from legal and academic fields, and explore the social and mental impacts of such legislation on the ground. To do so, this symposium will be for two panels, one related to the legal aspects of anti-LGBTQ+ law making and the other related to mental and social aspects of said law making. To conclude, our

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<sup>1</sup> This Symposium was sponsored by the *Tennessee Journal of Race, Gender & Social Justice* at The University of Tennessee College of Law on March 21, 2024.

<sup>2</sup> Colton Ragsdale is one of the 2023–24 Co-Symposium Editors for *The Tennessee Journal of Race, Gender, & Social Justice*. Mr. Ragsdale presented the opening remarks for this Symposium and served as one of the moderators for this discussion.

symposium will feature a keynote presentation by Professor Jennifer Levy, the senior director of Transgender and queer rights at LGBTQ+ Legal advocates and defenders, also known as GLAD, and a professor of law at Western New England University.<sup>3</sup>

Now, without further ado, I'm going to hand it over to Leo Brown, and let's introduce our first panelists and begin. Thank you.

## II. THE FIGHT IN PUBLIC: LEGAL CHALLENGES AND SCHOLARSHIP AGAINST ANTI-LGBTQ+ LEGISLATION

### A. Introduction by Leo Browne<sup>4</sup>

Like Colton said, my name is Leo Brown, and I am his other Co-Symposium Editor for *The Tennessee Journal of Race, Gender & Social Justice* this year, and I will be introducing our first panel. So, without further ado, to begin, our first panel is titled, "The Fight in Public: Legal Challenges and Scholarship against Anti-LGBTQ+ Legislation." This panel features legal scholars and professionals who work against or perform research in anti-LGBTQ law-making in order to advocate for LGBTQ people's existence and rights.

We would like to introduce Zee Scout, a Bertha Justice Fellow, at the Center for Constitutional Rights and a UTK College of Law alumna, where she was a member of Lambda Legal and heavily involved in the UTK Legal Clinic. During her time as a Bertha Justice Fellow, she has helped litigate the case *Diamond v. Ward et al.*, which revolved around an incarcerated trans woman in Georgia who challenged the cruel and unusual treatment of trans women in Georgia state prisons, *Women in Struggle, et al. v. Bain, et al.*, which challenged Florida's bathroom ban. Prior to her law career, Miss Scout worked as an investigative journalist in investigative journalism, where she covered the court systems and incarceration issues.

Secondly, we have Professor Regina L. Hillman, who is currently an Assistant Professor of Law at the Cecil C. Humphrey School of Law at the University of

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<sup>3</sup> The Keynote presentation given by Jennifer Levi is omitted from this Roundtable Discussion.

<sup>4</sup> Leo Browne is one of the 2023–24 Co-Symposium Editors for *The Tennessee Journal of Race, Gender, & Social Justice*. Ms. Browne introduced the panelists for the first roundtable discussion of this Symposium and served as one of the moderators for this discussion.

Memphis, in Memphis, Tennessee, where she teaches Legal Methods, Professional Responsibility, and Gender in the Law. Prior to joining the faculty at Memphis, Professor Hillman was an adjunct professor at our very own UTK College of Law where she taught Legal Process. Another student alumna of the UTK College of Law, Professor Helman served as the Editor-in-Chief for the *Tennessee Law Review* during her time as a law student here. Before going off to work at Bass, Barry and Sims and at Hutton and Williams as a litigation associate, Professor Hillman was an organizing member of the Tennessee Marriage Equality legal team in 2013 that challenged Tennessee's ban on recognition of valid out-of-state same-sex marriages in *Tanco v. Hasl*, a case which was later consolidated with *Obergefell v. Hodges*. Her current legal scholarship focuses on the progression of LGBTQ+ rights and the establishment of legal protections for that population.

Thirdly, and finally, we have Lucas Cameron-Vaughn. Mr. Cameron-Vaughn is a staff attorney at the ACLU Tennessee where his litigation focus has been on juvenile justice and rights. Currently he is serving as counsel in *LW v. Skrmetti*, an ongoing case challenging Tennessee's law banning gender-affirming care for transgender people under 18. In addition to this, he is the Co-Chair of National Trans Bar Association, and he has served as an extern at a Transgender Law Center and as an AUCD fellow in health law policy and disability rights with the University of Tennessee's Boling Center for Developmental Disabilities and Le Bonheur Children's Hospital.

The speakers will speak in the same order as they were introduced, and at the end of their individual comments, we will be posting a 15-minute moderated Q&A Session with the speakers. You may pose your questions on sheets of paper that you have been provided, which will be collected by RGSJ staff about 5 to 10 minutes before the end of the panel, or you can feel free to raise your hand. Either way works. And please make sure to include on your sheet to whom the question is addressed, which can be either generally or to particular panelists.

So thank you all so much for coming, and, Miss Scout, you may begin.

## B. Zee Scout<sup>5</sup>

Every graduate dreams of the day they get to come home to their university, so I'm excited to be here, thank you for having me.

I'm going to talk a little bit today about a case that Leo mentioned, *Women in Struggle v. Bain*, and, in general, kind of three aspects or elements of that case: how it is an example of a trans erasure bill, the limitations of the equal protection clause, and sex discrimination jurisprudence that I think we traditionally relied upon, specifically in the Eleventh Circuit Court of Appeals, and then, finally, going to look at other strategies that we used instead in that case. In particular, three theories under the first amendment, and what we learned from using those theories, and whether it makes sense to continue to try using those theories in the future. So I'll set the scene just a little bit, but I don't want to spend too much time on this.

Obviously, of course, 2023 was a watershed year for anti-LGBTQIA+ legislation. I'm just going to call it "anti-queer legislation" for short. I think we saw a lot of bills, of course, that targeted trans youth education, schools, healthcare, etc. We saw states going after trans adult healthcare through Medicaid. Of course, at the moment there's a sort of international struggle to this, as well with anti-queer laws being passed in certain countries in Africa, which all the evidence suggests is also due to certain influences of groups here in the global north.

These bills, I think, kind of have a common component just from my analysis of them. What they tend to do, regardless of the context, is include a definition of sex and gender that in several contexts keeps trans, queer, gender nonconforming, and certain kinds of intersex people out of various spaces. I'll kind of talk about how they do that in a moment by looking at a bill in Florida that ultimately became law and is still law today. But I wanted to just address upfront that the primary group of people who I'll be talking about affected by this law will be intersex, trans, and gender nonconforming people for the most part. I think, regardless of whether you

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<sup>5</sup> Zee Scout is currently a Bertha Justice Fellow at the Center for Constitutional Rights where she has helped litigate on behalf of trans women in the cases of *Diamond v. Ward et. al.*, and *Women in Struggle, et al. v. Bain, et al.* Zee Scout is also a University of Tennessee College of Law alumna.

would identify as cis or trans, a bathroom bill can affect you if you look atypical or present atypically in any way.

To kind of understand what I mean by a trans erasure bill, let's talk a little bit about a statute that we affectionately call the Florida bathroom ban, but that for reasons I can't understand, is burned into my brain as 553.865. 553.865 of the Florida statutes essentially says that in order to maintain privacy, decorum, and public safety, the State of Florida needs to segregate restrooms according to birth-assigned sex.

There are several key definitions in this statute. I think there's probably four that we should go over, which is sex, gender, male, and female. As you might imagine, it defines sex, roughly speaking, as the chromosomes, hormones, and reproductive capacity that you had at birth. It's immutable. It never changes past birth based on the literal language of the statute. Gender, on the other hand, is framed as a non-biological thing, a psychological phenomenon that is an individual's chosen experience.

It's supposed to have nothing to do necessarily with sex, except for when it does. Under this law in particular, gender flows directly from one's reproductive capacity. So, if you have a certain reproductive capacity, you are male, and if you have certain features, you are a female. And there's no changing that, because gender is also frozen at the moment of birth, just like sex under this law. In particular, what 553.865 does is it says that you need to go to this restroom of your assigned sex at birth, and if you don't, and you use an affirming one instead and somebody tells you to leave and you don't do so, you can be charged with trespass. I don't remember off the top of my head the exact misdemeanor/felony status of Florida's trespass law, but I think it's fair to say that that is an action that criminalizes a very specific biological necessity that every human engages in, which is just using a restroom really quickly and leaving.

In particular, this law harms trans and intersex people in kind of a couple of ways. For trans people, almost by definition, they're not going to agree with certain identities that flow from their assigned sex at birth. In order to use an affirming restroom, they would kind of have to break the law in this instance; or, they would have to go somewhere else. For instance, in my situation, I would use the women's

room, but I was assigned male at birth, and in this case, under this law, I would technically be breaking it. As for intersex people, which I'm assuming we have a general understanding of intersex variations in the room, the law does a really curious thing. Instead, what it says and what it does is it exempts people with intersex variations if, and this feels like a fairly big if, they have received some kind of therapy or treatment from a licensed professional. Advocates for intersex people and for people with intersex variations have said that this unfortunately could encourage invasive surgeries that often have been performed on children at birth who present with intersex variations, and frankly, it would encourage that, because if you have a more binary presentation as an intersex person, then you can be exempt from this bill's enforcement. In that sense, the way I kind of think of this law is it manipulates intersex identity in order to install a gender/sex binary that inherently excludes trans folks as well.

Now that we've kind of gone through the rigid statutory information here, let's talk a little bit about the plaintiffs in this case, *Women in Struggle v. Bain*. This case was an as-applied challenge to 553.865. It was brought on behalf of 6 individuals, all trans and non-binary, and one organization that kind of advocated for the rights essentially of all women of the United States. It has a certain number of chapters throughout the country, and it's called *Women in Struggle*. These plaintiffs were all individuals in a coalition. They were from across the country, and this is kind of a fun aspect of my job as we get to do what we call movement lawyering. Oftentimes, I will just embed with groups who are focused on various social justice issues, kind of discuss with them what their needs are, and look into solutions that may not necessarily be purely litigation-based.

In this instance, I was kind of joining this group every week, talking with them. They wanted to host a march, and they wanted to do it in Florida, because at least in 2023, that was a pretty symbolic epicenter of a lot of transphobic behavior. They specifically picked Orlando. As they were looking at how to put on this march, which they anticipated having hundreds of people at, a lot of them trans or non-binary in a state with a bathroom ban, they were wondering how they could travel into the state and use the restroom without being charged under it themselves. As we continued to talk, we looked more and more into legal solutions, because the State, over the summer of 2023, through a lot of Governor DeSantis's actions, was becoming increasingly hostile. It was removing prosecutors who publicly said they

were going to use their discretion to not charge gender-related crimes, I think, was the exact language. I had to essentially tell these folks that it would be hard to know exactly what enforcement was going to be like, but that this law was there, and that it would ask them to use the restroom of their assigned sex of birth, and that if they did not use it, they risked being told to leave and possibly facing a trespass charge.

So, we looked at what we could do legally to challenge this law. And unfortunately, Florida is in the Eleventh Circuit, which throughout 2022 and 2023, two really crucial decisions came down from the Eleventh Circuit. Respectively, I'm just going to refer to them as *Adams* and *Eknes Tucker*. *Adams* involved a bathroom ban out of Florida. Specifically, there was a trans boy who wanted to use the men's restroom at a high school and could not, because they had a policy that said you have to use the restroom of your "biological sex." The reason why *Adams* ended up being detrimental was this court ended up saying that, in response to intermediate scrutiny that applied to an equal protection claim, the State had a significant and substantial privacy interest in maintaining these sex-segregated spaces, and this privacy interest was all-encompassing. It applied the second you open the door, and it didn't necessarily matter what you did in the bathroom. You could walk straight to the stall, close the stall, use the restroom, wash your hands, and leave, and it wouldn't matter. The privacy interest was in effect the moment you opened the door. That's how the court framed it, anyway. I have some quibbles with whether that is a doctrinally sound finding.

The second case, *Eknes Tucker*, used what I think is an example of this kind of trans erasure in order to find that a trans youth healthcare ban could be upheld. And what I mean by that is that essentially what it did was it looked at this ban and it said, this affects everybody equally on the basis of sex [by suggesting that transgender identity is about gender, not reproductive sex, and therefore falls outside of sex], and therefore, there's no disparate treatment happening among the sexes. And therefore, we just need to look at whether there is a legitimate state reason for why they would want to keep these "experimental" treatments away. I think *Eknes Tucker* also is an example, which I'm imagining these other panelists will talk about as well, about the limitations of *Bostock*. In that case [*Eknes Tucker*], they were essentially saying that *Bostock* wasn't applicable because this context was occurring outside of a Title VII workplace discrimination context.



We were essentially staring down a situation in which the Fourteenth Amendment and equal protection and sex discrimination jurisprudence was really not our friend, because we had courts that were looking at sex in ways that entirely excluded trans people, while essentially framing gender as something that only affected gender nonconforming people and framing a lot of the healthcare that trans, intersex, and gender nonconforming people seek as healthcare that only they seek, which that is not quite accurate either. Everyone uses gender-affirming healthcare whether they realize it or not.

Instead, we decided to use the First Amendment, because the Fourteenth Amendment felt like a very slim road to travel down. We used three theories, but we essentially said that gender and identity are expressive speech under the courts' First Amendment expressive speech doctrine. We said that a lot of these bills, and in particular bathroom bills and trans erasure bills, amount to viewpoint discrimination. These are examples in which State governments are erasing one particular viewpoint during a debate about a particular and sensitive issue of public importance and then trying to install another [viewpoint] instead. And then we said finally, third, that the natural result of States doing this and clamping down on viewpoint and expressive speech was that you were going to force people to engage in compelled speech [that reflected the state's viewpoint]. If I use the restroom, I am communicating to the world my gender and my identity in doing so, and as a result, that I am engaging in speech which can be understood in the context of that situation. If you force me to go somewhere else, you force me to become the courier of the State's message, and engage in the state's speech instead. That was kind of the crux of that theory for us. Suffice to say, we had a lot to learn from bringing those claims and a lot to learn from what our opponents ended up saying. There's a lot of workshopping to be done, I think, in litigation in the Eleventh Circuit, especially because of the limitations of the Fourteenth Amendment, and because the First Amendment might not necessarily be the way forward. But at least at the moment it is an alternative that courts seem to give a good amount of weight to, so we will see, and I will pause there and let the other panelists go.

### C. Regina L. Hillman<sup>6</sup>

Hello! Good morning, it's wonderful to be here. I see some familiar faces, which makes me very happy, and I've spent a lot of time in this very classroom. What I'd like to do to start is talk about some of this anti-LGBTQ+ legislation – anti-queer, I heard you say, Zee. And I think I'm getting used to that term, because, from my generation, queer was not a positive word, and I know that has been kind of re-appropriated and is now commonly used by the younger generation. I'm going to talk about anti-queer legislation and then I'm going to talk about the vulnerabilities that exist because of executive orders. There are so many protections that the LGBTQ+ community obtains through executive orders because we still don't have federal protections. Then came *Bostock*, the case that gave us protections in employment, but we don't know what those bounds are yet and whether the protections from *Bostock* will extend out into federal non-discrimination statutes, particularly with Title IX.

I had to actually bring some notes because you can't keep up with all of the legislation at this point. As Colton pointed out though, in 2023, we saw over 500 anti-LGBTQ+ bills that were introduced. That was triple what we saw in 2022. 80 were passed into law. While all of the legislation that is introduced isn't obviously passed into law, all of it does cause harm. I started to look at, well, what were all of these bills addressing. The majority were targeting students and teachers in education, restroom classifications, classroom instruction, banning trans students from access to restrooms, banning the use of identity pronouns. There were 137 that targeted access to gender-affirming healthcare, and I want to point out that this gender-affirming healthcare, which I know Lucas will talk about, is the standard of care recommended by every major medical organization in the United States. It stuns me that we have this problem with bans when total support from all medical

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<sup>6</sup> Professor Regina L. Hillman is currently an Assistant Professor of Law at the Cecil C. Humphrey School of Law at the University of Memphis, in Memphis, Tennessee. Professor Hillman was an organizing member of the Tennessee Marriage Equality Legal Team in 2013. Her current legal scholarship focuses on the progression of LGBTQ+ rights and the establishment of legal protections for that population. Professor Hillman is also a University of Tennessee College of Law alumna.

authorities and there is no second place. That is the only standard of care. So I wanted to talk about these.

In 2024, we already have 479 bills that are advancing. Of those 479, I know that Tennessee, Florida, and Texas have typically been at the top of the list. Tennessee is still holding on, in third place, but Oklahoma is interesting. 54 different bills are pending in Oklahoma, and then Iowa and Tennessee both have 34 in third place, next is Missouri with 35. I wanted to talk just for a moment about the range of issues that these bills target, primarily transgender and nonbinary individuals, banning everything from gender-affirming care and medical care, DEI [Diversity, Equity & Inclusion] training, drag bans, which we've seen in this state. The timing was pretty perfect when Judge Parker found the drag ban unconstitutional on June 2, 2023. It was, I think, 11 o'clock at night the evening before the Memphis Pride Parade. That was a pretty big deal in Memphis that day. We're also seeing bans on pride flags in school. Rainbows are now the enemy.

Marriage continues to come up. There's a TN bill that just passed that allows an officiant to decline on moral grounds not to perform or solemnize a marriage. I think that we're addressing the clerks at that point, which is a repeat situation of Kentucky when *Obergefell* first passed. Forced outing at schools, a requirement that teachers, who may be the only confidant that an LGBTQ+ student has, requiring them to contact parents and out their students. Bans on saying gay, bans on books, pronoun use, bathroom use, curriculum censorship, and, of course, foster care is another topic that's been a big deal this last year or so. Finding homes for LGBTQ youth that are accepting, affirming foster homes, and some states, including Tennessee, pass laws saying that's not necessary. These states are anticipating and fighting proposed federal protections that would require finding these children homes where they can be affirmed and accepted and not experience challenges.

I started to look into "wait, why is this legislation happening all of a sudden?", transgender people have been around forever. I think that visibility is, of course, one issue – that there's more and more visibility as protections have increased. But the same type of attacks that are happening on the transgender and nonbinary community are the same things that we saw with the lesbian and gay community years ago. And so, as we have progress, we have backlash. Once we won *Obergefell* and had the right to marry, there was still another five years post-*Obergefell* where

you could marry, you had a constitutional right to do that, but you also could be fired from work the following Monday because your employer had no requirement not to discriminate. It took five years, but five years later, we won in *Bostock*, when, in 2020, the Supreme Court held that sexual orientation and gender identity were included under Title VII's discrimination protections. So if an employer fires an employee because of their gender identity or sexual orientation, it falls under the sex discrimination ban of Title VII.

However, the court didn't go further to address other aspects of Title VII, other protections that are afforded under Title VII, and left those things open. The EEOC, of course, came out and said that Title VII, that the protections under *Bostock*, apply to all areas that are protected under VII. The timing of the Title VII decision of *Bostock* in 2020 was quite interesting, because we had a Republican president that was in office. The decision was in June – the end of June. Just a few days prior to that decision, knowing that it was coming out, there were administrative regulations released under Section 1557 of the Affordable Care Act defining sex as biological, leading to multiple issues right off the bat when *Bostock* came out and the Court said the opposite.

On the positive side, when the *Bostock* decision was decided, Title VII and Title IX, often when Title IX is being interpreted, courts look to Title VII because they have similar language and they're both under the Civil Rights Act. Title VI addresses discrimination "because of sex" and Title IX addresses discrimination "based on sex." The Gavin Grimm case, a transgender bathroom case that was initiated in 2014 or 15, had worked its way up to the Fourth Circuit. The Supreme Court had granted certiorari in the fall of '16 based on the Department of Education's guidance that Title IX did protect against discrimination based on sexual orientation and gender identity.

That case was set for oral argument in March of '17, but a new president came in. That Republican president who was sworn in in January immediately withdrew that guidance, so the Supreme Court withdrew the certiorari grant. But toward the end of that presidency, the Gavin Grimm case, which had been knocked back down to the district court, worked its way back to the Fourth Circuit. It was shortly after the *Bostock* case that it went in front of the circuit court, and it decided the *Grimm* case within two months of the *Bostock* decision and found that the Supreme Court's

determination under Title VII that its sex discrimination prohibition included gender identity and sexual orientation also translated to Title IX.

The Eleventh Circuit was actually the first circuit that came out post-*Bostock*, in the *Adams* case – which is interesting that it was the Eleventh Circuit. It was a two-one split decision – but the court found that discrimination of transgender bathroom use, or barring use of the restroom that you identify with, was a violation of both Title IX and the Equal Protection Clause. There was a harsh dissent by the dissenting justice, who I believe was Chief Judge of the Eleventh Circuit. Because of some challenges with that decision's release, the court withdrew that decision and re-released a decision omitting Title IX a year later that only addressed the Equal Protection portion of it. In the meantime, the Fourth Circuit strongly found that Title IX protections, as Title VII, provided protections in education against sexual orientation and gender identity discrimination. As these cases have been winding out post-*Bostock*, the Fourth Circuit *Grimm* decision was challenged, and the Supreme Court denied certiorari.

We have a final decision in the Fourth Circuit about Title IX protections. The Eleventh Circuit has been very challenging, especially if you're writing about the issue, because it withdrew the original opinion, released the new opinion, and then vacated that decision and heard the case *en banc*. That decision came out in December of 2022, and the court found in a 7-5 split that *Bostock* did not apply to Title IX. In the meantime, the Ninth Circuit has weighed in and agreed with the Fourth, and then the Seventh Circuit weighed in also in agreement, so now there is a 3-1 split on the Title IX issue. Of course, there's still litigation that's going on as far as Title VII's reach. We have both employment and education conflicts as to how far those protections go, or if there are, in fact, protections under Title IX. The Seventh Circuit decided last August that the protections under *Bostock* applied equally under Title IX, and the Supreme Court just this January decided certiorari in that case, so the battles continue and wage on.

I thought about the discriminatory problems facing the LGBT community and the fact that we don't have federal civil rights protections and only limited statutory protections. Even under *Bostock*, if you have less than 15 employees or if you're an independent contractor, there are multiple areas where the LGBTQ+ community lacks protections. In education, there are so many problems with schools and whether or not students can have access to bathrooms that accord with their gender

identity. We're facing a severe issue as far as where protections are coming from at this time, many via executive order. Under President Trump, we lost a lot of protections. The day Biden came into office, he issued an executive order implementing *Bostock* broadly, but it takes time for the process to play out. We're now waiting on the Department of Education to release its new regulations, which I think will lead to a whole new slew of litigation where the Department of Education will have the right to deny federal funding if schools discriminate based on sexual orientation or gender identity. As you can imagine, in a state like ours right now, where we have laws that are passed regarding pronouns and bathrooms, there will be a real issue over the potential loss of federal funding and multiple other issues that will arise.

There are a lot of challenges that the LGBTQ+ community continues to face, but, as a person who's a little bit older, I see a lot of repeats and that keeps me hopeful. We've dealt with these issues before, we have continued to soldier on, and I think that this is the backlash before the next forward progress. Thank you.

#### **D. Lucas Cameron-Vaughn<sup>7</sup>**

Okay, good morning, everyone. I just want to first say thank you to *The Tennessee Law Journal of Race, Gender & Social Justice* for having me here. And thank you all for your interest in these issues and for being here.

I work at the ACLU-Tennessee, so I'm going to talk about my experience there last year, dealing with the legislation that was codified into law in 2023 and the litigation as well. It's fitting that the Symposium is taking place in Tennessee, because we have been the birthplace and the battleground state for so many of these anti-LGBTQ laws and the legislative attacks over the last few years. It's really been in the last three years that we've really seen increasing anti-LGBT legislation in Tennessee.

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<sup>7</sup> Lucas Cameron-Vaughn is currently a Staff Attorney at the American Civil Liberties Union ("ACLU") of Tennessee. Mr. Cameron-Vaughn is the Co-Chair of National Trans Bar Association. He has served as an extern at the Transgender Law Center. He has also served as an Association of University Centers on Disabilities ("AUCD") fellow in Health Law Policy and Disability Rights with the University of Tennessee's Boling Center for Developmental Disabilities and Le Bonheur Children's Hospital.

So I'm going to cover some of the recent litigation, including *L.W. v. Skrmetti*, *Friends of George's*, and lastly, *Tennessee Equality Project v. Murfreesboro*. So, and I just want to point out that when I'm talking about litigation, I'm talking about real people's lives, and the lives of the individuals impacted are seriously harmed by this legislation, and you can't really get that from just what I say to you here today. So I would encourage you to all look it up in the news, on the internet, to see if you can see the real people affected by this.

And I can try to answer any specific questions you have in the community. So first let me talk about the trans youth healthcare ban. That was a law that was passed last year. It went into effect on July 1, 2023, and it has a grandfather clause that starts, I think, this month on March 31<sup>st</sup>.

So just to give you kind of an idea, this law bans the provision of what's called "gender-affirming healthcare" to trans youth. And what that looks like is, normally between the ages of nine and fourteen, children in puberty, transgender children who have longstanding history of having an incongruence between their birth sex and the sex they identify with, who have seen therapists, formally a psychiatrist, they see an endocrinologist, they see a team of doctors who then decide whether or not, on an individual basis, they should start either puberty blockers or hormone therapy. That normally happens later, around the age of 15 or 16.

Generally, surgeries do not happen for anyone under 18. And up until the age of puberty, it's a social transition that happens, so that families will support their children by using the name and pronouns that they wish to use, allowing them to dress in the clothing they want to dress in. So that's what we're talking about when we talk about gender-affirming care.

Tennessee passed a law which banned this care. There were several, actually all the major hospital systems in Tennessee were providing this care, and we sued on behalf of three of the teenagers and their families. We also sued on behalf of a doctor in Memphis who is providing care to these youth. And we sued to stop the law from going into effect. Yeah, and once we filed that lawsuit, about a week later, the Department of Justice joined in on behalf of the United States.

So the claims that we allege in our lawsuit are that the ban violates equal protections of the Fourteenth Amendment, it prohibits medically necessary care based on sex and transgender status, and that this classification requires the court to examine it under heightened scrutiny. And the ban is not substantially related to achieving an important government interest. The district court, the federal district court, agreed with us, and they actually enjoined the ban against the state. That caused the State of Tennessee to seek an emergency stay of that order to the Sixth Circuit, and the Sixth Circuit granted that emergency stay. It allowed the law to go into effect, pending the appeal.

Part of what we also argued was that the ban violates the substantive due process of parents and their fundamental right to control the upbringing of their children, and specifically, to make decisions on their medical care. So, we have oral arguments at the Sixth Circuit. Ultimately, the Sixth Circuit reversed the district court and ruled that the ban was likely constitutional. When they granted the initial stay, that was the first circuit court in the country who had allowed one of these bans to go into effect. They'd been heard by, I think, seven district courts before then, and they all blocked the bans from going into effect.

After that happened, very soon after, the Eleventh Circuit then changed course on their ruling in *Eknes-Tucker* in Alabama's ban, and based it on the Sixth Circuit opinion. And so we kind of see now a wave of circuit courts following the Sixth Circuit. But we do have a circuit split, and so we have not . . . the Sixth Circuit opinion also, did not find that sex discrimination was an issue under this law. And so by not applying long-standing precedent regarding sex discrimination, it really veered off course from a lot of the modern day, U.S. Supreme Court precedent involving sex discrimination.

Also, the fact that they ruled that parents do not have a fundamental right to control medical decision-making for their children are big enough issues that we decided to appeal it to the United States Supreme Court. So we filed our petition for certiorari, it's fully briefed, and we are waiting on them to make a decision. It was supposed to be conferenced last week, and it's been rescheduled, so we're still waiting to hear from that. If they do accept certiorari, then they will likely hear it in the fall of 2024, but likely won't issue a decision until summer of 2025.



Okay so that was one of the laws that was passed last year. The second law that was passed was the drag ban, also known as the Adult Entertainment Act. So just a little history of this . . . in the fall of 2022, we're contacted by organizers of Jackson Pride, who had held a few successful pride vessels in Jackson, Tennessee for several years. Then, in the fall of '22, Chris Todd, who's a state representative for Jackson, had reached out to the city officials to try to have Jackson Pride banned from a local park, because he didn't believe, quote unquote, "female impersonation" should be in public.

The city officials moved the Jackson Pride to an indoor civic center, and then a few weeks prior to the actual festival taking place, Todd, with several members of his church and a State Senator, sued the city of Jackson in chancery court, alleging that the festival violated two Tennessee laws—a claim for the law regarding operating an adult cabaret within 1,000 feet of the church, the second claim of maintaining a public nuisance.

So the two lawmakers asked the court to declare the festival a public nuisance and permanently enjoin the city of Jackson from granting a permit to the organizers of Jackson Pride. Representative Todd issued a statement insisting that the drag performances were, quote, "clearly meant to groom and recruit children to this lifestyle, and that is child abuse."

The lawsuit settled, but in November 2022, Chris Todd pre-filed legislation, which was known as HB 009, to amend the adult cabaret law in Tennessee to ban any adult cabaret performance on public property or where it can be viewed by anyone. The first offense is a Class A Misdemeanor, and any subsequent offense is a felony. The definition of adult cabaret performance in the bill cross-referenced a criminal statute which regulates the sales and distribution of pornography to minors, and also banned performances "that feature topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers."

The law was passed by the legislature and signed by Governor Lee shortly before April 1<sup>st</sup>. About a year ago was when it was to take effect, and two attorneys in Memphis sued to stop that law from going into effect, and they were ultimately successful. They were granted a TRO, a preliminary injunction, and finally, a final order after a full trial on the merits declaring that the Adult Entertainment Act was

an unconstitutional restriction on speech and was permanently enjoined in Shelby County, from District Attorney Mulroy enforcing it.

So, despite this, Attorney General Skrmetti issued a statement opining that the Adult Entertainment Act remained in effect outside of Shelby County, and this action resulted in a District Attorney, Ryan Desmond, of Blount County, sending a letter to block pride on August 29<sup>th</sup>, just four days before the scheduled pride event, notifying them that he intended to enforce the act based on Attorney General Skrmetti's opinion.

The police chief also had a conversation with Maryville College, where pride was supposed to be held, alerting them that they would likely be issued at least citations for violating the law. So then we, as the ACLU of Tennessee, along with some of the attorneys for *Friends of George's*, filed a lawsuit in the Eastern District of Tennessee requesting a TRO to allow the pride to take place. We were granted that TRO as well as a preliminary injunction.

Right now, that case is stayed, pending the result of *Friends of George's* which is currently on appeal in the Sixth Circuit. And we actually permissively intervened in *Friends of George's*, which means we don't have standing, but they allowed us to intervene. That resulted—that statewide ban—resulted in smaller towns and cities trying to pass their own bans. One of them was Murfreesboro. So on the tails of this statewide drag ban, the city manager of Murfreesboro faced a lot of pressure from anti-LGBTQ activists to try to ban drag in public in Murfreesboro.

He stated in several correspondences with the activists that the festival was protected by the First Amendment, but then turned around, changed course, and decided to refuse to issue a permit to BoroPride, which was a pride festival put on by Tennessee Equality Project, which is a pro-LGBTQ rights organization. So Murfreesboro denied the permit to BoroPride . . . said they were engaging in negotiations—which were not in good faith—and then passed the city ordinance.

The city ordinance was called the Community Decency Ordinance, and it defined indecent behavior to include displays of homosexuality. So it went even further than the drag ban, to actually make it a crime to display homosexuality, which

resulted in the denial of the permit to BoroPride but also the removal of four LGBTQ books from the public library.

We sued them . . . and . . . alleging that the ordinance and their actions violated the free speech clause, due process, and equal protection, both the federal and state constitutions, which ultimately resulted in the city repealing the ordinance. The city manager is no longer able to review TEP's permits going forward. They're subject to the same permit review as every other organization that requests a permit, and they settled for \$500,000.

So, some good news is, and an important note, last year we saw Franklin trying to ban their pride festival. This year, a week ago, the city of Franklin approved their pride permit with no issues. So, that's where we are.

### III. DANGEROUS MANIFESTATIONS: HOW ANTI-LGBTQ+ LEGISLATION CAUSES PRACTICAL HARM

#### A. Introduction by Brandee Dillingham<sup>8</sup>

So, hello to anyone just now joining us. My name is Brandee Dillingham, and this is titled, "Educating for Equality: A Symposium on Combating Anti-LGBTQ+ Legislation," and is sponsored by the *Tennessee Journal of Race, Gender & Social Justice*, for which I serve as Managing Editor. We thank you for your attendance and for your interest in this deeply important topic.

Our second panel, titled "Dangerous Manifestations: How Anti-LGBTQ+ Legislation Causes Practical Harm," features social scientists and researchers, all of whom are also University of Tennessee teaching faculty, and whose work and community involvement focuses on LGBTQ+ people and advocacy. This panel will explore the mental and social aspects of anti-LGBTQ+ lawmaking and the effects on advocacy.

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<sup>8</sup> Brandee Dillingham is the 2023–24 Managing Editor for *The Tennessee Journal of Race, Gender, & Social Justice*. Ms. Dillingham introduced the panelists for the second roundtable discussion of this Symposium and served as one of the moderators for this discussion.

Our first panelist is Dr. Patrick R. Grzanka, professor in the Psychology Department at The University of Tennessee, and the Divisional Dean of Social Sciences for The University of Tennessee College of Arts and Sciences.

His expertise is in intersectionality, sexualities and gender, reproductive justice, and race and racism, with a research interest in how supposedly helpful institutions actually reproduce harm. His work is nationally celebrated in his field. In addition to his other goals, Dr. Grzanka is a fellow of the American Psychology Association and President of the Society for Psychology Study of Social Issues, and a public psychologist whose work was featured in national news outlets such as *The Washington Post* and *The Tennessean*.

His former roles include associate editor of the *Journal of Counseling Psychology*, positions on a number of editorial boards for other journals, and serving as chair for Interdisciplinary Program in Women, Gender, and Sexuality at UTK. In addition to his many accolades, he is a friend to many of our own faculty at UTK College of Law.

Our second panelist is Dr. Christina Perkins. Dr. Perkins is a clinical assistant director for the University of Tennessee, Psychological Clinic, and an adjunct lecturer for both the University of Tennessee's and Boise State's Master of Social Work programs. She has 12 years of clinical psychology practice under her belt where she is focused on LGBTQ+ in neurodivergent clients with a specialty in working with developmental and complex trauma and anxiety disorders.

In addition, Dr. Perkins has long been involved in the Knoxville community, where she works in sexual assault victims' advocacy, substance abuse services with women who were pregnant or parenting, and substance abuse dependence issues.

Our third and final panelist is Dr. Tamar Shirinian who currently serves as an assistant professor for the University of Tennessee Anthropology Department with a specialization in cultural anthropology. Her past research focuses heavily on queer theory and studies, transnational feminism, political economy, processes of post-socialism, and psychoanalysis, particularly in the context of post-socialist countries. Her forthcoming book, *Survival of a Perverse Nation: Morality and Queer Possibility in Armenia*, details the processes of rhetoric regarding queerness

and provisions as mapped on the broader right-wing Armenian nationalist movements which, to quote, “projects every day political and economic tensions onto sexual provision.” Dr. Shirinian also serves as a Co-Chair for the Association of Queer Anthropology.

As with the prior panel, the panelists will speak in the same order as they were introduced. At the end of their individual comments, we will be hosting a 15-minute moderated Q&A with the speakers. You may pose your questions on the sheets of paper that have been provided, or you may raise your hand to be selected for a question. Please make sure that you include on your sheet of paper who the question is addressed to, and the RGSJ staff will pick them up to give them to us. And your questions can be general or to particular panelists.

Thank you all. And Dr. Grzanka, you may begin.

**B. Dr. Patrick R. Grzanka<sup>9</sup>**

Thanks. Good morning, everyone. Thank you so much for inviting me to participate. It’s always a pleasure to be over at the law school with many friends and colleagues. I want to begin by recognizing the tragic death of Nex Benedict, a tenth grader in Oklahoma, who died in February after they were assaulted in a bathroom at school. Nex, who was a nonbinary, Native American child, died the day after the assault from suicide, according to authorities. The investigation is ongoing, but preliminary evidence suggests that school officials did little to nothing to support Nex in the immediate aftermath of the assault.

Oklahoma, like Tennessee, is one of the states in the U.S. that has faced a barrage of anti-LBGTQ+ legislation since 2016, and is now, at least temporarily, at the center of a national conversation as well as local activism about the consequences

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<sup>9</sup> Dr. Patrick R. Grzanka is currently a Professor in the Psychology Department at the University of Tennessee, and is the Divisional Dean of Social Sciences at the University of Tennessee College of Arts and Sciences. Dr. Grzanka is a fellow of the American Psychology Association and also serves as the President of the Society for Psychology Study of Social Issues. He is a public psychologist who work has been featured in national news outlets such as *The Washington Post* and *The Tennessean*. His expertise is in intersectionality, sexualities and gender, reproductive justice, and race and racism, with a research interest in how supposedly helpful institutions actually reproduce harm.

of anti-LGBTQ+ bills such as “Don’t Say Gay” laws that don’t have to directly impact individuals to result in direct consequences for their well-being—and even their existence.

I’m going to talk throughout my brief remarks about what it means to understand how a law both doesn’t directly affect someone and directly affects someone at the same time. “Don’t Say Gay” laws are not new. Don’t give contemporary conservatives more credit than they deserve for developing them. What used to be called “No Promo Homo” laws were a hallmark of conservative legislation, the Reagan era and the 1990’s.

And critiques of these bills actually served as the foundation of parts of the field that came to be known as Queer Theory. And if you haven’t read it, I definitely recommend to the law students in the room, Lisa Duggan’s 1994 classic “Queering the State” paper which uses an analysis of “No Promo Homo” laws and LGBT activism against them to, kind of, rethink the calculus of liberatory work. I first encountered that paper in my first semester of graduate school, and it really sparked my kind of queer, theoretical imagination.

Knoxville based Tennessee representative, Stacey Campfield, received national notoriety in 2013 when he proposed “Don’t Say Gay” legislation that ultimately failed. The end of his political career was actually attributed partially to his relentless promotion of legislative hate. And I just think if only he were in office today, his work would have been quite differently received.

When we talk about anti-LGBT legislation, we are talking about death. We’re also talking about depression, anxiety, unconstitutional repression of free expression, and a range of mental health issues. But we are always talking about death, and I think it’s incredibly important to hold on to that when we use terms like minority stress, which I’ll evoke in a moment, to think about the consequences of anti-LGBT laws.

I’m interested in all of this, but lately I’ve actually found myself circling back to some earlier arguments I made about the public and academic fixation on LGBT youth suicide both in popular culture and scholarship. I’m realizing that I don’t exactly feel the same way that I used to.

You'll find for some of the younger people in the room that this happens to you as you age and as you develop as a scholar and a thinker. It's not necessarily, and sometimes we just get it wrong and then we sort of recant our statements, but I think more often what I've experienced is that I would say things differently or I would think about them slightly differently. And I think it's very important to be open to revisiting earlier positions.

In my first academic writing, much of which I do still stand by, my colleagues and I underscored how fixating on spurious and deeply unreliable queer and trans youth suicide statistics can have the effect of reproducing stigma about LGBT people that meet and then expand straight and cis people's understanding of queer and trans people as fundamentally sick, sad, and bad.

These discourses on queer youth suicide that are perhaps best exemplified by the It Gets Better Project in the last decade, also tended to be coupled with ideas about how queer and trans people would be better off if they just left the country and the South and moved to big cities and got tech jobs and got married. These are deeply hetero and homonormative ideas about what a better life looks like.

More than just rhetorical, the discourse on queer youth suicide also, I think, has the effect of kind of excusing the rest of us from fighting for poor, disabled, BIPOC queer folks outside of the metro polls in favor of a more convenient story about attractive, operatively mobile, straight, passing, gay men who have some amount of access to heteronormativity.

I think holding onto that critique is imperative, but I also think that the onslaught of anti-trans and gay hate that's swept the country, in particular, since 2016, presents us with other pressing concerns about the health and well-being of queer and trans people that is deeply sobering and precarious.

*The Washington Post*, very recently—last week—published a fascinating and sobering analysis of the consequences of anti-LGBT legislation on school violence, which is specifically treated by the FBI as a hate crime.

In 2022 we're up to 251 hate crimes investigations compared to 145 in 2019, the year before Covid, and 70 in 2015, which was a low point in a 15-year downward trend. Now all of us in this room could have a robust debate about validity of hate crime statistics as a marker of LGBT violence, but there are many other markers that suggest significant upticks in violence, and its multifarious effects.

From *The Washington Post*:

Calls have spiked to the Trevor Project which provides support to LGBTQ+ youth aimed at suicide prevention and crisis intervention. In the fiscal year ending July 2022, that's before the most recent "Slate of Hate", the group fielded about 230,000 crisis contacts, including phone calls, texts, and online chats. The following year it was more than 500,000. Similarly, the Rainbow Youth Project, the nonprofit that offers crisis response and counseling to at-risk LGBTQ youth, saw calls to its hotline rise from an average of about 1,000 per month in 2022 to just over 1,400 per month last year. The top reason cited by callers in 2023 was anti-LGBTQ+ political rhetoric, such as debate over laws and policies limiting rights at school.

These laws have consequences which should be obvious to folks in the room. But one of the most important things to understand when thinking about these laws is that individuals do not have to be directly affected by legislation to be directly affected by legislation. So, what does that mean?

An extensive body of literature and psychology, and of behavioral and social sciences more broadly, has documented the ways that anti-LGBTQ+ legislation produces harmful effects by LGBT people in affected jurisdictions, regardless of whether people in that jurisdiction actually experience discrimination, or denial of rights, agency, etc., as a consequence of the particular law.

The stigma of the law appears to be similarly impactful to any juridical interaction or criminal justice system interaction. It's like smoke in the air—largely invisible, but potentially lethal.



There are a number of key theoretical frameworks that help us understand these dynamics and test hypotheses, so that we can say with some confidence how these laws harm lives, and for the rest of my time today I thought I might talk about that. I hope that it's helpful to you, and maybe what you wanted to hear. But as I was thinking about preparing my remarks, what I thought might be useful to you is for me to talk about some of the paradigms that we use to help understand the data because my understanding of the law, such that it is, is that it's often helpful to be able to demonstrate harm when challenging a law.

Minority Stress Theory is by far the most dominant lens that is used in psychological research in this area. It's popularized by Ilan Meyer first in the 1990s, and if you put minority stress theory in Google Scholar, you will see an absolutely astonishing number of papers in this domain using both community samples as well as population level data.

Minority stress theory helps us examine both what we call proximal and distal factors that contribute to unequal outcomes among groups. Proximal factors, close by, tend to refer to the psychological consequences, stress, anxiety, internalized homophobia, for example, whereas distal factors can include things like recent discrimination events and interactions with others that result in anxiety, among other things.

Minority stress theory, I often say in my work, serves as a bit of a kind of theoretical foundation. It's not the bedrock of my work, because I think there are a number of other elaborative theories that help us to take the notion of minority stress and its documentation of unequal outcomes into a more sophisticated place. No offense to Ilan Meyer and his kind of intellectual descendants.

So psychological mediation is a closely related framework and another powerful tool, which helps us to see why it is that not all members of minoritized or stigmatized groups respond to discrimination in the same way. You'll see sometimes in conservative arguments against the potential harms of these laws, and people will say, "well, look at this example of a healthy person. Things can't be this bad if we have this example of someone who's doing well, despite the existence of this law." Well, that can be true, certainly. What psychological mediation helps us

understand is what are the mediating variables that exist between the discrimination event and the outcome.

Why is it, for example, that one queer person may experience a discrimination event, brush it off, move on with their life, and have a great day—much less a great life—whereas another person may experience that exact same discrimination event and send them into psychological distress. It's those mediating variables that are incredibly important to account for, not only so that we can understand harmful consequences of the law, but also from an intervention perspective in how we attend to people, to actual people when tailoring interventions to support and promote mental health.

So, there we go. We've got minority stress theory—what are the variables that impact folks and result in unequal outcomes? Psychological mediation—what are some of the ways that we can account for variables that produce differential effects, and then the structural stigma? This is really the cornerstone of my work. This is where psychology and sociology intersect.

It helps us to identify how a level of anti-LGBT prejudice in a particular jurisdiction, that is law-empowering discrimination, helps explain these different outcomes when comparing LGBT people to their heterosexual counterparts and cis gender counterparts. The structural stigma research, which blends critical public health perspectives with psychology and other behavioral social sciences, really exploded in last decade with population level analyses of differences in these outcomes for LGBT people in states where hate crime legislation exists, for example: anti-discrimination laws, gay marriage legalization versus bans.

I have only a few minutes left, so I'm not going to rattle statistics off, but it just is quite predictable. In states where anti-LGBT laws exist, we see all kinds of negative outcomes compared to where they do not and this ranges from clinical levels of mental and physical health issues to broader, nonclinical level symptoms, such as elevated stress levels, perceived discrimination, and anxiety.

None of this, I think, should be understood—just to make sure we're following along, we've got minority stress theory, psychological mediation, structural stigma—none of this should be understood outside of the context of

intersectionality, which is the Black feminist legal theory that explains how systems of oppression collide to produce unique and non-derivative forms of harm for members of multiple marginalized social groups.

First articulated in academic legal scholarship by Kimberlé Crenshaw to explain the failures of U.S. anti-discrimination doctrine to account for black women's experiences of discrimination as well as the failures of support systems to protect women of color who are experiencing violence because these systems are formed on the experiences of white women, intersexuality has become an indispensable tool for understanding and critiquing how laws and other forms of institutional violence differentially impact non prototypical group members who experience multiple forms of oppression simultaneously.

In the case of LGBT+ discrimination, and discrimination law, intersectionality theory and what is called the Queer Color of Critique has been used to explain why we see consistently worse outcomes for queer and trans people of color when compared to their white and cisgender counterparts. Much of mainstream LGBT activism has been led by wealthy white cisgender, gay men. Intersectionality also helps us to critique the limits of this advocacy, to account for the ways the diverse forms of legal discrimination disproportionately harm LGBT people of color, even if this discrimination might not at first appear to be about gender or sexuality or race, for that matter.

To conclude, in 2016, then-governor Bill Haslam signed into law in our State a law that is still on the books which I called it "Tennessee Counseling Discrimination Law." It's a law written into the state's Annotated Code that enables counselors and therapists in private practice to deny services to their clients on the basis of the therapists' "sincerely held principles" without any legal recourse. So, it enables people to discriminate, which you can't do necessarily, but not lose your license.

Gender and sexuality and the word, the acronym LGBT, do not appear in the law, of course, but we know that it was developed to empower Christian therapists deny services to queer and trans clients.

When the law was signed in the books, despite our activism here on campus and coordinated activism with advocates throughout the state of Tennessee and the

country, including the union of pastoral counselors who opposed the law vehemently, Haslam signed it. We did a study with graduate students and faculty here at UT and surveyed over 400 Tennesseans about their knowledge and awareness of the law. In our analyses what we found was, of course, sobering. It was widespread awareness of the law, which is perhaps not surprising.

But what we also found is that for the folks who are highest in their LGBT identity—that is, people who felt that is a really key part of who they are and who are aware of the law—were more likely to experience psychological distress generally and to engage in identity concealment practices which are one of the key variables of minority stress theory that results in long term physical and mental stress.

We did follow up interviews with these folks and I'll conclude here. We talked to 20 of them, it's a very diverse group in terms of race, ethnicity, gender, identity, sexuality, age, etc. What we found is that these queer and trans people understood the law to be a powerful tool for broad discrimination in the state. So, like us, they were interested in the fact the law didn't target sexual and gender minorities explicitly and they noted in the interviews that they thought that this could be a way for therapists to harm immigrants, people seeking abortions, people who were contemplating divorce, and people who were experimenting with polyamory in their lives. One of the things that that we thought was so meaningful about these people is that they understood the law in intersectional terms and that's where I want to conclude today.

I think it's really imperative that as we think about laws and LGBT discrimination that we hold on to the fact that anytime we start legislating discrimination, we have to understand the multifarious effects that again, like that smoke in the air, can affect people in really unpredictable ways—that we as scholars and as activists need to keep a very careful eye on.

So, thank you so much for your time.

### **C. Dr. Christina Perkins<sup>10</sup>**

Good morning. I am the resident clinician in the room, so public speaking is my least favorite thing. I'm glad to see all of your shining faces. I'm going to read from my paper.

I'm going to pick up with just kind of locating myself in my intersectional identities because I think that informs everything about how I show up in this space, how I show up with my clients in my private practice, and how I show up when I teach students.

I'm a cisgender queer woman, but I am also white, and I also have lived in Northeast Tennessee in the Appalachian my entire life, so that gives me a facet of privilege in working with some of the folks here, some of the clients who are queer and from rural communities. I also have had access to several levels of higher education. I did my Master's and Doctorate here, at UTK. I just wanted to locate myself, and that's the lens that I frame from. I can't speak for other groups of humans.

What I brought with me today is some research. I'm also going to talk about minority stress theory. So, thank you for planting that seed, Dr. Grzanka. I also brought some quotes and lived experiences of a few clients. Of course, they're confidentiality protected. Also, some peers and colleagues who were willing to talk with me briefly about their experiences of being here.

One of the things I'm passionate about is this intersection of where research and humanity actually meet because sometimes, I think we forget that they're human beings with lives on the other side of numbers, especially the more rigorous the research—in my experience of doctoral work—the harder it was to stay connected to the fact that these are humans. My plan is just to remind us about the humanity

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<sup>10</sup> Dr. Christina Perkins is currently a Clinical Assistant Director for the University of Tennessee, Psychological Clinic. Dr. Perkins is an Adjunct Lecturer for the Master of Social Work programs at the University of Tennessee and at Boise State. Dr. Perkins works with LGBTQ+ neurodivergent clients with a specialty in developmental and complex trauma and anxiety disorders. Dr. Perkins is also involved in sexual assault victims' advocacy, substance abuse services with women who were pregnant or parenting, and substance abuse dependence issues.

of these people and talk a little bit about feelings and emotional dysregulations that occur; everyone loves when I speak because I always talk about feelings.

I'll just keep it brief because it is not my forte to be in the legal system, but right now, as we are talking, the House floor is hearing the Anti-Trans Youth in Foster Care Bill. I just want to locate us in right now. These conversations are happening in those rooms where people are in power, and the Tennessee Equality Project often calls our legislative session the "Slate of Hate" because there are so many anti-LGBTQIA bills that come through. I'm going to take a deep breath and know this is a piece of the pie, this doesn't include the tax on bodily autonomy and isn't inclusive of other pieces of legislation that exist.

This comes into the therapy space with me. What I'm going to do today is just bring you into that space a little bit as much as I can and share what one of my clients stated, who also works with LGBT folks in their professional life:

As a trans bisexual Tennessean, the legislative landscape takes up so much of my bandwidth. I regularly experience a range of negative emotions and, at times, find myself being hyper-vigilant about the safety of myself when I walk around—and my loved ones. It makes it so hard to do things, just around the house, to take care of myself, let alone find the energy to have fun when you're waiting for the other shoe to drop. And it always drops.

I appreciate the opportunity to be here and share a framework for how to think about what's happening for LGBT folks regarding our mental health symptoms. In my therapy room, there is and has been coping anxiety about every single election and legislative session since I opened the doors in 2018.

During election season, especially for state and federal level legislators, sometimes I've met an eight-client-hour day. I've spent at least five hours discussing fears, worries, increased difficulty to sleep, increased depressive symptoms, difficulty with emotion identification and awareness, increased conflict, and interpersonal and familial relationships, and often our resurgence of PTSD symptoms, especially if the clients—and this all of my clients because of the work that I do—have had other traumatic interpersonal experiences. These symptoms include hypervigilance,

a lack of capacity to enter deep sleep, increased nightmares, and difficulty connecting with safe loved ones—if they have social support.

And so, I'll offer an example. Of course, this client's identifiers have been changed. Take Jack, for example, a 25-year-old trans man that I worked with for almost five years who had no health insurance and could only afford sliding-scale therapy once a month because his job did not offer benefits and he had to pay out of pocket for his gender-affirming endocrinology care. He had to drive three hours to the local Planned Parenthood for services and for prescriptions. He cannot get the therapy that he truly needs to manage his mental health diagnoses because of the limitations placed on care by legislative bodies.

This includes the refusal of the state to expand Medicaid, a lack of affirming providers—and I do not mean tolerant. My doctoral research on bisexual Tennesseans shows there are two very distinct classes of medicinal providers here. One class of providers is tolerant—and that means they will accept LGBT folks—and the smaller population is affirming, and that means that we say, “Yes, you are absolutely beautiful as you are—as the human that you are—and we want to support you.” So those are two very different definitions of words. So this client, [Jack], manages daily worry about whether he's going to be forced to stop hormone therapy, which would bring back a menstrual cycle and cause extreme gender dysphoria, and whether this is going to impact his ongoing struggles with depression.

The worries of my LGBT clients are numerous and far-reaching. They include marriage stability, additional financial burdens such as adoption costs for married partners whether one parent is a bio-parent or not (where both parents are not biological parents), concern for state-level appeal of marriage, concern about who can take care of one partner at the end of their life, and access to gender-affirming medical care.

I quote from another queer woman, a mother, on the impact of her family living here:

We were originally considering adoption. Then Tennessee passed a bill that adoption agencies can refuse LGBT+ individuals. Once she

had a child—once my partner had a child—I was constantly worried about how being my son’s mom would be accomplished in such a hostile environment. We spent an additional \$6,000 to secure my spot legally as his mother via adoption. Now we’re divorced, but because of the national and local landscape, I wonder if one day I’ll wake up and not be a mom anymore.

The laws and bills that are proposed are in the therapy space with me and, indeed, in the lives of my clients. So, I could talk all day about minority stress, but I won’t do that. But what I will say about it is that these stressors are in addition to the daily life stress that we all experience, being human in the world.

This exists at all levels: individual, interpersonal, cultural, institutional, and sociopolitical. This literature, as Dr. Grzanka said, started in the 1990s, and in an updated meta-analysis and systematic review of all this literature in 2008, authors found that as a collective, sexual and gender minorities, or SGMs, continue to experience higher rates of mental health disorders and are at a two-fold increased risk for suicidal ideation, attempts to actually die by suicide, and any and all diagnosable mental health conditions.

Our sexual and gender minority folks experience an increased risk of illness, injury, and decreased access to care because we exist in a heterosexist culture, which is a dominant culture of heterosexuality. From an early age, there are social expectations gravitating toward heterosexuality and gender-confirming ideations. For example, there are the onesies for children, for little boys, that say things like “ladies man,” and for little girls that say, “drive the boys wild.” These are actual onesies that I saw when I was pregnant with my son.

This continues throughout adolescence as persons navigate prosexual behavior and into adulthood when people are coupling and integrating partners in their lives. Sexual and gender minority folks live in a culture with a passive assumption of heterosexuality, which requires persistent coming-out behavior. I bring this back to nonclinical language and use a metaphor. One of my favorite things. Minority stress theory suggests that everything impacts sexual and gender minorities; it’s the water we swim in, right? So without any other stressors like sharks, jellyfish, the other humans, the boats coign at us, the water is already choppy for sexual and gender minority folks.



To build on this, additional scholars discuss a further process model that may begin to shed light on how sexual and gender minority folks are impacted by these stressors. This is important in understanding the impacts of anti-LGBT legislation because it might seem like it should be easy, and for some folks it might be easy to ignore these laws or turn the other cheek as they say. However, one community member and fellow therapist articulates their experience of living under these laws by saying, “It’s like they’re trying to erase us as if we shouldn’t exist, and they all forget that we have existed as long as you can find us.” “We” [and “us”] being sexual and gender minorities. I know the sexual and gender minority folks have high rates of diagnosable mental health concerns and emotional dysregulation, which these authors posit come from a higher sensitivity to emotional arousal because of living in a chronically invalidating environment.

To use my water metaphor, the water never settles. It’s always choppy. We know the sharks are not far away. We know they’re going to routinely attack during the legislative session. Emotion dysregulation, when I say that, is overt displays and contained emotions—such as yelling, fighting, throwing, use of substances—and over-controlled emotion such as a lack of emotional presentation or freezing or internalizing—meaning ruminating thoughts, skin picking behaviors, those sorts of things. Invalidation, here when we talk about traumatic invalidation, is any action or inaction that communicates to an individual that their responses do not make sense and are not understandable within their current life, context, or situation.

Everyone experiences invalidation at some point in their life trajectory. However, sexual and gender minorities are subject to universal forms of invalidation, such as those socializations into gender roles and heteronormativity. This leads folks not to trust their own feelings, which means that they can’t trust themselves and actually increases their risk for discrimination and abusive interactions with others because if we can’t listen to ourselves, we’re not going to listen to those cues that we get from our intuition that says something is wrong. We know that increased adverse events lead to higher rates of ASD diagnoses and greater physical health problems from the well-known adverse childhood experiences work that has been done over the last 15 to 20 years.

There are many levels in the invalidation to discuss. And I'm happy to discuss this one on one if anybody is interested. But for today's purposes, we're going to think about systemic invalidation, which is that that occurs with macro-level systems, such as communities and cultures, and at the hand of powerful social structures, like institutions and governing bodies.

It is documented in the literature that sexual and gender minorities living in states with fewer legal protections have higher rates of emotional disorders, and though most literature focuses on interpersonal and family-level harms, evidence suggests that sexual and gender minority people, especially those with marginalized identities, such as people of color, feel that the legislature communicates that they are inferior and less worthy of consideration, wellness, and protection. To illustrate, [here is] a quote from a local community member, a trans woman who is not openly living her life as a trans woman:

I feel constantly under attack from elected officials who are parodying harmful stereotypes, promoting false narratives that fuel cultural hostility toward LGBT people. I often feel my safety is at risk, and I typically hide my identity when I'm in public. The never-ending list of anti-LGBT bills has left me feeling isolated and afraid I may even lose access to gender-affirming healthcare, even as an adult, and my mental health care. As a youth in our community, being stigmatized by elected officials, who are supposedly here to be supportive, has left me drained, often depressed, and has definitely contributed to my ongoing mental health [issues].

Anti-LGBT legislation can be defined as active structural violence and have wide-ranging mental health impacts, including those post-traumatic symptoms that I talked about at the beginning and causing people to make choices, such as leaving home or leaving areas of connection, in dealing with the daily onslaught of harm. One such quote from a community member illustrates this stress:

I was born and raised here. To see anti LGBT bills makes me realize I could have chosen, and I have chosen between staying here and being under stress every day as I ride the line between being seen for my identities or hiding them, or moving away from my extended family and friends who are supportive.

Even when legislation is reversed, post-traumatic symptoms are present, such as avoidance and re-experiencing. After the 2016 presidential election, a group of scholars, Brown and Keller, discussed the experience of increased fear, stress, and hopelessness, just in anticipation of legislative rollbacks that have been put in place by formal presidential administration. Especially in Tennessee, LGBT people hope and rely on federal-level protections as the State continues to threaten to any support. This exists currently in the wake of our legislative session as well.

There is a palpable increase in fear inside the therapy room, and I have conversations that go one of 2 ways: clients either ask me, “What do you think is going to happen? Have you seen the latest bill? I’m not sure what to do. Should we move?” or, [for] the clients who have enacted a lack of emotional response, they don’t know what is going on. They are not able to engage and consider how to keep safe because they aren’t aware, and they choose not to be aware. And though avoidance is my favorite coping tactic, I can’t do that and have these conversations in my clinical space.

So LGBT folks are telling us they’re hurried and worried, and scared and impacted, and further being harmed by any invalidation that they get. Each new piece of legislation becomes a barrier to swimming, or even better, floating in this water, which is almost what they want to do to survive. So, I ask of you, consider your work, each document, each work case, each person as a whole person impacted by every level of their environment, and know that you can be a protective factor or another stressor.

And so, to summarize, one of our beloved transqueer community leaders said:

There’s a constant, low-level exhaustion in the LGBT+ community, and that creates a long-term depression when facing daily life. It’s linked to the legislature. Adoptions are being placed on hold, knowing their foster children could be housed, but are institutionalized instead. Still having to—excuse my language—choose a f\*\*\*\*\* bathroom, the best suits you today. Most places that you go, even in our own bars and safe spaces, there is constant stress at work and public spaces where we are questioning the boldness of those in the midst due to any lash out because we are different. And will anyone stand up with us to oppose them?

Legislative agendas drive public opinion simply by drawing attention to issues that bring a focus, a public controversy that challenges the quieter empowerment that creates balance in the daily life of our community. Those folks, the legislators, are able to pause our lives, halted adoptions, and other issues in a real way that creates uncertainty, heightens anxiety, and our feelings.

#### **D. Dr. Tamar Shirinian<sup>11</sup>**

Thank you to my colleagues. This panel has been great. I am coming from a slightly different angle. I am an anthropologist. I have done research in the post-Soviet Republic of Armenia. So, what I am going to talk about today is U.S.-contextualized but draws on the theoretical insights from my research in Armenia which was established over two years of deeply immersed ethnographic fieldwork. My forthcoming book, which is coming out in October, is about where transphobia and homophobia come from—as in what are its political and economic roots. The argument that I am making is that we need to see homophobia and transphobia as political and economic in nature. Not just political, but political *and economic* in nature. I will be giving a little bit of context of how I see that theory in work in the United States today.

This panel is about how anti-LGBTQ legislation causes practical harm. This is a really critical issue and has many dimensions, as my colleagues have already elaborated on quite well. I want to spend the bit of time that I have here today to talk about something else that anti-LGBT legislation does, which is not necessarily the direct harm the policies create, but the ways in which these policies emerge out of context and are often attempts to cover up other harmful, violent mechanisms. Law does far more than just enact a policy. Law is a discourse, a form of talk, speech, a performative space that always comes out of existing knowledge and discourse and that also produces knowledge in the world. Anti-LGBTQ laws, in

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Tennessee, Florida, and Alabama, or elsewhere, produce particular kinds of knowledge about gender, sexuality, and non-normative life. These knowledges are pernicious as they constitute justifications for forms of violence other than the legal violence that they enact. They justify violence on queer and trans bodies which the laws narrate and discursively produce as dangerous to the good, clean, wholesome body politic.

They also, however, erase other forms of violence—political-economic violence—which the narrative of queer and trans bodies as dangerous displaces, condenses, and ultimately obscures from view. I want to argue that this latter point is important because while we look at maps, and there are many of them now, that show us where in the US such harmful policies are legislated, we see certain places, usually the South and the Midwest as hostile and some other places as safe harbors. This knowledge gets established on only certain criteria: sets of laws. What it leaves out are the underlying political and economic realities. This means that our general discursive frameworks around queer life often do not include understanding of how queer and trans folks have to navigate more difficult economic realities with higher rates of poverty and unemployment than others that are often left out of focus when all eyes are on policy. What it also leaves out, however, is that the hate directed towards queer and trans folks might also be economically motivated as it is rooted within political-economic anxiety about other things.

First, a note on language. I will be using “queer” and “trans” rather than LGBTQ for three main reasons. First, LGBTQ often collapses critical differences, most notably, as Gail Salomon has argued, the difference between identity based on gender distinction from the regime of the norm and one based on sexual difference from the regime of the norm. This is important because in the age of what some queer theorists may call homonormativity, in which gay and lesbian identity and position socially has been normalized and incorporated into nonpoliticized life, trans people are still left out and far more marginalized. Second, the laws that we are often talking about today particularly target trans bodies. These laws are about medical care, the use of particular bathrooms, the ability to use language based on one’s assumed bodily status, etcetera. In this sense, we are not necessarily talking about sexual orientation, sexual desire, or sexual practice, but rather, we are talking about mechanisms that seek to normalize, police, discipline, and control gendered bodies. Finally, third, “queer” is a capacious term that points to marginality and the

politics that are located there. I use “queer” here because I find that much of the rhetoric within right-wing discourse, knowledge, production, and law is afraid of these marginal, political possibilities. Rather than diminish the capacity for radical alteration of life as we know it, and understandings of gender as we understand it—which is what the right wing is afraid of—I think we should embrace it.

Let’s start with the kinds of knowledge that anti-queer and anti-trans legislation produces. Indeed, knowledge that was about the radical world-altering possibility of queer and trans. While many of the narratives here—to be clear—are false, they also produce moral panic that then justifies violence. Much of it is based on absurd claims that schools and their liberal teachers, who promote queer and trans ideas and perspectives, are educating children and encouraging them to take on anti-social behaviors. For instance, Heidi Ganahl, on the University of Colorado Board of Regents, proclaimed that because of what they are being taught in schools, many students are choosing to identify as cats and are showing up in costumes to schools and using litter boxes in schools. The idea that children can become cats is attributed, by Ganahl, to “woke” ideology that has replaced real education in schools. Ganahl, of course, is not alone. A South Dakota lawmaker evoked the figure of furies, people who dress up as animals, in reference to gender-affirming care. A Montana legislator has discussed parents who help their children receive gender-affirming care as helping their children in medically assisted suicide. For Tucker Carlson, the former Fox News talking head that majorly profited from anti-trans moral panic, “transgenderists,” as he likes to call them, are violent and delusional. They believe themselves to be gods and will kill anyone who does not worship them and their unnatural ways.

The very concept of gender as part of a larger global, anti-gender movement has also come to play a prominent role within these discussions. Christiana Kiefer, an attorney who works for the Alliance Defending Freedom, tells us that “gender” threatens Title IX because it takes entitlements away from women. If biological differences between men and women are ignored, she argues, women suffer, left again without any legal protections. Sarah Perry, [an] attorney with the Right-Wing Family Research Council, argued in 2019 that transgender ideologists prey on autistic youth who are more likely to wrongly understand discomfort that they feel in their bodies as gender incongruity. Her colleague, Attorney Joshua Arnold, has argued that:

[S]cience only benefits us if we follow it. Nevertheless, a new ideology claims people can change their sex if they feel like they belong to the other gender, relying on unscientific assumptions that differences between the sexes is merely superficial. This transgender ideology has swept like the horde of Genghis Kahn across all of America's elite institutions nearly unopposed, leaving carnage in its wake. Many of those who clamor most loudly that we should follow the science also most stubbornly refuse to do so.

While these moral panics are absurd, and I am sure that everyone sitting here knows that these folks are either making this up or are just crazy themselves, this is knowledge production. The main takeaway that legislators, policymakers, and the public have come to narrate as acceptable speech is that transgender people are disruptive towards society and that educating children about gender identity and the inclusion of the concept of gender within everyday life will lead to horrible, society-destroying outcomes. Beyond just what the laws, based on these rhetoric, do—the practical harm to trans people that they encode—these narratives also produce the possibilities of everyday fear, shame, and violence, like my colleagues discussed. The laws are part of a larger rhetoric, a larger knowledge. They produce what we might see as the “figure of the transgender,” an abstraction beyond the actually-existing trans subject. This figure of the transgender is a monstrous figure. A dangerous figure. A violent figure that harms children, harms good, religious people, and that is out to destroy the good society.

That we see this knowledge production as part of a moral panic is important. Moral panics are always grounded in anxiety and fear that often stems from actually-existing crises. Moral panics work because they capitalize on already-existing feelings that something is not right, [that] something has gone awry with general morality. Morality is intimately connected to gender and sex. Feminists and other critical theorists have argued for decades that home or family is both the site in which feelings and morality are produced, kept, and maintained, but is also the site in which normative ideas of proper gender roles are produced. The primary victim of both so-called unnatural gendered and sexual behaviors, as well as a declining morality, is always claimed as the family—the very social reproducer of the good, normal, moral citizen. It is not a coincidence, then, that today we find, along with these various gender and sex panics, that Americans feel morality to be in jeopardy.

A 2022 Gallup poll shows that 50 percent of Americans feel that the state of moral values in the country are currently poor; 78 percent feel that moral values are only getting worse and that the top problem cited in these feelings of moral degeneration nationally is a lack of consideration of others. As the Gallup poll concludes:

Americans' view of the state of moral values in the US are dismal and their expectations for the future are grim. This has generally been the case over the course of a 20-year trend but negative ratings of the current state of moral values are the worst they have ever been.

How might we read these feelings of morality? Morality, especially regarding the question of consideration for others, has much to do with what socialist feminist theorists have called social reproduction, or the mechanisms through which a society reproduces itself. Social reproduction is about care, about the labor of care that is necessitated in order for a generation of laborers to be birthed, fed, cleaned, educated, disciplined, and raised to become workers for society.

Here, feminists have made a critical move. While care is an economic provision, a form of labor, it is also an affective position. For some feminists, this has been a major force of the concept that has kept women feeling as if it would be wrong to demand compensation and credit for the free labor they provide society by caring for children in households whether they work outside of the home or not. If care is something that one does because of the affection they have for their family, then it becomes selfish and perhaps even immoral to ask for compensation. In other words, care is both a form of labor as well as a moral imperative.

If Americans feel that there is lack of concern for others, and that this is a moral failure in the country, we can also see similar trends about care in the transgender panics I described. That children are not receiving a proper education. That young adults are veering towards improper ways of life, transitioning to cats for example. Not the good life in which they marry, settle down, buy a house, and start a family. That women's equality is being threatened by transgender people, they claim, and the very concept of gender. These are all connected to the politics of care or social reproduction.



Economic crisis, now ongoing since the beginning of the era of neo-liberalization in which cuts to public spending in education, healthcare, and social welfare have severely impacted everyday life for many Americans, in which privatization of many of these once-public resources has led to a rapidly growing gap between those who have and those who have not. [This has also] led to the post-World War II American Dream to become an American fantasy that many young people—who are drowning in debt, who cannot afford down payments on homes or sometimes even rent to move out of their parents homes, and who do not see a social safety net that will allow them to comfortably imagine a future good life—see as entirely out of the realm of possibility for them.

All of this is to say that we must read anti-queer and anti-trans legislation as part of this larger, political-economic crisis. It is certainly true that queer and trans lives are jeopardized by laws and policies that come out of moral panics. It is also true that these laws are products of, and are themselves producing narratives of, the “figure of the transgender,” a monstrous figure, that then works to justify violence against trans people. However, what I am suggesting is that these laws and policies—including the larger knowledge of which they are a part—are only displacements and condensations, holding queer and trans people as hostages and as scapegoats for a wider, more material, and perhaps for many Americans, a more concerning reality sparking anxieties on which these moral panics capitalize: that life itself is endangered—economically, politically, and socially.

I am thus arguing that the only way to end the trend of homophobia and transphobia to overturn these policies and to reveal the absurdity of the knowledge on which they are based and which they also, in turn, produce, is to target moral panic at its roots: anxieties concerning material life.