

ARTICLES

“SAVE OUR CHILDREN” REDUX: HOW HISTORY, POLITICAL PSYCHOLOGY, AND A SHIFTING MEDIA LANDSCAPE HELP EXPLAIN TODAY’S BANS ON GENDER-AFFIRMING CARE FOR MINORS

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INTRODUCTION

Backlash is a common response to civil rights victories, and the LGBTQIA+-rights movement is no exception. After a decade of significant legal victories between the mid-1990s to the mid-2000s—ranging from a landmark Equal Protection Clause holding¹ to the striking down of sodomy laws² to winning marriage equality³—the LGBTQIA+ community has faced significant backlash. That backlash intensified when the U.S. Supreme Court held in *Obergefell v. Hodges* that same-sex couples share in the fundamental right to marriage.⁴ Since that decision, LGBTQIA+-rights opponents have mounted a multi-pronged attack on LGBTQIA+ rights and people.⁵ This attack has taken place in legislatures and courts alike and targets a wide breadth of LGBTQIA+-rights issues. In the judicial arena, for example, opponents of LGBTQIA+ equality have sought religious exemptions from state public accommodations laws⁶ as well as the anti-discrimination provisions of Title VII,⁷ to permit discrimination against LGBTQIA+ people.

The legislative arena has been particularly active: In 2024, 691 anti-trans bills were introduced in 43 states, of which 52 passed.⁸ These numbers contrast sharply with 2015, which saw only 21 anti-trans bills introduced.⁹ Moreover, in 2023, an unprecedented 53 anti-transgender bills were introduced at the federal level.¹⁰ These bills, many of which target transgender youth,¹¹ have been described as efforts to “erase transgender people from public life”¹² by “seeking to deny [them] access to basic healthcare, legal recognition, education, facilities, and the right to publicly exist.”¹³ In both the judicial and legislative realms, the central driver of this backlash is a political movement known as white Christian nationalism.¹⁴

1. See *Romer v. Evans*, 517 U.S. 620 (1996).

2. See *Lawrence v. Texas*, 539 U.S. 558 (2003).

3. See *Obergefell v. Hodges*, 576 U.S. 644 (2015). This success has trickled into the 2020s, although at a slower pace and with significant defeats more plentiful than victories. Compare *Bostock v. Clayton County*, 590 U.S. 644 (2020), with *Masterpiece Cakeshop v. CCRD*, 584 U.S. 617 (2018), *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) and *303 Creative v. Elenis LLC*, 600 U.S. 570 (2023).

4. 576 U.S. 644 (2015).

5. See, e.g., Kyle C. Velte, *The Nineteenth Amendment as a Generative Tool for Defeating LGBT Religious Exemptions*, 105 MINN. L. REV. 2659, 2689–93 (2021).

6. See, e.g., *Masterpiece Cakeshop v. CCRD*, 584 U.S. 617 (2018); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021); *303 Creative v. Elenis LLC*, 600 U.S. 570 (2023).

7. See, e.g., *Braidwood Management, Inc. v. EEOC*, 70 F.4th 914 (5th Cir. 2023).

8. See 2024 anti-trans bills tracker, TRANS LEGISLATION TRACKER, <https://perma.cc/4NPF-VVGB>.

9. See *Tracking the rise of anti-trans bills in the U.S.*, TRANS LEGISLATION TRACKER, <https://perma.cc/MA9X-G9PA>.

10. *Id.*

11. See generally Elana Redfield, Kerith J. Conron & Christy Mallory, *The Impact of 2024 Anti-Transgender Legislation on Youth*, WILLIAMS INST. (Apr. 2024), <https://perma.cc/UZW3-3M9E>; Kyle C. Velte, 2022 *Quietly Set the Stage for a Massive Rollback of LGBTQ Rights*, Truthout (Dec. 27, 2022), <https://perma.cc/5JED-QKLW>.

12. *Tracking the rise of anti-trans bills in the U.S.*, *supra* note 10.

13. *Id.*

14. See, e.g., Kyle C. Velte, *The Supreme Court's Gaslight Docket*, 96 TEMP. L. REV. 391, 407–11 (2024) [hereinafter *Gaslight Docket*]. I use “White Christian nationalism” as a term of art, described by

Most of the rationale offered in support of these anti-trans-youth bills relies centrally on purported concerns about the safety or fair treatment of cisgender and straight children with arguments that the bills are necessary to protect parents' rights¹⁵ to decide how and when their children learn about topics related to gender identity and sexual orientation.¹⁶ In two contexts, however, the rationales for such bills center the interests of trans children rather than (or in addition to) the interests of cis/straight children and parents. These contexts are bans on gender-affirming care for trans minors and bills that require school staff to disclose the gender identity of transgender youth to their families.¹⁷ In those contexts, lawmakers contend that the bills protect transgender youth.¹⁸

This article focuses specifically on bans on gender-affirming care for minors and contends that revisiting our history is vital to fully understanding and appreciating these present-day bans. History shows that the narratives about protecting and saving children has been a centerpiece of anti-LGBTQIA+ lawmakers' campaigns since at least the 1950s. These narratives have been deployed to support sodomy bans and bans on employing LGBTQIA+ teachers, as well as to fight against anti-discrimination protections based on sexual orientation and gender

journalist Katherine Stewart as a political ideology rather than a religious creed, that “promotes the myth that the American republic was founded as a Christian nation.” See KATHERINE STEWART, *THE POWER WORSHIPPERS: INSIDE THE DANGEROUS RISE OF RELIGIOUS NATIONALISM* 4 (Bloomsbury Publishing 2020). It is a kind of nationalism because it claims that its legitimacy arises from its assertion that it represents “a specific identity unique to and representative of the American nation.” *Id.* at 5. It is “Christian” in nature based on the “movement’s own understanding of this national identity, which it sees as inextricably bound up with a particular religion.” *Id.* Importantly, as does Stewart, “I do not mean to suggest that Christian nationalism is representative of American Christianity as a whole. Indeed, a great many people who identify as Christians oppose the movement, and quite a few even question whether it is authentically Christian in the first place.” *Id.* I add “white” to Stewart’s concept of “Christian” nationalism because opposition to racial desegregation was the genesis of that movement and because its present political and judicial goals are permeated with white supremacist norms. See generally OBERY M. HENDRICKS, *CHRISTIANS AGAINST CHRISTIANITY: HOW RIGHT-WING EVANGELICALS ARE DESTROYING OUR NATION AND OUR FAITH* 4–5 (Beacon Press 2021); David Simson, *Most Favored Racial Hierarchy: The Ever-Evolving Ways of the Supreme Court’s Superordination of Whiteness*, 120 MICH. L. REV. 1629 (2022); ELIZABETH DIAS & LISA LERER, *THE FALL OF ROE: THE RISE OF A NEW AMERICA* 31 (Flatiron Books 2024). See also Christopher Wiggins, *Leaked Emails Show GOP Lawmaker, Anti-Trans Activists Discuss Holy War*, ADVOCATE (Mar. 23, 2023), <https://perma.cc/EKG9-HS4Ms> (“Recently leaked emails reveal an alarming coalition of far right-wing extremists, Christian nationalists, anti-trans lobbyists, and elected officials in cahoots, using language rooted in religion to paint Americans at war with the LGBTQ+ community.”).

15. See, e.g., Chase Strangio and Gabriel Arkles, *Four Myths About Trans Athletes, Debunked*, ACLU (Apr. 30, 2020), <https://perma.cc/FRJ2-S8S4>.

16. See, e.g., Nicholas Serafin, *Born to Equality: Minor Children, Equal Protection, and State Laws Targeting LGBTQ+ Youth*, 75 U.C. L. J. 411, 448 (2024); Zachary B. Wolf, *Focus on Parental Rights’ Chips Away at Gay Rights*, CNN (Mar. 29, 2022), <https://perma.cc/R26D-GB8T>; Parents for Privacy v. Barr, 949 F.3d 1210, 1219 (9th Cir. 2020); H.R. 1557, 2022 Leg., (Fl. 2022).

17. Abigail Shrier, *California’s New Law Lets Schools Keep Secrets from Parents*, THE FREE PRESS (July 18, 2024), <https://perma.cc/7QZT-GNH4>; Emilie Kao, *Safeguarding Parental Rights and Protecting Children from Federally Mandated Gender Ideology*, HERITAGE FOUND. (Jan. 10, 2023), <https://perma.cc/UP6X-MXMY>.

18. See Part I, *infra*.

identity and to oppose marriage equality. While the social and legal contexts have shifted over time, this child-specific rhetoric is a through line that threads together decades of efforts to roll back or prevent LGBTQIA+ equality.

After providing a primer on the white Christian nationalism movement and the history of child-based rationales for anti-LGBTQIA+ lawmaking, the article contextualizes that history within a frame of political psychology. This discipline helps to explain the “why” behind the child-focused justifications for the retrenchment of LGBTQIA+ rights. Research from the field of political psychology reveals differences in tolerance for ambiguity between conservatives and liberals.¹⁹ Generally speaking, liberals have a higher tolerance for ambiguity, which corresponds to a psychological trait known as a “need for cognition.”²⁰ This “trait captures how much people enjoy—or get satisfaction from—thinking hard about solving problems.”²¹ Such people “are more likely to evaluate and reevaluate information before updating their beliefs.”²² Those with this trait also exhibit cognitive reflection, a practice that makes it less likely to believe false information.²³ In contrast, conservatives generally have lower tolerance for ambiguity and as a result exhibit a psychological trait known as “need for closure.”²⁴ This need for closure manifests in the use of heuristics (cognitive shortcuts) to arrive at conclusions and answers quickly without needing to absorb various information and points of view and reflect on how that information might influence conclusions and answers.²⁵ These disparate psychological profiles are exacerbated by today’s fragmented media environment, which the article briefly describes.

This article contends that historical lessons, political psychology, and the current media landscape can provide insights into the rapid rise of bans on gender-affirming care for minors by providing a new and thicker way to understand the bans.

Part I provides political context for the LGBTQIA+-rights backlash with an overview of the white Christian Nationalism movement. Part II reviews the recent wave of bans on gender affirming care for transgender minors as well as the rationales typically offered in support of these laws. It then examines the historical uses of justifications centered around protecting children to support anti-LGBTQIA+ bills. Part III explores the research from political psychology demonstrating significant differences between liberals and conservatives when it comes to dealing with ambiguity—differences that help contextualize the fervor with which the white Christian nationalism movement pursues anti-trans laws.

19. See DANNAGAL GOLDTHWAITE YOUNG, *WRONG: HOW MEDIA, POLITICS, AND IDENTITY DRIVE OUR APPETITE FOR MISINFORMATION* 66–69, 111, 235 (Johns Hopkins University Press 2023) [hereinafter *WRONG*].

20. *Id.* at 37.

21. *Id.*

22. *Id.*

23. *Id.*

24. YOUNG, *WRONG*, *supra* note 19, at 38.

25. *Id.*

This part also explores the role of today’s fragmented media landscape in exacerbating these psychological differences. Part IV brings together history, psychology, and media and explains why this combination of analytical lenses may be helpful for both understanding and combating the current wave of bans on gender affirming care for transgender minors, which deeply harm transgender children while purporting to protect them.

I. WHITE CHRISTIAN NATIONALISM

A. A PRIMER ON WHITE CHRISTIAN NATIONALISM

In 2022, the U.S. Supreme Court completed its first full term with a conservative supermajority for the first time in recent history.²⁶ The Court has since handed down a set of decisions that privileged the interests of the white Christian nationalist movement over the interests of historically marginalized groups such as LGBTQIA+ people, women, and people of color.²⁷

White Christian nationalism has long been a part of the American political and cultural story.²⁸ Its core tenet is that the country was founded as a Christian nation and thus ought to be governed based on the Bible—despite founding-era evidence to the contrary.²⁹ It is, first and foremost, a political ideology that contends the United States government will not be legitimate “until its laws and policies are thoroughly consistent with the Christian nationalists’ narrow . . . readings of the biblical text.”³⁰ White Christian nationalists “have long argued that only a ‘good Christian’ can be a ‘real American.’”³¹

Over time, white Christian nationalism has shown itself to be cyclical in nature.³² While the movement was initially prompted by the success of racial,

26. Velte, *Gaslight Docket*, *supra* note 14, at 393.

27. *See id.*

28. *See generally* Hendricks, *supra* note 14, at 3. White Christian nationalism’s origin can be traced back at least to the abolition of slavery. *See, e.g.,* Kiara Alfonseca, *Culture Wars: How Identity became the Center of Politics in America*, ABC NEWS (July 7, 2023), <https://perma.cc/J7HJ-W7S6> [hereinafter *Culture Wars*]. This article focuses on the agenda of the more contemporary white Christian nationalism movement beginning in the 1960s, during which “[m]arginalized groups in the Civil Rights, Black power, Chicano, feminist and gay rights movements were demanding equal rights and challenging the ‘normative American culture’ of the ‘50s that had begun to solidify.” *Id.*

29. Hendricks, *supra* note 14, at 4 (“They routinely ignore all evidence to the contrary, no matter how compelling, including the testimony of founding fathers like Thomas Jefferson and John Adams that America was not founded as a Christian nation.”); *see also* Caroline Mala Corbin, *The Supreme Court’s Facilitation of White Christian Nationalism*, 71 ALA. L. REV. 833, 841 (2020).

30. Hendricks, *supra* note 14, at 6.

31. Jason A. Springs, *Zombie Nationalism: The Sexual Politics of White Evangelical Christian Nihilism* 53 in RELIGION, POPULISM, AND MODERNITY: CONFRONTING WHITE CHRISTIAN NATIONALISM (University of Notre Dame Press (2023)).

32. *Id.* (noting that white Christian nationalism “persists by self-protectively morphing and resurging socio-politically, at distinctive points in time, and be reigniting in response to specific issues.”); *see also* Philip Gorski, *Religious Nationalism and Right-Wing Populism* 23, RELIGION, POPULISM, AND MODERNITY: CONFRONTING WHITE CHRISTIAN NATIONALISM (University of Notre Dame Press 2023 eds., Omer and Lupo) (“[T]here are hidden links between religion and nation that can always be reactivated, even if they have lain dormant for some time.”).

gender, and queer civil rights movements in the 1950s,³³ the movement's current prominence and power is partially attributable to demographic shifts beginning in 2012. That year marked the first time that white Christians were not a majority of the U.S. population.³⁴ Simultaneously, U.S. society became significantly more secular, leading to lower marriage rates and a decline in church membership.³⁵ The number of U.S. Christian evangelicals, the most common denomination of white Christian nationalists, fell from twenty-three percent in 2006 to fourteen percent in 2020, and young adults make up only seven percent of U.S. Christian evangelicals.³⁶ White Christian nationalists believe that these recently-emerged "secular and pluralistic principles represent ahistorical aberrations in desperate need of correction."³⁷ Their concerns are compounded by an impending demographic shift which will see white people constitute less than half of the U.S. population by 2050.³⁸

White Christian nationalists seek to influence hot-button "culture war" issues such as civil rights for African-Americans, women, and LGBTQIA+ people.³⁹ Its attorneys consider their work "as part of a much bigger religious project to enact God's kingdom on earth, a way to use the law to reshape the country around the tenets of Christianity."⁴⁰ The project's ultimate goal is "to force every aspect of American life to genuflect at the altar of their narrow brand of Christianity."⁴¹ Because the movement is made up of a "dense ecosystem of nonprofit, for profit, religious and nonreligious media and legal advocacy groups"⁴² rather than a singular entity or person, its story is a complex one to tell.

The disparate segments of the movement are unified by its long-term plan to build an American society "in which its versions of the Christian religion and its

33. See, e.g., Edward Lempinen, *Crisis of Faith: Christian Nationalism and the Threat to U.S. Democracy*, UC BERKELEY RESEARCH (Sept. 20, 2022), <https://perma.cc/UE5K-RDZ7>.

34. Becky Sullivan, *The Proportion Of White Christians In The U.S. Has Stopped Shrinking*, *New Study Finds*, NPR (July 8, 2021), <https://perma.cc/LDE4-TNA6>. Two decades earlier, white Christians accounted for nearly 66% of the U.S. population. *Id.* A 2020 poll revealed that fewer than 50% of Americans were affiliated with a church, synagogue or mosque for the first time since that poll originated in 1930. See Lempinen, *supra* note 33. The same poll showed no religious affiliation for 21% of Americans. *Id.* Moreover, a recent Pew Research Center report quantified the number of "nones" at 30 percent. *Id.*

35. See Gorski, *supra* note 32, at 24.

36. See Lempinen, *supra* note 33; see also PRRI Staff, *Support for Christian Nationalism in All 50 States: Findings from PRRI's 2023 American Values Atlas*, PUB. RELIGION RSCH. INST. (Feb. 28, 2024), <https://perma.cc/NNU8-XN9T>.

37. Zachary Brown, *Christian Nationalism and Its Growing Legal Footprint*, JURIS MENTEM LAW REVIEW 1 (Mar. 31, 2024), <https://perma.cc/YMM9-4YXP>; see also generally Sarah Posner, *The Legal Army Behind 'Masterpiece Cakeshop,'* THE NATION (Nov. 28, 2017), <https://perma.cc/DM54-YZTJ>; Margaret Talbot, *Justice Alito's Crusade Against a Secular America Isn't Over*, NEW YORKER (Aug. 28, 2022), <https://perma.cc/L47W-YJ3L>.

38. See DIAS & LERER, *supra* note 14, at 10.

39. See, e.g., Alfonseca, *Culture Wars*, *supra* note 28.

40. Hendricks, *supra* note 14, at 6.

41. *Id.*

42. See STEWART, *supra* note 14, at 4.

adherents, along with their political allies, enjoy positions of exceptional privilege and power in government and in law.”⁴³ In the 1970s, leaders of the movement developed a long-term strategy that would take decades to come to fruition.⁴⁴ Since then, the movement’s coordinated campaign to form a Christian nation has seen a steady stream of successes.⁴⁵

One of the long-term targets of the movement has been the judiciary. A major item on the white Christian nationalist political agenda has been the appointment of like-minded people to courts at all levels, but especially to the U.S. Supreme Court.⁴⁶ Appointing like-minded jurists is an important component of the movement’s plan to transform U.S. law to reflect its specific Christian worldview.⁴⁷ The appointments of Justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett to the Supreme Court—in addition to the appointment of large numbers of white Christian nationalist-endorsed judges to state and lower federal courts—has been the payoff for the movement’s decades-long behind-the-scenes efforts.⁴⁸

This packing of state and federal courts with sympathetic jurists works in tandem with another of the movement’s tactics: coordinated amicus briefing campaigns funded and drafted by the same groups and players who facilitated the judicial appointments in the first place.⁴⁹

The efforts to impose this ideology through the judicial realm are supplemented by strategies in the electoral realm—resulting in a shift toward the election of more radically conservative state and federal lawmakers⁵⁰ as well as attacks on the administrative state with a goal of deregulation in all areas of American life.⁵¹ One former movement leader stated that his “task was to convince religious

43. *Id.*

44. STEWART, *supra* note 14, at 9. See also Katherine Stewart, *How the Christian Right Took Over the Judiciary and Changed America*, THE GUARDIAN (June 25, 2022), <https://perma.cc/TZ3C-3NT2>.

45. See, e.g., PHILIP S. GORSKI & SAMUEL PERRY, *THE FLAG AND THE CROSS: WHITE CHRISTIAN NATIONALISM AND THE THREAT TO AMERICAN DEMOCRACY* 68–71 (Oxford University Press 2022); *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022); 303 Creative LLC v. Elenis, 600 U.S. 570 (2023); *Carson v. Makin*, 596 U.S. 767 (2022); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021); *Masterpiece Cakeshop v. CCRC*, 584 U.S. 617 (2018).

46. See, e.g., Katherine Stewart, *How Christian Nationalism Perverted the Judicial System and Gutted Our Rights*, NEW REPUBLIC (May 10, 2022), <https://perma.cc/HCK6-RL33>.

47. See, e.g., AMANDA HOLLIS-BRUSKY, *IDEAS WITH CONSEQUENCES: THE FEDERALIST SOCIETY AND THE CONSERVATIVE COUNTERREVOLUTION* 6–8 (Oxford University Press 2015).

48. See generally Rob Schenk, *Confessions of a (Former) Christian Nationalist*, MOTHER JONES (Nov/Dec 2024), <https://perma.cc/YJX6-U22C>.

49. See Sheldon Whitehouse, *A Flood of Judicial Lobbying: Amicus Influence and Funding Transparency*, 131 YALE L.J.F. 141, 151–58 (2021). Sheldon Whitehouse is a Democratic Senator from Rhode Island. See Sheldon Whitehouse, United States Senator for Rhode Island, <https://perma.cc/2SCE-ACKB>.

50. See Hannah Allam, *Pro-Trump Christian Extremists Use Scripture to Justify Violent Goals*, WASHINGTON POST (July 23, 2024), <https://perma.cc/8TVV-Q5BE>; see generally Sarah Posner, *The Christian Nationalist Boot Camp Pushing Anti-Trans Laws Across America*, TYPE INVESTIGATIONS (Sept. 21, 2022), <https://perma.cc/WJ5Q-4V8P> [hereinafter *Christian Nationalist Boot Camp*].

51. See, e.g., James Goodwin, *Inside Project 2025*, BOSTON REV. (2024), <https://perma.cc/5DAG-VVSG>.

leaders, officials on every level of government, and big-money benefactors that our nation was literally going to hell and the only way to rescue it was a mass conversion to Christian sensibilities” and that while “[p]reachers and politicians might be able to persuade some people, . . . the force of law would be necessary to coerce others.”⁵²

This same former leader noted that while the three U.S. Supreme Court appointments were the “pinnacle” of his success, he had “started with Congress, [then] advanced to the White House,” to push forward the movement’s mission of bringing “the Word of God to bear on the hearts and minds of those who make public policy in America.”⁵³ He had the backing of “some 50,000 donors” across the United States, “along with hundreds of church leaders and several prominent lawmakers. The goal was to convert a ‘secular culture’ into a God-fearing, foundationally Christian, socially conservative, and politically Republican one. To achieve it, we raised tens of millions of dollars, mobilized activists, and lobbied lawmakers relentlessly.”⁵⁴

In short, the white Christian nationalist movement “aspires to take over government at all levels, from school boards and state legislatures to Congress and the Supreme Court. Its prominent influencers, ties to militias, and pervasiveness across civil society reveal a radical movement hiding in plain sight.”⁵⁵ From the national-level issues like a constitutional right to abortion,⁵⁶ to local-level issues like K-12 school curricula,⁵⁷ the movement seeks to infiltrate all aspects of American law and life.⁵⁸

While the literature on white Christian nationalism and the goals of the movement itself is abundant,⁵⁹ here, I consider and address the movement’s attacks on LGBTQIA+ rights.

52. Schenk, *supra* note 48.

53. *Id.*

54. *Id.*

55. Noma Bar, *Under God: The Christian Nationalist Plan to Take Over America*, MOTHER JONES (Nov/Dec 2024), <https://perma.cc/BND4-664Z>. See also, e.g., Guthrie Graves-Fitzsimmons and Maggie Siddiqi, *Christian Nationalism Is ‘Single Biggest Threat’ to America’s Religious Freedom*, CTR. FOR AM. PROGRESS (Apr. 13, 2022), <https://perma.cc/9CXV-6XM7>.

56. See, e.g., Brown, *supra* note 37.

57. See, e.g., Schuyler Mitchell, *Inside Christian Nationalists’ Legal Long Game to End Church-State Separation*, Truthout (Nov. 25, 2024), <https://perma.cc/TD8U-WS77>.

58. See generally Michael Sozan & Ben Olinsky, *Project 2025 Would Destroy the U.S. System of Checks and Balances and Create an Imperial Presidency*, Center for American Progress (Oct. 1, 2024), <https://perma.cc/Q5J5-HSM8>; Rachel Laser, *White Christian Nationalism is Rising in America. Separation of Church and State is the Antidote*, THE FREETHINKER (May 6, 2024), <https://perma.cc/W6Y2-XJ7F>.

59. See, e.g., Berta Esperanza Hernández-Truyol, *Hempishpheric Justice: Awakening to 303 Creative’s Troubles: A Glocalised LatCrit Analysis*, 22 SEATTLE J. FOR SOC. JUST. 705, 735–36 (2024); Stephen Feldman, *White Christian Nationalism Enters the Political Mainstream: Implications for the Roberts Court and Religious Freedom*, 53 SETON HALL L. REV. 1 (2023); GORSKI & PERRY, *supra* note 45, at 68–71; STEWART, *THE POWER WORSHIPPERS*, *supra* note 14; Hollis-Brusky, *supra* note 47, at 6–8; Margaret Talbot, *Amy Coney Barrett’s Long Game*, NEW YORKER (Feb. 7, 2022); Linda Greenhouse, *Alito’s Call to Arms to Secure Religious Liberty*, N.Y. TIMES (Aug. 11, 2022), <https://perma.cc/AD3K->

B. WHITE CHRISTIAN NATIONALIST ATTACKS ON LGBTQIA+ RIGHTS

White Christian nationalists believe in rigid gender roles;⁶⁰ in women’s subordinate position to men in the family and society;⁶¹ that marriage is only between one man and one woman;⁶² the immorality of sex outside of marriage; that gender identity is fixed at birth and binary;⁶³ that homosexuality is wrong;⁶⁴ and that patriarchy is the best and proper system by which to order society.⁶⁵ The Bible is the basis of these beliefs.⁶⁶ The white Christian nationalist movement seeks a return to prior eras when society as a whole reflected these same sex- and gender-based values and expectations.⁶⁷

G49S; Samuel L. Perry & Philip S. Gorski, *With the Buffalo Massacre, White Christian Nationalism Strikes Again*, WASH. POST (May 20, 2022), <https://perma.cc/RMG6-JQPH> (“For a segment of Christians, the battle over abortion is just one front in a wider war to make America Christian again—by any means necessary. They are not pro-life so much as pro-control.”); Sophie Bjork-James, *Christian Nationalism and LGBTQ Structural Violence in the United States*, 7 J. RELIGION & VIOLENCE 278–302 (2019); Terry Gross, *How One Christian Legal Group is Shaping Policy, from Abortion to LGBTQ Rights*, NPR (Oct. 18, 2023), <https://perma.cc/KR5U-X76F>; Adam Gabbatt, *Well-Funded Christian Group Behind US Effort to Roll Back LGBTQ+ Rights*, THE GUARDIAN (June 19, 2023), <https://perma.cc/D7LF-J8WA>; David D. Kirkpatrick, *The Next Targets for the Group that Overturned Roe: Alliance Defending Freedom Has Won Fifteen Supreme Court Cases. Now It Wants Religious Exemptions to Anti-Discrimination Laws—and is Going After Trans Rights*, NEW YORKER (Oct. 9, 2023), <https://perma.cc/K9RE-SJS4>; Katherine Stewart, *Christian Nationalism Is One of Trump’s Most Powerful Weapons*, N.Y. TIMES (Jan. 6, 2022), <https://perma.cc/8GLX-FENU>; Jared A. Goldstein, *How the Constitution Became Christian*, 68 HASTINGS L. J. 259 (2017); Jason A. Springs, *Zombie Nationalism: The Sexual Politics of White Evangelical Christian Nihilism* 53 in RELIGION, POPULISM, AND MODERNITY: CONFRONTING WHITE CHRISTIAN NATIONALISM (University of Notre Dame Press (2023)).

60. See, e.g., Keegan Beamish, *Why Christian Nationalism Is a Feminist Issue*, NOW (Nov. 14, 2023), <https://perma.cc/AXM7-MSFW>.

61. See, e.g., Shirley Paulson, *A Christian Nationalist Versus a Woman Voter: Reading the Bible Differently*, WESTAR INST. (May 3, 2024), <https://perma.cc/2QQE-JR5S>; Nathaniel Manderson, *Christian Nationalism is Rooted in Stupid Tough-Guy Misogyny: What Would Jesus Say?*, SALON (Feb. 20, 2022), <https://perma.cc/2Z5V-XV9J>; Chloe Vanderhoof, *Christian Nationalism’s Effect on Women’s Socioeconomic Status in the United States*, UNIV. OF MARY WASHINGTON EAGLE SCHOLAR, at 1–2, 18, 23 (2024), <https://perma.cc/8VG4-K3B2>.

62. See, e.g., Velte, *Nineteenth Amendment*, *supra* note 5, at 2689–99.

63. See, e.g., Kyle C. Velte, *Mitigating the “LGBT Disconnect”; Title IX’s Protection of Transgender Students, Birth Certificate Correction Statutes, and the Transformative Potential of Connecting the Two*, 27 AM. U. J. GENDER SOC. POL’Y & L. 193, 223–24 (noting that “arguments about the privacy rights of cisgender students to use school restrooms free of the presence of transgender students are steeped in anxiety and retrenchment—anxiety created by the transgender student’s disruption of the gender binary, a concept that for most people is inevitable, stable, ‘natural,’ and occupies a ‘sacred status.’”) (internal citations omitted) [hereinafter *Mitigating*].

64. See, e.g., Silas House, *The Christian Nationalist Forces That Terrorized Me as a Child Have Grown Only More Powerful*, TIME (Nov. 7, 2022), <https://perma.cc/R4B6-DWX9>.

65. See generally Beamish, *supra* note 60.

66. See, e.g., Maura Casey, *Project 2025: The Blueprint for Christian Nationalist Regime Change*, CHARLES F. KETTERING FOUND. (Aug. 19, 2024), <https://perma.cc/QK7L-FUB4>.

67. See generally, e.g., Kyle C. Velte, *Postponement as Precedent*, 29 S. CAL. REV. L. & SOC. JUST. 1, 31–32 (2019).

The emergence of the women's rights movement, the sexual liberation movement, and the LGBTQIA+ rights movement in the 1960s, which built momentum and created equality-enhancing legal and cultural changes for those communities, was destabilizing for patriarchy and for those in the white Christian nationalist movement.⁶⁸ White Christian nationalists experienced these changes as sinful, wrong, dangerous, and a threat not only to their way of life, but to American life writ large.⁶⁹

Those in the white Christian nationalist movement experienced anxiety, fear, discomfort, and anger in response to these turbulent decades of legal and social change for women and LGBTQIA+ people (and American society generally).⁷⁰ That anxiety, fear, discomfort, and anger in turn galvanized the white Christian nationalist movement's anti-abortion and anti-LGBTQIA+ rights agenda—an agenda that would take decades to fully operationalize and that is still being pursued today.⁷¹

68. See, e.g., Note, *Patriarchy Is Such a Drag: The Strategic Possibilities of a Postmodern Account of Gender*, 108 HARV. L. REV. 1973, 1976 (1995); Mary Coombs, *Sexual Dis-Orientation: Transgendered People and Same-Sex Marriage*, 8 UCLA WOMEN'S L.J. 219, 266 (1998); Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins*, 8 YALE J.L. & HUMANS 161, 161–62 (1996); David A. Reichard, “We Can’t Hide and They Are Wrong”: *The Society for Homosexual Freedom and the Struggle for Recognition at Sacramento State College, 1969-1971*, 28 LAW & HIST. REV. 629, 631 (2010). It is important to note—but outside the scope of this article to further explore—that contrary to the prevailing narrative, abortion was *not* the issue that galvanized the white Christian nationalist movement in the 1970s. Although that narrative has taken on mythical proportions, it is wrong as a matter of historical fact. White Christian nationalism in the 1970s first arose to oppose racial equality; the movement vigorously opposed racial desegregation. See, e.g., Randall Balmer, *The Religious Right and the Abortion Myth*, POLITICO (May 10, 2022), <https://perma.cc/AF8X-9HSR> (noting that in the 1970s, white Christian nationalists “did not mobilize against *Roe v. Wade*, which they considered a Catholic issue. They organized instead to defend racial segregation in evangelical institutions, including Bob Jones University” and contending that to “suggest otherwise is to perpetrate what I call the abortion myth, the fiction that the genesis of the Religious Right—the powerful evangelical political movement that has reshaped American politics over the past four decades—lay in opposition to abortion.”).

69. See, e.g., Elizabeth Sepper & Deborah Dinner, *Sex in Public*, 129 YALE L.J. 78, 83 (2019) (describing the history of the feminist movement's campaign for inclusion of sex in public accommodation laws; noting that “[t]he sex segregation of public spaces derived from three sources: the separate-spheres ideology of the mid-nineteenth century, which assigned women to the home and men to the market; heterosexual norms that emphasized the sexual vulnerability of respectable white women while simultaneously constructing other women as sources of sexual disorder; and defensive impulses to preserve dominant masculinity in male-only spaces such as gyms and barber shops.”); see *id.* at 84 (“Feminist public accommodation activists aspired to use the laws to destabilize prevailing understandings of bodily sex difference, to challenge assumptions about the need for sexual privacy, and to reconfigure institutions ranging from athletic fields to bathrooms. Business owners, politicians, and courts all struggled with the implications of sex integration for masculinity.”).

70. See, e.g., Claude Fischer, *The Right's Reaction to Americans' Leftward Shift: A Supreme Example*, MADE IN AM. (Feb. 15, 2022), <https://perma.cc/U89U-BQB4>.

71. See generally Talbot, *Justice Alito's Crusade*, *supra* note 37 (“In the end, Alito may be angry for the same reasons that many conservatives of his demographic are angry—because they find their values increasingly contested; because they feel less culturally authoritative than they once were; because they want to exclude who they want to exclude, and resent it when others push back.”); DIAS & LERER, *supra* note 15, at 13.

Opposition to abortion and LGBTQIA+ rights has long been linked to the white Christian nationalist movement. For example, the founding of Jerry Falwell’s Moral Majority organization in the late 1970s was inspired by both issues; that group focused on “‘moral and religious decay,’ tying it to abortion, the Equal Rights Amendment . . . and homosexuality.”⁷²

Abortion rights and LGBTQIA+ rights share the common denominators of freedom and autonomy—in one’s body and one’s sexual and reproductive choices, both of which are contrary to a core tenet of white Christian nationalism: patriarchy.⁷³ The sexual revolution of the 1960s was the genesis of both the LGBTQIA+ and abortion rights movement; where LGBTQIA+ rights engender sexual autonomy and freedom for LGBTQIA+ people, abortion rights create sexual autonomy and freedom for women. Abortion rights and LGBTQIA+ rights both blur bright lines between (cis) men and (cis) women and thus destabilize patriarchal norms and practices.⁷⁴

The white Christian nationalist movement’s agenda included the overturning of *Roe v. Wade*,⁷⁵ which it set its sights on soon after the case was decided in 1973. Movement leaders knew that it would take decades to put in place the

72. Genevieve Siegel-Hawley, Ash Taylor-Beier, Erica Frankenberg, April Hewko, & Andrene Castro, *When Public Meets Private: Private School Enrollment and Segregation in Virginia*, 30 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 95, 123–24 (2024) (internal citation omitted).

73. See, e.g., Shannon Dunn, *Appropriation, Opting Out, and the Common Good in Public Debates: An Analysis of Christian Ethical Arguments*, 38 J.L. & RELIGION 403, 408 (2023) (“As an ideology, White Christian nationalism supports the promotion of white male bodies in public spaces and the reordering of other bodies below them in a hierarchy.”); ANDREW WHITEHEAD AND SAMUEL L. PERRY, *TAKING BACK AMERICAN FOR GOD: CHRISTIAN NATIONALISM IN THE UNITED STATES* 10 (New York: Oxford University Press, 2020) (describing white Christian nationalism as a movement that “‘nativism, white supremacy, patriarchy, and heteronormativity, along with divine sanction for authoritarian control and militarism.’”); Siegel-Hawley et al., *supra* note 72, at 124 (noting that an early white Christian nationalism organization, the Moral Majority, “drew on central tenets of White Christian nationalism by merging a hierarchical, authoritarian and patriarchal version of Christianity with civic institutions and public policy”). White Christian nationalists consider becoming a mother as a “social milestone,” one that some have described as the “motherhood mandate.” See generally, e.g., Sophia Moskalenko, Ekaterina Romanova, & Mia M. Bloom, *Gender-Bender Narratives: Radicalising Effects of Disinformation that Threatens Gender-Normative Views*, CRIME & DELINQUENCY 6 (2024). As a result, a right to abortion is contrary to what white Christian nationalists believe is the natural order of society. *Id.* As a result, for some in the white Christian nationalist movement, the fight to overturn *Roe* was about “unwinding the entire sexual revolution to a time when women had fewer rights and far less control over their bodies. They were the ‘foundational issue upon which everything else is built.’” DIAS & LERER, *supra* note 14, at 174.

74. See generally Tatsiana Ziniakova, *Gender-Based Violence in International Human Rights Law: Evolution Towards a Binding Post-Binary Framework*, 27 WM. & MARY J. RACE, GENDER & SOC. JUST. 709, 739–40 (noting that gender-based violence “is an embodiment of patriarchy, a manifestation of full power some men have over women as a group, over ‘weaker’ men, and over ‘queers’ who do not fit into a predetermined binary gender role.”); Andrew Proctor, *Anti-Transgender Legislation and the Politics of Patriarchy*, THE GENDER POL’Y REP. (July 6, 2021), <https://perma.cc/3MAD-VLQT> (“Antitrans sports legislation denies transgender women recognition as women, which reinforces biological sex binaries that contribute to systems of patriarchy Accepting that trans and cis girls and women can play sports together challenges the very logics and power structures that cis men benefit from.”).

75. 410 U.S. 113, 153 (1973).

people needed to overturn the case but were undaunted by that timeline.⁷⁶ Christianity was at the center of the movement's mission to overturn *Roe*.⁷⁷ Of course, the movement's long game paid off in 2022, when the U.S. Supreme Court overturned *Roe* in *Dobbs v. Jackson Women's Health Organization*.⁷⁸ That decision is a high water mark of the white Christian nationalist movement's successful effort "to engraft a pro-business Christian nationalism onto our constitutional order."⁷⁹

The white Christian nationalist movement's agenda targeted LGBTQIA+ people even earlier than its campaign to overturn *Roe*. In the 1950s, the movement sought to legally and socially subordinate LGBTQIA+ people. It did so by characterizing LGBTQIA+ people as pedophiles, deviant, and mentally ill.⁸⁰ The movement leveraged this unsubstantiated and incorrect narrative to pass anti-LGBTQIA+ laws and policies, such the "Lavender Scare"—the firing of over five thousand LGBTQIA+ federal government employees in the 1950s.⁸¹ In 1953, then-President Eisenhower issued an executive order barring the employment of LGBTQIA+ people by the federal government and federal contractors.⁸² The 1950s also saw some states ban LGBTQIA+ people from being employed as public school teachers.⁸³ In the late 1970s, the movement successfully organized to repeal a Dade County, Florida ordinance preventing discrimination based on sexual orientation.⁸⁴

The white Christian nationalist movement saw its first constitutional law victory in 1986, when the U.S. Supreme Court held that states may constitutionally criminalize private, consensual, same-sex sexual activity in *Bowers v. Hardwick*.⁸⁵ *Bowers* rested on notions of morality firmly grounded in the tenets of white Christian nationalism.⁸⁶ In 1996, Colorado voters approved

76. See DIAS & LERER, *supra* note 14, at 13.

77. *Id.*

78. 597 U.S. 215, 231 (2022).

79. David S. Cohen, Kelcie Ouillette, Jessica Tyrrell, *Abortion at the Crossroads: Reproductive Rights and Justice on the Precipice of Roe's Demise*, 14 DREXEL L. REV. 787, 805–06 (2022).

80. See Kyle C. Velte, *Why the Religious Right Can't Have Its (Straight Wedding) Cake and Eat It Too: Breaking the Preservation Through Transformation Dynamic in Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 36 L. & INEQ. 67, 71–72, 74 (2018) [hereinafter *Cake*].

81. See Velte, *The Nineteenth Amendment*, *supra* note 5, at 2684.

82. See Christina Capatides, *A History of Gay Rights in America*, CBS NEWS (June 27, 2015), <https://perma.cc/59CT-755R>.

83. See, e.g., Karen Graves, *The Shameful History of the Mistreatment of LGBT Teachers*, HISTORY NEWS NETWORK, <https://perma.cc/G9NM-DXS7>; Daniel C. Sanpietro, *Gradually Triumphant Over Ignorance: Rhode Island's Treatment of Sexual Orientation Discrimination in the Workplace*, 30 SUFFOLK U. L. REV. 439, 460 (1997).

84. *Anita Bryant and the Save our Children Campaign*, GAY HISTORY (Aug. 13, 2009), <https://perma.cc/8VTY-YYR7>.

85. 478 U.S. 186 (1986), *overruled by* Lawrence v. Texas, 539 U.S. 558 (2003).

86. See generally Alex Schulman, *Kulturkampf and Spite: The Rehnquist Court and American "Theoconservatism"*, 22 LAW & LITERATURE 48, 67–69 (2010); Brief of Petitioner Michael J. Bowers Attorney General of Georgia at 5, 20–21, *Bowers v. Hardwick*, 478 U.S. 186 (1986) (No. 85-140), 1985 WL 667939; *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986) (Burger, C.J., concurring) ("[c]ondemnation of [sodomy] is firmly rooted in Judeo-Christian moral and ethical standards.").

Amendment 2, a state constitutional amendment that stripped LGBTQIA+ people of existing antidiscrimination protections and prohibited the enactment of such protections in the future.⁸⁷ Although the Court ultimately struck down Amendment 2 in *Romer v. Evans*, “[t]he list of amici in the United States Supreme Court arguing for upholding Amendment 2 read[] like a roll call of the ‘religious right;’ Concerned Women for America, the Christian Legal Society, the Family Research Council, a group called Colorado for Family Values, and the religious legal organization American Center for Law and Justice[.]”⁸⁸

In sum, abortion rights and LGBTQIA+ rights are inextricably intertwined in the minds of white Christian nationalists. A right to abortion allows women to avoid forced pregnancy, which in turn allows women to become economically and socially independent and self-sufficient.⁸⁹ This independence and self-sufficiency destabilizes traditional, rigid gender roles held dear by white Christian nationalists—men acting as head of the family and women acting as subservient caregivers.⁹⁰ LGBTQIA+ rights threaten white Christian nationalists’ central beliefs about sexuality, gender, and the sanctity of the heterosexual nuclear family.⁹¹ *Obergefell*’s recognition of marriage equality in 2015 presented the starkest challenges to the white Christian nationalist belief about the sanctity of the heterosexual nuclear family; White Christian nationalists decried that decision as against Biblical teachings, as a sign of declining American morality, and as evidence of the decreasing power of the movement and its adherents.⁹²

This brief history of the white Christian nationalism’s two-pronged attack on abortion rights and LGBTQIA+ rights leading up to *Obergefell* sets the stage for understanding the most recent attack on LGBTQIA+ rights to which I turn next: those launched by the white Christian nationalism movement against transgender youth.

II. BANS ON GENDER-AFFIRMING CARE FOR MINORS: NEW ANTI-LGBTQIA+ LAWS, OLD RHETORIC

Transgender people have seen some recent successes in securing anti-discrimination protections, such as those permitting them to change their gender markers on

87. 517 U.S. 620, 635–36 (1996).

88. Steven H. Aden, *A Tale of Two Cities in the Gay Rights Kulturkampf: Are the Federal Courts Presiding Over the Cultural Balkanization of America?*, 35 WAKE FOREST L. REV. 295, 298–99 (2000).

89. See generally Jennifer S. Fan, *Corporations and Abortion Rights in a Post-Dobbs World*, 57 U.C. DAVIS L. REV. 819, 836 (2023) (noting that “86% of women state that controlling if and when to have children has been important to their careers. Women who cannot access abortion when needed are three times more likely to be unemployed, and four times more likely to have a household income below the federal poverty level.”) (internal citation omitted).

90. See Gila Stopler, “A Rank Usurpation of Power”—*The Role of Patriarchal Religion and Culture in the Subordination of Women*, 15 DUKE J. GENDER L. & POL’Y 365, 378 (2008).

91. See, e.g., Deborah L. Brake, *Title IX’s Trans Panic*, 29 WM. & MARY J. RACE, GENDER & SOC. JUST. 41, 56–57 (2022).

92. See, e.g., John Huleatt, *After Obergefell: Liberating Christian Witness*, THE PLOUGH (Aug. 14, 2015), <https://perma.cc/J425-NMKP>.

government documents and policies that permit them to participate in sex-segregated activities and use in sex-segregated spaces consistent with their gender identity.⁹³ These equality- and dignity-enhancing rights don't only create freedom and autonomy for trans people to live authentic lives just as their cisgender counterparts do, they also signal to larger society that trans people *deserve* such dignity, freedom, and autonomy. As was the case with marriage equality and abortion rights, the emergence of trans rights threatens white Christian nationalists' belief that sex and gender are divinely ordained, binary, and fixed.⁹⁴ As such, it is unsurprising that the white Christian nationalism movement has turned its attention to transgender rights, with a particular focus on the rights of trans youth.

This Part reviews the recent wave of bans on gender-affirming care and the child-protective rhetoric used to justify them. It then looks back at the history of legal subordination of LGBTQIA+ people, revealing similar child-protective rhetoric has been deployed for decades. What's old is new again.

A. A PRIMER ON GENDER-AFFIRMING CARE FOR MINORS

Over the past decade, transgender people have become increasingly visible; that increased visibility has included transgender children coming out earlier than in past generations.⁹⁵ Some, though not all,⁹⁶ transgender people experience gender dysphoria, which the American Psychiatric Association defines as “psychological distress that results from an incongruence between one’s sex assigned at birth and one’s gender identity.”⁹⁷ Not all transgender people experience gender dysphoria, but for those who do, it often emerges in childhood.⁹⁸ Left untreated, gender dysphoria “can result in debilitating anxiety, depression, and self-harm, and is associated with suicidality.”⁹⁹

“Gender-affirming care” is an umbrella term that describes the medical best-practice protocols for treating gender dysphoria.¹⁰⁰ Gender-affirming care for

93. See generally *Identity Documents and Policies*, MOVEMENT ADVANCEMENT PROJECT, <https://perma.cc/SCJ7-PQRR>; *Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVANCEMENT PROJECT, <https://perma.cc/W79M-3C2C> (noting that 25 states permit transgender athletes to play on sports teams consistent with their gender identity).

94. See, e.g., Eric Geiger, *God's View of Gender Dysphoria and the Transgender Movement*, ERIC GEIGER (Feb. 14, 2023), <https://perma.cc/MW95-GNBS>; Andrew T. Walker, *Gender and Sexuality*, THE GOSPEL COALITION, <https://perma.cc/P9Q7-BXQD>.

95. See generally Velte, *Mitigating*, *supra* note 63, at 204.

96. See Brief of the American Psychological Association and Other Leading Mental Health Organizations as Amici Curiae in Support of Petitioners, *United States v. Skrmetti*, No. 23-477, at 6 (U.S. 2024).

97. *What is Gender Dysphoria?*, Am. Psychiatric Ass'n, <https://perma.cc/AX45-L8C2>.

98. *Id.* For most people, gender identity stabilizes between the ages of three and four. See Velte, *Mitigating*, *supra* note 63, at 204.

99. Brief of Amici Curiae American Academy of Pediatrics and Additional National and State Medical and Health Organizations in Support of Petitioner and Respondents in Support of Petitioner, *United States v. Skrmetti*, at 4, No. 23-477 U.S. Sept. 3, 2024) [hereinafter AAP Amicus Brief].

100. *Id.* Gender-affirming care should be distinguished from transitioning. Transitioning is one protocol recommended by the World Professional Association for Transgender Health (WPATH), which was established in 1979 with a mission of understanding and treating transgender people. See

minors most often consists of hormone-based medical interventions and rarely involves surgical interventions.¹⁰¹

The protocols for treating transgender children and adolescents differ from those for treating and adults.¹⁰² Professionals further distinguish between minors, recommending different interventions for children before puberty and pubescent adolescents. Because there is evidence that some pre-adolescent transgender children with gender dysphoria do not continue along that path into adolescence and adulthood, three approaches have emerged for treating children with gender dysphoria: (1) affirm and accept the child’s gender identity through social transition; (2) insist that the child align their gender identity with their sex assigned at birth, and (3) utilize a supportive but incremental approach, through which children work with a supportive therapist to explore their gender identity but proceed slowly with social and medical transition.¹⁰³

There is broader consensus concerning the treatment of gender dysphoria in transgender adolescents (as opposed to prepubescent children) given that “the persistence of gender dysphoria into adulthood appears to be much higher for adolescents.”¹⁰⁴ Widely accepted protocols for the treatment of adolescent gender dysphoria include the use of puberty blockers and hormone therapy.¹⁰⁵

Puberty blockers do just that—they delay the onset of puberty and the physical changes that accompany it: the development of secondary sex characteristics such

Velte, *Mitigating*, *supra* note 63, at 203. Transition is a best practice for all transgender people, not just transgender people with gender dysphoria. *Id.* Transition may be “social” (living one’s daily life presenting as their gender identity rather than as their sex assigned at birth), “legal” (changing the gender marker on identity documents), or “medical.” *Id.* Medical transition may involve hormone treatment, surgery, or both. *Id.* at 203–04. This essay focuses on medical transition, specifically medical transition for minors, which is the target of the laws banning gender-affirming care for minors.

101. See AAP Amicus Brief at 3. n.4; see also Brief of the American Psychological Association and Other Leading Mental Health Organizations as Amici Curiae in Support of Petitioners, *United States v. Skrmetti*, No. 23-477, at 25 (U.S. 2024) (“most surgical interventions are offered to adults only, save for chest masculinization surgery, which is only available to transgender adolescents experiencing “significant and impairing chest dysphoria,” and only with the support and consent of their parents”); see also *Get the Facts on Gender-Affirming Care*, HUM. RTS. CAMPAIGN, <https://perma.cc/3PKP-D54Y>.

102. See Velte, *Mitigating*, *supra* note 63, at 204. See also Brief of the American Psychological Association and Other Leading Mental Health Organizations as Amici Curiae in Support of Petitioners, *United States v. Skrmetti*, No. 23-477, at 8 (U.S. 2024).

103. See Velte, *Mitigating*, *supra* note 63, at 205–06; see also Suzi Goebel, *Protect Trans Kids: A Call to Action*, 77 SMU L. REV. FORUM 50, 54 (2024) (“The first stage of gender-affirming care is typically social transitioning, which involves changes to gender presentation (such as wearing clothes or hairstyles associated with a certain gender), names and pronouns, and participation in other social activities like gender-segregated sports.”); Austin Hoening, Student Note, *Anti-Transgender Legislation in Arizona, Alabama, and Arkansas: Arbitrary Moral Discrimination Masquerading as Child Protection*, 101 DENV. L. REV. 185, 188–89 (2023).

104. E. Coleman, et al., World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 11 (7th ed., 2011), <https://perma.cc/DN3V-GB8W> [hereinafter WPATH SOC].

105. See *id.* at 21. The WPATH Standards of Care state gender-affirming surgery should not be performed until a person reaches the age of legal majority to consent to medical procedures. *Id.* See also Brief of the American Psychological Association and Other Leading Mental Health Organizations as Amici Curiae in Support of Petitioners, *United States v. Skrmetti*, No. 23-477, at 9 (U.S. 2024).

as breast development, the development of an Adam's apple, the onset of menstruation, and the deepening of the voice.¹⁰⁶ Delaying the onset of puberty allows transgender adolescents to avoid the physical and psychological discomfort that these physical changes would bring on¹⁰⁷ and thus gives these adolescents time to work through their exploration of their gender identity with parents and mental health providers.¹⁰⁸ Puberty blockers are reversible, meaning that if an adolescent struggling with their gender identity ultimately determines that they are cisgender, stopping the use of puberty blockers will permit the onset of a puberty process that is consistent with that person's sex assigned at birth and gender identity.¹⁰⁹

If, however, the adolescent ultimately determines that they are, in fact, transgender, accepted medical protocols would call for the use of hormone therapy.¹¹⁰ This involves the administration of cross-sex hormones, which enables the body to develop secondary sex characteristics consistent with one's gender identity.¹¹¹ For example, a transgender girl would begin using testosterone hormone therapy to force male puberty and its attendant physical changes. These treatments are highly individualized, safe, evidence-based and effective.¹¹²

The research is clear: transgender children and adolescents suffer negative mental health outcomes, such as depression, suicidal ideation, and anxiety, when they are denied appropriate medical care for their transgender dysphoria.¹¹³ Moreover, such care, which is "overwhelmingly accepted by the medical community"¹¹⁴ and is a "critical component for ensuring that transgender

106. See Brief of the American Psychological Association and Other Leading Mental Health Organizations as Amici Curiae in Support of Petitioners, *United States v. Skrmetti*, No. 23-477, at 26–28 (U.S. 2024); Amici Brief of Genders & Sexualities Alliance Network, PFLAG, Inc., and Other Non-Profit Organizations in Support of the United States and Respondents in Support of the Petitioner, *United States v. Skrmetti*, No. 23-477, at 7 (U.S. 2024).

107. See Brief of the American Psychological Association and Other Leading Mental Health Organizations as Amici Curiae in Support of Petitioners, *United States v. Skrmetti*, No. 23-477, at 17 (U.S. 2024).

108. See Brief of Amici Curiae American Historical Association, Organization of American Historians, LGBTQ+ History Association, and Historian Scholars in Support of Petitioner and Respondents in Support of Petitioner, *United States v. Skrmetti*, No. 23-477, at 24 (U.S. 2024); Lois A. Weithorn, *The Intrusive State: Restrictions on Gender-Affirming Healthcare for Minors, Exceptions to the Doctrine of Parental Consent, and Reliance on Science and Medical Expertise*, 75 UC LAW J. 713, 744 (2024); Dara E. Purvis, *Gender-Affirming Care and Children's Liberty*, 15 CONLAWNOW 155, 157 (2023); Megan Medlicott, *A Parent's Right to Obtain Puberty Blockers for Their Child*, 56 CONN. L. REV. 301, 309–13 (2023).

109. See *id.*

110. See Weithorn, *supra* note 108, at 746.

111. See *id.*

112. See Brief of the American Psychological Association and Other Leading Mental Health Organizations as Amici Curiae in Support of Petitioners, *United States v. Skrmetti*, No. 23-477, at 16, 20, 23–24 (U.S. 2024).

113. See, e.g., Diana M. Tordoff, et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 JAMA NETWORK OPEN (2022), <https://perma.cc/GVQ7-8EXT>.

114. Brief of the American Psychological Association and Other Leading Mental Health Organizations as Amici Curiae in Support of Petitioners, *United States v. Skrmetti*, No. 23-477, at 5 (U.S. 2024).

youth lead healthy lives,”¹¹⁵ is the exact care targeted by the bans on gender-affirming care, to which I turn next.

B. AN OVERVIEW OF STATE LAWS BANNING GENDER-AFFIRMING CARE FOR MINORS AND THE RATIONALE BEHIND THEM

There has been an onslaught of anti-transgender bills introduced in state legislatures since 2018. These bills generally began as ones focused on the use of sex-segregated spaces by transgender people, such as prohibiting transgender people, including transgender minors at school, from using locker rooms and restrooms that align with their gender identity.¹¹⁶ Thus, the early focus of anti-trans legislation did not focus on medical treatment. In fact, before 2020, no state banned gender-affirming care for minors.¹¹⁷ More recently, however, this anti-transgender legislation has turned its focus away from public spaces and toward the private realm of gender-affirming medical care for minors.¹¹⁸ Today, 25 states ban such care.¹¹⁹ These laws generally target medical professionals, although some also target parents of transgender youth.¹²⁰ All mainstream medical associations agree that such bans are contrary to evidence-based best practices for treating trans youth experiencing gender dysphoria.¹²¹ Yet, proponents of these bills persist with the narrative that such laws are necessary to protect trans children.¹²²

The general contention that these bans are necessary to protect transgender minors is supported by more specific misconceptions that gender-affirming care for

115. *Id.* at 16.

116. *See, e.g.*, Kathleen Kassa & Alexander J. Merritt, *Health*, 40 GA. ST. U. L. REV. 127, 128 (2023) (noting that over 400 anti-trans bills were introduced in states in 2023).

117. *See* Purvis, *supra* note 108, at 160.

118. Kassa & Merritt, *supra* note 116, at 128–29 (noting that 130 state bills targeting gender-affirming care were introduced in in 2023, 22 of which were passed); *see also* Dahlia Lithwick, *How Anti-Trans Legislation Took Over State-Level Governments*, SLATE (June 13, 2023), <https://perma.cc/GU8J-YQYB>.

119. *See* Movement Advancement Project, <https://perma.cc/7D62-2NTF>. These states are: Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming. *See id.*

120. *See generally*, Medlicott, *supra* note 108, at 313–15; *see also* Scott Skinner-Thompson, *Trans Animus*, 65 B.C. L. REV. 965, 991–93 (2024); Purvis, *supra* note 108, at 160.

121. *See, e.g.*, *Every Major Medical Association Supports Health Care for Transgender People and Youth: The Facts Finally Catch Up to States Passing Discriminatory Bills*, GLAAD (June 21, 2023), <https://perma.cc/PRZ9-378X>; AAP Amicus Brief.

122. *See, e.g.*, Jo Yurcaba, *Texas AG says transition care for minors is child abuse under state law*, NBC NEWS (Feb. 22, 2022), <https://perma.cc/XUW5-MJ3S>; ALA. CODE § 26-26-1 (West, Westlaw current through 2024 Reg. Sess.); Ark. Code Ann. § 20-9-1501 (West, Westlaw current through 2025 Reg. Sess.); ARIZ. REV. STAT. ANN. § 32-3230 (West, Westlaw current through 2024 Reg. Sess.); MONT. CODE ANN. § 50-4-1002 (West, Westlaw current through 2023 Reg. Sess.) (stating the law’s purpose is “to enhance the protection of minors and their families . . . from any form of pressure to receive harmful, experimental puberty blockers and cross-sex hormones and to undergo irreversible, life-altering surgical procedures prior to attaining the age of majority”).

minors is unsafe and thus harmful,¹²³ sometimes permanent,¹²⁴ experimental,¹²⁵ and that transgender adolescents who receive such care might later regret it.¹²⁶ For example, Tennessee's ban on gender-affirming care, SB1,¹²⁷ which is currently being challenged at the U.S. Supreme Court,¹²⁸ offers the following "legitimate, substantial, and compelling" interests to justify the law: "protecting minors from physical and emotional harm"; "promoting the dignity of minors"; "encouraging minors to appreciate their sex, particularly as they undergo puberty"; and "protecting the integrity of the medical profession, including by prohibiting medical procedures that are harmful, unethical, immoral, experimental, or unsupported by high-quality or long-term studies, or that might encourage minors to become disdainful of their sex."¹²⁹

The titles of the Alabama and Montana laws telegraph their alleged protective purpose: the Vulnerable Child Compassion and Protection Act and the Youth Health Protection Act, respectively.¹³⁰ Representative Wes Allen, a sponsor of

123. See Austin Hoenig, *Anti-Transgender Legislation in Arizona, Alabama, and Arkansas: Arbitrary Moral Discrimination Masquerading as Child Protection*, 101 DENV. L. REV. 185, 200 (2023–2024).

124. See, e.g., ALA. CODE § 26-26-2 (West, Westlaw current through 2024 Reg. Sess.).

125. See, e.g., Defendants' Combined Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction; Reply in Support of Defendants' Motion to Dismiss at 1, *Brandt v. Rutledge*, 551 F. Supp. 3d 882 (E.D. Ark. 2021) (No. 21-cv-00450); see also, e.g., Combined Memorandum of L. in Opposition to Motion for Preliminary Injunction & in Support of Motion to Dismiss at 17–19, *Poe ex rel. Poe v. Labrador*, 709 F. Supp. 3d 1169 (D. Idaho Oct. 2, 2023), 2023 WL 8850770; Defendants' Response in Opposition to Plaintiff's Motion for Preliminary Injunction at 27–29, *van Garderen v. Montana*, No. 2023-0541 (Mont. Dist. Ct. Missoula Cnty. Sept. 1, 2023); David Chen, *Missouri to Restrict Medical Care for Transgender Adults, Citing Consumer Protection Law*, N.Y. TIMES (Apr. 14, 2023), <https://perma.cc/9JR5-DCKR>. Arkansas's law is titled *Save Adolescents from Experimentation*. See Ark. Code Ann. § 20-9-1501 (West, Westlaw current through 2025 Reg. Sess.). Mississippi's law is titled *Regulate Experimental Adolescent Procedures*. See MISS. CODE ANN. § 41-141-1 (West, Westlaw current through 2024 Reg. Sess.). See also TENN. CODE ANN. §§ 68-33-101(b-m) (West, Westlaw current through 2024 Reg. Sess.); ARK. CODE ANN. § 20-9-1501 (West, Westlaw current through 2025 Reg. Sess.); ALA. CODE § 26-26-2 (West, Westlaw current through 2024 Reg. Sess.); MISS. CODE ANN. § 41-141-1 (West, Westlaw current through 2024 Reg. Sess.); Serafin, *supra* note 16, at 431–32.

126. See generally, e.g., Noa Ben-Asher & Margot J. Pollans, *Gender Regrets: Banning Abortion and Gender-Affirming Care*, 2024 UTAH L. REV. 763, 764, 772 (2024). In fact, fewer than one percent of transgender people regret having had gender-affirming surgery. *Id.* at 768. See also Gina Dvorak, 'Absolutely Lucifer at its Finest': Nebraska Governor Criticized for Categorization of Trans Youth Care, FIRST WATCH6 (May 23, 2023), <https://perma.cc/BJW7-SRKU> (quoting Nebraska's governor stating that the state's ban "steps towards making sure our kids aren't making harmful decisions that they're gonna regret for the rest of their lives and that they're duped by outside voices"); Missouri's governor made a similar statement when signing that state's ban into law. See Kaanita Iyer, Jack Forrest, & Devan Cole, *Missouri Governor Signs Gender-Affirming Care Ban for Minors and Anti-Trans Sports Bill*, CNN (June 7, 2023) ("[W]e must protect children from making life-altering decisions that they could come to regret in adulthood once they have physically and emotionally matured."), <https://perma.cc/8CGS-JUK8>.

127. TENN. CODE ANN. § 68-33-101 (West, Westlaw current through 2024 Reg. Sess.).

128. See *United States v. Skrametti*, 144 S. Ct. 2679 (2024); see also *L. W. v. Skrametti*, 83 F.4th 460 (6th Cir. 2023).

129. TENN. CODE ANN. § 68-33-101(m) (West, Westlaw current through 2024 Reg. Sess.); see also TENN. CODE ANN. § 68-33-101(b) (2023).

130. ALA. CODE § 26-26-1 (West, Westlaw current through 2024 Reg. Sess.); MONT. CODE ANN. § 50-4-1001 (West, Westlaw current through 2023 Reg. Sess.).

Alabama’s ban, likened the ban to the restrictions of the sale to minors of alcohol, cigarettes, and tattoos, declaring that all “are harmful to minors.”¹³¹ As is often the case with state legislators who support these bans,¹³² Wes Allen’s political supporters include organizations aligned with white Christian nationalist values.¹³³ John Fuller, a sponsor of Montana’s ban—who declared the ban necessary because “[t]he state of Montana has the responsibility and the right to protect children from such abuse”¹³⁴—is credited as being a part of Montana’s “hard right turn toward Christian nationalism.”¹³⁵

The Kentucky legislature justified its ban on gender-affirming care for minors based on its assertion that the law “protects children in Kentucky from irreversible harm.”¹³⁶ Although the Kentucky governor vetoed the bill, the legislature overrode the veto and the ban became law.¹³⁷ The executive director of the Kentucky-based Family Foundation, the “leading Christian public policy organization in Kentucky” that “works to engage His church and encourage His people to be the salt and light they are called to be while promoting biblically sound public policy[.]”¹³⁸ celebrated the override of the veto.¹³⁹

In Texas, Attorney General Ken Paxton penned an opinion letter, in response to a request from a legislator, contending that the facilitation of gender-affirming care by parents of minor children “can legally constitute child abuse.”¹⁴⁰ Texas Governor Greg Abbott went further than A.G. Paxton when he declared that such provision of gender-affirming care by parents *is* child abuse.¹⁴¹ The Texas

131. Jo Yurcaba, *Alabama Governor Signs Bill Criminalizing Transgender Health Care for Minors*, NBC NEWS (Apr. 8, 2022), <https://perma.cc/PF6M-5QVP>.

132. See generally Russell Contreras, *The Forces Behind Anti-Trans Bills Across the U.S.*, AXIOS (Mar. 31, 2023), <https://perma.cc/9LVP-58V5>; Meg Cunningham, *National Conservative Groups Working to Limit Transgender Rights are Finding Success in Missouri*, KCUR (Mar. 11, 2024), <https://perma.cc/RWL7-NTSA>.

133. See, e.g., John H. Glenn, *Alabama Citizens for Life Endorse Wes Allen for Secretary of State*, ALA. POL. REP. (May 13, 2022), <https://perma.cc/2CC8-DXN7>.

134. Mara Silvers, *Lawmakers Debate Ban on Gender-Affirming Care for Transgender Minors*, MONT. FREE PRESS (Jan. 27, 2023), <https://perma.cc/4ZNT-7EKL>.

135. See Abe Streep, *How Montana Took a Hard Right Turn Toward Christian Nationalism*, N.Y. TIMES (Jan. 11, 2023), <https://perma.cc/6GB2-YPXH>.

136. Reply Brief for Kentucky, 2023 WL 5500631, at *21, *Doe v. Thornbury*, 75 F.4th 655 (6th Cir. 2023).

137. See Tessa Duvall & Austin Horn, SB 150: *KY Legislature Easily Overrides Gov. Beshear’s Veto of Gender-Affirming Care Ban Bill*, LEXINGTON HERALD-LEADER (Mar. 29, 2023), <https://perma.cc/L588-6SNC>.

138. *About Us*, FAMILY FOUND., <https://perma.cc/UA8M-2D94>.

139. He stated: “Today’s vote to override Gov. Beshear’s veto of SB 150 is a win for children and their parents in Kentucky. SB 150 will protect the lives of Kentucky children by setting policy in alignment with the truth that every child is created as a male or female and deserves to be loved, treated with dignity, and accepted for who they really (are).” Duvall & Horn, *supra* note 137; see also Austin Horn, *Behind the Scenes: How an Effort to Soften Kentucky’s ‘Anti-Trans’ Bill Fell Apart*, LEXINGTON HERALD-LEADER (Mar. 29, 2023), <https://perma.cc/HH5D-PUVN>.

140. Letter from Ken Paxton, Tex. Att’y Gen, to Hon. Matt Krause, Chair, Tex. House Comm. On Gen. Investigating at 2 (Feb. 18, 2022), <https://perma.cc/UF83-V5YP>.

141. Purvis, *supra* note 108, at 159–60.

Department of Family and Protective Services has initiated investigations of child abuse against nine families who provided gender-affirming care to their minor children.¹⁴²

After Idaho's governor signed that state's ban into law, the president of a conservative Christian policy and research group remarked: "We're grateful that Gov. Brad Little fulfilled his responsibility to protect vulnerable children struggling with gender dysphoria[.]"¹⁴³ The president of another conservative organization told the press: "We are thankful that Gov. Little heard. . . the message of thousands of Idahoans concerned about the brainwashing and long term effects of radical gender ideology on our kids. . . Idaho will be a state where children can grow up free from this kind of harm."¹⁴⁴ He went on to state that the new law was the "'culmination of a long fight' to protect children."¹⁴⁵ A national conservative advocacy organization issued a press release applauding the Idaho governor's decision to sign the bill, stating: "It is encouraging to see lawmakers nationwide taking action to protect children from the predatory transgender industry. . . We thank Gov. Little and the Idaho Legislature for stepping up to protect their state's families and kids."¹⁴⁶

Additional examples of this "child protection" narrative surrounding the bans include:

- Alabama's governor statement explaining her decision to sign that state's ban on gender-affirming care into law: "I believe very strongly that if the Good Lord made you a boy, you are a boy, and if he made you a girl, you are a girl. We should especially protect our children from these radical, life-altering drugs and surgeries when they are at such a vulnerable stage in life. Instead, let us all focus on helping them to properly develop into the adults God intended them to be."¹⁴⁷
- South Dakota's governor stated, when signing the ban into law: "South Dakota's kids are our future. With this legislation, we are protecting kids from harmful, permanent medical procedures. . . I will always stand up for the next generation of South Dakotans."¹⁴⁸

142. See Serafin, *supra* note 16, at 415; see also Madeleine Carlisle, 'I'm Just Waiting for Someone to Knock on the Door.' Parents of Trans Kids in Texas Fear Family Protective Services Will Target Them, TIME (May 19, 2022).

143. Mia Maldonado, *All Kids 'Deserve A Chance': Idaho, U.S. React to Governor Signing Law to Ban Gender-Affirming Care*, IDAHO CAP. SUN (Apr. 6, 2023), <https://perma.cc/TKH9-Z2NS>.

144. *Id.*

145. *Id.*

146. *Id.*

147. Caroline Klapp, *Governor Ivey Signs Transgender Youth Bills Into Law*, WAFF 48 (Apr. 8, 2022), <https://perma.cc/9UEF-BK39>; see also Hoenig, *supra* note 123, at 205 ("Rather than expressing a genuine effort to protect children, the Governor's sentiment demonstrates an arbitrary moral determination based on intolerance in the name of religion. It is *religious affirmation* through discrimination.") (emphasis in original).

148. Sydney Kashiwagi, *South Dakota Governor Signs Bill Prohibiting Gender-Affirming Treatment for Transgender Minors*, CNN (Feb. 13, 2023), <https://perma.cc/W5BE-HVEB>.

- Nebraska’s governor stated when signing that state’s ban into law: “[W]e believe in protecting our kids, making sure that they—parents and kids—don’t get duped into this silliness that if you do this, you’re gonna become happy. That is absolutely Lucifer at its finest. And we believe this law protects and allows our children to make decisions on their own when they become of age.”¹⁴⁹
- When signing Oklahoma’s bill into law, the governor stated: “By signing this bill today we are taking the first step to protect children from permanent gender transition surgeries and therapies. It is wildly inappropriate for taxpayer dollars to be used for condoning, promoting, or performing these types of controversial procedures on healthy children[.]”¹⁵⁰
- In response to a lawsuit challenging Indiana’s ban, the state’s attorney general stated: “Signing the bill that protects our children from irreversible and damaging decisions was the right move by the governor. Banning these experimental procedures is critical for the health and wellbeing of future generations.”¹⁵¹
- A Tennessee lawmaker offered this justification for that state’s ban: “The state has a compelling interest to protect children from experimental and unproven medical procedures.”¹⁵²
- Florida’s governor Ron DeSantis described that state’s ban as one that will “outlaw the mutilation of minors.”¹⁵³
- A Utah State Senator who supported that state’s ban described gender-affirming care as “a radical and dangerous push for children to enter this version of health care.”¹⁵⁴
- Missouri’s governor described that state’s ban as an “effort to protect . . . Missouri children from potentially harmful experimental surgeries and treatment.”¹⁵⁵

These bans were proposed and adopted notwithstanding that the purported state interest in protecting trans children is belied by scientific and medical evidence that gender-affirming care is safe and, in fact, a best practice.¹⁵⁶ Moreover,

149. Dvorak, *supra* note 126.

150. Governor Stitt Signs Bill to Prevent Gender Transition Services at OU Children’s Hospital, Calls for Statewide Ban on Irreversible Transition Surgeries, Hormone Therapies on Minors, OKLAHOMA.GOV (Oct. 4, 2022), <https://perma.cc/6EY8-K4M6>.

151. Whitney Downard, *Holcomb Signs Transgender Medical Care Ban, ACLU Files Suit*, IND. CAP. CHRON. (Apr. 5, 2023), <https://perma.cc/8CA6-NK3R>.

152. Shawna Mizelle, *Tennessee Governor Signs Ban on Gender-Affirming Care for Minors*, CNN (Mar. 3, 2023), <https://perma.cc/N9Y9-6MBF>.

153. Jo Yurcaba, *DeSantis Signs ‘Don’t Say Gay’ Expansion and Gender-Affirming Care Ban*, NBC NEWS (Mar. 17, 2023), <https://perma.cc/CC9H-SDNX>.

154. Ava Sasani, *Utah Bans Transition Care for Transgender Youth*, N.Y. TIMES (Jan. 29, 2023), <https://perma.cc/5X8S-YEYB>.

155. Iyer, Forrest, & Cole, *supra* note 126 (“[W]e must protect children from making life-altering decisions that they could come to regret in adulthood once they have physically and emotionally matured.”).

156. See Goebel, *supra* note 103, at 52–54; Ben-Asher & Pollans, *supra* note 126, at 768; Lewis Grossman, *Criminalizing Transgender Care*, 110 IOWA L. REV. 281, 292–93 (2024); Hoening, *supra* note

lawmakers' alleged concern about protecting trans children from harm stands in marked contrast to the fact that the same lawmakers *permit* the *same* medical treatment for cisgender youth without acknowledging that the same purported risks are the same for all youth who receive the treatment.¹⁵⁷

While beyond the scope of this article, which focuses on the narrative and rhetorical aspects that underlie the bans on gender-affirming care rather than directly addressing the substantive medical claims made by proponents of the laws, it is important to briefly note the absence of scientific or medical evidence for proponents of these laws.¹⁵⁸ Instead, these laws are justified by a combination of the “protect the children” rhetoric (the focus of this article) *and* on religious pseudo-science packaged as legitimate medical and scientific evidence that is anything but legitimate.¹⁵⁹

These bans are, in fact, taken from the playbook of the conservative Christian political movement—a literal playbook of model legislation distributed by

123, at 199–200; G. Samantha Rosenthal, *Gender-Affirming Care Has a Long History in the US - and Not Just for Transgender People*, CONVERSATION (Mar. 27, 2023), <https://perma.cc/7LSZ-MRAM>; Katherine L. Kraschel, Alexander Chen, Jack L. Turban, & I. Glenn Cohen, *Legislation Restricting Gender-Affirming Care for Transgender Youth: Politics Eclipse Healthcare*, 3 CELL REPS. MED. 100719, 1, 1 (2022); Cecile A. Unger, *Hormone Therapy for Transgender Patients*, 5 Translational Andrology and Urology 877, 878 (2016); Jennifer Logan, *A Public Health Law Response to Gender-Affirming Car Bans*, 23 CONN. PUB. INT. L.J. 78, 91–92 (2024); John M. Rossi, *No Time for Caution: Ensuring Equity for Transgender Individuals in Fourteenth Amendment Equal Protection Challenges*, 59 GONZ. L. REV. 413, 426–27 (2024).

157. See Hoenig, *supra* note 123, at 193–95 (noting that these laws’ “limited application to transgender affirmation and transition makes clear that child safety is not of concern”); Serafin, *supra* note 16, at 421 (“[N]one of these states have banned aesthetic plastic surgery for cisgender minor children, despite the fact that it is risky, permanent, and of uncertain benefit. It is only medical care for youth who express non-traditional gender identities that seems to provoke the ire of state legislators, one of whom likened gender-affirming care to the “bizarre medical experiments” of the Holocaust.”); Maggie Crain, *Fear and Loathing in Animus: Moral Panic, the Contextualizing Tool for Challenging Gender-Affirming Care Bans*, 39 WIS. J.L. GENDER & SOC’Y 21, 37 (2024) (noting that “a cisgender child on puberty blockers for precocious puberty is not prohibited from accessing the same medication that is prohibited for use by a transgender child to delay or slow puberty. Here, the states’ histrionic language and irrational reasoning are directly rooted in the larger moral panic around gender expression and transgender identity, especially among minors.”).

158. See, e.g., SUSAN D. BOULWARE, REBECCA KAMODY, LAURA KUPER, MEREDITH McNAMARA, CHRISTY OLEZESKI, NATHALIE SZILAGYI, & ANNE ALSTOTT, *BIASED SCIENCE: THE TEXAS AND ALABAMA MEASURES CRIMINALIZING MEDICAL TREATMENT FOR TRANSGENDER CHILDREN AND ADOLESCENTS RELY ON INACCURATE AND MISLEADING SCIENTIFIC CLAIMS* (2022), <https://perma.cc/QY3C-ES4R>; Karen M. Matouk & Melina Wald, *Gender-Affirming Care Saves Lives*, COLUM. UNIV. DEP’T OF PSYCHIATRY (Mar. 30, 2022), <https://perma.cc/6SQB-KD4R> (noting that “measures to restrict this critical care not only run counter to scientific evidence but also threaten the mental health of [trans] youth[.]”).

159. See Anne Alstott, Melisa Olgun, Henry Robinson, and Meredith McNamara, “*Demons and Imps*”: *Misinformation and Religious Pseudoscience in State Anti-Transgender Laws*, 35 YALE J.L. & FEMINISM 223, 227, 239 (2024) (providing an overview of conservative Christian pseudo-science organizations, the work of which has been cited to justify anti-LGBTQ laws and concluding: “On issues including adoption, conversion therapy, and LGBTQIA+ ‘criminality,’ conservative Christian organizations have long sought to cast what are, at bottom, religious views about sexual morality, family structure, and abortion in a deceptively secular, ‘scientific’ light.”).

conservative Christian legal and policy groups.¹⁶⁰ Faith-based, anti-LGBTQIA+ “research” is used to justify state action against trans youth. When these laws are challenged, this junk science is used by conservative Christian legal organizations to “manufacture uncertainty” in the minds of judges, thus causing some courts to uphold anti-LGBTQIA+ laws.¹⁶¹ Although anti-trans laws, including bans on gender-affirming care for minors, are rooted in religion, the faith-based premise of these laws is rarely expressly articulated.¹⁶² Instead, these bans are most commonly justified by reference to science and medicine, which in turn underscore the “protect the children” rationale for the bans. While purportedly secular on its face, this scientific and medical evidence is, in contrast, “misinformation and religious pseudoscience.”¹⁶³ That misinformation is likely to persist in a way that hides that it is, in fact, misinformation: in the first days of his presidency, President Trump signed Executive Order 14149, titled “Restoring Freedom of Speech and Ending Federal Censorship,” which ends the attempts of President Biden’s administration to combat misinformation.¹⁶⁴

160. See Sarah Posner, *The Big Myth About the Supposed ‘Anti-Trans’ Backlash*, MSNBC (June 12, 2023), <https://perma.cc/9T7H-833Q> (noting that in 2021 a coalition of the Focus on the Family, the Alliance Defending Freedom, and the Heritage Foundation, “launched the ‘Promise to America’s Children,’ which claimed to be ‘a national movement of parents and lawmakers to oppose legislation that harms children’ and ‘to create and support laws that will protect children’s health, safety, and families.’”); Kavish Harjai, Jeff McMillan, & Kimberlee Kruesi, *Transgender Health: Comparing Model Bills to Real Proposals*, ASSOC. PRESS, (May 23, 2023), <https://perma.cc/2MCK-WTTZ>; see also Posner, *Christian Nationalist Boot Camp*, *supra* note 50.

161. See Ari Ezra Waldman, *Manufacturing Uncertainty in Constitutional Law*, 91 FORDHAM L. REV. 2249 (2023); see also Alstott, Olgun, Robinson, & McNamara, *supra* note 159, at 239 (noting that “[b]y concealing its religious views behind supposedly scientific data, in other words, the Christian right aims to give its message the appearance of moderation, attracting those likely to be alienated by more overtly theological arguments,” and “arguments that sound scientific—that on their face appear to be backed up by studies, figures, credentialed “experts”—can find a receptive audience in certain quarters of the judiciary, and among policymakers who lack the training necessary to evaluate them critically.”).

162. Legislative debate on Florida’s was a rare exception to this trend. During that debate, state representative Webster Barnaby made explicit his faith-based opposition to transgender people accessing public restrooms consistent with their gender identity. He stated that people with gender dysphoria are like:

mutants from another planet. This is Planet Earth, where God created men, male and women, female! . . . [T]he Lord rebuke you Satan and all of your demons and imps that come parade before us. That’s right I called you demons and imps who come and parade before us and pretend that you are part of this world.

Facility Requirements Based on Sex: Hearing on H.B. 1521 Before the H. Reg. Reform & Econ. Dev. Subcomm., 2023 Leg., 54th Sess. (Fla. Apr. 10, 2023) (statement of Rep. Webster Barnaby, Member, H. Commerce Comm., at 2:30:35-2:34:10), <https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8804>. Barnaby apologized later in the hearing. See Kiara Alfonseca, *Florida Republican Apologizes for Anti-Transgender ‘Demons’ and ‘Mutants’ Comments*, ABC NEWS (Apr. 11, 2023), <https://perma.cc/6BUG-V8GV> [hereinafter *Florida Republican Apologizes*].

163. Alstott, *supra* note 159, at 227.

164. See Executive Order 14149 (Jan. 20, 2025), <https://perma.cc/VQQ2-NJFD>. This Executive Order is based on Project 2025. See, e.g., Clara Ence Morse, *Five Ways Project 2025 Appeared in Trump’s Presidential Directives*, THE SPOKESMAN-REVIEW (Jan. 25, 2025), <https://perma.cc/8R6J-BXN3>.

In sum, the purported legislative concern about protecting transgender minors is thus pretextual.¹⁶⁵ That pretext only thinly veils the real intent of these laws: discrimination against transgender people based on conservative Christian beliefs about the gender binary, gender roles, and patriarchy.¹⁶⁶ Thus, notwithstanding the deafening chorus of lawmakers' claims about protecting trans children, "[t]hese bans are not protecting Trans youth; worse, they risk killing them."¹⁶⁷

C. WHAT'S OLD IS NEW AGAIN: THE HISTORY OF "PROTECT THE CHILDREN" RHETORIC

We have seen this "protect the children" narrative before. It has been a consistent refrain of opponents of LGBTQIA+ equality since the emergence of the LGBTQIA+ rights movement, and often is the basis for backlash after LGBTQIA+ civil rights victories.¹⁶⁸

1. The 1950s–1970s

By the 1950s, all 50 states had passed sodomy laws, based in part on concerns for children's safety.¹⁶⁹ In the 1950s and 1960s, laws prohibiting LGBTQIA+ people from being employed as teachers were passed, justified by a rationale of protecting children.¹⁷⁰ In 1958, a Florida legislative committee began an investigation to support its desire to purge LGBTQIA+ teachers from public schools.¹⁷¹ That committee opined that a "great many homosexuals have an insatiable appetite for sexual activities and find special gratification in the recruitment to their ranks of youth."¹⁷² This "seduction" rhetoric would later be referred to as "grooming."

As the 1960s faded into the 1970s, the white Christian nationalism movement became a potent political force.¹⁷³ Anita Bryant, a national celebrity, launched a campaign to repeal an anti-discrimination ordinance in Dade County, Florida,

165. See, Hoenig, *supra* note 123, at 204–05.

166. See, e.g., Alfonseca, *Florida Republican Apologizes*, *supra* note 162.

167. Kimberly Jade Norwood & Jaimie Hileman, *The Tragic Costs of "Protecting" Trans Youth*, 73 WASH. U. J.L. & POL'Y 203, 244 (2024). See also Casey R. Johnson, *2022 Brings A Flood of Anti-LGBT Legislation Across the Country*, ORANGE CNTY. BAR ASS'N (June 2022), <https://perma.cc/A9U3-6DR4> ("Ironically, the protection of children is often cited as the reason for much of the anti-LGBT legislation currently being proposed across the country. However, the outcome of such legislation will most certainly harm LGBT youth[.]").

168. See generally Clifford Rosky, *Fear of the Queer Child*, 61 BUFF. L. REV. 607, 609 (2013).

169. See generally *Criminalization of Homosexuality in American History*, DEATH PENALTY INFO. CTR., <https://perma.cc/DH7Y-52JJ>.

170. See, e.g., Graves, *supra* note 83.

171. See WILLIAM N. ESKRIDGE, JR., *GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET* 73 (Harvard University Press 1999).

172. *Id.* (quoting Florida Legislative Investigation Comm., *Homosexuality and Citizenship in Florida* (Tallahassee, Jan. 1964) in Johns Committee Files, Box 1, Folder 21).

173. See DIDI HERMAN, *THE ANTIGAY AGENDA: ORTHODOX VISION AND THE CHRISTIAN RIGHT* 50 (1997); see also, Velte, *Gaslight Docket*, *supra* note 14, at 407–11.

that prohibited sexual orientation discrimination.¹⁷⁴ It was the first campaign to push back against LGBTQIA+ rights.¹⁷⁵ The child-protection rhetoric was front-and-center: her campaign was known as “Save Our Children.”¹⁷⁶ A cornerstone of that campaign was an expressly homophobic claim that homosexuals intended to recruit children into a gay lifestyle and then molest them.¹⁷⁷ The campaign succeeded and reached beyond Dade County: two days after the ordinance was repealed, Florida’s governor signed a law banning adoption by LGBTQIA+ people.¹⁷⁸

The 1970s also saw the deployment of the “protect the children” rhetoric in family law and employment law cases. For example, the 1975 case of *Chaffin v. Frye* involved a custody dispute in which one parent’s sexual orientation was used as a basis for questioning their fitness as a parent.¹⁷⁹ The court ruled against granting custody to the homosexual mother, citing potential harm to the children.¹⁸⁰ It stated that homosexuality is not “a pattern to which children should be exposed in their most formative and impressionable years or as an example that should be put before them for emulation.”¹⁸¹ The court further stated that “[i]n exercising a choice between homosexual and heterosexual households for purposes of child custody a trial court could conclude that permanent residence in a homosexual household would be detrimental to the children and contrary to their best interests.”¹⁸²

In the 1976 case of *In re Jane B.*, the court changed custody of a child from a lesbian mother to a heterosexual father, finding that the “homosexual relationship admittedly carried on by the respondent mother. . . where the infant child. . . resides, creates an improper environment for this child. . . . [L]iving with her mother while [mother’s partner] lives there in a lesbian relationship with the mother is not for the best interests and welfare of the child.”¹⁸³

174. See Anita Bryant and the Save Our Children Campaign, GAY HISTORY, <https://perma.cc/7ATP-VAF2>. The ordinance had passed by a margin of 69% to 31%. *Id.* During the campaign, Bryant stated: “As a mother, I know that homosexuals cannot biologically reproduce children, therefore, they must recruit our children[.]” *Id.*

175. See Anthony Niedwiecki, *Save Our Children: Overcoming the Narrative that Gays and Lesbians are Harmful to Children*, 21 DUKE J. GENDER L. & POL’Y 125, 143 (2023).

176. See Anita Bryant and the Save Our Children Campaign, GAY HISTORY, <http://gayhistory4u.blogspot.com/2009/08/religious-right-has-been-on-attack.html>. [<https://perma.cc/8WE8-624B>.] The ordinance had passed by a margin of 69% to 31%. *Id.* During the campaign, Bryant stated: “As a mother, I know that homosexuals cannot biologically reproduce children, therefore, they must recruit our children[.]”

177. See *id.*

178. Rebecca M. Solokar, *Gay and Lesbian Parenting in Florida: Family Creation Around the Law*, 4 FLA. INT’L U. L. REV. 473, 477–78 (2009). See generally FLA. STAT. § 63.042(3) (2006) (“No person eligible to adopt under this statute may adopt if that person is a homosexual.”), *invalidated by Florida Dep’t of Children & Families v. X.X.G. (In re Matter of Adoption of X.X.G. and N.R.G.)*, 45 So. 3d 79, 81 (Fla. Dist. Ct. App. 2010).

179. *Chaffin v. Frye*, 119 Cal.Rptr. 22, 25–26 (1975).

180. *Id.*

181. *Id.* at 26.

182. *Id.*

183. *In re Jane B.*, 380 N.Y.S.2d 848, 860 (Sup. Ct. 1976).

In the 1977 case of *Gaylord v. Tacoma School District No. 10*, the court upheld the termination of a gay high school teacher's employment.¹⁸⁴ The court held that homosexuality was immoral and because "[t]he moral conduct of a teacher is relevant to a consideration of that person's fitness or ability to function adequately as a teacher of the students he is expected to teach," the termination was justified."¹⁸⁵

While the trope of protecting children from LGBTQIA+ "groomers" and "predators" still had purchase in the 1970s, that decade also saw the emergence of a different "protect the children" narrative. It was less explicitly attacking of LGBTQIA+ people and thus more "palatable"¹⁸⁶ through the use of language such as "indoctrination, role modeling, and public approval" as the grounding of child-centered arguments against LGBTQIA+ rights.¹⁸⁷ "These narratives suggested new ways in which queer adults—and the public's growing acceptance of them—could mislead unwitting children into a queer life."¹⁸⁸

For example, proponents of the 1978 Briggs Amendment, which would prohibit the employment of LGBTQIA+ teachers in California's public schools, grounded the purported need for such a law in concerns about the "indoctrination" and "recruitment" of children.¹⁸⁹ Campaigns like Bryant's "Save Our Children" and the Briggs Amendment thus built on "fears about exposing children to queerness and took advantage of a general fear of the possibility of queer children."¹⁹⁰

2. 1980s–Early 2000s

In the 1980s, the use of "grooming" rhetoric continued, alleging that LGBTQIA+ people sought to enable the sexual abuse of children.¹⁹¹ The *Bowers* decision in 1986, which held that the state may criminalize same-sex intimate conduct, created the "bedrock of legal discrimination against gay men and lesbians"¹⁹² because if criminalization of homosexual conduct was constitutional, surely it was permissible to discriminate against LGBTQIA+ people in all other areas of life, such as family law and employment law.¹⁹³ For example, in *G.A. v. D.A.*, the Missouri Court of Appeals denied child custody to a lesbian woman and granted custody to the man she was divorcing.¹⁹⁴ In 1986, an Arizona appellate court

184. *Gaylord v. Tacoma School Dist. No. 10*, 559 P.2d 1340, 1347 (Wash. 1977).

185. *Id.* at 1342 (Wash. 1977).

186. Rosky, *supra* note 168.

187. *Id.*

188. Erik Fredericksen, *Protecting Transgender Youth After Bostock: Sex Classification, Sex Stereotypes, and the Future of Equal Protection*, 132 YALE L.J. 1149, 1191 (2023).

189. *Id.*

190. *Id.* at 1191–92.

191. *Id.*

192. Patricia A. Cain, *Litigating for Lesbian and Gay Rights: A Legal History*, 79 VA. L. REV. 1551 (1993).

193. See Velte, *Cake*, *supra* note 80, at 76.

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

upheld the denial of an adoption by a bisexual man, relying on *Bowers*.¹⁹⁵ The court stated: “It would be anomalous for the state on the one hand to declare homosexual conduct unlawful and on the other create a parent after that proscribed model, in effect approving that standard, inimical to the natural family, as head of a state-created family.”¹⁹⁶

Child protection tropes continued in the 1990s. A rhetorical shift took place—“away from explicit claims about children’s homosexuality, in favor of increasingly vague claims about children’s variance from traditional gender roles and identities.”¹⁹⁷ For example, custody disputes involving one LGBTQIA+ parent and a heterosexual parent saw arguments that custody should be denied to the LGBTQIA+ parent because that parent could not adequately model appropriate gender roles, particularly for opposite-sex children, which would be harmful to children.¹⁹⁸ One court reasoned that “a court cannot ignore the effect which the sexual conduct of a parent may have on a child’s moral development [T]he environment into which [the child] would be thrust by granting custody to [the lesbian mother] would not be a healthy one.”¹⁹⁹ Another case from this era addressed the question of whether a boy raised by two lesbian women would have sufficient masculine role models, or be unable to appropriately form his gender identity, because of the lack of a male role model.²⁰⁰

When the marriage equality debate began in earnest in 1995,²⁰¹ children were again prominent in the rhetoric employed by anti-LGBTQIA+ organizations. For example, attorneys with the organizations Alliance Defending Freedom and Advocates for Faith & Freedom filed a brief that emphasized procreation and child-rearing.²⁰² That brief described the State’s interest in banning same-sex marriage as promoting responsible procreation to ensure that children conceived through heterosexual intercourse are raised by both of their biological parents in one household—the optimum setting for child rearing.²⁰³ They went further to allege that same-sex parents are detrimental to children.²⁰⁴ That narrative continued throughout the decade leading up to *Obergefell* in 2015.²⁰⁵

195. See, Matter of Appeal in Pima County Juvenile Action B-10489, 727 P.2d 830, 835 (Ariz. Ct. App. 1986).

196. *Id.*

197. Rosky, *supra* note 168, at 659.

198. See *id.*

199. *Id.* at 660 (quoting *Lundin v. Lundin*, 563 So. 2d 1273, 1275 (La. Ct. App. 1990)).

200. See *Lundin v. Lundin*, 563 So. 2d 1273, 1275 (La. Ct. App. 1990).

201. See Charles J. Butler, *The Defense of Marriage Act: Congress’s Use of Narrative in the Debate over Same-Sex Marriage*, 73 N.Y.U. L. REV. 841, 862 (1998).

202. Brief for Petitioner-Appellant at 31, Proposition 22 Legal Defense and Education Fund v. City of San Francisco, No. 503943, 2004 Cal. Super. LEXIS 1110 (No. A110651), 2005 WL 3955027 (“Every child raised in a same-sex home has been deliberately made to be motherless or fatherless [T]here is no generally applicable, generally accepted social science evidence that children raised by a same-sex couple do as well as children raised by their own biological parents.”)

203. See *id.*; see also, e.g., Katie Eyer, *Irrational Inequality: The Role of Fact-Based Review in Equality Change*, 73 VAND. L. REV. EN BANC 177, 186 (2020); Glen Staszewski, *Obergefell and Democracy*, 97 B.U. L. REV. 31, 54–56 (Jan. 2017).

204. See Brief for Petitioner-Appellant, *supra* note 202, at 31–32.

205. See generally Staszewski, *supra* note 203, at 54–56.

These “child protection” narratives persisted into the 21st century. For example, in the 2001 case of *Lofton v. Kearney*, LGBTQIA+ foster parents challenged Florida’s statutory ban on LGBTQIA+ people adopting.²⁰⁶ The court declined to subject the law to heightened scrutiny.²⁰⁷ The court accepted that the state provided a legitimate interest for the ban, namely that a “child’s best interest is to be raised in a home stabilized by marriage, in a family consisting of both a mother and a father”²⁰⁸ because “married heterosexual family units provide adopted children with proper gender role modeling and minimize social stigmatization.”²⁰⁹ Thus, “families in which there is a mother and a father are considered important for the well-rounded growth and development of the child.”²¹⁰ Notwithstanding evidence to the contrary—that children of LGBTQIA+ parents suffer no detrimental outcomes because of their parents’ sexual orientation²¹¹—the court held that this was legitimate state interest and that the law was rationally related to that interest.²¹²

In 2008, opponents of the Employment Non-Discrimination Act, which would have prohibited discrimination based on sexual orientation and gender identity in federal employment, argued that transgender teachers posed a risk to children, namely of forcing children “to learn about bizarre sexual fetishes.”²¹³ Note that this represented a shift away from targeting gay and lesbian teachers and toward targeting transgender teachers and arguing a need to protect children from gender “confusion.”²¹⁴

3. The 2020s

The trope depicting LGBTQIA+ people as child predators has persisted, with reprisals of the “groomer” narrative re-emerging in the 2020s.²¹⁵ It has been used to justify “don’t say gay” curriculum laws and laws restricting drag shows.²¹⁶

206. *Lofton v. Kearney*, 157 F. Supp. 2d 1372 (S.D. Fla. 2001).

207. *Id.* at 1382.

208. *Id.* at 1383.

209. *Id.*

210. *Id.*

211. See, e.g., *Lesbian & Gay Parenting*, Am. Psych. Ass’n (2005), <https://perma.cc/5LUN-2QR8>.

212. *Lofton*, 157 F. Supp. 2d at 1384.

213. Rosky, *supra* note 168, at 663.

214. *Id.* at 663–64.

215. See James J. Tallis, *More than a Transaction: Extending Medical Expense Deductions to Same-Sex Male Couples Using Assisted Reproductive Technologies*, 43 VA. TAX REV. 513, 525–26 (2024); *id.* at 527 (“Modern conservatives, using LGBTQIA+ people as scapegoats and political pawns, are taking their cues from the conservative movements of the 1970s and 1980s—associating homosexuality with pedophilia to demonize a historically marginalized community and reignite their base around a polarizing agenda.”). In reference to Florida’s anti-LGBTQIA+ curriculum bill, Governor DeSantis’s press secretary described the bill as “the Anti-Grooming Bill” and tweeted “[i]f you’re against [the bill], you are probably a groomer or at least you don’t denounce the grooming of four to eight year-old children.”*Id.*

216. See e.g., *id.* at 527 (describing Florida’s “Don’t Say Gay” bill and justifications made by proponents of the bill, noting that “proliferation of the idea that the LGBTQIA+ identity and education about queer issues is harmful to children’s safety has forcibly reemerged as a primary issue among

Other “child protection” arguments to justify anti-trans bills include arguments that cisgender girls’ privacy rights will be improperly infringed, which in turn will cause them discomfort, if transgender girls are allowed to use girls’ locker rooms and restrooms.²¹⁷ A corollary to this argument is that permitting a transgender girl to use the girls’ restroom presents a safety risk to cisgender girls.²¹⁸

Bans on trans girls participating on girls’ sport teams are supported by arguments that such participation would be unfair to cisgender girls and would present a risk of taking away college athletic scholarships from cisgender girls.²¹⁹ State legislatures have passed bans on transgender students participating in sports consistent with their gender identity in twenty-five states.²²⁰

4. Connecting the Past to Today’s Bans on Gender-Affirming Care

A historical trend thus emerges: for seven decades, anti-LGBTQIA+ activists and lawmakers have deployed child-based scare tactic narratives that LGBTQIA+ rights are antithetical to children’s safety, healthy development, and wellbeing. This narrative has often been successful in legally subordinating LGBTQIA+ people, whether that be through denial of child custody, termination of employment, criminalization of same-sex intimate conduct, or the denial of marriage equality (until recently).

contemporary conservatives in recent years.”); Cathryn M. Oakley, *Curriculum Censorship of LGBTQ+ Identity: Modern Adaptation of Vintage Save Our Children Rhetoric is Still Just Discrimination*, 54 LOY. U. CHI. L.J. 641, 650 (2022); Zackary W. Harris, *Shantay You Stay: Keeping Kids at Drag Shows*, 32 J.L. & POL’Y 123 *passim* (2023); Davis J. Villano, *Queer Liberation’s Long March Towards Equality: How LGBTQIA+ Advocates May Seek to Combat the Rise of Anti-LGBTQIA+ State-Level Legislation and Substantiate Broader Lasting Legal Protections in a Post—Bostock World*, 29 CARDOZO J. EQUAL RTS. & SOC. JUST. 155, 174–75, 183 (2022) (noting that the recent wave of anti-LGBTQIA+ laws, including “don’t say gay” laws and bans on drag shows, have been supported in part by a reprisal of “grooming” language from the 1970s); Timothy S. Hall, *Potential Effects of Dobbs v. Jackson Women’s Health on Civil Commitment Law*, 49 AM. J.L. & MED. 359, 369–70 (2023) (“Recent years have seen an alarming increase in anti-LGBTQ+ rhetoric from the extreme right wing of American politics, [...] increasingly echoed by more mainstream news outlets, political candidates, and office holders” that “attempts to cast LGBTQ+ individuals, especially but not limited to transgender and gender nonconforming individuals, as a threat to children.”).

217. See, e.g., Harper Jean Tobin & Jennifer Levi, *Securing Equal Access to Sex-Segregated Facilities for Transgender Students*, 28 WIS. J.L. GENDER & SOC’Y 301, 316 (2013); see also Bd. of Educ. of the Highland Loc. Sch. Dist. v. U.S. Dep’t of Educ., 208 F. Supp. 3d 850, 857–58; 874–75 (S.D. Ohio 2016) (noting that the privacy and comfort of cisgender students were asserted state interests to justify prohibiting trans students from using restrooms that align with their gender identity).

218. See, e.g., 208 F. Supp. 3d at 876. See generally Chan Tov McNamarah, *Cis-Woman-Protective Arguments*, 123 COLUM. L. REV. 845, 874–80 (2023) (describing common arguments opposing trans-inclusive bathroom access, particularly those rooted in “safety” and “privacy” concerns “that trans-inclusive policies endanger the physical safety of cis women and girls,” which ultimately “[fall] flat in the face of real-world evidence”).

219. See, e.g., *Explainer: How bans on transgender athletes protect fairness in women’s sports*, THE ETHICS & RELIGIOUS LIBERTY COMM’N (Aug. 25, 2023), <https://perma.cc/9VZL-NYW5>.

220. See *Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVANCEMENT PROJECT (Feb. 16, 2025), <https://perma.cc/3E64-TTHS>.

As Clifford Rosky chronicled in *Fear of the Queer Child*, opponents of LGBTQIA+ equality have a long-held fear that exposing children to homosexuality will “turn” those children into LGBTQIA+ individuals themselves, and this fear has motivated backlash against LGBTQIA+ civil rights advancements for decades.²²¹ Rosky traces the history of this fear of the queer child from ancient times to 2013. He notes that “by tracing the emergence of the fear’s contemporary reincarnations, it explains how opponents have nearly managed to dictate the normative parameters of legal and political debates about LGBT rights for the last fifty years.”²²² Today, that number sits at seventy years.

Notably, these historical examples center their child-protection rhetoric on (presumably) cis and straight children and, at least until the 2020s, deploy those arguments against LGBTQIA+ adults—teachers, parents, scout leaders,²²³ and consenting adult same-sex couples. Put another way, the potential victim in need of protection in this historical rhetorical model was cisgender and (presumably) straight children who needed to be protected from becoming LGBTQIA+ themselves, while the target of this historical rhetorical model was LGBTQIA+ adults (and later, the state itself once it has granted LGBTQIA+ people legal protections).²²⁴ This rhetoric reflected a *normative* position that the government should be encouraging children to be straight (and cisgender), which made responsive *empirical* arguments by LGBTQIA+ advocates both unpersuasive and expressively troubling.²²⁵

The “child protection” rhetoric surrounding bans on gender-affirming care are different in kind, but not in nature. They are different in kind because the potential victim in need of protection is the *trans child* (as opposed to the cis child in earlier eras) and the target is most often the state itself (if the state were to continue allowing gender-affirming care for minors).²²⁶ But, as explained in Part V, this different kind of “child protection” rhetoric appears to be the same in nature, namely based on a *normative* position that the government should be encouraging children to be cisgender. The outcomes in this context, however, are considerably more risky and dangerous than in the historical contexts in which (presumably) straight children were purported victims in this rhetoric, as Part V also explains.

221. Rosky, *supra* note 168, at 608.

222. *Id.* at 635.

223. *See, e.g.,* Boy Scouts of America v. Dale, 530 U.S. 640, 652–53 (2000).

224. *See* Rosky, *supra* note 168, at 608–09.

225. *See, e.g., id.* at 689, 667–68, 684–85.

226. Laws that ban transgender girls from playing on girls’ sports teams and laws that ban transgender students from using restrooms and locker rooms that align with their gender identity are different in kind because both the purported victim and the target are children. These laws thus shift the rhetoric from protection of the child victim from an adult to the protection of the child victim *from another child*.

III. POLITICAL PSYCHOLOGY AND THE MODERN MEDIA ENVIRONMENT

As described in Part II, child-protective narratives continue to motivate anti-LGBTQIA+ backlash and “are related to the idea that the very existence of LGBTQIA+ people and relationships are adult topics inappropriate for children to encounter.”²²⁷ This backlash thus advances the notion that youth and adolescent LGBTQIA+ identity is “inherently suspect and the product of sinister influence rather than normal development. The recent legislative attack on transgender youth is an offshoot of this tradition, relying on the idea that transgender youth are not, and cannot really be, who they say they are.”²²⁸ To provide further context and explanation for this persistent “child protection” rhetoric, this Part examines political psychology and the modern media environment.

Recent psychological research has sought to better understand individuals’ political preferences.²²⁹ This research shows interesting differences between liberals and conservatives when it comes to dealing with ambiguity—differences that may deepen our understanding of the recent onslaught of bans on gender-affirming care for minors and the rhetoric surrounding them. Moreover, those psychological differences have been amplified by significant regulatory changes in the legal landscape of the media, as well as the technological changes that gave birth to cable television.²³⁰ These changes, coupled with the media industry’s capitalist profit-seeking model, have created “media fragmentation” that hinders meaningful political dialogue about gender-affirming care.²³¹ The “protect the children” rhetoric only heightens the divide between liberals and conservatives on this issue.

A. THE CONSERVATIVE-LIBERAL DIVIDE ON THE TOLERANCE OF AMBIGUITY

When it comes to understanding individuals’ attitudes toward ambiguity, there are two kinds of people—those who are comfortable with it and those who are not. In this context, “tolerance for ambiguity” is an underlying psychological trait that contributes to an individual’s aesthetic preferences, specifically referring to “how comfortable an individual is with novelty and uncertainty.”²³² These two responses to ambiguity generally track political ideology, with conservatives having a low tolerance for ambiguity and liberals have a high tolerance for it.²³³ In the language of political psychology, “need for cognition” describes liberals’ comfort with ambiguity and “need for closure” characterizes conservatives’ discomfort with it.²³⁴

227. Fredericksen, *supra* note 188, at 1191–92.

228. *Id.* at 1192–93.

229. See DANNAGAL GOLDTHWAITE YOUNG, *IRONY AND OUTRAGE: THE POLARIZED LANDSCAPE OF RAGE, FEAR, AND LAUGHTER IN THE UNITED STATES* 100–18 (Oxford University Press 2019) [hereinafter *IRONY*].

230. See *id.* at 15–16.

231. *Id.* at 46.

232. YOUNG, *IRONY*, *supra* note 229, at 101.

233. *Id.*

234. *Id.*

The phrase “need for cognition” reflects the extent to which people enjoy thinking.²³⁵ The concept is not related to a person’s intelligence but instead captures how much a person actually enjoys the process of problem-solving.²³⁶ “Put simply: individuals high in need for cognition are more motivated to process complex information and form complex judgments. They also tend to engage thoughtfully in message processing, mentally elaborating on incoming information more than people with lower need for cognition.”²³⁷ They tend to be more likely to be tolerant of ambiguity and “adapt easily to new situations, are open to new experiences, and tend to reject structure, order, and predictability.”²³⁸ Liberals are more likely to have these psychological traits.²³⁹

The phrase “need for closure” is the converse of “need for cognition” and tends to be high in people with a low tolerance for ambiguity, describing individuals who are “are less comfortable with new experiences and tend to prefer routines, order, structure, and predictability.”²⁴⁰ Individuals who are low in need for cognition “are more likely to be dogmatic.”²⁴¹ Social/cultural conservative individuals are more likely to fall into this category.²⁴² Moreover, social/cultural conservatives’ ideologies are “significantly (but not completely) related to motivational concerns having to do with the psychological management of uncertainty and fear.”²⁴³ In particular, social/cultural conservatives’ desire to avoid uncertainty may be particularly connected to “resistance to change,” a central aspect of conservative thought.²⁴⁴

Religious fundamentalists are more likely to sit on this “need for closure” side of this epistemic divide.²⁴⁵ Religion is a system rooted in faith, which no form of evidence can prove or disprove; this reality aligns with “need for closure” rather than “need for cognition.”²⁴⁶ Empirical evidence overwhelmingly underscores a connection between religiosity and the “need for closure” trait, which may be linked to religious fundamentalists’ tendency to “exhibit reduced analytic and actively open-minded thinking.”²⁴⁷ This lack of open-minded thinking, however, “does not mean that fundamentalists are pigheaded or prejudiced, but rather that

235. *Id.* at 88.

236. *Id.*

237. *Id.* at 88–89.

238. YOUNG, IRONY, *supra* note 229, at 101. People with this psychological trait also “tend to be more curious, more willing to dedicate long periods of time to a dedicated task, more open to new ideas, and more likely to see social and political issues as affecting them personally.” *Id.* at 89.

239. *Id.* at 105 (“A number of surveys and experiments have demonstrated that need for cognition (enjoyment of thinking) tends to be higher among political liberals than among political conservatives.”).

240. *Id.* at 101–02.

241. *Id.* at 89.

242. *Id.* at 105–06.

243. *Id.* at 106 (quoting Jost, J.T., Glaser, J., Kruglanski, A.W., & Sulloway, F.J., *Political Conservatism as Motivated Social Cognition*, 129 PSYCHOLOGICAL BULLETIN 339 (2003)).

244. *Id.*

245. See YOUNG, WRONG, *supra* note 19, at 108.

246. *Id.* at 108.

247. *Id.*

they simply prioritize faith in what they *already* believe over evidence to the contrary.”²⁴⁸

These psychological differences are particularly consequential when legal changes are rooted in social and cultural changes: “Strong cultural conservatives demonstrate lower tolerance for aspects of social change that may present uncertainty or pose a threat to the existing social order.”²⁴⁹ In contrast, liberals “are more likely to change how they react to certain events, as they tend to devote cognitive resources to choosing the most suitable responses to various situations. Whereas conservatives are commonly monitoring their environments for threats, liberals are evaluating information and verifying that the data coming in matches their attitudes and judgments.”²⁵⁰ “Conservatives’ basic neurocognitive orientations toward uncertainty and threat affect the kinds of things they see as correct, appropriate, or desirable in their society and around the globe.”²⁵¹

Conservatives are more likely to have a high “need for closure,” which correlates with a tendency to “prioritize efficiency over accuracy,” a preference for “hav[ing] answers sooner rather than later,” and discomfort with uncertainty and ambiguity.²⁵² Individuals who are “high in need for closure and low in need for cognition tend to use their emotions to guide their beliefs and behaviors,” but this approach was also found to be “more likely to result in errors in judgment and recall” in social science studies.²⁵³ Research has also shown that conservatives are more likely than liberals to have a fixed mindset that resists change and to support existing policies and social practices.²⁵⁴ In sum, conservatives—especially social or cultural conservatives—“tend to be less tolerant of ambiguity and lower in need for cognition” compared to liberals, and this difference underlies the distinct worldviews and approaches to decision-making between the two groups.

Each of these psychological profiles presents advantages and disadvantages for decision-making in different contexts. Because conservatives are generally lower in need for cognition than liberals, they are “especially good at quick, efficient decision-making tasks and [suited] to certain leadership roles where taking quick action is needed.”²⁵⁵ A disadvantage of this profile is that it “makes [people with this profile] not so good at changing their minds in light of new information and less than stellar at thinking about issues in terms of complex, systemic causes.”²⁵⁶ Because liberals are generally lower in need of closure than conservatives, they

248. *Id.*

249. YOUNG, IRONY, *supra* note 229, at 106.

250. *Id.* at 107.

251. *Id.* at 107–08.

252. YOUNG, WRONG, *supra* note 19. “While all of us are somewhat motivated by efficiency and use cognitive shortcuts (called heuristics) for guidance, some rely on heuristics more than others,” including individuals who have a “high level of the trait ‘need for closure.’” *Id.*

253. *Id.*

254. YOUNG, IRONY, *supra* note 229, at 108.

255. *Id.*

256. *Id.*

are “especially good at analytical thinking, scientific inquiry, and higher education, where thinking for the sake of thinking is an advantage, not a hindrance.”²⁵⁷ A disadvantage is that people with this profile tend to be “less efficient decision-makers, more likely to make use of various forms of information when making up their minds, and less likely to ‘go with their gut.’”²⁵⁸ As a result, people with a low need for closure are “not as great at quick decisive judgments” as people who have a high need for closure.²⁵⁹

It is clear from the campaign trail, as well as from his early days in office, that President Trump’s second term will further exacerbate the divide in political psychology. While on the campaign trail, he described supporting transgender children in schools as “gender insanity” and referred to transgender women as “men.”²⁶⁰ This rhetoric appeals to conservatives’ need for closure while simultaneously widening the gap between the two ends of the political psychology continuum because it is incorrect and inflammatory, minimizing any real chance of meaningful political dialogue on this issue.

B. MEDIA DEREGULATION, MEDIA FRAGMENTATION, AND THE AMPLIFICATION OF THE LIBERAL-CONSERVATIVE DIVIDE

The psychological differences between liberals and conservatives regarding ambiguity are exacerbated by today’s regulatory and economic environment for the media. Today’s media landscape is fractured and polarized as well as driven by a desire to maximize profits. As a result, many Americans receive news and information from media echo chambers.²⁶¹ This phenomenon is known as “media fragmentation.”²⁶²

It hasn’t always been this way. Historically, the U.S. media has been more balanced and less fragmented. As radio and television technologies emerged in the 1920s, there was a scarcity problem: the nascent technology meant that only limited frequencies were available for broadcasting.²⁶³ This scarcity concerned lawmakers given that the fledgling industry was largely in the hands of private enterprise that was motivated by profit rather than by ensuring fair access and balanced programming.²⁶⁴ The “result was chaos” that led to government intervention, namely the establishment of the Federal Radio Commission in 1927 and the Federal Communications Commission (“FCC”) in 1934.²⁶⁵ These commissions, along with the regulations they promulgated and enforced, were necessary

257. *Id.*

258. *Id.*

259. *Id.*

260. See, e.g., James Pollard, *GOP Candidates Elevate Anti-Transgender Messaging as a Rallying Call to Christian Conservatives*, EL PAÍS (Feb. 18, 2024), perma.cc/REH4-YQAU; JA Westenberg, *The Wrath Apparatus*, MEDIUM (July 25, 2023), perma.cc/QK7L-FUB4.

261. See YOUNG, IRONY, *supra* note 229, at 168.

262. *Id.* at 46.

263. See *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 375–76 (1969).

264. *Id.* at 376–77.

265. *Id.* at 375–76, 388.

because “[w]ithout government control, the medium would be of little use because of the cacophony of competing voices, none of which could be clearly and predictably heard.”²⁶⁶

One concern of federal regulators was protecting the public’s interest in “the free and fair competition of opposing views” to “all discussions of issues of importance to the public.”²⁶⁷ This gave rise to the “fairness doctrine,” which required broadcasters to “give adequate coverage to public issues” and mandated that such “coverage must be fair in that it accurately reflects the opposing views.”²⁶⁸ In short, that doctrine “required broadcasters to be even-handed in their treatment of political and social issues.”²⁶⁹

Between the 1920s and the 1980s (when cable technology emerged), the U.S. media market was one of the “mass audience”: Because there were only a small number of television network channels, the vast majority of Americans watched the same programming, which was governed by the fairness doctrine.²⁷⁰ All of that changed in the 1980s because of changes in technology and in the regulatory arena.²⁷¹

New cable technology created new opportunities for programming.²⁷² Cable networks like CNN and Fox News emerged.²⁷³ On the regulatory front, this was the Reagan era of widespread deregulation across many industries, including media.²⁷⁴ During this era “the regulatory powers of the FCC over media content and media industry all but disappeared. The FCC removed requirements on the amount of informational programming that broadcasters had to supply and repealed the fairness doctrine, which had required that broadcasters give ‘equal time’ to competing political voices.”²⁷⁵ This “opened up the airwaves not just to conservative ideological speech but also to explicit partisan arguments *for and against* political policies and candidates.”²⁷⁶

The 1980s also saw a loosening of restrictions on media ownership. Until 1985, a single media entity was permitted to own no more than seven television stations.²⁷⁷ In 1985, that number rose to twelve.²⁷⁸ These regulatory changes fueled a capitalist feeding frenzy in the media sector with the goal of maximizing profits. Huge media conglomerates emerged as large media corporations rapidly

266. *Id.* at 376.

267. *Id.* at 377 (internal citations omitted).

268. *Id.* at 377. Moreover, “[t]his must be done at the broadcaster’s own expense if sponsorship is unavailable.” *Id.*

269. YOUNG, IRONY, *supra* note 229, at 15.

270. *See id.* at 46.

271. *Id.* at 15.

272. *Id.*

273. *Id.* at 16.

274. *Id.* at 33.

275. YOUNG, IRONY, *supra* note 229, at 33.

276. *Id.* at 16 (emphasis in original). For example, far-right conservative Rush Limbaugh launched his radio show in 1988. *Id.*

277. *Id.* at 33.

278. *Id.*

bought up smaller media enterprises.²⁷⁹ The consolidation of the media industry is staggering: In 1983, there were up to 50 different corporate owners in the U.S. media market; that number fell to 23 by the mid-1990s.²⁸⁰ As of 2019, five corporations control 90 percent of the U.S. media market.²⁸¹

This commercialization of the American media market has meant less emphasis on the public interest/public service role of the media and, with it, a decline in commitment to long-held journalistic values of “responsibility to the public welfare; freedom of the press; independence from private or partisan interests, sincerity, truthfulness, and accuracy; impartiality; fair play; and decency.”²⁸² That kind of values-based programming has been replaced with advertiser-driven programming that reflects the current reality of media fragmentation. Media executives and advertisers have engaged in the “deliberate segmentation of audiences according to demographics and psychographics”²⁸³ which, in turn, has signaled divisions among Americans “based on hobbies and interests” and “also on race, class, lifestyle, and culture.”²⁸⁴ This fragmentation of advertising dollars “also contributed to cultural and even political divisions” because media executives “figured out how to segment news-obsessed partisans into boxes, by means of ideologically driven 24-hour news networks that provide news and ‘analysis’ all while supporting a particular worldview.”²⁸⁵

These technological and regulatory changes gave rise to “outrage media” targeted at and tailored to conservative viewers, including those who support the white Christian nationalism movement.²⁸⁶ This genre, epitomized by Fox News, includes “increased ‘moral outrage’ aimed at the behavior of Democrats, increased distrust of mainstream news outlets, significant distortion of one’s understanding of politicians’

279. *Id.* at 34. This allowed for economies of scale, which increased profits. *Id.*

280. *Id.* at 34.

281. YOUNG, IRONY, *supra* note 229, at 35. These corporations are Comcast, Walt Disney Corporation, 21st Century Fox, AT&T-Warner Media, and National Amusements. *Id.*

282. *Id.* at 36. Moreover, “[c]orporate media’s intense focus on profit undermines the function of journalism. . . . [T]he news itself is not the product that is bought and sold in exchange for money.” *Id.* at 37–38.

283. *Id.* at 46. Media execs promised advertisers (1) “claim of efficient separation” that “suggested that media outlets would promise advertisers a small, homogeneous audience, without advertisers having wasted money on anyone they didn’t want to try to reach” and (2) “claim of a special relationship” — “the notion that because these new outlets were programmed with specialized ‘niche’ content designed for a ‘specific kind of person,’ their audiences were loyal, engaged, and eager to receive everything that came to them through that trusted outlet—including advertising.” *Id.* at 47.

284. *Id.* at 47.

285. *Id.* Young notes: “Cable television was not created with the explicit purpose of dividing audiences into socially, culturally, and politically distinct enclaves. Those outcomes were merely a by-product of the economics of the new technology. But cable’s emergence against the backdrop of low public trust in news and an increasingly polarized electorate positioned it well as the place where media producers could develop new programming genres that would satisfy their audiences’ political information needs[.]” *Id.*

286. *Id.* at 49–52. On the liberal side, it gave rise to the genre of satire and irony television shows like *The Daily Show*. *Id.* at 48.

issue positions, and more extreme conservative issue positions.”²⁸⁷ The tone of this genre of media is fearful, angry, and emotional.²⁸⁸ Its specific tactics include “hyperbole, sensationalism, ad hominem attacks, ridicule, extreme language, and ‘proving’ that an opponent is a hypocrite.”²⁸⁹

Outrage media has a direct connection to the political psychology phenomenon of conservatives’ “need for closure.”²⁹⁰ Outrage media’s attributes map onto conservatives’ high need for closure because this form of media sets up named enemies (such as transgender activists) or specific policies (such as permitting minors to access gender-affirming care). Those with a high need for closure want “to be perfectly clear” on “who the villains are” to satisfy their high threat awareness and need for closure.²⁹¹ Outrage media meets these needs by identifying and constructing enemies and using “semiotic shortcuts, attempting to symbolically pollute their enemies by linking them to the groups most reviled by American audiences.”²⁹²

Outrage media thus effectively taps into the conservatives’ quick use of heuristics to make decisions on issues that present uncertainty or ambiguity, like transgender people and transgender rights. It feeds into conservatives’ need for closure, which can be arrived at quickly not by cognition but by gut instinct and emotions.²⁹³ There is no need to entertain the thought that “your side” may be incorrect when consuming outrage media.²⁹⁴ Outrage media hosts speak in ways that are satisfying to minds in need of closure and certainty because “they reduce complex situations and processes to readily understandable narratives with easily identifiable antagonists.”²⁹⁵

Outrage media also presents information through an evaluative lens rather than a factual lens: It provides stories constructed through deliberate misrepresentative exaggeration, designed to give viewers a strong valenced impression of a policy, person, or institution.”²⁹⁶ As a result, conservatives can easily make “efficient use of heuristic-dominant inclinations and minimize the need for internal debate or scrutiny.”²⁹⁷

This combined “need for closure” psychological profile and the fragmented media environment has created a situation in which outrage media is a staple for white Christian nationalists. Outrage media has covered gender-affirming care for transgender minors using rhetoric reflecting a “need for closure” orientation. For example, one popular right-wing outrage media outlet describes gender-affirming care as “child sacrifices” and declares “There Are No Trans Kids, Just

287. YOUNG, IRONY, *supra* note 229, at 50.

288. *Id.* at 141.

289. *Id.*

290. *Id.*

291. *Id.* at 142.

292. *Id.*

293. YOUNG, IRONY, *supra* note 229, at 142.

294. *Id.*

295. *Id.*

296. *Id.* at 142–43.

297. *Id.* at 143.

Self-Absorbed, Abusive Parents.”²⁹⁸ Another right-wing outrage media outlet blasted a story covering the *Skrmetti* case in Politico, a news outlet some consider to have a left-leaning bias:

The Supreme Court case involving state laws banning genital mutilation surgeries for minors is going to destroy women’s health care—that’s the latest inception ploy the Left is trying to implant into the national psyche. Yes, preventing the irreversible damage done by such unnecessary surgeries, pushed mainly by whack-job parents, could place women’s health care at risk. It’s so insane you don’t even need to read the whole piece in Politico magazine[.]²⁹⁹

In reporting on an Associated Press article about gender-affirming care, another right-wing outrage media outlet declared that “[i]t’s amazing that recognizing two sexes is now controversial in the press” and that the “supposedly objective AP repeatedly bowed to the teenage transitioning cult by parroting the jargon of activists, pretending there’s an officially accepted definition of ‘transgender girls’ besides what a troubled boy might be going through at a particular time of their life.”³⁰⁰

Appreciating political psychology and its connection to outrage media—along with the historical record of child-centered justifications for LGBTQIA+ backlash—provides a potent framework for understanding the bans on gender-affirming care for minors.

IV. HOW HISTORY, PSYCHOLOGY, AND THE MEDIA ENVIRONMENT HELP US UNDERSTAND BANS ON GENDER-AFFIRMING CARE FOR MINORS

A. CONNECTING THE LENSES

The fact that white Christian nationalists have a high need for closure and a low need for cognition, and therefore are “more likely than liberals to be motivated by efficiency and to form judgments based on emotions and intuition[,]”³⁰¹ shine a new light on the current backlash against transgender people. This is because the white Christian nationalism movement’s core values include a belief in binary, rigid gender roles, heteronormativity, and patriarchy—values that until recently have been centered in law and society.³⁰² Moreover, “conservatism, measured in all different ways, is negatively associated with ‘blurred boundaries’

298. Brandon Morse, *There Are No Trans Kids, Just Self-Absorbed, Abusive Parents*, REDSTATE (Dec. 5, 2024), <https://perma.cc/9WJS-SYVT>.

299. Matt Vespa, *You Don’t Need to Get Past the Second Paragraph to Know This Politico Piece Is Insane*, TOWNHALL (Dec. 27, 2024), <https://perma.cc/C5EC-T4XE>.

300. Clay Waters, *AP Pushes Democrat ‘Civil Rights Issue’ of Genital Amputation Surgery for Kids*, NEWSBUSTERS (Jan. 27, 2025), <https://perma.cc/X4XR-KBL6>.

301. YOUNG, WRONG, *supra* note 19, at 109.

302. See generally, Bjork-James, *supra* note 59, at 294.

of all kinds.”³⁰³ An example of this is the discomfort that many conservative Christians feel about transgender people and rights because transgender people represent the blurring of traditional boundaries of sex and gender.³⁰⁴

Given that traditional gender norms have been dominant in U.S. law and society until relatively recently, white Christian nationalists have long been comfortable in an environment where gender ambiguity was not prevalent. Law and society were predictable and well-established for white Christian nationalists during this era, a time when LGBTQIA+ people were legally and culturally marginalized.

As LGBTQIA+ people began living openly and successfully advocating for dignity and equality under the law, the social meanings and traditional roles associated with sex and gender shifted dramatically. Patriarchy is no longer the only accepted way to organize social and legal relations. The sex/gender binary is no longer unanimously presumed to be the natural or only way to understand sex and gender or to regulate sex-segregated spaces. The open existence of LGBTQIA+ people has complicated traditional ideas about gender, sex, and patriarchy, stirring feelings of uneasiness and fear in white Christian nationalists. Life for white Christian nationalists no longer feels clear but instead uncertain and ambiguous.

The mere existence of LGBTQIA+ people, particularly trans people, destabilizes what most white Christian nationalists have considered a rigid, natural, and normal gender binary, which in turn destabilizes patriarchy.³⁰⁵ And when those newly out³⁰⁶ LGBTQIA+ people go so far as to demand equal rights, the ambiguity is heightened. For example, when transgender people seek legal protection to use sex-segregated spaces that align with their gender identity, white Christian nationalists may feel disorientated and as if they have entered an ambiguous world where “men” are allowed in “women’s” spaces.³⁰⁷ The very existence of trans people disrupts the belief long held by the majority of white Christian nationalists that sex and gender are binary, static, and firmly established at birth.

From the perspective of white Christian nationalists, the LGBTQIA+ rights movement has thrust them into a world in which it is difficult to tell who is a “real” woman and a “real” man and in which some people are nonbinary or gender fluid—a world where gender norms have been turned upside down and where sex and gender ambiguity have moved to the center from the margins.³⁰⁸

303. YOUNG, IRONY, *supra* note 229, at 123.

304. For example, a persistent anti-trans refrain from conservative lawmakers is that “transgender men are just women dressed as men and transgender women are just men dressed as women.” Arthur S. Leonard, *Legislative & Administrative Notes*, 2021 LGBT L. NOTES 34, 36 (2021).

305. See Velte, *Gaslight Docket*, *supra* note 14, at 443–44.

306. Of course, LGBTQ people have existed since the beginning of humankind. This “newly present” descriptor is from the perspective of white Christian nationalists. See, e.g., Kiara Alfonsaca, *LGBTQ People Have ‘Been Around for Forever,’ Historians Say*, ABC NEWS (Mar. 27, 2023), <https://perma.cc/H37F-ZWP4>.

307. See, e.g., Ted Cruz Says Not Having ‘Bathroom Bill’ Is ‘Opening the Door for Predators,’ ABC NEWS (Apr. 23, 2016), <https://perma.cc/M9XM-6BDW>.

308. Importantly, there is a crucial difference between the *feelings* of white Christian nationalists and the factual reality that the movement holds outsized power in all branches of the federal government and

Moreover, in addition to representing heretical gender threats in the Biblical sense, trans people also pose a threat to established gender hierarchies endorsed by white Christian nationalists, where men sit on top the political and cultural hierarchy and women sit in a subordinated role, with less political and cultural power, not just in the church, but in the halls of power in civic life.³⁰⁹

The bans on gender-affirming care for minors are a concrete example of how ambiguity-inducing social and legal changes trigger white Christian nationalists' cognitive need for closure, to the exclusion of consideration of other views or evidence. The bans make closure on sex and gender quick and easy—those assigned male at birth will always be boys and those assigned female at birth will always be girls.³¹⁰

That closure will be easier to achieve given the shift to a fragmented media landscape, in which outrage media feeds a nonstop stream of misinformation and disinformation to its viewers and listeners.³¹¹ The rhetoric deployed by outrage media to advocate for banning gender-affirming care for minors—that the bans will “permanently outlaw the mutilation of minors” so we must pass the bans to “protect” or “keep safe” children—is appealing to people whose need for closure triggers quick, gut-based decision-making.³¹²

Moreover, the outrage media environment makes it unlikely that white Christian nationalists will ever see or hear even-handed coverage of gender-affirming care that includes information about safe, evidence-based best practices. The result is an echo chamber filled with like-minded white Christian nationalists who arrive quickly at their gut reaction—“Of course we should outlaw the mutilation of children!”—and whose psychological profile means that they are unlikely to consider or think deeply about new information in the unlikely event that their outrage media channel of choice would even present that information. So the backlash cycle continues.

in many state and local governments. *See generally* Sozan & Olinsky, *supra* note 58. There is thus a disconnect between *feeling* like victims of secular society with its attendant ambiguity and the reality on the ground—widespread introduction of anti-LGBTQ laws, especially anti-trans laws, a good number of which are *successfully introduced and passed by white Christian nationalist lawmakers*. So, although it is correct to say that white Christian nationalist values are presently being *contested* as U.S. society becomes more secular and sex/gender norms change, this current debate over such traditional values is not the same as being deprived of power and privilege. *See* Talbot, *Justice Alito's Crusade*, *supra* note 37.

309. *See generally, e.g.*, Moskalenko, Romanova, & Bloom, *supra* note 74, at 1 (“The changes in cultural norms around gender and sexuality have challenged established worldviews. This cultural shift toward evolving gender norms and fluid gender identities contributed to a cultural ‘unfreezing[.]’”).

310. *See generally* YOUNG, WRONG, *supra* note 19, at 113. In contrast, the need for cognition exhibited by most liberals results in support LGBTQ and abortion rights. *See id.*

311. *See generally, e.g.*, Moskalenko, Romanova, & Bloom, *supra* note 73, at 1.

312. Jo Yurcaba, *DeSantis Signs ‘Don’t Say Gay’ Expansion and Gender-Affirming Care Ban*, NBC NEWS (Mar. 17, 2023), <https://perma.cc/JS8F-G5N4>. Rhetoric deployed to support bans on transgender girls from girls’ sports teams—“do biological males belong in girls’ sports?”—is another concrete example. “Of course biological males don’t belong on girls’ sports teams!” would be a comfortable and easy response to someone with a high need for closure and a low need for cognition.

B. A PATH FORWARD?

So what does all of this mean for the future of LGBTQIA+ civil rights? It seems to paint a bleak picture of the possibility of progress. Is there a path forward?

To begin, it is important to note that the psychological profiles of “need for cognition” and “need for closure” are “correlations . . . about *probabilities*, not deterministic relationships.”³¹³ The political psychology research does *not* contend that “‘conservative are always this way’ and ‘liberals are always that way.’”³¹⁴ Critically, it *is* possible to change people’s epistemic motivations.³¹⁵ Notably, “despite the deep linkages between political ideology, psychology, physiology, and biology, the relationships between these characteristics are complex, affected by social and environmental context, and thus, still somewhat malleable.”³¹⁶

Research shows that a high need for closure can be changed by “exposure to new experiences and information. Rich and diverse life experiences as well as education can reduce [the] need for closure and render you more tolerant of ambiguity.”³¹⁷ As a result, one focus of LGBTQIA+-rights activists and policymakers could be advocating for access to higher education for all. Because “[o]ne long-standing goal of a liberal arts education is to promote tolerance for ambiguity in order to foster a sense of openness, adaptability, and a willingness to change one’s point of view[.]” joining coalitions of groups that advocate to access to an affordable college education may represent a new and promising avenue for LGBTQIA+-rights advocates to begin the work of shifting the way conservatives think about ambiguity.

The history discussed here could play an important role in that education. It may have lessons to teach. History reveals a decades-long normative, rhetorical campaign by opponents of LGBTQIA+ existence (and equality) that relied on “child protection” rationales to justify their equality-diminishing efforts. That historical rhetoric of protecting children maps onto today’s rhetoric in support of the bans.

However, the ‘child protection’ justifications deployed in past eras have largely been rejected by courts and society more generally. For example, today there is legal consensus that a parent’s sexual orientation isn’t per se detrimental to parenting skills such that a parent’s LGB sexual orientation should not be a basis to deny custody or parenting time.³¹⁸ The arguments made in opposition to marriage equality about different-sex marriages being better for children were rejected in *Obergefell*, which held quite the opposite—that denying marriage equality to same-sex couples harmed the children of those couples.³¹⁹ Until recently, the “groomer” narrative had receded and prior prohibitions, such as those that banned LGBTQIA+ people from being employed as K-12 teachers, have fallen by the wayside.

313. YOUNG, IRONY, *supra* note 229, at 104 (emphasis in original).

314. *Id.* at 104–05.

315. *Id.* at 114.

316. *Id.*

317. *Id.* at 114–15.

318. *See, e.g.*, Knudson v. Knudson, 916 N.W.2d 793, 799 (S.D. 2018).

319. *Obergefell v. Hodges*, 576 U.S. 644, 646 (2015).

Given that some of the historic ‘child protection’ tropes have fallen from prominence, readers of that history may be surprised that the world was ever ‘like that’ when it came to LGBTQIA+ people and their rights. Looking to history to unearth decades-long patterns of similar rhetoric could be a powerful way to disrupt current uses of “protect children” justifications.

Another promising yet nontraditional area in which LGBTQIA+-rights advocates might consider putting in some organizing and lobbying efforts is media literacy intervention programs. Given the fragmented media landscape in which outrage media creates an echo chamber of mis- and dis-information about LGBTQIA+ people and rights, creating paths for LGBTQIA+-rights opponents to more intentionally engage with media might be helpful in moving the needle on need for closure toward an openness to considering new information and other viewpoints. Research has shown that such a cognitive shift is possible, even through the simple “prompt emphasizing accuracy over efficiency”:³²⁰

In one study exploring how people judged others, researchers artificially reduced the participants’ need for closure by instructing them: “I want you to form the most accurate impression of [this person] that you can because after you have given your impression of them, I will ask you to *justify* it to me and a clinical psychologist who is also involved in this project.”³²¹

This simple directive to focus on accuracy shifted participants’ cognitive focus away from a need for closure and toward cognition: The “participants based their judgments far less on the primed features of the person in question and more on other available information.”³²² Media literacy programs may hold the promise of institutionalizing the cognitive habit of focusing on accuracy. These are “educational initiatives designed to reduce harmful media effects. They teach audiences about elements of media that may influence beliefs, attitudes, and behaviors in detrimental ways, such as promoting violence, substance abuse, or misinformation.”³²³ In short, these programs seek to build the habit of thinking and considering new information, which may assist those who have a high need for closure in moving toward the need for cognition.

Finally, history is important because it reminds us from where we came, of what was successful and what was not in the march for LGBTQIA+ equality. Rosky encourages LGBTQIA+-rights advocates to learn what did *not* work well from the history of the “child protection” rhetoric in LGBTQIA+ civil rights.³²⁴ Rosky identifies a mistake made by LGBTQIA+-rights advocates of prior eras,

320. See YOUNG, IRONY, *supra* note 229, at 114.

321. *Id.*

322. *Id.*

323. See Heidi Boghosian, *An Exorcism to Save America*, THE PROGRESSIVE MAG. (June 5, 2024), <https://perma.cc/29FK-6Y5N>.

324. Rosky, *supra* note 168, at 616.

namely focusing almost exclusively on empirical responses to this rhetoric rather than centering *normative* arguments to counter the anti-LGBTQIA+ movement’s normative “premise that children are better off straight.”³²⁵

The fight for gender-affirming care for minors is a “both/and” situation when it comes to empirical versus normative arguments. Rosky is right about what history can teach us with regard to the importance of normative efforts, which might be lost or obscured by appeals to empirical data. Certainly, today’s fights over gender-affirming care for minors are, at their core, normative ones: White Christian nationalists think, as normative matter, that cisgender children are “natural” and thus “normal” and thus preferable to transgender children. That normative position is built on what the Bible purportedly teaches about sex and gender. The fact that all mainstream medical organizations *support* gender-affirming care based on empirical, evidence-based research itself illustrates that proponents of the bans are making a normative argument. Rosky is correct in asserting that LGBTQIA+-rights advocates should be making normative arguments that cisgender people are no better off than transgender people, including trans youth. On this front, the history summarized above can teach us lessons about that normative advocacy. However, LGBTQIA+ advocates should *both* take normative positions opposing the bans (informed by lessons from history) *and* respond to the bans with the avalanche of empirical data showing such care is safe, effective, and life-saving.

CONCLUSION

Considered through the lenses of history, political psychology, and the modern media landscape, it is not surprising that bans on gender-affirming care for minors have made their way into the law books. There is a link between conservatives’ need for closure and their opposition to transgender rights.³²⁶ History reveals a decades-long normative, rhetorical campaign by opponents of LGBTQIA+ existence (and equality) that relied on “child protection” rationales to justify their equality-diminishing efforts.³²⁷ That historical rhetoric of protecting children maps onto today’s rhetoric in support of the bans.

The numerous anti-trans bills passed over the past several years are part of a larger political, social, and legal context that seeks to erase ambiguity and uncertainty and restore a predictable and rigid order to U.S. society—an order that satisfies the psychological need for closure exhibited by most white Christian nationalists. A return to rigid certainty means restoring the gender binary and the roles that accompany it (people are born with a static sex and gender identity; patriarchy thrives because there is no ambiguity about sex and gender or, for that

325. *Id.* at 610.

326. See YOUNG, IRONY, *supra* note 229, at 105.

327. Rosky, *supra* note 168, at 616.

matter, about who is a “real” man or a “real” woman; women marry men, and give birth to and raise children).³²⁸

The white Christian nationalism backlash to gender ambiguity demonstrates that the “relationships between psychological traits, on the one hand, and political ideology, on the other . . . are most pronounced in the context of social and cultural ideology—that is, issues related to gender [and] sexuality[.]”³²⁹ This need for closure and eschewing of deep thinking forms the foundation of the white Christian nationalism legal movement to roll back LGBTQIA+ rights.

Despite what seems to be a deep divide between political psychology profiles, keeping in mind that these traits are malleable can allow LGBTQIA+ advocates to think creatively about long-term solutions to the challenges presented by the need for closure mindset. In addition, keeping in mind both our history and the challenges of the modern media environment can further equip LGBTQIA+-rights advocates with important perspectives for what promises to be a long-term fight for equality.

By analyzing the wave of anti-trans bills through the interlocking lenses of history, political psychology, and today’s fragmented media landscape, this article seeks to provide a thicker way to consider this recent retrenchment and make this regressive legal trend legible in a new and different way for progressive scholars, activists, practitioners, judges, and lawmakers as they think about strategies and tactics to fight back against the white Christian nationalism attack on trans lives.

328. This legal retrenchment for LGBTQIA+ people, and specifically for trans and nonbinary people, is part of the long-term agenda of the white Christian nationalism movement: By the time of the first Trump election, legal actors in that movement had been developing a wide-scale approach to change laws around sexuality—first, writing model legislation to push back on expanding gay rights, then getting states to pass the bills, and then providing states with legal defense in court when they were sued. It was a one-two-three punch that took full advantage of the Democrats’ weakness in the states. . . . Since late 2014, the [Alliance Defending Freedom] had been using that strategy to advance so-called bathroom bills, laws that required people to use the public restrooms of the sex they were assigned at birth. There was a state where those efforts had been especially effective: Mississippi. With its strong opposition to abortion, Mississippi could be fertile ground for [the Alliance Defending Freedom] to run a similar play on *Roe*. YOUNG, IRONY, *supra* note 229, at 148.

329. YOUNG, WRONG, *supra* note 19, at 110.