

MULTI-GENERATION QUEER FAMILIES: FOREGROUNDING THE LGBTQIA+ CHILDREN OF LGBTQIA+ PEOPLE

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INTRODUCTION

In the last several years, state legislatures have introduced a disturbing array of anti-LGBTQIA+ bills that take aim at queer¹ and trans² children. Many of these

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1. This Essay uses different terms to discuss sexual orientation and gender identity. When discussing the movement for (or against) equal rights for people of different sexual orientation and gender identities, we use LGBTQIA+, an acronym for lesbian, gay, bisexual, transgender, queer, intersex, and asexual people. We use this acronym in its most expansive sense, to also include two-spirit people and others with sexual orientations and gender identities who consider themselves part of the movement but are not represented by an existing letter. When referring to individuals and families, we use the term “queer,” as both a short-hand, and to acknowledge the many variations and combinations of sexual orientation and gender identity. When we are discussing historical laws that took aim at gays, lesbians, and bisexuals specifically, or modern laws that specifically target transgender and non-binary children, we will often use specific terms to discuss the impacted people. Finally, we will use LGBTQ rather than LGBTQIA+ in some places to acknowledge the limited scope of our argument and research, especially as it applies to intersex people. The unique issues faced by intersex parents and intersex children are not directly addressed here, and would benefit from deeper consideration. For example, some of the same states that ban gender affirming care for minors still allow “gender normalizing surgeries” on intersex infants. See Ido Katri & Maayan Sudai, *Intersex, Trans and the Irrationality of Gender Affirming Care Bans*, 134 YALE L. J. (forthcoming 2024). For discussion of the perils of lumping various sexual and gender minorities into a generalized LGBTQIA+ rights movement, see Marie-Amélie George, *The LGBT Disconnect: Politics and Perils of Legal Movement Formation*, 2018 WISC. L. REV. 503 (2018).

2. When we use the word “trans” or “transgender,” we use it in its most expansive sense to include non-binary people. Note that, even though “queer,” as we use it, includes trans people, we will sometimes use the locution “trans and queer” to emphasize transgender people specifically.

bills have become law.³ These bills and laws involve, for example, various limitations on gender-affirming care, prohibitions on the discussion of LGBTQIA+ identity in classrooms, and banning drag shows. In the same period, school boards and parent groups have increased their efforts to ban books from school and public libraries, with a special focus on books that discuss LGBTQIA+ identity.⁴ The basic fear animating these bills, laws, and policies is that exposure to LGBTQIA+ people, or even to LGBTQIA+-supportive ideas, will somehow turn straight children queer. Although these particular laws are new, the general goal behind them, to protect children by shielding them from queerness, has been in circulation for a long time. Clifford Rosky dubbed the anxiety underlying such laws “the fear of the queer child.”⁵

In the past, the LGBTQIA+ civil rights movement has responded to these types of attacks by arguing that sexuality is immutable and, thus, that exposure to queer adults will not make children queer or trans. While the immutability argument seems to have been effective, particularly in the fight for marriage equality and extension of anti-discrimination laws to LGBTQIA+ people, we argue that it is beginning to outlive its general usefulness, and is largely useless when it comes to protecting “multi-generation” queer families in particular.⁶ An argument solely rooted in the biological nature of queerness could be misused by opponents of LGBTQIA+ rights to prevent queer people from becoming parents, given that they may be more likely to have queer children. If we accept that the development of a person’s sexuality is complex and subject to many possible influences, some

3. See, e.g., H.B. 322, 2022 Leg., Reg. Sess. (Ala. 2022); H.B. 1557, 2022 Leg., 124th Reg. Sess. (Fla. 2022) (laws prohibiting instruction about LGBTQ people in schools); H.B. 648, 2023 Leg., Reg. Sess. (La. 2023); S.B. 14, 88th Leg., Reg. Sess. (Tex. 2023) (laws prohibiting minors from accessing gender-affirming care). For a more complete picture of laws that have been enacted, see *Snapshot: LGBTQ Equality by State*, MOVEMENT ADVANCEMENT PROJECT, <https://perma.cc/RV29-D958>. For information about laws that have been introduced, see, e.g., *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024*, AM. CIV. LIBERTIES UNION, <https://perma.cc/F8WG-Y3SB>; *2024 Anti-trans Bills Tracker*, TRANS LEGISLATION TRACKER, <https://perma.cc/TEH9-UTFV>.

4. The American Library Association documented 1,247 attempts to censor books in 2023, and the number of titles targeted for censorship increased by 92% compared to 2022. Of the top ten most challenged books, seven had LGBTQ content cited as a reason for challenge. (Two of the ten books discussed race or racism.) *Top 10 Most Challenged Books of 2023*, AM. LIBRARY ASS’N, <https://perma.cc/FY5J-9TL5>.

5. Clifford J. Rosky, *Fear of the Queer Child*, 61 BUFF. L. REV. 607, 608 (2013).

6. We use the term “multi-generation queer family,” to refer to a family that includes a queer person who has a queer child. See, e.g., Aaron Dickinson Sachs, *Family Pictures: The Queer Relationships of Multigenerational Queer Family*, 70 J. HOMOSEXUALITY 111, 118 (2023). Some scholarship on this topic uses instead the term “second generation” to refer to the LGBTQ children of LGBTQ people. See, e.g., Katherine A. Kuvalanka & Cat Munroe, *The “Second Generation:” LGBTQ Youth with LGBTQ Parents*, in LGBTQ-PARENT FAMILIES: INNOVATIONS IN RESEARCH AND IMPLICATIONS FOR PRACTICE 241 (Abbie E. Goldberg & Katherine R. Allen, eds., 2d ed. 2020). We prefer the “multi-generation” terminology because it encompasses queerness across multiple generations, while “second-generation queer family” does not. See, e.g., Nancy A. Orel, *Lesbian and Bisexual Women as Grandparents: The Centrality of Sexual Orientation on the Grandparent-Grandchild Relationship*, in LESBIAN, GAY, BISEXUAL, AND TRANSGENDER AGING: RESEARCH AND CLINICAL PERSPECTIVES 175 (Douglas Kimmel, Tara Rose, & Steven David., eds. 2006).

biological and some not,⁷ the immutability argument is much weaker than it might have originally seemed. After all, many immutable traits are passed from parent to child. It is not unexpected that this may be the case with sexual orientation as well. One might think that multi-generation queer families could be held up as examples of the immutable nature of sexuality. Instead, however, foregrounding the existence of such families opens the door to accusations of indoctrination, recruitment, or grooming from opponents of LGBTQIA+ rights.⁸ This is likely the reason that these families are often closeted or erased⁹ by the LGBTQIA+ rights movement.¹⁰ While it may have been politically expedient to keep these families out of the public eye in the past, multi-generation queer families have much to offer the LGBTQIA+ movement, particularly in responding to the fear of the queer child.

Focusing on immutability in response to fear of the queer child puts activists on the defensive. Anti-LGBTQIA+ activists argue that children can be made queer by exposure to queer adults or queer ideas.¹¹ LGBTQIA+ activists often counter by arguing that queerness is biologically determined and cannot be changed no matter how a child is raised and to what a child is exposed.¹² But by focusing on the etiology of queerness, in general, and its immutability, in particular, activists miss the mark: simply put, they avoid arguing that there is nothing wrong with being queer, regardless of how sexuality develops.

Responding aggressively to the “fear of the queer child” is especially important in the face of the current flood of anti-LGBTQIA+ legislation focusing on queer children. Instead of arguing that LGBTQIA+ people should be treated equally because they have an immutable and/or innate trait, the LGBTQIA+ rights movement should argue that queer people are worthy of equal treatment and protection because that is what all people deserve. Indeed, U.S. law prevents discrimination based on many *non*-immutable characteristics that society has decided are worthy of protection.¹³

7. EDWARD STEIN, *THE MISMEASURE OF DESIRE: THE SCIENCE, THEORY AND ETHICS OF SEXUAL ORIENTATION* 227–8 (2001); Lisa M. Diamond & Clifford J. Rosky, *Scrutinizing Immutability: Research on Sexual Orientation and U.S. Legal Advocacy for Sexual Minorities*, 53 J. SEX RES. 363 (2016); cf. Charles M. Blow, *People Say Queer People Are Born That Way*, N.Y. TIMES (July 31, 2024), <https://perma.cc/PDP8-MRT4>.

8. Melissa Block, *Accusations of ‘Grooming’ are the Latest Political Attack — with Homophobic Origins*, NAT. PUB. RADIO (May 11, 2022), <https://perma.cc/4JE4-SQSG>.

9. For an influential discussion of erasure of a subgroup of the LGBTQ community, see Kenji Yoshino, *The Epistemic Contract of Bisexual Erasure*, 52 STANFORD L. REV. 353 (2000) (discussing how both heterosexual and gay and lesbian people erase bisexuality). For a discussion of how queer children of queer parents have been closeted by the LGBTQ rights movement, see Kavalanka & Munroe, *supra* note 6.

10. See e.g., Reina Gattuso, *Meet the Children of LGBTQ+ Parents Who Are Reclaiming the Narrative*, REWIRE NEW GROUP (Jun. 27, 2023), <https://perma.cc/JTW8-Q4NT>.

11. *Id.*

12. Blow, *supra* note 7.

13. Religion is a significant example of a mutable trait protected by law. People of all religious groups are protected, whether they are born into the religion, or they choose to convert as an adult. For

Taking an aggressive response to “the fear of the queer child” trope provides a more expansive way to defend LGBTQIA+ rights. The LGBTQIA+ rights movement should not repeat what occurred during the fight for same-sex marriage, when, in selecting plaintiffs for test cases and spokespeople for the cause, advocates chose queer families with either straight children or children too young to declare their sexuality.¹⁴ Instead, the movement should center multi-generation queer families, their concerns, and their perspectives. As part of this recalibration, multi-generation queer families could share their unique perspectives about how queer culture affects the way children in these families are raised, specifically how children are exposed to a more flexible view of gender and sexuality and encouraged to embrace and be open about their queerness.

Multi-generation queer families would be particularly meaningful in today’s fight for LGBTQIA+ rights, given that trans and queer children specifically are the latest target of anti-LGBTQIA+ state laws and bills. These new anti-LGBTQIA+ laws and bills are based on the fear that exposure to queer adults makes children queer. As such, multi-generation queer families, where queer children have been exposed to queer adults throughout their lives, are well-positioned to address this fear and undercut its power; such families show that even if it is true that queer adults can make children queer, this is not a problem. Multi-generation queer families can demonstrate that being a queer child or growing into a queer adult is not an adverse outcome that society should aim to avoid by shielding children from queerness. In this moment, members of multi-generation queer families should be recognized as particularly appropriate spokespeople for LGBTQIA+ rights, at least as appropriate as straight parents of queer children or the straight children of queer parents.

In her article about the selection of plaintiffs for marriage equality cases, Cynthia Godsoe argued that “fronting straight-acting plaintiffs leaves intact the problematic traditional marital hegemony; squanders the potential of diversity to enrich all families; and risks perpetuating the harmful norms that LGB families and cultures are second-best.”¹⁵ Our article develops these themes as they relate to multi-generation queer families and expands Godsoe’s argument beyond plaintiff selection in the litigation context. Centering multi-generation queer families in various contexts challenges the problematic idea—pervasive in even the LGBTQIA+ rights movement—that queer parents should strive to have families

an early discussion of the relevance of religious classifications to LGBTQ rights, see David Richards, *Sexual Preference as a Suspect (Religious) Classification: An Alternative Perspective on the Unconstitutionality of Anti-Lesbian/Gay Initiatives*, 55 OHIO ST. L. J. 491 (1994).

14. See, e.g., *Goodridge v. Dept. of Pub. Health*, 798 N.E.2d 941, 949 (Mass. 2003) (showing that all plaintiffs’ children were twelve years old or younger); *Obergefell v. Hodges*, 576 U.S. 644, 658 (2015) (discussing DeBoer and Rowse, who had children under 10). See also *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014) (couples suing to be recognized on their children’s birth certificates; case later consolidated with *Obergefell*). Only two plaintiff families in *Obergefell* had children over 12. See *Bourke v. Beshear*, 996 F.Supp.2d 542 (W.D. Ky. 2014).

15. Cynthia Godsoe, *Perfect Plaintiffs*, 125 YALE L.J.F. 136, 140–41 (2015).

that look similar to straight families, which includes raising straight children. This idea is rooted, in part, in the assumption that queer families are just like straight, cisgender families, and obscures the unique culture these families have. Multi-generation queer families are in a unique position to challenge the “fear of the queer child” framework¹⁶ and instead create a new paradigm for how society at large, and queer people in particular, view queerness. As threats to trans and queer people increase, tolerance is no longer enough. Focusing on multi-generation queer families will help the LGBTQIA+ rights movement move beyond arguments based on the idea that queerness is a burden that must be bravely suffered, and towards the idea that queerness is a way of life that should be celebrated. Through discussion of immutability arguments and how state courts have dealt with queer people’s attempts to keep or obtain custody and visitation of their children, we show how multi-generation queer families are especially well suited to challenge problematic assumptions about queerness that are entrenched in our legal system and how foregrounding such families is an important strategy for LGBTQIA+ rights.

This article argues that the time has come for a more direct response to the fear of the queer child. As part of making the strongest case for LGBTQIA+ rights, advocates should uplift the stories of queer children of queer parents and queer parents with queer children. The LGBTQIA+ movement will benefit from the centering of multi-generation queer families. The article discusses the weaknesses of the immutability argument, and how multi-generation queer families are uniquely positioned to respond to the weaknesses of that argument. The article then traces how the law has forced queer adults to closet themselves, with a specific focus on how the fear of the queer child influences child custody and visitation cases. The article concludes by arguing that the LGBTQIA+ rights movement would benefit from centering multi-generation queer families, including by using these families as plaintiffs in test cases and by ensuring their perspectives are represented in the movement.

I. IMMUTABILITY

As previously noted, a common refrain of opponents of LGBTQIA+ rights is that they are trying to protect children from becoming queer. Their approach is undergirded by the fear of the queer child. One main LGBTQIA+-positive response to this approach is to deny that sexual orientations or gender identities are so malleable by arguing that orientations and identities are immutable. This immutability argument takes roughly the following form: if same-sex sexual attractions and transgender identities are unchangeable, then it would be wrong to discriminate against LGBTQIA+ people. It would, for example, be wrong, to criminalize same-sex sexual activities, wrong to withhold state-sanctioned legal recognition for same-sex relationships, and wrong to discriminate on the basis of

16. See generally Rosky *supra* note 5.

sexual orientation and gender identity in employment and public accommodations contexts.¹⁷

The immutability argument has a crucial *empirical* premise about sexual orientation and gender identity. Although one of us has argued elsewhere that the empirical claim, at least with respect to sexual orientation, is unproven,¹⁸ for this initial discussion we set aside doubts about such empirical claims. The strength of these empirical claims aside, the immutability argument faces a serious *normative* problem: even if sexual orientation and gender identity are immutable, much of what is ethically and legally relevant about being an LGBTQ person is *not*. With respect to sexual orientation, even if sexual orientations are immutable, choices are necessarily involved when an individual engages in sexual acts with a person of the same sex, publicly or privately identifies as a queer person, decides to establish a household with a person of the same sex, and raises children as an openly queer person. In other words, even if sexual orientation is immutable, a lesbian, a bisexual, or a gay man can decide to be celibate, closeted, single, and childless, even though they might not want to do so. Similarly, even if gender identity is immutable, a trans person can decide to publicly identify in accordance with their sex assigned at birth (rather than in a manner that accords with their gender identity) and to forgo gender-affirming medical treatment (including hormone therapy or surgery), even though such decisions might lead them to experience extreme psychological distress. An individual's decision, for example, to be openly queer or to dress according to their gender identity—as opposed to their sex assigned at birth—goes beyond the characteristics with which they are born. To put this point another way, someone who is convinced that queer people deserve rights only because sexual orientations and gender identity are immutable might, consistent with this position,

17. For early versions of the immutability argument, which, in the U.S. legal context, was supposed to be connected to the Constitution's Equal Protection Clause, *see, e.g.*, E. Gary Spitko, *A Biologic Argument for Gay Essentialism-Determinism: Implications for Equal Protection and Substantive Due Process*, 18 U. HAW. L. REV. 571 (1996); Richard Green, *The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Legal) Analysis*, 16 J. PSYCHIATRY & L. 537 (1988); Harris M. Miller II, Note, *An Argument for the Application of Equal Protection Heightened Scrutiny to Classifications Based on Homosexuality*, 57 S. CAL. L. REV. 797, 817–21 (1984). For criticisms of this argument, *see, e.g.*, STEIN, *supra* note 7, at 277–304 (2001); Janet E. Halley, *Sexual Orientation and the Politics of Biology: A Critique of the Argument from Immutability*, 46 STAN. L. REV. 503 (1994). More recent immutability arguments appeal to what some have called “soft immutability,” according to which a characteristic is (softly) immutable if it is fundamental to a person's identity and it would be abhorrent for the state to strongly to pressure a person to change it. *See, e.g.*, Tiffany C. Graham, *The Shifting Doctrinal Face of Immutability*, 19 VA. J. SOC. POL'Y & L. 169, 173 (2011); Joseph Landau, “Soft Immutability” and “Imputed Gay Identity”: Recent Developments in Transgender and Sexual-Orientation-Based Asylum Law, 32 FORDHAM URB. L.J. 237, 263 (2005); Susan R. Schmeiser, *Changing the Immutable*, 41 CONN. L. REV. 1495, 1504 (2009). For criticism of the soft immutability argument, *see, e.g.*, Jessica Clarke, *Against Immutability*, 125 YALE L. J. 2 (2015); Edward Stein, *Immutability and Innateness Arguments About Lesbian, Gay, and Bisexual Rights*, 89 CHI.-KENT L. REV. 597, 633–35 (2014). For a detailed historical study of immutability in the context of the quest for LGBTQIA+ rights, *see* JOANNE WUEST, *BORN THIS WAY: SCIENCE, CITIZENSHIP, AND INEQUITY IN THE AMERICAN LGBTQ+ MOVEMENT* (2023).

18. *See generally* STEIN, *supra* note 7, at 119–257.

accept that people can be discriminated against on the basis of *choices* relating to their sexual orientation and gender identity. The point stands that LGBTQIA+ people appropriately want and deserve rights with respect to their *actions* and *decisions* irrespective of any arguably “immutable” characteristic.

Once we discharge the assumption that sexual orientation and gender identity are immutable, more problems for the immutability argument follow. Some queer people experience their sexual orientation and/or gender identity as immutable, but others do not.¹⁹ If we accept the self-conception of queer people who do not experience their sexual orientation and gender identity as immutable (and we have no more reason to doubt them than we do to doubt those who think their identities are immutable), then the immutability argument would provide no basis for the protection of their rights. Further, consider bisexuals. Even if a bisexual’s sexual orientation is immutable—in the sense that they did not choose to be bisexual and cannot change their sexual orientation—that person can opt to have sexual relationships only with people of a different sex. In that sense, the “queerness” of their sexual orientation is not immutable.²⁰ Furthermore, some scientists claim that women’s sexual orientations are more fluid than men’s.²¹ If some women’s sexual orientations—or women’s sexual orientations generally—are fluid, even if they are immutability fluid, such women can choose the sex or gender of their relationship partners. Thus, like bisexuals, some women may, in effect, be able to choose to be non-queer. Accordingly, it may not make sense to say that these individuals’ sexual orientations are “immutable” in this context. An argument that purports to advance LGBTQIA+ rights but which might be inapplicable to bisexuals and many women is seriously flawed.

It is worth noting that immutability arguments related to LGBTQIA+ rights have failed in the past. In early twentieth century Germany, Magnus Hirschfeld, a doctor and one of the leading sexologists of the last century, argued for legal protections for queer people by claiming that they constituted a third sex.²² Prior to his

19. See, e.g., CLAUDIA CARD, *LESBIAN CHOICES* (1995); VERA WHISMAN, *QUEER BY CHOICE: LESBIANS, GAY MEN, AND THE POLITICS OF IDENTITY* (1996); Jonathan Pickhardt, Note, *Choose or Lose: Embracing Theories of Choice in Gay Rights Litigation Strategies*, 73 N.Y.U. L. REV. 921 (1998); E.J. Graff, *What’s Wrong with Choosing to Be Gay*, THE NATION (Feb. 3, 2014), <https://perma.cc/5HP5-7PAD>; Brandon Ambrosino, *I Wasn’t Born This Way; I Choose to Be Gay*, THE NEW REPUBLIC (Jan. 28, 2014), <https://perma.cc/5QC7-ARCM>; Lindsay Miller, *Queer by Choice, Not by Chance: Against Being “Born This Way,”* ATL. MONTHLY (Sept. 12, 2011), <https://perma.cc/3D37-2JFL>.

20. But cf. Eliot Tracz, *The Inscrutable Bisexual: An Essay on Bisexuality and Immutability*, 21 SEATTLE J. SOC. JUST. 917 (2023) (suggesting that bisexuality is immutable yet also arguing that immutability is a weak argument for LGBTQIA+ rights).

21. See, e.g., LISA DIAMOND, *SEXUAL FLUIDITY: UNDERSTANDING WOMEN’S LOVE AND DESIRE* (2009).

22. See Rainer Herrn, *On the History of Biological Theories of Homosexuality*, 28 J. HOMOSEXUALITY 31 (1995).

death, having seen how queer people were brutally treated in Nazi Germany,²³ Hirschfeld acknowledged both that the immutability of same-sex sexuality was unproven, and that his attempted use of the immutability argument to help queer people socially, legally, and politically had failed.²⁴ This shows how immutability arguments do not necessarily lead to positive results for LGBTQIA+ people and, thus, that linking something as important as LGBTQIA+ rights to a particular scientific finding is simply too risky.

Another significant problem with the immutability argument is that it may increase the likelihood that people will attempt to use reproductive technologies to intentionally produce heterosexual and cisgender children, which might have deleterious effects on the socio-legal landscape for queer people.²⁵ Suppose that prospective parents making use of assisted reproductive technologies believed that the future sexual orientation or gender identity of developing embryos could be determined through some sort of pre-implantation screening procedure. Some would, no doubt, attempt to use such screening procedures to attempt to avoid having queer children.²⁶ Emphasizing the supposed immutability of sexual orientation and gender identity could facilitate interest in the development of, awareness of, and trust in the effectiveness of such screening methods.²⁷

Even though we strongly doubt that such screening methods will be efficacious, if these methods were available, we suspect some people would make use of them. This is partly because such methods would appear effective because the majority of children turn out to be cisgender and heterosexual even absent such interventions. Add to this that parents who make use of screening methods might think their intervention had been successful in part because their children may not yet have embraced their queer identities or have not yet “come out” to their parents. In fact, some queer people who know that their parents proactively sought to ensure that their child would not be queer would likely decide to delay—perhaps forever—“coming out” to their parents. In short, making the immutability argument might unintentionally encourage anti-queer screening methods that, even if ineffective, might contribute to shaping negative attitudes towards queer people and reinforcing preferences for straight and cisgender children over queer

23. See, e.g., HEINZ HAGER, *MEN WITH THE PINK TRIANGLE: THE LIFE-AND-DEATH STORY OF HOMOSEXUALS IN THE NAZI DEATH CAMPS* (1994); RICHARD PLANT, *THE PINK TRIANGLE: THE NAZI WAR AGAINST HOMOSEXUALS* (1986).

24. See Herrn, *supra* note 22.

25. See generally TIMOTHY F. MURPHY, *ETHICS, SEXUAL ORIENTATION, AND CHOICES ABOUT CHILDREN* (2012); STEIN, *supra* note 7, at 310-17.

26. Cf. Christy Mallory, Taylor N.T. Brown & Kerith J. Conron, *Conversion Therapy and LGBT Youth*, THE WILLIAMS INSTITUTE (Jan. 2018). The Williams Institute estimated that 350,000 LGBTQ adults were subject to conversion therapy as adolescents. While it is possible that some of those LGBTQ adolescents were in conversion therapy voluntarily, the vast majority were likely placed in conversion therapy by their parents. Given that hundreds of thousands of parents were willing to exert this level of control over their children’s sexuality, it is not out of the realm of possibility that many of these parents would engage in orientation-selection procedures, were they to exist.

27. See STEIN, *supra* note 7, at 315.

children.²⁸ This would fit a historic pattern of queer people being subjected to various forms of medical and psychological interventions to remove or “cure” them of their queerness, even though there exists no evidence that these interventions are effective.²⁹

The immutability argument has another problem, one that multi-generation queer families are uniquely equipped to resolve. Immutability arguments implicitly accept the idea that queerness is a burden, and queer people should be pitied. For many years, it was accepted by the LGBTQIA+ rights movement that no one would choose to be queer.³⁰ If even queer people are expressing some level of dissatisfaction with their identities, it stands to reason that no parent would want their child to be queer, even if the parent was queer themselves. Immutability arguments, however well-intentioned and successful they may have been, accept the idea that it is bad to be queer, at least implicitly, and problematically frame queerness as a tragedy that must be endured, not an identity that should be celebrated. Multi-generation queer families are in a unique position to challenge the idea that being queer is a tragedy and create a new paradigm for how society generally, and queer people themselves, view queerness. By declaring pride for their queer children, by passing down queer traditions, and by celebrating a queer lineage, multi-generation queer families show queer identities are worth protecting and cultivating. As threats to trans and queer people increase, mere acceptance is no longer enough. The LGBTQIA+ rights movement must celebrate multi-generation queer families and advocate that the law and culture of this country embrace these families. The queer children of queer parents know that queerness is more than just sexual desire or gender expression; queer culture is unique in its understanding of gender, power, society, love, friendships, and family, and children raised by queer parents have a greater opportunity to internalize this worldview starting at a young age. Multi-generation queer families can assist the LGBTQ rights movement by sharing a broader view of queerness and reshaping how LGBTQ activists fight for and expand rights for trans and queer people.

28. *Id.*, at 315-17.

29. See, e.g., JONATHAN N. KATZ, *GAY AMERICAN HISTORY: LESBIANS AND GAY MEN IN THE U.S.A.* 129-406 (rev. ed. 1992); Siobhan Somerville, *Scientific Racism and the Emergence of the Homosexual Body*, 5 J. HIST. SEXUALITY 243 (1994). See generally, TIMOTHY F. MURPHY, *GAY SCIENCE: THE ETHICS OF SEXUAL ORIENTATION RESEARCH* (1997). To mention one such example, gay men were injected with testosterone with the aim of turning them into heterosexuals, despite studies showing no correlation between sexual orientation and testosterone levels. See Heino Meyer-Bahlburg, *Psychoendocrine Research on Sexual Orientation: Current Status and Future Options*, in *PROGRESS IN BRAIN RESEARCH* 375, 376-77 (G. J. Devries et al. eds. 1984).

30. See, e.g., ERIC MARCUS, *IS IT A CHOICE: ANSWERS TO 300 OF THE MOST FREQUENTLY ASKED QUESTIONS ABOUT GAYS AND LESBIANS* 9 (1993) (“[O]ne of my friends says whenever he . . . hears someone [say] that gay people make a conscious choice to be gay: ‘Why would I choose to be something that horrifies my parents, that could ruin my career, that my religion condemns, and that could cost me my life if I dared to walk down the street holding hands with my boyfriend?’”); Michael Mello, *For Today, I’m Gay: The Unfinished Battle for Same-Sex Marriage in Vermont*, 25 VT. L. REV. 149, 222 (2000) (“I do not believe anyone ‘chooses’ their sexual orientation. . . . What person with half a brain would ‘choose’ to be gay or lesbian in the United States?”).

Now is time for the movement to seek out these families and ensure that their concerns and perspectives are considered and well-represented by the LGBTQIA+ movement.

II. HOW FEAR OF THE QUEER CHILD INFLUENCES LAW

While multi-generation queer families have much to offer the LGBTQIA+ movement, the hesitance on the part of LGBTQIA+ activists to promote the stories of multi-generation queer families is understandable given the historic backlash to efforts to expand LGBTQIA+ rights. The myth of indoctrination—the idea that queer adults would turn straight children queer—looms large in the struggle for LGBTQIA+ rights. Successful early challenges to advances in LGBTQIA+ rights were brought under the guise of protecting children from exposure to queer adults. Many of the earliest fears about queer adults and their power to indoctrinate children into queerness center around educators, with states introducing or passing laws to prevent queer people from becoming teachers. There are echoes of this today, as states try to block discussion of LGBTQIA+ topics from classrooms. But as queerness became more accepted, and people began to come out, the fear of queer indoctrination moved to the home. Custody and visitation cases became a battleground, where, more often than not, the fear of the queer child was enough to strip a queer parent of their right to see their children. Even today, courts only consider whether a parent’s sexuality or gender identity will harm their child; the potential benefits of a queer parent’s sexuality or gender identity are never discussed. This silence is reflected in the LGBTQIA+ rights movement more generally.

A. LAWS RESTRICTING LGBTQIA+ ADULTS

The notion that queer adults will recruit children into homosexuality was, for example, behind Anita Bryant’s 1977 “Save Our Children” campaign, which was formed to overturn a then-recently enacted gay rights ordinance in Miami.³¹ Statements about homosexuality as a “religious abomination” might have been convincing to some, but it was messaging about how an anti-discrimination ordinance would allow “homosexuals to recruit and molest children” that appeared to mobilize voters.³² Almost fifty years later, Bryant’s message is being recycled as queer people and straight advocates of LGBTQIA+ rights are accused of “grooming” children.³³ This allegation continues to persuade people, despite

31. *Miss Bryant’s Victory Over Homosexuals*, N.Y. TIMES, (Jun. 12, 1977), <https://perma.cc/RFE9-S9ZL>.

32. B. Drummond Ayres Jr., *Miami Votes 2 to 1 to Repeal Law Barring Bias Against Homosexuals*, N.Y. TIMES (Jun. 8, 1977), <https://perma.cc/3P69-75AQ> (quoting the bill’s sponsor, who said the result was “three times worse than I ever expected” and that the law’s opponents “came out of the woodwork.”).

33. “Grooming” is shorthand for a set of behaviors by abusers undertaken specifically to gain the trust of their victim in order to molest them. See, e.g., Melissa Block, *Accusations of ‘Grooming’ Are the Latest Political Attack—With Homophobic Origins*, NAT. PUB. RADIO, (May 11, 2022), <https://perma.cc/E5FZ-7C8B>. See also Susanna Cassisa, *The ‘Groomer’ Anti-LGBTQ+ Panic Is Not New—and Has*

evidence that the vast majority of child molesters are heterosexual,³⁴ and the most frequent victims of child molestation are young girls.³⁵ While the old panic about molestation is resurfacing today, it was used less frequently by anti-LGBTQIA+ advocates in the years after the success of the “Save Our Children” campaign in Miami in 1977. Instead, anti-LGBTQIA+ advocates focused on the fear that queer people would “recruit” children into a life of queerness.³⁶

Taking their campaign national, anti-LGBTQIA+ advocates worked across the country to enact laws preventing queer people from becoming teachers.³⁷ Oklahoma, for example, enacted such a law based on the fear that a teacher’s power to “inculcate basic community values in students” could lead to teachers inculcating homosexual values into their students.³⁸ While this law was ultimately struck down as unconstitutional,³⁹ schools continued to fire LGBTQIA+ teachers and educators who revealed their sexuality.⁴⁰

These laws, and the recent spate of anti-LGBTQ laws being enacted across the country, are often supported by elected officials and anti-LGBTQIA+ advocates

Caused Immense Harm, WASH POST (Jul. 24, 2023), <https://perma.cc/793L-3C4T>; Clifford Rosky, *Don’t Say Gay: The Government’s Silence and the Equal Protection Clause*, 2022 U. ILL. L. REV. 1845, 1852 (2022) (“During the legislative debates, [Governor DeSantis’s] press secretary dubbed HB 1557 the ‘Anti-Grooming Law’ and implied that anyone who opposed it was ‘probably a groomer.’”); CENTER FOR COUNTERING DIGITAL HATE & THE HUMAN RIGHTS CAMPAIGN, DIGITAL HATE: SOCIAL MEDIA’S ROLE IN AMPLIFYING DANGEROUS LIES ABOUT LGBTQ PEOPLE 12 (2022) (finding that there was a 406% increase in tweets connecting LGBTQ people with grooming following the passage of Florida’s “Don’t Say Gay” bill).

34. See, e.g., Carlos A. Ball & Janice Farrall Pea, *Warring with Wardle: Morality, Social Science, and Gay and Lesbian Parents*, 1998 U. ILL. L. REV. 253, 307 (1998); Kurt Freund & Robin J. Wilson, *The Proportions of Heterosexual and Homosexual Pedophiles Among Sex Offenders Against Children: An Exploratory Study*, 18 J. SEX & MARITAL THERAPY 34, 40 (1992).

35. David Finkelhor, Anne Shattuck, Heather A. Turner, & Sherry L. Hamby, *The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence*, 55 J. ADOLESCENT HEALTH 329, 329–31 (2014).

36. See, e.g. Rosky, *supra* note 33, at 1852.

37. For example, California State Senator John Briggs echoed Bryant’s messaging in his 1978 campaign for Proposition 6, a ballot initiative that would have allowed school districts to fire or refuse to hire any teachers that engaged in “homosexual activity or conduct,” which included “advocating, soliciting, imposing, encouraging or promoting private or public homosexual activity” in such a way that it would come to the attention of schoolchildren or other school employees. March Fong Eu, *California Voters Pamphlet*, OFFICE OF THE CALIFORNIA SECRETARY OF STATE, 28 (1978), <https://perma.cc/WLV3-9AY4>. This broad definition of “homosexual conduct” which punished teachers for actions they took outside the classroom and put straight teachers who supported LGBTQ rights at risk of losing their jobs, led to the Briggs initiative’s failure at the ballot box. Bruce Pettit, *Briggs Crushed*, BAY AREA REP. (Nov. 9, 1978) (“In rejecting Prop. 6 [...] the citizenry wished to indicate it was tolerant,” according to contemporaneous accounts from pollsters).

38. Nat’l Gay Task Force v. Bd. of Educ., No. CIV-80-1174-E, 1982 WL 31038, *3 (1982).

39. Nat’l Gay Task Force v. Bd. of Educ., 729 F.2d 1270, 1273 (1984).

40. See, e.g., Rowland v. Mad River Local Sch. Dist., 730 F.2d 444, 449 (6th Cir. 1984) (holding that the firing of a school counselor who revealed to a gay student she was counseling that she was bisexual was constitutionally permissible because her declaration of her sexuality was not a matter of public concern).

under the guise of “parents’ rights.”⁴¹ The argument is that parents have a right to control what their children are exposed to, and discussion of sexuality and gender identity should occur when parents decide, rather than when the state deems it appropriate. But there is a double standard here. The state protects the rights of straight parents who want to shield their children from discussions of LGBTQIA+ topics by preventing the discussion of LGBTQIA+ issues in schools or removing LGBTQIA+ books from libraries.⁴² In doing so, the state violates the parental rights of queer parents who may want their children to be exposed to that content or access those books. Queer parents have the same rights as other parents to control their children’s education, including their children’s awareness of sexuality and gender identity. Yet, a parent’s right to be open about their sexual orientation and/or gender identity while raising their children has also historically been denied to queer parents. For years, queer parents were denied custody of or visitation with their children after they came out, or were given custody or visitation only on the condition that they hide their sexual orientation and/or gender identity, lest they somehow influence their children to be queer.⁴³

B. THE SPECTER OF THE LGBTQIA+ CHILD IN CUSTODY AND VISITATION CASES

As a case study of how the fear of queer children has shaped the law, we examine the history of how family courts in the United States have thought about LGBTQIA+ people with children, and how the approaches to determining custody often harm LGBTQIA+ parents.⁴⁴ We also discuss how considering multi-generation queer families will move courts beyond how they currently think about queerness in the context of custody decisions. Most family court judges view a parent’s queerness as—at best—neutral, and—at worst—as risking great harm to a child. Throughout history, parents have only obtained custody when they can prove their queerness will not affect their child at all. We propose that courts should begin to consider the benefit a parent’s queerness can have on their

41. See, e.g., Mary Ziegler, Maxine Eichner & Naomi Cahn, *The New Law and Politics of Parental Rights*, 123 MICH. L. REV. (forthcoming) 16-20 (2024). Note also that Florida’s law prohibiting teachers from discussing sexual orientation and gender identity in the classroom is titled “Parental Rights in Education Act,” H.B. 1557, 124th Leg., Reg. Sess. (Fla. 2022). “Parental rights” is often used as a justification for laws that require schools to notify parents when their child requests to use a different name or different pronouns. See Adeel Hassan, *States Passed a Record Number of Transgender Laws. Here’s What They Say.*, N.Y. TIMES (Jun. 27, 2023), <https://perma.cc/8Z46-PPJ8> (“Other states, like Indiana, outline ‘parental rights’ policies, requiring that parents be notified when their children request to use a different name or want to be called pronouns that don’t match their sex.”).

42. See, e.g., H.B. 1557, 124th Leg., Reg. Sess. (Fla. 2022) (prohibiting classroom discussion of LGBTQIA+ issues). Further, an analysis of book bans found that 21% of book challenges were filed by parents and that 43% of book challenges targeted books with LGBTQIA+ characters or themes. See Hannah Natanson, *Objection to Sexual, LGBTQ Content Propels Spike in Book Challenges*, WASH. POST (Jun. 9, 2023 6:15 PM), <https://perma.cc/4VKD-DWCL>.

43. See *infra* Section II.B.

44. On LGBT parents and the law, see generally CARLOS A. BALL, *THE RIGHT TO BE PARENTS: LGBT FAMILIES AND THE TRANSFORMATION OF PARENTHOOD* (2012). On transgender parents, see Shannon Price Minter, *Transgender Family Law*, 56 FAM. CT. REV. 410 (2018); Sonia K. Katyal & Ilona M. Turner, *Transparenthood*, 117 MICH. L. REV. 1593 (2019).

child. This new way of looking at queer families generally, and multi-generation queer families in particular, and the associated acknowledgement that these families have something unique to offer their children, can benefit the LGBTQIA+ rights movement especially in litigation about queer and trans children.

When courts get involved in determining the custody of children, custody is supposed to be determined based on “the best interest of the child.”⁴⁵ For decades, it was unquestioned by judges that it is in a child’s best interest to maximize the chance that they will be cisgender and heterosexual. Indeed, for many years, courts determined custody for parents using the *per se* standard, which assumes that a parent’s queerness, standing alone, renders them an unfit parent.⁴⁶ The rhetoric used by courts that adopted the *per se* standard is similar throughout history. A gay father in the 1950s was denied custody because his sexuality posed a threat to his child’s “moral and spiritual well-being.”⁴⁷ A transgender parent’s parental rights were terminated in 1986 because she had “postured herself in a position of recurring conflict with the child’s mother and the ‘traditional’ upbringing enjoyed by [the child] during her formative years.”⁴⁸ In 1987, a lesbian mother was denied custody because of the impact her sexuality would “have on [her] child’s moral development.”⁴⁹ Before immutability arguments about queerness became commonplace, courts obsessively focused on the possibility that a child would “emulate” the conduct of their queer parent.⁵⁰ The threat that a child would copy their parent by starting down the path of a life of queerness was enough for courts to deny such parents the custody of their children, even when the parents were taking care of the child “in a satisfactory manner.”⁵¹

Courts’ fears about children being exposed to queerness were so profound that parents could only secure custody or visitation of their children if they closeted their sexuality and/or gender identity. Transgender parents were often only able to retain custody of their children if they hid their transition from them.⁵² Parents who exhibited gender non-conforming behavior, whether or not they identified as transgender, were frequently ordered by courts to keep this behavior from their children if they wanted custody and/or visitation.⁵³ Queer parents who courts acknowledged were “fit, devoted, and competent” caregivers could be prevented

45. See, e.g., Janet L. Dolgin, *Why Has the Best Interest Standard Survived?: The Historic and Social Context*, 16 CHILD. LEGAL RTS. J., 2 (1996).

46. Paula A. Brantner, *When Mommy or Daddy is Gay: Developing Constitutional Standards for Custody Decisions*, 3 HASTINGS WOMEN’S L. J. 97, 101 (1992).

47. *Commonwealth v. Bradley*, 91 A.2d 379, 381–82 (Pa. 1952).

48. *Daly v. Daly*, 715 P.2d 56, 71 (Nev. 1986).

49. *G.A. v. D.A.*, 745 S.W.2d 726, 728 (Mo. Ct. App. 1987).

50. *In re Jane B.*, 380 N.Y.S.2d 848, 854 (N.Y. Sup. Ct. 1976).

51. *Id.* at 858.

52. See Helen Y. Chang, *My Father is a Woman, Oh No: The Failure of the Courts to Uphold Individual Substantive Due Process Rights for Transgender Parents Under the Guide of the Best Interest of the Child*, 43 SANTA CLARA L. REV. 649, 689–91 (2003).

53. See, e.g., *In re Marriage of D.F.D.*, 862 P.2d 368, 370 (Mont. 1993); *M.R. v. Superior Court*, Nos. A122117 & A122281, 2008 WL 4650440, *11 (Cal. Ct. App. 2008).

from seeing their children, if they remained in a relationship that “flies in the face of society’s mores.”⁵⁴ No matter how capable a parent was, no matter how connected they were to their child, their queerness was repeatedly treated as “a most sensitive issue which holds the possibility of inflicting severe mental anguish and detriment on . . . innocent children.”⁵⁵ For many courts that applied the *per se* test, exposure to a queer parent was enough to deny custody, because a queer parent “could impede healthy sexual development in the future” based on the fear that the children could be “subject to either overt or covert homosexual seduction which would detrimentally influence their sexual development.”⁵⁶

The *per se* standard played a similar role in the context of foster care and adoption law in some states. Starting as early as the 1970s, social service agencies often turned to queer people to be foster parents, specifically for queer children who could not otherwise be placed in foster homes.⁵⁷ Some officials still objected to these placements, afraid that placing a queer child with queer parents would “cement what had been a temporary aberration.”⁵⁸ Over time, several states, in some manner, banned queer people from becoming foster or adoptive parents.⁵⁹ Applying the *per se* standard to adoption and foster care meant that states and foster care and adoption agencies were so fearful of the possibility that a child might grow up to be queer that they would sacrifice finding a potential home for that child.

Compared to the *per se* standard, the *presumption of harm* standard, which courts began to use in the 1970s, seemed progressive. Applying the presumption of harm standard, a court would presume that a parent’s queerness negatively affected their child.⁶⁰ Unlike under the *per se* standard, however, queer parents had the chance to rebut the presumption of harm by providing evidence that their sexuality did not harm their child.⁶¹ In attempting to provide that evidence, queer parents often turned to expert testimony, and custody determinations under the presumption of harm test were often based more on what a court heard about the nature of queerness, and less about any individual’s parenting abilities.⁶² If a psychiatrist opined that sexuality was a “learned behavior,” a parent was likely to

54. *Roe v. Roe*, 324 S.E.2d 691, 692-93 (Va. 1985).

55. *In re J. S. & C.*, 324 A.2d 90, 97 (N.J. 1974).

56. *Id.* at 96.

57. See Marie-Amélie George, *Agency Nullification: Defying Bans on Gay and Lesbian Foster and Adoptive Parents*, 51 HARV.C.R.-C.L. L. REV. 363, 375 (2016) (“Although national debates over lesbian and gay foster parents erupted in the mid-1980s, social service agencies had been placing children in the homes of openly gay men and women since the mid-1970s. Though these first placements were limited to adolescents who self-identified as gay or lesbian and were sexually active, they were still extremely controversial. . . . Many [people] believed that gay and lesbian parents would model their homosexuality, such that their children would grow up to be homosexual themselves.”); see also Cynthia Godsoe, *Adopting the Gay Family*, 90 TULANE L. REV. 311, 331-33 (2015).

58. George, *supra* note 57, at 376.

59. See Godsoe, *supra* note 57, at 333.

60. Brantner, *supra* note 46, at 104.

61. *Id.*

62. *Id.*

lose custody of their child.⁶³ What is worse, courts removed children too young to define their sexuality based on the possibility of the future presumed harm of that child someday becoming queer. For courts using the presumption of harm test, allowing a child to live in a home with a queer parent would be “plac[ing] a child in a milieu where she might be inclined” towards queerness in the future.⁶⁴ Queer parents lost custody even if all the evidence pointed to their children being happy and well-adjusted, because courts did “not need to wait. . .till the damage is done.”⁶⁵ Transgender parents have also found limited support from expert testimony.⁶⁶ Even when experts recommend children be placed with transgender parents, courts have overridden that, based on “concerns about [the children’s] adjustment to puberty, and their own understanding of their budding sexuality” in light of their parent’s gender identity.⁶⁷ In denying custody and visitation to queer parents, courts were explicitly condemning queerness, and, thereby, sought to prevent children from becoming queer.⁶⁸ Legal attitudes of the state “play an important. . .role in the individual’s formation of his or her sexual destiny” and if the state were to be more neutral towards homosexuality, young people “may question whether he or she should ‘choose’ heterosexuality.”⁶⁹ Through the presumption of harm test, courts expressed a strong preference for heterosexuality and cisgender identity by assuming, even when presented with evidence to the contrary, that queer parents could in some way influence their child to become queer, and that a child becoming queer would be a harm the state should aim to avoid.⁷⁰

Today, most courts have shifted to the *nexus* test, which considers a parent’s sexuality as one of the many factors in a custody determination.⁷¹ Under the nexus test, a court would only deny a queer parent custody if there was a connection between the parent’s sexuality or gender identity and harmful effects on the child.⁷² The nexus test no longer presumes that a parent’s sexuality and/or gender identity will harm a child, but trans identity and queer sexuality are still factors to be debated in custody cases, in a way cisgender identity and straight sexuality are not and never were.⁷³ The widespread application for the nexus test coincided with a rise in psychological research which demonstrated “that being raised by a homosexual parent does not increase the likelihood that a child will become

63. *Collins v. Collins*, No. 87-238-II, 1988 WL 30173, *3 (Tenn. Ct. App. 1988).

64. *N.K.M. v. L.E.M.*, 606 S.W.2d 179, 186 (Mo. Ct. App. 1980).

65. *Id.*

66. See Katyal & Turner, *supra* note 44, at 1628.

67. *M. v. M.*, No. FA-940064700, 1996 WL 434302 (Conn. 1996).

68. Brantner, *supra* note 46, at 104.

69. *Collins*, 1988 WL 30173, at *6.

70. See, e.g., *N.K.M.*, 606 S.W.2d at 186.

71. See, e.g., Kim H. Pearson, *Sexuality in Child Custody Decisions*, 50 FAM. CT. REV. 280 (2012); Katyal & Turner, *supra* note 44, at 1617–21.

72. Katja M. Eichinger-Swainston, Note, *Fox v. Fox: Redefining the Best Interest of the Child Standard for Lesbian Mothers* 32 TULSA L. J. 57, 59 (1996).

73. Nancy Polikoff, *Custody Rights of Lesbian and Gay Parents Redux: The Irrelevance of Constitutional Principles*, 60 UCLA L. REV. DISC. 226, 237 (2012).

homosexual.”⁷⁴ This research was also used to remove state and local prohibitions on placing children with queer parents in adoption and foster care cases.⁷⁵ The nexus test is beneficial to queer parents in comparison to the *per se* test and the presumption of harm test, since the nexus test makes it easier for some queer parents to retain custody of their children.⁷⁶ However, while more lesbian, gay, and bisexual parents have been able to retain custody of their children, transgender parents are still at the mercy of the courts, with one study finding that the majority of transgender parents lose custody of their children after they transition.⁷⁷ The application of the nexus test also raises the question of what would happen if a court was confronted with evidence that a queer parent could or would in some way impact whether their child becomes queer. As there is no established understanding of what causes queerness, courts have heard evidence from psychologists that a queer parent will lead to a child having “difficulties in achieving a fulfilling heterosexual identity...in the future.”⁷⁸ In these cases, courts have determined that placing a child with a queer parent is not in the child’s best interests.⁷⁹ Indeed, a 2009 analysis of custody cases found that when concerns about a child’s “sexual development” were raised, judges were highly likely to accept that as a reason to deny custody to queer parents.⁸⁰

Under the nexus test, a queer parent can only be denied custody if there is a connection between the parent’s sexuality or gender identity and harm to the child. But the definition of harm is a fluid one. As some cases show,⁸¹ when applying the nexus test, some courts fixate on the possible harm that a queer parent might somehow make their child queer. Such courts, it seems, want to avoid the potential harm to a child resulting from a queer identity. This is why, in many cases where evidence is presented that a queer parent is likely to make their child queer, that parent loses custody of their child. While queer parents can present evidence to courts to show that queer parents are not more likely to make their

74. *Conkel v. Conkel*, 509 N.E.2d 983, 986 (Ohio Ct. App. 1987).

75. See George, *supra* note 57, at 374.

76. Polikoff, *supra* note 73, at 237.

77. Katyal & Turner, *supra* note 44, at 1628 (“We found that at trial, 63% of transgender parents lost their cases, and 62% of transgender parents lost on appeal, in part due to explicit biases that relate to the transgender status of the parent.”).

78. *S. v. S.*, 608 S.W.2d 64, 66 (Ky. Ct. App. 1980).

79. *Id.*

80. Clifford Rosky, *Like Father, Like Son: Homosexuality, Parenthood, and the Gender of Homophobia*, 20 YALE J. L. & FEMINISM 257, 296–97 (2009) (finding that concerns about “recruiting and role modeling stereotypes...[and] specifically... ‘sexual development’ stereotypes” were raised in about 28% (48 out of 171) of all cases, and they were accepted by judges in about 90% (43 of 48) of these cases”) (internal citations omitted).

81. See, e.g., *Glover v. Glover*, 586 N.E.2d 159, 164 (Ohio Ct. App. 1990) (finding that while “studies showed that children raised by lesbian mothers were not affected by the custodial parent’s sexual preference,...no such research was available for male children raised by homosexual fathers”); *Cook v. Cook*, 965 So.2d 630, 633–34 (La. Ct. App. 2007) (father claimed that “kids raised by lesbian parents are more likely to grow up lesbian”).

children queer,⁸² presenting this evidence does not challenge the prejudice inherent in the court's concern. The state, through family courts, seems to accept that a queer child is a harm to be avoided. This anti-queer perspective not only deprives fit queer parents of their constitutional right to parent their children; it also prevents the development of multi-generation queer families. A queer parent who expresses a desire for children that share their identity would be viewed with great suspicion by courts and much of society at large, even though many people, including many *non-queer* parents, want their children to be cisgender and heterosexual just like they are. Note, further, that many non-queer people implicitly embrace such a desire when they support laws that prevent children from being exposed to LGBTQIA+ people due to the fear that their children will become queer. Entrenched judicial homophobia both prevents queer parents from publicly celebrating their queer children and makes some queer children of queer parents feel they have failed when they become aware of their queerness.⁸³

Courts have not yet accepted that exposure to a queer parent is a good thing, whether to serve as a positive role model for the child in question, who may turn out to be queer, or to provide a model for relationships or gender that children may not be exposed to in other areas of their life. Essentially, courts seem comfortable when LGBTQ parents are “just like everyone else” but they seem unwilling to accept that LGBTQ parents have something unique to offer their children, particularly if their children turn out to be queer.

Research demonstrates that the children of queer parents fare just as well as the children of straight parents on psychological well-being, peer relations, and social and behavioral adjustment measures,⁸⁴ but it does not prove that there is no difference between queer and straight parents. One study showed that the children of lesbian mothers have fewer traditional gendered role ideas, likely in part because lesbian mothers report more liberal attitudes about gender than heterosexual

82. See, e.g., Brantner, *supra* note 46, at 110 (“Scientific studies of children raised by gay parents have conclusively shown that there is no higher prevalence of homosexuality in those families than in heterosexual families.”). But see Nanette Gartrell, Henry Bos & Audrey Koh, *Sexual Attraction, Sexual Identity, and Same-Sex Sexual Experiences of Adult Offspring in the U.S. National Longitudinal Lesbian Family Study*, 48 ARCHIVES SEXUAL BEHAV. 5 (2019) (finding that adult children raised by lesbians are more likely to report same-sex attraction, sexual minority identity, and same-sex experiences than children raised by straight parents). Relying on scientific evidence to prove that queer parents are not more likely to have queer children is, thus, not a foolproof strategy, particularly in light of more recent research which has cast doubt on the original claim.

83. See, e.g., GABRIELA HERMAN, *THE KIDS: THE CHILDREN OF LGBTQ PARENTS IN THE USA* 82 (2017) (“When you do things as a member of a minority group, you don’t just do them for yourself, you do them as a representative of your entire minority group, so you have to do things perfectly. . . That translated in my head, growing up as a child of gay parents, to being heterosexual—that gay parents had to raise normal children and normal children were straight.”).

84. See, e.g., Timothy J. Bilblarz & Evren Savic, *Lesbian, Gay, Bisexual, and Transgender Families*, 72 J. MARRIAGE & FAM. 480, 484 (2010).

parents.⁸⁵ Lesbian mothers are also more likely to teach their children about sexuality and to establish that there are options beyond heterosexuality.⁸⁶ This is in stark contrast to the heterosexual mothers surveyed, who mostly assumed their children to be heterosexual and did not discuss queer orientations with their children.⁸⁷ Perhaps because of this more open attitude, another study found that the children of queer parents felt that their upbringing allowed them to establish more flexible ideas about sexuality.⁸⁸ More expansive and less rigid views of sexuality, of gender identity, and the rejection of certain traditional gender roles are just some examples of the distinct type of queer culture that queer parents can share with their children. There are also countless intangible aspects of queer culture that parents can pass on to their children, from taking their children to queer events such as pride marches or drag shows,⁸⁹ sharing queer art,⁹⁰ or participating in queer activism.⁹¹ A court holding that it is in a child's best interest to be raised by queer parents, even if that means a child has a more expansive view of their own sexuality and gender (and/or sexuality and gender more generally), would go a long way towards confronting and dismantling the fear of the queer child that is animating many anti-LGBTQIA+ laws around the country.

Opponents of LGBTQIA+ rights continue to repeat fear of the queer child arguments and have adopted these arguments in support of new anti-queer legislation and policies. The preceding discussion shows how, in the contexts of education and family law, this argument has been effective in advancing anti-LGBTQIA+ policy, as well as how the LGBTQIA+ rights movement has not responded as strongly as it could to this argument. In the context of custody and visitation for queer parents, the LGBTQIA+ movement's response has been that

85. Erin L. Sutfin, Megan Fulcher, Ryan P. Bowles, & Charlotte J. Patterson., *How Lesbian and Heterosexual Parents Convey Attitudes About Gender to Their Children: The Role of Gendered Environments*, 58 SEX ROLES 501, 503 (2008).

86. Katherine Kuvalanka, *The "Second Generation": LGBTQ Youth with LGBTQ Parents*, in LGBTQ-PARENT FAMILIES: INNOVATIONS IN RESEARCH AND IMPLICATIONS FOR PRACTICE 163, 166 (Abbie E. Goldberg & Katherine R. Allen, eds. 2013).

87. Karin A. Martin, *Normalizing Heterosexuality: Mothers' Assumptions, Talk, and Strategies with Young Children*, 74 AM. SO. REV. 190, 196-97 (2009).

88. Kuvalanka, *supra* note 86, at 166.

89. See, e.g., HERMAN, *supra* note 83, at 133 ("I went to the 1993 March on Washington, I grew up going to Gay Pride every year, a lot of my parents' friends are queer, and their straight friends are really down for the cause."). One of us speaks from personal experience here, having been taken to her first drag show at eight years old.

90. See, e.g., *id.*, at 32 ("I lived with my mom for a summer before graduate school, and I was really into records, and my mom's like, 'Your dad had a bunch of records, if you want to go look at them.' And so I went down in the basement, and it was just the gayest collection of records, straight up Judy Garland"). See also, *id.* at 154 ("My mom got involved in women's consciousness-raising groups and poetry, and there was a thriving women's feminist scene. There was the lesbian separatist café... and lesbian comedy nights, and all that kind of thing. My dad lived in the Castro... We used to go to the Castro Theatre, where they always were having a Marlene Dietrich film festival or a Bette Davis marathon.").

91. See, e.g., *id.*, at 92 ("[T]here was a hearing in Des Moines [about] a proposed constitutional amendment... that would have reversed the Supreme Court ruling in Iowa that legalized marriage equality in our state. I testified about what my life was like growing up with my lesbian parents.").

queer parents are no different than non-queer parents and no more likely to make their children queer. In the educational context, the response has been that queer teachers and books with LGBTQ content will not have any impact on any child's sexuality or gender identity. While these arguments have been effective, they do nothing to confront the fear of the queer child. It is time for a more robust argument, one that challenges the assumptions at the heart of the fear of the queer child. We next argue that multi-generation queer families are uniquely situated to challenge this argument.

C. CENTERING MULTI-GENERATION QUEER FAMILIES IN THE FIGHT FOR LGBTQIA+ RIGHTS

The state's past hostility to queer families and queer children forced LGBTQ activists to downplay what makes queer families unique. Part of this involved minimizing the lived experiences of the queer children of queer parents. The existence of multi-generation queers can be twisted to support the idea that, whether through nature or nurture, queer parents are affecting their children's sexuality. Faced with the fear of the queer child, the LGBTQIA+ rights movement has suppressed the stories of multi-generation queer families in test cases brought to secure recognition of LGBTQIA+ rights, failed to challenge the idea that queerness can be chosen by children or influenced by parents, and erased these families and their unique concerns from the LGBTQIA+ movement. In choosing only families with straight (or straight-appearing) children as test plaintiffs and spokespeople, activists, whether intentionally or not, have projected a message that queerness is something that should not be chosen or intentionally passed down. Instead, the choices of the LGBTQIA+ movement suggest that queerness is an identity that should be accepted, not encouraged or celebrated.⁹²

Civil rights organizations of all types, when they are litigating cases that challenge discriminatory laws, often strive to pick the best possible plaintiff or the ideal combination of plaintiffs.⁹³ Instead of taking any case that came along, the test case strategy, pioneered by the National Association for the Advancement of Colored People (NAACP), had lawyers recruit individuals or groups with stories with which they believed courts and juries would sympathize.⁹⁴ Lawyers in the women's rights movement, including a young Ruth Bader Ginsburg, also adopted the strategy.⁹⁵ The LGBTQIA+ movement followed suit, striving whenever possible to pick the best combination of plaintiffs for test cases challenging sodomy

92. See Rosky, *Fear of the Queer Child*, *supra* note 5, at 609.

93. See, e.g., Susan D. Carle, *Race, Class, and Legal Ethics in the Early NAACP (1910-1920)*, 10 L. & HIST. REV. 97, 100 (2002); Godsoe, *supra* note 15.

94. See Carle, *supra* note 93, at 101.

95. LINDA HIRSHMAN, *SISTERS IN LAW: HOW SANDRA DAY O'CONNOR AND RUTH BADER GINSBURG WENT TO THE SUPREME COURT AND CHANGED THE WORLD* 94 (Ginsburg, whose early cases were tried exclusively by male judges, would often bring sex discrimination cases with male plaintiffs).

law or seeking marriage equality.⁹⁶ As in many civil rights movements, this meant that less-than-perfect plaintiffs were often removed from the limelight, or brought their cases without the backing of major LGBTQIA+ civil rights groups.⁹⁷ When it came to test cases, especially test cases for same-sex marriage, LGBTQIA+ movement lawyers wanted to choose groups of plaintiffs, especially those who were well-spoken but not overly radical, and who had been partnered for many years. As the movement developed, plaintiff groups frequently included couples raising children.⁹⁸ Typically, families in marriage equality cases were carefully chosen, often resulting in plaintiffs with children who were young, often too young to express their sexuality.⁹⁹

When the children of queer parents were old enough to speak for themselves, the stories that were told by advocates were almost always the stories of straight children. This is particularly noticeable in several amicus briefs submitted by LGBTQIA+ advocacy organizations in marriage equality cases.¹⁰⁰ These organizations had the laudable goal of elevating the voices of children, so often discussed in such cases, but so rarely heard from. However, these amicus briefs fell into the trap of prioritizing the voices of the straight children of LGBTQIA+ parents in an effort to make queer families appear the same as all other families but for the genders of the parents. Children quoted in the briefs talk about their heterosexuality,¹⁰¹ and the typicality, ordinariness, and traditional nature of their

96. See, e.g., Dahlia Lithwick, *Extreme Makeover*, NEW YORKER (Mar. 5, 2012), <https://perma.cc/948C-39P6>. But see Michael Boucai, *Glorious Precedents: When Gay Marriage Was Radical*, 27 YALE J.L. & HUMAN. 6–7 (2015) (discussing the plaintiffs in 1970's marriage equality cases).

97. See, e.g., Lithwick, *supra* note 96 (“Some gay-rights attorneys, having been burned a dozen years earlier when, in *Bowers v. Hardwick*, the Supreme Court upheld Georgia’s homosexual-sodomy law, wanted nothing to do with Lawrence or Garner [the plaintiffs in *Lawrence v. Texas*, 539 U.S. 558 (2003)] or the prospect of another legal challenge. Since the days of *Brown v. Board of Education*, and right up to *District of Columbia v. Heller*, the 2008 handgun-ban case, major test cases, they knew, have turned as much on selecting the perfect plaintiffs as on the law being challenged. An interracial, lower-middle-to-lower-class pair hooking up in a seedy apartment in a marginal neighborhood: Lawrence and Garner were hardly a civil-rights litigator’s dream plaintiffs. They were not the type to tug at judicial heartstrings.”); Ariel Levy, *The Perfect Wife*, NEW YORKER (Sep. 23, 2013), <https://perma.cc/NK9C-6J4V> (discussing the personal story and legal situation of Edie Windsor, the plaintiff in *U.S. v. Windsor*, 570 U.S. 744 (2013)).

98. Edward Stein, *The Story of Goodridge v. Department of Public Health: The Bumpy Road to Marriage for Same-Sex Couples* in FAMILY LAW STORIES 41–42 (Carol Sanger ed. 2007).

99. See, e.g., *Goodridge v. Dept. of Pub. Health*, 798 N.E.2d 941, 949 (Mass. 2003) (showing that all plaintiffs’ children were twelve years old or younger).

100. See, e.g., Brief for Family Equality Council as Amicus Curiae Supporting Respondents, *U.S. v. Windsor*, 570 U.S. 744 (2013) (No. 12-307) 2013 WL 4737186 [hereinafter *Windsor* Amicus]; Brief for Family Equality Council as Amicus Curiae Supporting Respondents, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (No. 14-556), 2015 WL 1022686 [hereinafter *Obergefell* Amicus].

101. See, e.g., *Windsor* Amicus, *supra* note 100, at 1–2 (quoting son of lesbian mothers, “[m]y life is pretty typical for an eighth grader. . . I like girls”); *id.* at 19 (quoting another son of lesbian mothers, “when I think of my own wedding someday, should I be lucky enough to find a girl I want to spend the rest of my life with, I can’t imagine two better role models to base a family around than my moms”). See also *Obergefell* Amicus, *supra* note 100, at 1, (quoting daughter of lesbian mothers, “After I told one woman about my parents, she prefaced her response with, ‘Well understand, I’m a straight, conservative, Christian, raised in the South.’ ‘Yes, ma’am. So am I.’”); *id.* at 11 (quoting another

families.¹⁰² These amicus briefs also included the voices of queer children,¹⁰³ but never the queer children of queer parents: children could be queer, or they could have queer parents, but the possibility that a queer child could have a queer parent was never discussed.

The same thing occurred outside the courts. Children who spoke out in support of their queer parents either were, or appeared to be, straight.¹⁰⁴ Organizations like Family Equality and Children of Lesbians and Gays Everywhere (“COLAGE”) exist to serve the full spectrum of queer families, which means the unique needs of multi-generation queer families are often ignored.¹⁰⁵ Media featuring queer parents almost never portrays multi-generational queer families.¹⁰⁶ The erasure of multi-generation queer families needs to be rectified in many areas of society, but the LGBTQIA+ movement can begin to fill this gap by making an effort to include multi-generation queer families in their legal and advocacy work and ensuring these families and their concerns are represented.

During the fight for same-sex marriage, activists presented families with lesbian or gay parents as nearly identical to families with straight parents, the only

daughter of lesbian mothers, “I had a curfew and was not allowed to have my boyfriend in my bedroom”); *id.* at 13 (quoting yet another daughter of lesbian mothers, “I... met my high school sweetheart who would become my husband.”).

102. *Windsor* Amicus, *supra* note 100, at 12-13 (“When amici talk to these children, they hear the same theme over and over again: their families are typical American families. Their moms and dads are raising their children to love their country, stand up for their friends, treat others the way they would like to be treated, and tell the truth.”).

103. *See, e.g., id.* at 35 (quoting a queer child of straight parents, “I’ve known I was gay since I was in 6th grade but I also knew that if I was gay I wouldn’t be able to get married . . . therefore I wouldn’t be able to share those moments [that] my parents enjoyed”).

104. *See, e.g.,* Iowa House Democrats, *Zach Wahls Speaks About Family*, YouTube, at 1:32 (Feb. 1 2011), <https://perma.cc/ZM4C-26UK> (son of queer parents stating that he is an Eagle Scout at a time when the Boy Scouts of America did not allow openly queer people as members); Gabriela Herman, *What Could Gay Marriage Mean for the Kids?*, N.Y. TIMES (June 13, 2015), <https://perma.cc/4CEK-56LS> (highlighting a variety of stories of children with queer parents; while some featured in this photo essay were themselves queer, their sexuality was not discussed; only two years later, in HERMAN, *supra* note 83, at 46, were they identified as queer children of queer parents).

105. COLAGE (originally called Children of Lesbians and Gays Everywhere), for example, has support groups specifically for second-generation queer people. *See Connect*, COLAGE, <https://perma.cc/PRR6-CFJ6> (explaining how “Second Generation COLAGERS” can “connect with others who share similar experiences”). Family Equality, however, focuses primarily on securing rights for queer parents, and rarely discusses children. *See Virtual Peer Support Spaces for LGBTQ+ Families*, FAMILY EQUALITY, <https://perma.cc/9HG2-CHMV> (the groups hosted by Family Equality are for (i) trans, nonbinary, and gender non-conforming parents, (ii) parents trying to conceive, and (iii) parents navigating challenges involving their children’s schools).

106. Consider, for example, *Modern Family*, the popular TV sitcom that ran for eleven seasons. Two of the featured characters are gay men raising a daughter together. The daughter’s sexual orientation is never explicitly mentioned, but in several episodes, she discusses crushes on boys and never expresses any such interest in girls. *See, e.g., Modern Family: Playdates*, at 02:40-03:00 (ABC television broadcast, Jan. 6, 2016). *See also*, THE BIRDCAGE (MGM 1996) (a film about two gay fathers and their son who is marrying a woman). One notable exception is the Broadway musical based on a graphic novel about a lesbian reflecting on her father’s sexuality and his suicide. ALLISON BECHDEL, *FUN HOME: A FAMILY TRAGICOMIC* (2006).

difference being whether the parents were of the same sex.¹⁰⁷ Queer parents, however, have something unique to offer their children, particularly their queer children. Queer kids raised by non-queer parents, for example, have to look outside their family for queer role models; depending on where they are raised and how safe it is to be openly queer, they may not have a trusted queer adult whom they can turn to with questions or if they need support. Queer kids raised by queer parents, on the other hand, have queer adults in their own home who can serve as role models, and can help them navigate their identity and share how to navigate the straight, cisgender world as queer people. Having queer parents may make it easier for queer children to come out, since they know they will not be rejected for their orientation by their queer family.¹⁰⁸ These unique supports are not just available to queer children: research has shown that the non-queer children of queer parents develop their gender identity and sexual orientation differently from children raised by straight parents.¹⁰⁹ These are real benefits that are specific to queer families, but these benefits went undiscussed in the fight for marriage equality.

Instead of focusing on what made queer families unique, advocates trotted out studies to prove that the children of LGBTQIA+ parents were as well-adjusted as the children of straight parents.¹¹⁰ Even judicial opinions admitted that queer parents' ability to raise successful and happy children was "accepted beyond serious debate in the field of developmental psychology."¹¹¹ While this was undoubtedly useful in securing marriage equality and other rights for queer parents, it unintentionally placed pressure on all children of queer parents to express only positive things about their upbringing. If these children did share their experiences, they were championed by the LGBTQIA+ rights movement, so long as the experiences the children had to share were positive ones. If the child of a queer parent discussed, or even implied, that their upbringing was less than perfect, this

107. *Kris Perry & Sandy Stier*, AMERICAN FOUNDATION FOR EQUAL RIGHTS, <https://perma.cc/D2VT-P9FH> (in their video on this website, Perry compares their family home to the Waltons').

108. Some queer children of queer parents do still self-report "anxiety and pressure" that causes them to stay closeted, even from their queer parents. See Megan McKnight *Queerspawn on the Couch: A Guide for Clinicians Working with Youth and Adults with LGBT Parents*, 7 COLUM. SOC. WORK REV. 11, 16 (2016) ("...there is a fear shared by many 2nd Gen queerspawn that by being LGBT, they are letting down their parents and community") (citing Shondra Davis, *Implicit Expectations about Intimacy and Romantic Relationships for Adult Children of Gay and Lesbian Parents* (2014) (Ph.D. dissertation, California Institute of Integral Studies) (ProQuest: Dissertations & Theses Global), <https://perma.cc/DMF4-GLQC>).

109. See McKnight, *supra* note 108, at 13 ("This is due to the decentralizing of heteronormativity and cismativity, thus allowing for less rigid gender expectations and opening up the possibility of sexual expression.") (internal citations omitted).

110. See, e.g., *Perry v. Schwarzenegger*, 704 F. Supp. 921, 980 (N.D. Cal. 2010); What We Know Project, Cornell University, *What Does the Scholarly Research Say about the Well-being of Children with Gay or Lesbian Parents?* (2015), <https://perma.cc/PM5V-LM2S>.

111. See, e.g., *Perry*, 704 F. Supp. at 980.

was likely to be met with criticism from LGBTQIA+ advocates.¹¹² Never mind that all children have conflicts with their parents, the children of LGBTQIA+ parents were expected not to discuss those conflicts, lest they inadvertently give ammunition to anti-LGBTQIA+ advocates. This pressure to be a perfect representative is compounded for the queer children of queer parents, many of whom report that they internalized the idea that they had to be straight¹¹³ since the alternative would be to prove anti-LGBTQIA+ advocates right that queer parents produce queer kids.¹¹⁴ This pressure does not just come from a homophobic society; multi-generation queers occasionally report that other LGBTQIA+ people have expressed anxiety about their multi-generation queer families.¹¹⁵ While the LGBTQIA+ rights movement cannot wholly control the actions of society at large, the movement does have the ability, and the obligation, to better support multi-generation queer families.

Choosing ideal test plaintiffs and minimizing the existence of the queer children of queer parents was, it seems, a successful strategy, as same-sex marriage is now allowed in every state. As new laws that target LGBTQIA+ people are enacted around the country, it may be tempting to continue the strategy of picking the “perfect plaintiffs” to whom judges can best relate in order to secure wins as fast as possible. It is certainly possible that bringing a test case on behalf of a transgender child of queer parents to challenge a gender-affirming care ban would not be as successful as a similar case brought on behalf of a transgender child of straight parents. Similarly, courts in states that have passed anti-LGBTQIA+

112. Take, for example, a blog post published by Professor Christa Olson in response to a photo essay by Gabriela Herman. Herman, herself the child of a lesbian mother, undertook a project to interview and photograph other children of queer parents. In her view, children were a frequently discussed part of same-sex marriage cases, but no one was bothering to talk directly to the children of queer parents about what they had experienced. Herman, *supra* note 104. In the photo essay, the children of queer parents talked about both how much they loved their parents and valued their families, as well as some of the struggles they had experienced. In her response, Olson argued that “the portraits frame their adult subjects as in recovery, using all the conventions of post-trauma photography.” Christa Olson, *I Wanted to Like that NYT Photo Essay About Growing up with Gay Parents*, READING THE PICTURES (Jun. 23, 2015), <https://perma.cc/H2P5-P7LL>. Olson further reminds the reader that “[t]hese aren’t pictures of the children of gay marriage; they’re pictures of people who grew up in a world hostile to gay people and their families.” *Id.* Ultimately, Olson’s fear is that these photos, which aimed to portray the full experience of growing up with a queer parent, could provide “Justice Scalia rounds of ammunition that I’d prefer he not have.” *Id.*

113. HERMAN, *supra* note 83, at 85 (“I had tried to rule out being queer for the longest time. I wanted to be heterosexual to prove people wrong that gay parents have gay kids. It was difficult. I tried to like only men, but I can’t help it.”); *id.* at 106 (“I came out maybe ten years ago. I was really nervous to share that with my mom because I just didn’t want her to think that she had any role in that.”).

114. Kuvalanka, *supra* note 86, at 166.

115. When the gay son of lesbian mothers spoke on a panel about LGBTQ families, a co-panelist who was also a lesbian mother who had to sue for custody of her children told him “Nothing personal, Dan, but you’re my worst nightmare.” Kuvalanka, *supra* note 86, at 167. *See also* HERMAN, *supra* note 83, at 108 (describing a documentary filmmaker, making a documentary about queer parents and their children, recalls supporters of the film “really tamped down on any sense that kids would struggle, and I think they were weirdly homophobic about second-gen kids, so like, ‘We definitely don’t want to talk about kids being gay or queer if they have queer parents because that’s super dangerous.’”).

curriculum laws might be more sympathetic to a suit brought by queer parents with straight children than one brought by a multi-generation queer family. We do not argue for uplifting multi-generation queer families because we are confident that this will be the fastest way to achieve the goals of the LGBTQIA+ rights movement. Instead, we argue for uplifting these families partly because we think that better integrating multi-generation queer families into the LGBTQIA+ rights movement might lead to better results when challenging anti-LGBTQIA+ laws both in court and politically, and because multi-generation queer families have unique concerns and challenges in the face of new anti-LGBTQIA+ laws that could go unaddressed by “perfect plaintiffs.”

Many anti-LGBTQIA+ laws being debated and enacted today are grounded in the fear that exposure to queer people or queer topics makes children queer. This is why laws and policies are targeting drag performances and drag story hours designed for children, children’s and young adult books with LGBTQIA+ content, and discussion of LGBTQIA+ issues in schools.¹¹⁶ Other anti-LGBTQIA+ laws are based on the false assumption that children under eighteen are incapable of knowing with confidence that they are transgender or non-binary and should be kept from gender-affirming care and social support until they are legal adults.¹¹⁷ These laws can be challenged under many different legal theories, but if LGBTQIA+ activists fail to confront the fears and assumptions at the heart of these laws, queers, generally, and multi-generation queer families, in particular, will continue to be at risk. Uplifting and centering the stories of multi-generation queer families can lead to a broader range of protections for all LGBTQIA+ people.

Consider two hypothetical cases that could be brought by parents on behalf of a transgender child challenging anti-trans laws, one involving straight, cisgender parents and one involving queer parents. Both sets of parents could talk eloquently about how much they love their child, no matter their child’s gender or gender identity. Both sets could impress upon the court how gender-affirming care and social support are vital for their transgender child. Both children are presumably going to be equally capable of advocating for themselves before the court. The queer parents of a trans child can, however, also talk about their experiences identifying as queer. They can talk about their own experiences of being closeted, and the harms that can result. If applicable, they can share how they

116. See, e.g., H.B. 1557, 2022 Leg., Reg. Sess. (Fla. 2022) (Florida’s bill prohibiting the discussion of LGBTQIA+ issues with elementary schoolers); Manuela Lopez Restrepo, *The Anti-drag Bills Sweeping the U.S. Are Straight from History’s Playbook*, NAT. PUB. RADIO (Mar. 6, 2023, 5:44 PM), <https://perma.cc/F7WB-J8R2>.

117. Not all transgender and non-binary people wish to medically transition, but all deserve to be called the right name and be referred to with the proper pronouns. Anti-trans laws do not just impact gender-affirming care; such laws can also prevent schools from using a child’s proper name and pronouns, and restrict trans or non-binary students from using facilities or participating in activities that align with their gender. See, e.g., S.B. 868, 2024 Leg., Reg. Sess. (Mo. 2024); H.B. 1356, 2024 Leg., Reg. Sess. (N.H. 2024).

were certain of their sexuality or gender identity from a young age. Alternatively, they can tell the court how their conceptions about their own sexual orientation or gender identity have shifted throughout their life. Given that one fear animating anti-trans laws in particular is the fear that transgender children will “regret” transitioning,¹¹⁸ it may be beneficial for a court to hear from the queer parents of those children. The parents can discuss the value of giving children space to explore and try out different identities, and also share their own experiences with reexamining and clarifying their own identities, or even changing their mind about how they identified later in life. In short, queer parents can speak personally about some of the fears and assumptions underpinning laws that target trans youth and challenge those assumptions.¹¹⁹

We are not arguing that every single case challenging bans on gender-affirming care for transgender youth must be brought by a multi-generation queer family, especially since some of these families may, for various quite sensible reasons, be unwilling to serve as test plaintiffs. Rather, we are arguing that, in the contexts of litigation, policy, and education, the LGBTQIA+ movement should be open to engaging with these families and their concerns. Many multi-generation queer families have perspectives that would be useful for the LGBTQIA+ movement to adopt and represent, whether or not these families end up being actual plaintiffs.

A similarly powerful argument can be made in relation to multi-generation queer families in response to anti-LGBTQIA+ curriculum laws, bans on drag shows, or other laws that aim to shield children from the idea of queerness. Advocates can continue to respond to these laws by arguing that because queerness is immutable, children cannot become queer by exposure to queer people or queer ideas. Dropping the immutability argument, however, allows LGBTQIA+ advocates to confront the most dangerous part of the fear of the queer child. The fear that youths might be indoctrinated by queer adults is a convenient talking point, but what is animating anti-LGBTQIA+ laws is a fear and a hatred of all queer people, including and especially queer children. To put it another way, if scientists discovered genes responsible for queerness, anti-LGBTQIA+ advocates would not stop introducing anti-LGBTQIA+ laws; rather, they would just change the arguments they used to support those laws. Instead of countering the reasoning offered by anti-LGBTQIA+ advocates, the LGBTQIA+ rights movement should boldly challenge the fear of the queer child, by shifting how the movement talks about queer identity. This is where multi-generation queer families can make an important and distinctive contribution to the LGBTQIA+

118. Maggie Astor, *How a Few Stories of Regret Fuel the Push to Restrict Gender Transition Care*, N.Y. TIMES (May 16, 2023), <https://perma.cc/F6BG-VMVT>.

119. Importantly, we do not argue that the transgender children of cisgender queer parents face no difficulties coming out or interacting with their parents. Indeed, some transgender and non-binary children of cisgender queer parents have reported disappointment with their parents’ reaction to their coming out. *See, e.g.*, Kuvalanka, *supra* note 86, at 170. There is likely a similar argument to be made on behalf of multi-generation transgender families, but given the dearth of scholarship about transgender parents, this argument is beyond the scope of this paper.

movement. Non-queer parents supporting their queer or trans child can make a powerful argument for tolerance. Queer parents supporting their queer child can make the same powerful argument, while also challenging the assumptions that underlie the fear of the queer child: yes, queer parents' sexual orientation or gender identity could be part of the reason their child ended up queer, *and that is fine*. In fact, parents sharing an orientation or gender identity with their child is wonderful, a point of connection that adds a richness to the parent-child relationship. The queer parents of queer children are uniquely situated to counter the oft-repeated idea that no loving parent would want their child to be queer, because of the discrimination their children would face.¹²⁰ This is particularly true for queer foster and adoptive parents, many of whom may have specifically chosen to provide a home for a queer child.¹²¹ These queer parents can truthfully say that they are happy their children are queer, because queerness is something to be celebrated, because queerness has the potential to change society for the better, and because their children have the opportunity for membership in a rich and diverse subculture that has sustained generations of people.

The queer children of queer parents, specifically those old enough to advocate on their own behalf, can make similar arguments, challenging the fear of the queer child from their unique point of view. Why does it matter if an adult can influence whether a child is queer or trans, either through shared genetics of the elusive "gay gene" or by raising children in a queer environment? Somehow, children get all kinds of character traits from their parents, for good and for ill.¹²² Queer children of queer parents can share how their queerness was supported by their parents, and/or how they felt safe to experiment with their sexuality or gender identity because of how they were raised. These children can directly challenge the presumption, still occasionally used by courts, that being a queer child in a queer household is harmful in some way to the child's upbringing. Instead, these children can honestly discuss how their queerness has shaped their lives, and how they benefited from having queer parents, whether or not their parents influenced their sexuality.

120. See e.g., RICHARD POSNER, SEX AND REASON 308 (1992) (confidently asserting that no parent would want their child to be gay, as least if that child "has not yet assumed a [gay] identity").

121. See, e.g., George, *supra* note 57.

122. Children of lawyers, for example, are more likely to become lawyers than the children of people of other professions. Staci Zaretsky, *Children Of Lawyers 17 Times More Likely To Become Lawyers*, ABOVE THE LAW (Apr. 1, 2019), <https://perma.cc/6UN9-CAN9> (citing SAM FRIEDMAN & DANIEL LAURISON, THE CLASS CEILING: WHY IT PAYS TO BE PRIVILEGED (2018)). Despite this, no one argues that lawyers who have lawyers as parents were forced into the legal profession to the detriment of their own well-being. Nor does anyone suggest there is something in one's genes that makes them become a lawyer. Rather, it is understood that intimate exposure to a career, the day-to-day work, the highs and lows, and the like, makes that career feel more tangible to children, and makes them more likely to consider it when thinking about the life they want to lead. In contrast, as we have discussed, the mere suggestion that children's sexuality or gender identity might be impacted by a queer parent has been both a politically potent argument and an argument LGBTQIA+ advocates have avoided confronting.

CONCLUSION

As discussed briefly above, there is a risk that cases brought on behalf of multi-generation queer families will not be successful, while cases brought by straight parents or queer parents of a straight child would be. The impulse to file the perfect test case with the most sympathetic plaintiffs is understandable. We have argued that the LGBTQIA+ rights movement should question that impulse. It is possible that a win for the “perfect plaintiffs” will leave some people unprotected, particularly those people and their families whose interests were not represented. It is trans people and queer children who are facing the backlash that developed after the nationwide legalization of same-sex marriage. A compromise now—the perfect plaintiff, the fastest result—likely means more cases later, perhaps if multi-generation queer families are targeted. There will always be a tension between securing rights quickly and securing broad protections. The LGBTQIA+ rights movement has made sacrifices to achieve rights quickly. Now may be the time to advocate for broad protections that represent the concerns and perspectives of multi-generation queer families. This can be achieved by having them as plaintiffs in litigation, as spokespeople for the cause, or by ensuring that their perspectives are represented. Foregrounding these families may assist the LGBTQIA+ movement in making bold arguments to protect trans and queer people, no matter how their gender identities and sexual orientations are formed, or how they are expressed.

Beyond challenges to current anti-LGBTQIA+ laws, the queer children of queer parents, raised as they were by a person or people who rejected certain societal norms, have the potential to expand society’s understanding of family. Marriage equality, advances in assisted reproduction, and amendments to state parentage law have made it easier for queer individuals to have and raise children. Despite these developments, state courts still frequently hold that non-biological parents do not have parental rights to their children, even children they have raised from birth.¹²³ Lawyers still recommend that queer people adopt children they are not biologically related to, a process that can cost thousands of dollars

123. See, e.g., *In re Marriage of Rebekah Wilson & Kristina Williams*, No. FD-2021-3681 (Okla. 2022) (family court judge removed non-biological mother from child’s birth certificate, replacing her name with the sperm donor’s); *Interest of N.H.*, 652 S.W. 3d 488 (Tex. 2022) (denying visitation to non-biological mother, who had not been married to biological mother at the time of the child’s birth, despite the facts that the non-biological mother had been involved in the pregnancy, and the family lived together in the non-biological mother’s home following the child’s birth); *P.F.-T. v. M.T.*, 379 So. 3d 436 (Ala. App. 2023) (denying request to consider a non-biological mother a presumptive parent under the state’s Uniform Parentage Act, since the issue hadn’t been preserved on appeal, with the practical result that she was denied custody, despite the fact that she was closely involved in the pregnancy, married the biological mother following the birth of the child, and spent the early years of the child’s life as a stay-at-home parent); *In re K.B.*, No. 5-22-0685, 2023 WL 2238895 (Ill. 2023) (holding that a non-biological mother who was not married to the child’s biological mother had no standing to seek parental rights or parenting time, despite non-biological mother being actively involved in the pregnancy and the early years of the child’s life).

and take months.¹²⁴ These problems are compounded for people whose family and parenting structures fall outside of the traditional two-parent model. Only ten U.S. jurisdictions recognize three-parent adoptions,¹²⁵ and applications for three-parent adoptions do not always succeed.¹²⁶ Platonic co-parents—that is, people who want to parent a child, but who are not in a sexual or romantic relationship with each other—also face legal hurdles.¹²⁷ The queer children of queer parents, who frequently self-report that they have an expansive view of family, sexuality, and gender,¹²⁸ may be just the type of people to change how society and the law view families, queer families, and multi-generation queer families.

It is time for the LGBTQIA+ rights movement to uplift the stories of multi-generation queer families. The goals of anti-LGBTQIA+ activists are changing, and in recent years, they have begun to target queer children and trans people of

124. See, e.g., Deirdre M. Bowen, *The Parent Trap: Differential Familial Power in Same-Sex Families*, 15 WM. & MARY J. WOMEN & L. 1, 8 n. 45 (2008) (“A second-parent adoption can cost \$2,500-\$3,000”) (citing Carol Ness, *Lesbian Moms Gain Rights*, S.F. EXAMINER, May 2, 1999, at A-1). Second-parent adoption costs vary, but, as of 2021, they could cost up to \$3,000. See Austin Ledzian, *Guide to Second Parent Adoption*, THE NATALIST, <https://perma.cc/E2UE-GF6M>. The length of the process varies considerably, especially in states that have laws allowing for confirmatory adoptions, see, e.g., ME. STAT. tit. 18-C § 9-316. In states without this process, however, LGBTQ parents must pass a criminal background check, complete a home study, and file a petition with the court. The court will review the documentation and hold a finalization hearing to speak with the second parent, the current legal parent, and the child, if the child is old enough to speak with the judge. Kathy Brodsky, *What’s a Second Parent Adoption?*, FAMILY EQUALITY COUNCIL (May 2, 2019), <https://perma.cc/X5MB-SNQA>.

125. Courtney G. Joslin & Douglas NeJaime, *Multiparenthood*, 99 NYU L. REV. 1242, 1262 n. 105 (2024) (listing California, Connecticut, Delaware, the District of Columbia, Louisiana, Maine, Massachusetts, Nevada, Vermont, and Washington as expressly authorizing courts to determine that a child has more than two legal parents).

126. See Elisabeth Sheff, Kimberly Rhoten, & Jonathan Lane, *A Whole Village: Polyamorous Families and the Best Interests of the Child Standard*, 31 CORNELL J. L. & PUB. POL’Y 287, 291 (2021) (“A review of child custody case law indicates that many lower court family judges have determined that polyamorous parents or polyamorous parented families, merely by virtue of their engagement in polyamory, do not meet [best interests of the child] standards and therefore, it could not be in the child’s best interest for a polyamorous parent to retain custody of their child”); Angela Chen, *The Rise of the 3-Parent Family*, THE ATLANTIC (Sep. 24, 2020) <https://perma.cc/3S4E-WWEX> (“[A]pplications for three-parent adoption succeed most commonly when the triad consists of a same-sex couple—usually female—and the male sperm provider who plans to be a platonic co-parent.”); Elizabeth F. Emens, *Monogamy’s Law: Compulsory Monogamy and Polyamorous Existence*, N.Y.U. REV. L. & SOC. CHANGE 277, 311–12 (2004) (discussing a case where a court removed a child from their mother’s home “until such time as the mother resolves her situation” in this case, her polyamorous relationship). For additional discussion, see, e.g., Joslin & NeJaime, *supra* note 125; Courtney G. Joslin & Douglas NeJaime, *Multiparent Families, Real and Imagined*, 90 FORDHAM L. REV. 2561 (2022); Colleen M. Quinn, *Mom, Mommy & Daddy and Daddy, Dad & Mommy: Assisted Reproductive Technologies & the Evolving Legal Recognition of Tri-Parenting*, 31 J. AM. ACAD. MATRIM. L. 175 (2018); and June Carbone & Naomi Cahn, *Parents, Babies, and More Parents*, 92 CHI.-KENT L. REV. 9 (2017).

127. See, e.g., *Enriquez v. Velazquez*, 350 So.3d 147 (Fla. 2022), which involved a biological father of a child who filed a petition to establish paternity and approve a custody agreement supported by the child’s biological mother. The two were close friends and decided to have a child together, despite never having a romantic relationship. The trial court held that the biological father was not entitled to custody. The appellate court reversed. This case shows the hurdles non-traditional families, even those with two different-sex parents, must overcome.

128. See generally HERMAN, *supra* note 83, at 116.

all ages. Many current anti-LGBTQIA+ bills and laws are rooted in the fear of the queer child, and the incorrect belief that exposure to queer adults makes children queer. Instead of making immutability arguments, the LGBTQIA+ rights movement should challenge the root of this fear by arguing that, no matter how a person becomes queer, queer people of all ages still deserve legal protection. Multi-generation queer families support this argument. Embracing these families would challenge the ideas that queerness is something that should not be passed down and that queer parents should strive for normalcy, in the form of straight children. Supporting multi-generation queer families demonstrates that queerness is not something that should be avoided, but instead, is something that families, the LGBTQIA+ movement, and society generally should celebrate. Queer families have a unique culture to offer society, one that embraces a more expansive view of gender and sexuality. Instead of continuing to argue that queer families are no different from straight, cisgender families, the LGBTQIA+ rights movement should embrace these differences and use multi-generation queer families to challenge ingrained societal homophobia. The LGBTQIA+ rights movement has tried to respond to anti-LGBTQIA+ attacks without reframing the debate for too long. It is time for the LGBTQIA+ movement to change the conversation, to take a bold view of how queerness can change society for the better, and celebrate, rather than tolerate, queerness. Uplifting multi-generation queer families is a promising way for the LGBTQIA+ rights movement to combat the old and new tactics used against queer people, queer families, and their right to flourish.