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Coming Out

Eliot T. Tracz[†]

Introduction

The closet is an apt metaphor. It is a dark place where we go to hide—sometimes literally—and a place where we store our skeletons, those secrets so personal we fear that they may one day lead to our undoing. For many people, one of those skeletons is a queer identity. Bisexual, transgender, lesbian, or gay, some element of their being causes them to hide.¹ But the closet is stifling. Often people find that the burden of hiding eventually becomes too heavy, and that the desire to be free is overwhelming. The solution often involves making a life altering choice—the choice to come out.

When a person chooses to come out, they hope for a positive reaction. A woman identified as Charli, in a compilation titled *Coming Out Stories*, wrote of her coming out experience, saying:

The first person I came out to properly was my mum. She was just like, “Yeah, we know. Okay. Alright.” I don’t really know how she knew. She then spoke to my auntie, who was living with us for a while, and apparently she knew as well! I thought, “Okay, so it’s just me completely oblivious and everybody else knew.” My mum told my dad, which saved that conversation, but he was fine. We’re not the best of friends but we understand each other a lot more than we used to. I told my sisters and my brother and they were like, “Yeah, whatever.” And that was it! I was then open and out.²

For Charli, and many people, there couldn’t be a better experience.

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Professor Tracz's research focuses on issues of sexual orientation and gender identity, with particular interest in First Amendment protections as well as the intersection between bisexuality and the law. His scholarship has appeared (or is forthcoming) in the *American University Journal of Gender, Social Policy & Law*, *Connecticut Public Interest Law Journal*, and the *Hofstra Law Review*. He is the author of a forthcoming casebook titled *CASES AND PROBLEMS ON SEXUAL ORIENTATION, GENDER IDENTITY, AND THE LAW* with Aspen Publishing.

1. This article recognizes that there are many more sexual and gender identities than those listed here.

2. Emma Goswell & Sam Walker, *Coming Out Stories: Personal Experiences of Coming Out from Across the LGBTQ+ Spectrum* 106 (2021).

Unfortunately, coming out comes with the risk of rejection. Marjorie Rowland, for example, was a high school guidance counselor in Montgomery, Ohio.³ Ms. Rowland's disclosure of her own bisexuality to a colleague ultimately ended up costing her job.⁴ Others have lost more. Matthew Shepherd is a tragic example of a young, queer man whose life was cut short in a shockingly violent manner simply because of his sexuality.⁵ In a number of jurisdictions, violent reactions to queer men identifying themselves as such were given validation by so called "gay panic defense[s]."⁶

Another, similarly, harrowing experience is that of a woman named Lucia, a lesbian born and raised in Ireland.⁷ Lucia did not come out so much as she was outed by her own brother after he found a letter from a female classmate in Lucia's bag.⁸ After her grandmother threatened to have her sent away, Lucia ran away.⁹ Eventually, Lucia became homeless and after getting caught stealing a bicycle, a judge recommended that she see a psychiatrist.¹⁰ The psychiatrist, in turn, suggested that he would perform a lobotomy on Lucia to cure her homosexuality.¹¹

Along with the risks of coming out is the additional burden of knowing that coming out is not a singular event. A person who chooses to be out will continue to come out for the rest of their life.¹² This is particularly true for people who identify as bisexual, many of whom will have to reassert their bisexual identity repeatedly when in same-sex or opposite-sex relationships.¹³

For much of recorded history, homosexuality was seen as a set of behaviors rather than an identity.¹⁴ Because of this, homosexuality could

3. See *Rowland v. Mad River Loc. Sch. Dist.*, 730 F.2d 444, 446 (6th Cir. 1984).

4. *Id.* For a deeply insightful look at the Rowland case, see Ann E. Tweedy, *Bisexual Erasure, Marjorie Rowland, and the Evolution of LGBTQ Rights*, 46 HARV. J.L. & GENDER 265 (2023).

5. *Our Story*, MATTHEW SHEPHERD FOUNDATION, <https://www.matthewshepard.org/about-us/our-story/> [https://perma.cc/FPS4-HPNG].

6. Nakota G. Wood, *The Gay Panic Defense: A Rainbow of Reasons Calling for Abolishment and Protection in Tennessee*, 32 TUL. J.L. & SEXUALITY 111, 113 (2023); Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471, 489 (2008).

7. GOSWELL & WALKER, *supra* note 2, at 77.

8. *Id.*

9. *Id.* at 78.

10. *Id.* at 78-79.

11. *Id.* at 79.

12. Brian Webb, *Coming Out Twice: Why the Closet Isn't a One Time Thing*, HOMOCULTURE (Apr. 22, 2025), <https://thehomoculture.com/coming-out-experience/> [https://perma.cc/GD4F-BLDC].

13. *Coming Out*, BI.ORG (Aug. 18, 2025), <https://bi.org/en/coming-out> [https://perma.cc/YZZ8-UCHD].

14. Michel Foucault, *The History of Sexuality*, Volume I: An Introduction 43 (Vintage Books Ed. 1990).

be dealt with through sodomy laws which prohibited a broad scope of sexual activities, rather than individuals themselves.¹⁵ Following World War II, however, gay and lesbian individuals began to assert themselves as a social group in ways previously unseen.¹⁶ Queer publications arose, challenging obscenity laws and pushing the boundaries of free speech.¹⁷ Groups like the Mattachine Society and the Daughters of Bilitis provided social opportunities and political activism.¹⁸ Queer people have fought for the right to express their identity through clothing, marriage,¹⁹ and association.

At every step of the way, society and the law have conspired to fight back against expressions of queer identity. Sodomy laws, which existed for most of our nation's history, were selectively enforced against gay men until they were struck down by *Lawrence v. Texas*²⁰ in 2003. The Lavender Scare purged gay men from their jobs in the federal government.²¹ Just a couple of decades later, "Don't Ask, Don't Tell" would do the same for members of the armed services.²² The Reagan Administration failed to even acknowledge the AIDS epidemic during its early years,²³ going further as to advance the scapegoating of gay and bisexual men as spreaders of disease.

Even so, queer-identifying people have refused to go away. *RuPaul's Drag Race* has brought queer culture into our homes since 2009.²⁴ The number of people self-identifying as LGBTQ has increased with each successive generation in the United States.²⁵ LGBTQ advocacy groups

15. See William N. Eskridge, Jr., *Dishonorable Passions: Sodomy Laws in America, 1861–2003*, at 16–17 (2008).

16. Michael Bronski, *A Queer History of the United States* 176 (Beacon Press 2011).

17. *Id.* at 180–81.

18. *Id.*

19. See, e.g., *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003) (holding that the Massachusetts Constitution requires recognition of same-sex marriage); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

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

21. See David K. Johnson, *The Lavendar Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* 2 (U. Chic. Press 2023).

22. See Sharon E. Debbage Alexander & Kathi S. Wescott, *Repeal of "Don't Ask, Don't Tell": A Smooth Transition*, 15 WASH. & LEE J. C.R. & SOC. JUST. 129, 130 (2008) (estimating a purge of over 12,000 service members beginning in 1993).

23. BRONSKI, *supra* note 16, at 230–31.

24. Spencer MacNoughton & Sam Donndelinger, *How 'RuPaul's Drag Race' Queens Became the Ambassadors of Being Yourself*, GAY TIMES (Jan. 3, 2025), <https://www.gaytimes.com/uncloseted/ru-paul-drag-race-season-17-impact-alaska-sheacoulee/> [https://perma.cc/3MF4-Z9SK].

25. One recent study shows that the percentage of people identifying as LGBTQ+ is inversely related to age bracket, with people 65 and older least likely to identify as queer (1.8%); followed by people aged 50–64 (2.7%); people aged 35–49 (4.1%); people aged 25–34 (9.1%); and finally people age 18–24 (15.2%). See Jeffrey Jones, *LGBTQ+ Identification in*

exist in all corners of the world, engaging in everything from political speech to health care to adoption, and every so often news breaks about a new country legalizing same-sex marriage.²⁶

Given the breadth of legal issues and rights disputes facing queer people, what is it that makes coming out worthy of its own Article? The simple answer is that none of these things—relationships with same-sex partners, social interaction with queer communities, understanding a need for queer representation in media—are possible without first coming out to oneself. But how does a person come out to themselves if they lack access to the information necessary to help them understand who they are? And once a person decides to share their truth with others, how does one do so? Through clothing? By attending a public event with their new partner? By requesting that others use appropriate pronouns? Bear in mind, coming out is not a singular occurrence; a person will continue to come out for the rest of their life. What if someone—the legislature, the school board, Janet down the street—wants to stop you from expressing that identity?

This Article explores the ways in which the decision to come out is affected by law and society. Part I explores the decision to come out as queer.²⁷ It begins by taking a broader view of the decision to come out. This discussion includes the process of self-defining one's identity, the appeal of remaining in the closet and the political considerations, both internal and external to the LGBTQ community, involved in the decision to come out. Part II discusses conflicts between individuals' desire to express themselves by coming out and rules and policies which chill queer self-expression.²⁸ It begins by discussing the framing of legislation forcing schools to out children to their parents. It then discusses rules and regulations preventing schools from disclosing a child's sexuality or gender identity. Part III argues that the legal rights at issue have been misstated, either deliberately or through ignorance.²⁹ It argues that framing forced outing as recognizing a form of parental rights is wrong, because it misstates who is harmed by forced outing.³⁰ Instead, laws

U.S. Now at 7.6%, GALLUP (Mar. 13, 2024), <https://news.gallup.com/poll/611864/LGBTQ+-identification.aspx> [https://perma.cc/V262-STT4].

26. See, e.g., *LGBTQ Resources List*, GLAAD (Sep. 29, 2025), <https://glaad.org/resourcelist/> (listing U.S. based advocacy groups) [https://perma.cc/BA5Y-EXQ4]; see also *Find Bi+/Queer Resources*, BISEXUAL RES. CTR. (Sep. 29, 2025), <https://biresource.org/find-bi-resources/> (listing U.S. and international resources) [https://perma.cc/PYM4-5Z8A].

27. See *infra* Part I.

28. See *infra* Part II.

29. See *infra* Part III.

30. See *infra* Part IV.

requiring forced outing should consider the child's right to privacy as the right which ought to be protected.

A few notes before proceeding. First, because coming out is a deeply personal experience, this Article relies on a combination of legal analysis and anecdotal evidence intended to emphasize the human experience of coming out. Second, there are many sexual orientations and gender identities, which makes it impractical to try to list them all repeatedly throughout the Article. As a result, this Article uses "LGBTQ" or "queer" due to the breadth of their meanings. When necessary, specific orientations or gender identities will be referenced directly.

I. Coming Out

A. Self-Defining Identity

Self-determination is part of the American mythos.³¹ Politically, self-determination—that is, the right to choose—“has its roots in the American and French revolutions.”³² As a concept, it may refer to national “choices regarding the exercise of sovereignty and independent external relations,” or “to the selection of forms of government” by the people.³³ For purposes of this Article, and in relation to individuals, self-determination is still about the fundamental right to choose, but instead of grand questions of government and societal formation, it is used to reference a person’s concept of the “self.” Queer people (really all people, but this Article is about queer people) make these choices every day, whether in making decisions regarding the expression of their gender identity³⁴ or other indicators of their sexual orientation.

i. A Wealth of Orientations

Sexual orientation as an identity is relatively new. Some scholars, such as Michel Foucault, trace the beginning of homosexuality as an identity to 1870, after an article on “contrary sexual sensations” began to characterize homosexuality:

31. See Damaris Zehner, *The Myth of Autonomy*, RESILIENCE (Oct. 18, 2019), <https://www.resilience.org/stories/2019-10-18/the-myth-of-autonomy/> [https://perma.cc/E64M-29XC].

32. Wolfgang Danspeckgruber & Anne-Marie Gardner, *Self-Determination*, PRINCETON ENCYCLOPEDIA OF SELF-DETERMINATION, <https://pesd.princeton.edu/node/656/> [https://perma.cc/75YE-ZK39].

33. *Id.*

34. Gender expression is defined as the “[e]xternal appearance of one’s gender identity, usually expressed through behavior, clothing, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.” *Glossary of Terms*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/glossary-of-terms> [https://perma.cc/G923-XMNS].

[L]ess by a type of sexual relations than by a certain quality of sexual sensibility, a certain way of inverting the masculine and the feminine in oneself. Homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphroditism of the soul. The sodomite had been a temporary aberration; the homosexual was now a species.³⁵

A more recent account from David Halperin takes a different view, claiming:

Homosexuality and heterosexuality, as we currently understand them, are modern, Western, bourgeois productions. Nothing resembling them can be found in classical antiquity.... In London and Paris, in the seventeenth and eighteenth centuries, there appear... social gathering-places for persons of the same sex with the same socially deviant attitudes to sex and gender who wish to socialize and to have sex with one another.... This phenomenon contributes to the formation of the great nineteenth century experience of "sexual inversion," or sex-role reversal, in which some forms of sexual deviance are interpreted as, or conflated with, gender deviance. The emergence of homosexuality out of inversion, the formation of a sexual orientation independent of relative degrees of masculinity and femininity, takes place during the latter part of the nineteenth century and comes into its own only in the twentieth. Its highest expression is the "straight-acting and -appearing gay male," a man distinct from other men in absolutely no other respect besides that of his "sexuality."³⁶

Despite their differences, both point to the evolution of same-sex intimacy from simple acts that people did together into an individual identity that could be claimed by a person.

Today a person might identify as gay,³⁷ lesbian,³⁸ bisexual,³⁹ pansexual,⁴⁰ asexual,⁴¹ or a number of other orientations. What's more,

35. MICHEL FOUCAULT, THE HISTORY OF SEXUALITY: VOLUME I 43 (Robert Hurley trans., Vintage Books 1990) (1978).

36. David M. Halperin, One Hundred Years of Homosexuality 8-9 (1990).

37. "A person who is emotionally, romantically or sexually attracted to members of the same gender. Men, women and non-binary people may use this term to describe themselves." *Glossary of Terms*, *supra* note 34.

38. "A woman who is emotionally, romantically or sexually attracted to other women. Women and non-binary people may use this term to describe themselves." *Glossary of Terms*, *supra* note 34.

39. "A person emotionally, romantically or sexually attracted to more than one gender, though not necessarily simultaneously, in the same way or to the same degree." *Glossary of Terms*, *supra* note 34.

40. "Describes someone who has the potential for emotional, romantic or sexual attraction to people of any gender though not necessarily simultaneously, in the same way or to the same degree. Sometimes used interchangeably with bisexual." *Glossary of Terms*, *supra* note 34.

41. "Often called 'ace' for short, asexual refers to a complete or partial lack of sexual attraction or lack of interest in sexual activity with others. Asexuality exists on a spectrum, and asexual people may experience no, little or conditional sexual attraction." *Glossary of Terms*, *supra* note 34.

sexual orientation is often considered to be fluid, meaning that person's sexual orientation may evolve over time.⁴² As a result, self-determination may not result in a permanently fixed identity.

ii. Gender

Gender is an equally diverse and complex collection of experiences and identities beyond the simple male/female binary. A recent textbook identifies as many as twelve different genders: cisgender, trans boy, trans girl, genderqueer, non-binary, gender fluid, gender flux, agender, demigender, questioning gender, androgynous, and bigender.⁴³ Most of these identities share the fundamental aspect that they involve a person whose gender identity does not align with the gender that they were assigned at birth.⁴⁴

Transgender and non-binary appear to be the most common identities, according to the demographics revealed by the 2015 United States Transgender Survey (USTS) of the transgender community in the United States.⁴⁵ Amongst the respondents, 62% identified as transgender men or women, while 35% identified as non-binary or genderqueer.⁴⁶ Among those who identified as non-binary or genderqueer, 80% were assigned female at birth, and 20% were assigned male at birth.⁴⁷ Non-binary respondents also tended to be young, with approximately two thirds falling within the 18–24 age range.⁴⁸ A final piece of evidence suggests that non-binary people are more likely to be multiracial than transgender people.⁴⁹

Intersex people exist as well. People who are intersex are often born with the external sexual organs of one sex, and the internal sexual organs

42. Sabra L. Katz-Wise, *Sexual Fluidity and the Diversity of Sexual Orientation*, HARV. HEALTH PUBL'G (Mar. 31, 2022), <https://www.health.harvard.edu/blog/sexual-fluidity-and-the-diversity-of-sexual-orientation-202203312717> [https://perma.cc/D7F7-VB9S].

43. See Carlos A. Ball, Jane S. Schacter, Douglas NeJaime & William B. Rubenstein, *Cases and Materials on Sexuality, Gender Identity and the Law* 7 (7th ed. 2022).

44. *Id.*

45. See Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet & Ma'ayan Anafi, *The Report of the 2015 U.S. Transgender Survey* 44 (2016), <https://transequality.org/sites/default/files/docs/usts-Full-Report-Dec17.pdf> [https://perma.cc/3YY6-RYVH].

46. *Id.* at 45.

47. *Id.*

48. *Id.* at 46.

49. See Jack Harrison, Jaime Grant & Jody L. Herman, *A Gender Not Listed Here: Genderqueers, Gender Rebels, and OtherWise in the National Transgender Discrimination Survey*, 2 LGBTQ PUB. POL'Y J. HARV. KENNEDY SCH. 13, 18–19 (2012) (attributing this statistic to "Q3GNLs, those who did not write their gender" in the survey question).

of a different sex.⁵⁰ Some intersex people find that they struggle to place themselves with the gender binary.⁵¹ For example, Hil Malatino writes:

I wasn't buying the narrative that was offered me, the notion that nature had an intention that my body was somehow disobeying or belying, that I was a failed but remediable woman. It didn't resonate with me; it seemed that I failed to meet the constitutive criteria for womanhood at what I had been taught was the most basic level—the biological—and that no amount of gender appropriate dressage would change that.

That was when I began to ask myself [sic] could inhabit a specifically intersex identity. I was preoccupied, above all, with the question of what I was, now that I considered myself neither male nor female. Some big questions concerning me, in no particular order: what was wrong with conventional understandings of biological sex, if a being like me could be produced? What did being intersex mean in terms of my sexuality? Could I still be heterosexual? Homosexual? Bisexual? Did any of these sexual identities pertain?⁵²

In this excerpt, Malatino captures the sometimes-complex relationship between sexual orientation and gender identity from a perspective that is not widely understood.⁵³

iii. Access to Information

But how does a person determine their sexual orientation or their gender identity? One way may be through access to information. Unfortunately, we live in a time where social and political forces conspire to make access to the necessary information more and more difficult to obtain.⁵⁴

Book bans and censorship are on the rise in the United States.⁵⁵ 2023 saw over 1,200 “demands to censor library books, materials, and

50. See KATRINA KARKAZIS, FIXING SEX: INTERSEX, MEDICAL AUTHORITY, AND LIVED EXPERIENCE 118 (2008); *Intersex*, CLEVE CLINIC (July 19, 2022), <https://my.clevelandclinic.org/health/articles/16324-intersex> [<https://perma.cc/VFX7-TBC3>] (“People who are intersex have genitals, chromosomes or reproductive organs that don’t fit into a male/female sex binary.”).

51. See Hil Malatino, *Queer Embodiment: Monstrosity, Medical Violence, and Intersex Experience* 19 (2019).

52. *Id.*

53. *Id.* at 19–20.

54. See Brooke Tanner & Nicol Turner Lee, *Children’s Online Safety Laws are Failing LGBTQ+ Youth*, BROOKINGS (July 9, 2025), <https://www.brookings.edu/articles/childrens-online-safety-laws-are-failing-lgbtq-youth/> [<https://perma.cc/9LT6-RUX2>] (explaining how online safety laws targeting children can be broadly construed to restrict access to LGBTQ+ resources for youth).

55. See Elizabeth Wolfe, *Book Bans Are Harming LGBTQ People, Advocates Say. This Online Library Is Fighting Back.*, CNN (Dec. 16, 2023),

resources" and "4,240 unique book titles targeted for censorship."⁵⁶ Approximately 47% of those titles contained content about LGBTQ people or people of color.⁵⁷ These attempts at censoring queer content have been directed to two places where children and adolescents are frequently able to go for information: school and public libraries.⁵⁸

True self-determination requires a person to have the knowledge to understand who they are.⁵⁹ Without easy access to this information, a child or adolescent questioning their gender identity may turn to less safely regulated sources—such as the internet—or to people who reinforce feelings of shame related to the child or adolescent's sexuality or gender identity.⁶⁰ Similarly, lack of access to such information deprives society of a chance to better understand, and more easily accept, people who are different.⁶¹ Both of these are forces which could drive children, adolescents, and even adults, into the closet.

B. The Comfort and Oppression of the Closet

Society has long given queer people incentives to hide. From anti-sodomy laws,⁶² to political witch hunts,⁶³ to public ridicule, queer people in the United States and abroad have often faced legal and social challenges related to their sexual orientation or gender identity.⁶⁴ For

<https://www.cnn.com/2023/12/16/us/queer-liberation-library-combats-lgbtq-book-bans-reaj/index.html> [<https://perma.cc/DK2C-9ZP2>] (identifying increased censorship of LGBTQ books in recent years).

56. *American Library Association Reports Record Number of Unique Book Titles Challenged in 2023*, AM. LIBR. ASS'N (Mar. 14, 2024), <https://www.ala.org/news/2024/03/american-library-association-reports-record-number-unique-book-titles> [<https://perma.cc/RQE4-TXJM>].

57. *Id.*

58. See Eliot T. Tracz, *Censorship and Book Bans: Two Non-Constitutional Arguments Against Queer Erasure*, 52 HOFSTRA L. REV. 903, 913-17 (2024).

59. See Stephen C. Denney & Alfred W. Daviso, *Self-Determination: A Critical Component of Education*, 40 AM. SECONDARY EDUC. 43, 43-44 (2012) (identifying self-knowledge as a "[component] of self-determination").

60. See Tracz, *supra* note 58, at 925.

61. Cf. *id.* at 920 (demonstrating how access to information allows children to understand themselves better which indicates that information can also help children and adults understand others better).

62. See generally ESKRIDGE, JR., *supra* note 15 (detailing the history of sodomy laws in the United States through the decision in *Lawrence v. Texas*).

63. See generally DAVID K. JOHNSON, *THE LAVENDER SCARE: THE COLD WAR PERSECUTION OF GAYS AND LESBIANS IN THE FEDERAL GOVERNMENT* (1st ed. enlarged 2023) (detailing the McCarthy Era persecution of queer federal government employees).

64. As Gayle Rubin has written, "[a]s with other aspects of human behavior, the concrete institutional forms of sexuality at any given time and place are products of human activity. They are imbued with conflicts of interest and political maneuvering, both deliberate and incidental. In that sense, sex is always political." GAYLE S. RUBIN, *DEVIATIONS: A GAYLE RUBIN READER* 138 (2011).

many queer people, the safest way to escape the shame, fear, and danger associated with their queerness was, and still is, to hide.

Eve Kosofsky Sedgwick has noted that there are few of even the most openly queer people who are not still closeted in regards to some person or institution which is important in their life.⁶⁵ Writing in the late 1980s and early 1990s, Sedgwick noted that the closet is “the fundamental feature of social life; and there can be few gay people, however courageous and forthright by habit, however fortunate in the support of their immediate communities, in whose lives the closet is not still a shaping presence.”⁶⁶

People have found multiple ways to seek to remain closeted. One way do so is by attempting to pass as straight.⁶⁷ So called “passing privilege” is often ascribed to bisexual people in heterosexual relationships, therefore appearing to be straight and becoming oppressors of their gay and lesbian allies.⁶⁸ A related concept prevalent during the 1980s and 1990s in the Black community involves the “down-low.”⁶⁹ Men on the “down-low” present as straight and masculine, while hiding their same-sex attractions or activities.⁷⁰

Being closeted, and hiding that deep, personal aspect of one’s life, seems, to many, to be a safe decision.⁷¹ In his monumental work, *Gay New York*, George Chauncey described the decision to remain in the closet, writing:

Many gay men, for instance, described negotiating their presence in an often hostile world as living a double life, or wearing a mask and taking it off. Each image has a valence different from “closet,” for each suggests not gay men’s isolation, but their ability—as well as their need—to move between different personas and different lives, one straight, the other gay, to wear their hair up, as another common phrase put it, or let their hair down. Many men kept their gay lives hidden.... Leading a double life in which they often passed as straight (and sometimes married) allowed them to have jobs and

65. Eve Kosofsky Sedgwick, *Epistemology of the Closet* 67–68 (1990).

66. *Id.* at 68.

67. See, e.g., Milena Popova, *Internalized Biphobia*, in CLAIMING THE B IN LGBT 51, 53 (Kate Harrad ed., 2018).

68. Eliot T. Tracz, *The Inscrutable Bisexual: An Essay on Bisexuality and Immutability*, 21 SEATTLE J. FOR SOC. JUST. 917, 920 (2023); Brittney White, *The Myth of Straight Passing Privilege*, BI.ORG (Oct. 7, 2017), <https://bi.org/en/articles/the-myth-of-straight-passing-privilege> [https://perma.cc/E3VXPSYT].

69. *Down-low*, DICTIONARY.COM, <https://www.dictionary.com/browse/down-low> (defining the down-low as “of or pertaining to men who secretly or discreetly have sex with other men.”); GEORGE CHAUNCEY, *GAY NEW YORK: GENDER, URBAN CULTURE, AND THE MAKING OF THE GAY MALE WORLD, 1890-1940*, at 6 (2nd trade paperback ed., 2019) (footnotes omitted).

70. *Id.*

71. See Jack Drescher, *The Closet: Psychological Issues of Being In and Coming Out*, PSYCHIATRIC TIMES (Oct. 1, 2004), <https://www.psychiatrictimes.com/view/closet-psychological-issues-being-and-coming-out> [https://perma.cc/ZXL5-2HBX].

status a queer would have been denied while still participating in what they called “homosexual society” or “the life.” For some, the personal cost of “passing” was great. But for others it was minimal, and many men positively enjoyed having a “secret life” more complex and extensive than outsiders could imagine.⁷²

But that is not so. Perhaps the most insidious aspect of the closet is the false sense of security that it offers. Remaining closeted offers safety in a world where social and political forces actively push a regression into hostility against queer people.⁷³ The cost, however, comes at the expense of living an authentic life.

C. Coming Out

Once a person has determined who they are and—in a perfect world—decided to share their true self with the world, they may choose to come out of the closet. For others, the choice may be taken from them, either by circumstance or the intentional actions of another. Either way, coming out—or being forced out—is a major event in the life of a queer person.

i. Coming Out Voluntarily

In an ideal world, a person could choose the time, manner, and place of their coming out. That could include as few or as many people as the closeted person was comfortable with. It might include picking a safe setting in which to share the information, whether that be home, a café, or someplace else. On some occasions the act of coming out may be bombastic, at other times it may be something as subtle as casually referring to a same-sex partner as “my boyfriend” or “my wife” during conversation with a person who is unaware of the speaker’s sexual orientation or gender identity.

In this ideal world, coming out would be met with validation. For some, validation might look like the experience of Charli, who writes that:

The first person I came out to properly was my mum. She was just like, “Yeah, we know. Okay. Alright.” I don’t really know how she knew. She then spoke to my auntie who was living with us for a while, and apparently she knew as well! I thought, “Okay, so it’s just me completely oblivious and everybody else knew!”⁷⁴

For others, validation might come differently, but ultimately the result of coming out would be acceptance.

One of the things about coming out which is not widely understood by those who have never had to come out is that it is not a one-time

72. Chauncey, *supra* note 69, at 6–7 (footnotes omitted).

73. See Drescher, *supra* note 71.

74. GOSWELL & WALKER, *supra* note 2, at 106.

occurrence. An openly queer person will continue to come out, repeatedly, throughout their life as they meet new people,⁷⁵ move to new communities, or begin new jobs. What is important is that the decision be voluntary. Not everyone is so lucky.

ii. Forced Outing

Outing someone is the act of “[e]xposing someone’s lesbian, gay, bisexual transgender or gender non-binary identity to others without their permission.”⁷⁶ It is generally considered a socially unacceptable act as it infringes upon the outed person’s privacy, autonomy, and potentially exposes that person to danger.⁷⁷ Yet outing is not always a malicious act. Here, this article discusses three ways in which a person can be outed.⁷⁸

a. *Forced Outing and Queer Politics*

Like any community, the politics of the queer community can be heated.⁷⁹ Kathleen Guzman, writing in 1995, argued the one tactic adopted by queer advocates included the outing of queer individuals in various publications.⁸⁰ As a political tool, outing was said to serve the premise that progress “requires visibility and collective action.”⁸¹ Justifications for outing individuals included:

1. Heighten sensitivity to gay concerns, especially Acquired Immune Deficiency Syndrome (AIDS);
2. Increase public awareness of gay rights;
3. Provide positive gay role models; and
4. Expose the hypocrisy of those in power positions.⁸²

75. Or people they already know. Part of the experience of being bisexual involves coming out to people you already know when you introduce a new romantic partner of a different gender from your previous partner.

76. *Glossary of Terms*, *supra* note 34.

77. *Glossary of Terms*, *supra* note 34.

78. This article refers to all of these ways under the heading of “Forced Outing” to reference the fact that each form is involuntary.

79. See, e.g., *Resource Guide to Coming Out as Bisexual*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/resources/resource-guide-to-coming-out-as-bisexual> [https://perma.cc/2C2M-WNSC] (recognizing the exclusion and erasure of bisexual people by other members of the LGBTQ community); see also Cassie Sheets, Andrew J. Stillman, & Rachel Shatto, *10 Reasons the Phrase “Gold Star Lesbian” Needs to Die*, PRIDE.COM (Nov. 19, 2024), <https://www.pride.com/lesbian/gold-star-lesbian> [https://perma.cc/P3CM-7DBE] (drawing attention to a unique type of discrimination within the LGBTQ community).

80. See Kathleen Guzman, *About Outing: Public Discourse, Private Lives*, 73 WASH. UNIV. L. Q. 1531 (1995).

81. *Id.* at 1535.

82. *Id.* at 1536 (citation omitted).

There was even discernable support for such tactics by those who acknowledged that outing people could help restructure beliefs about homosexuality.⁸³

Supporters of outing have argued that “secrecy is more damaging than revelation, both to individual and community.”⁸⁴ This, of course, forecloses the right of an individual to select whom to come out to and instead demands that one come out wholeheartedly and to everyone. Unsurprisingly, there has been pushback against outing people because keeping a queer person’s secret is a convention of the queer community.⁸⁵

b. Forced Outing by Circumstance

Sometimes a person may be forced out of the closet not through the opportunism or malice of another but simply through unfortunate circumstances. A lesbian woman identified as GJ recounts her story of beingouted to her community by a picture published in a newspaper, saying:

I went to a protest march in London. I can't remember the cause now, but I was walking in front of a "Black, Lesbian and Gay" banner and my picture got taken by someone from the Caribbean Times. In those days in Leicester, every Black person used to read the Caribbean Times. That was on a Saturday, and I think by the Wednesday word had got around about my picture⁸⁶

While not a universal experience, GJ’s story represents the sort of events which may force a person out of the closet without the intent of someone else to cause the outing.

There are, of course, other ways in which circumstances may result in someone being outed. A parent stumbling upon search history on a shared computer, running into an acquaintance while on a date with a same-sex partner, a parent discovering gender non-conforming clothing while doing laundry. None of these circumstances involves the malice of another, yet they may still be deeply embarrassing and constitute an involuntary outing of the closeted person.

83. *Id.* at 1536; *id.* at 1536 n. 24 (presenting the argument that there is internal debate within the gay and lesbian community towards whether a person’s sexual orientation is a public or private concern).

84. *Id.* at 1549.

85. See RICHARD D. MOHR, GAY IDEAS: OUTING AND OTHER CONTROVERSIES 29 (1992) (“[T]he presumption that every gay person will keep every other gay person’s identity secret from the public is a convention and not merely a rule. Any field anthropologist examining the folkways of the gay community would easily notice that among all the variety in the gay community—just for starters divisions of life-styles between lesbians and gay men—The Secret is *the* social convention that most centrally defines the community.”).

86. GOSWELL & WALKER, *supra* note 2, at 112.

c. Forced Outing by Operation of Law

A final form of outing may be caused by the operation of law.⁸⁷ In this scenario, a state law or regulation may actually require that when a child or adolescent has disclosed their orientation or identity to an adult employed in a school system, that school system must inform the child or adolescent's parents.⁸⁸ The remainder of this article is spent in discussion of this type of forced outing.

II. Forced Outing

A. The Supreme Court Takes a Pass

On December 9, 2024, the United States Supreme Court denied a petition for a writ of certiorari in the case *Parents Protecting Our Children v. Eau Claire Area School District*.⁸⁹ That case arose from the policy creation by a local school district in Wisconsin relating to the forced outing of a transgender student.⁹⁰ In 2021, the Eau Claire Area School District created a document called the "Administrative Guidance for Gender Identity Support," which was intended to "foster inclusive and welcoming environments that are free from discrimination, harassment, and bullying regardless of sex, sexual orientation, gender identity or gender expression."⁹¹ The document provided guides for schools to follow to "address the needs of transgender, nonbinary, and/or gender non-conforming students."⁹²

The authors of the document noted the sensitive nature of matters involving gender identity, including the possibility that students may not feel or be safe coming out at home.⁹³ As a result, the guidelines suggest that "[s]chool personnel should speak with the student first before discussing a student's gender non-conformity or transgender status with the student's parent/guardian."⁹⁴

87. "Operation of law" is not a technical term but is used here to describe a situation where a legal rule results in the outing of an individual.

88. See MOVEMENT ADVANCEMENT PROJECT, LGBTQ YOUTH: FORCED OUTING OF TRANSGENDER STUDENTS (June 25, 2025), <https://www.lgbtmap.org/img/maps/citations-forced-outing.pdf> [<https://perma.cc/U5KW-Z8UE>].

89. 145 S. Ct. 14, 14 (2024).

90. *Id.* See also Bob Egelko, *SCOTUS Turns Down Chance to Weigh in on Forced Outing of Trans Students in Schools*, S.F. CHRON. (Dec. 9, 2024), <https://www.sfchronicle.com/politics/article/scotus-trans-students-19969541.php> [<https://perma.cc/Z32J-WDB4>] ("The court denied review Monday of a school district's refusal to require its teachers to notify parents that their child identifies as transgender.").

91. *Parents Protecting Our Child. v. Eau Claire Area Sch. Dist.*, 95 F.4th 501, 503 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 14, 14 (2024).

92. *Id.*

93. *Id.*

94. *Id.*

In 2022, the School District introduced a template for a “Gender Support Plan.”⁹⁵ The plan records the understanding between the student and the School District regarding a student’s gender identity and the involvement of the student’s parents in the process.⁹⁶ It is, however, not a privileged document and may be provided to parents upon request.⁹⁷

In September of 2022, Parents Protecting Our Children (Parents Protecting), an association of parents whose children attended schools within the School District, brought suit alleging that the Administrative Guidance for Gender Support Plan violated its members’ rights as parents under both the Due Process Clause of the Fourteenth Amendment and the Free Exercise Clause of the First Amendment.⁹⁸ Parents Protecting was upfront about the fact that its challenge was not actually brought in response to an experience any member parent had with the School District’s implementation of the Administrative Guidance, but rather as a facial pre-enforcement challenge attempting to invalidate the entirety of the new policy.⁹⁹ They also alleged religious concerns.¹⁰⁰

The District Court for the Western District of Wisconsin ruled against Parents Protecting on the grounds that they failed to allege any injury or risk of injury sufficient to establish standing under Article III’s Case or Controversy requirement.¹⁰¹ On appeal, Parents Protecting argued, and all parties agreed, that associational standing might exist if Parents Protecting could show:

factual allegations showing that (1) at least one of the association’s members would otherwise have standing to sue in their own right; (2) the interests sought to be protected by the lawsuit are germane to the association’s purpose; and (3) neither the claims asserted nor the relief sought requires the participation of individual members in the lawsuit.¹⁰²

Nonetheless, the Seventh Circuit affirmed, finding that Parents Protecting could not satisfy requirements for associational standing.¹⁰³

Despite *Parents Protecting* not deciding any substantive issues, the stage is set for a new front in the culture wars. Forced outing will likely now join gender affirming care, LGBTQ+ books, and pronoun usage in the

95. *Id.*

96. *Id.*

97. *Id.* at 503–04.

98. *Id.* at 504. The district court dismissed the case for lack of standing, so these claims were not developed. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 505.

103. *Id.* at 503.

list of litigated issues involving the rights of certain Americans to simply exist authentically.

B. Policies Requiring the Outing of Children

The Movement Advancement Project provides information on a number of issues affecting the queer community.¹⁰⁴ Among the issues it tracks are laws requiring the forced outing of students.¹⁰⁵ At time of writing, eight states required the outing of transgender students to their parents.¹⁰⁶ Another handful encouraged but did not automatically require the outing of transgender students.¹⁰⁷

Alabama is one of those states which requires the forced outing of transgender students to their parents.¹⁰⁸ The law, which is codified in the guise of a healthcare statute, states that:

Section 5. No nurse, counselor, teacher, principal, or other administrative official at a public or private school attended by a minor shall do either of the following:

- (1) Encourage or coerce a minor to withhold from the minor's parent or legal guardian the fact that the minor's perception of his or her gender or sex is inconsistent with the minor's sex.
- (2) Withhold from a minor's parent or legal guardian information related to a minor's perception that his or her gender or sex is inconsistent with his or her sex.¹⁰⁹

The law provides no exceptions for students who might be endangered by a parent learning of their gender identity.

Idaho has a similar bill, portrayed as a civil rights law, yet framed in a slightly different manner.¹¹⁰ There, the bill states that:

- (3) An employee of a public school or public institution of higher education, regardless of the scope of such employee's official duties, shall not:

104. See generally MOVEMENT ADVANCEMENT PROJECT, <https://www.lgbtmap.org/> [<https://perma.cc/M6M2-FEVU>] (providing information on numerous state laws and pending legislation).

105. *Forced Outing of Transgender Youth in Schools*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/youth/forced_outing [<https://perma.cc/5QH4-ZMFQ>].

106. S.B. 184, 2022 Leg., Reg. Sess. (Ala. 2022); S. File 496, 90th Gen. Assemb. (Iowa 2023); H.B. 538, 67th Leg., 2d Reg. Sess. (Idaho 2024); H.B. 1608, 123rd Gen. Assemb., 1st Reg. Sess. (Ind. 2023); S.B. 49, 2023 Gen. Assemb., 2023 Sess. (N.C. 2023); H.B. 1522, 68th Legis. Assemb., Reg. Sess. (N.D. 2023); H.B. 4624, 2023–2024 Gen. Assemb., 125th Sess. (S.C. 2024); S.B. 1810, 113th Gen. Assemb. (Tenn. 2024).

107. H.B. 1468, 94th Gen. Assemb., Reg. Sess. (Ark. 2023); S.B. 518, 68th Leg., Reg. Sess. (Mont. 2023); NEV. ADMIN. CODE § 388.880(3)(c)(2) (2018); S.B. 100, 2023 Leg., Gen. Sess. (Utah 2023).

108. See S.B. 184, 2022 Leg., Reg. Sess. § 5 (Ala. 2022).

109. *Id.* at § 5(1)–(2).

110. See H.B. 538, 67th Leg., 2d Reg. Sess. § 2 (Idaho 2024).

- (a) Knowingly and intentionally address an unemancipated minor student by a name other than the student's legal name or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with the student's sex, without the written permission of the student's parent or guardian; and
- (b) Be subject to adverse employment action for declining to address a student using a name other than the student's legal name, or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with a student's sex.¹¹¹

The bill also excludes a transgender student's peers from addressing them by their preferred name or pronouns.¹¹² To top it off, it adds a cause of action for injunctive relief and money damages for any person "harmed" by a violation of the bill.¹¹³ It is unclear what constitutes a "harm" under this statute.

Indiana requires that if a student requests to change their name, pronouns, or title, a parent must receive written notice within five days.¹¹⁴ Iowa similarly requires that parents be notified of any accommodations requested by a student involving the use of a name or pronoun which differs from the name assigned to the student in the school registration forms or records.¹¹⁵ Neither take into account the needs of the student in question, including any consideration for the child's safety at home. Instead, these statutes actively reduce transgender students to a discrete class of individuals and single them out for differential treatment. Here, the concern is that states have actively sought to determine a class of students who are singled out for no reason other than their identity and taken away their autonomy in making a major decision about their own life.

i. Coercively Forced Outing

Another set of states do not explicitly require the forced outing of students.¹¹⁶ Those states do, however, sometimes resort to coercive methods to incentivize forced outing.¹¹⁷ As a result, students in these states may face the same challenges as those in states which require forced outing.

111. *Id.* at § 2(3).

112. *Id.* at § 2(4).

113. *Id.* at § 2(5).

114. See IND. CODE § 20-33-7.5-2.

115. See S. File 496, 90th Gen. Assemb. § 14 (Iowa 2023).

116. See H.B. 1468, 94th Gen. Assemb., Reg. Sess. (Ark. 2023); S.B. 518, 68th Leg., Reg. Sess. (Mont. 2023); NEV. ADMIN. CODE § 388.880(3)(c)(2) (2018); S.B. 100, 2023 Leg., Gen. Sess. (Utah 2023).

117. These methods include actions such as threatening employees with discipline.

Florida is one such example. The Parent's Bill of Rights states that “[a]n employee of the state, any of its political subdivisions, or any other governmental entity who encourages or coerces, or attempts to encourage or coerce, a minor child to withhold information from his or her parent may be subject to disciplinary action.”¹¹⁸ This requirement could easily be construed to include information regarding sexual orientation or gender identity.

Arizona has a similar law which does not require the forced outing of a child but may coerce it. There, the statute grants parents:

[t]he right to request, access and review all written and electronic medical records of the minor child unless otherwise prohibited by law or unless the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement official requests that the information not be released.¹¹⁹

Again, state employees may be subject to disciplinary action for any violation of the statute.¹²⁰

While these policies do not directly force a school employee to out a student to their parents, they do two other things which coerce employees into sharing a student's information about their sexual orientation or gender identity with that student's parent. First, by requiring that all information be shared with a parent, they require school employees to take the affirmative step of sharing information about the student's orientation or identity. This has the effect of being a forced outing. Second, by threatening employees with legal consequences for choosing not to share that information with parents even if the employee is aware of potential risks to the student's health or safety, legislators encourage a system in which self-preservation becomes more important than actually protecting the needs of a vulnerable and isolated group of individuals. Ultimately, even in states that do not require forced outing, there is no choice not to comply with outing a student.

C. Policies Preventing the Outing of Children

Against the backdrop of forced outing of children, some headway has been made to counteract the attempts at forced outing. California has adopted a so called “anti-snitch” law preventing educators from outing students.¹²¹ The law includes two important provisions:

An employee or a contractor of a school district, county office of

118. FLA. STAT. § 1014.04(3).

119. Ariz. Rev. Stat. § 1-602(A)(6).

120. *Id.* at § 1-602(C).

121. Amelia Hansford, *California Passes “Anti-Snitch” Law to Prevent the Forced Outing of LGBTQ+ Students by Teachers*, PINK NEWS (Dec. 27, 2024), <https://www.thepinknews.com/2024/12/27/california-law-stops-teachers-outing-students/> [<https://perma.cc/WCQ6-YK86>].

education, charter school, or state special school for the blind or the deaf shall not be required to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent unless otherwise required by state or federal law.¹²²

And:

A school district, county office of education, charter school, state special school for the blind or the deaf, or a member of the governing board of a school district or county office of education or a member of the governing body of a charter school, shall not enact or enforce any policy, rule, or administrative regulation that would require an employee or a contractor to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent, unless otherwise required by state or federal law.¹²³

Enacted in response to school districts requiring the forced outing of students, the law does not prevent teachers from speaking to parents. Instead, as Governor Gavin Newsom points out, school districts cannot "fire a teacher for not being a snitch."¹²⁴ It is Newsom's position that policing student gender identity should not be required of teachers.¹²⁵

It remains to be seen how many, if any, states will follow in California's wake. There will undoubtedly be legal challenges to the "anti-snitch" law, and some organizations have decried it as unconstitutional.¹²⁶ At the same time, however, action is still being taken at the local level to help protect the rights of transgender children in schools.

The Administrative Guidance at issue in *Parents Protecting* is one such example. There, the complained of rules included the following language:

The following guidelines should be used to address the needs of transgender, nonbinary, and/or gender non-conforming students:

- a. A transgender, non-binary, and/or gender-nonconforming student is encouraged to contact a staff member at the school to address any concerns, needs, or requests. This staff member will notify and work with the principal/designee. Parents/guardians of transgender, non-binary, and/or gender non-conforming students may also initiate contact with a staff member at school.
- b. When appropriate or necessary, the principal or designee will schedule a meeting to discuss the student's needs and to develop a specific Student Gender Support Plan when appropriate to address

122. A.B. 1955, 2023-24 Leg., Reg. Sess. § 5(a) (Cal. 2024).

123. *Id.* at § 6(a).

124. Hansford, *supra* note 121.

125. Hansford, *supra* note 121.

126. *Parent Secrecy Bill Passes CA Assembly Amid Heated Debate*, CAL. FAM. COUNCIL (July 1, 2024), <https://www.californiafamily.org/2024/07/parent-secrecy-bill-passes-ca-assembly-amid-heated-debate/> [https://perma.cc/SD3Z-WFHH].

these needs. Documentation shall include date, time, location, names, and titles of participants, as well as the following information. The plan shall address, as appropriate:

1. The name and pronouns desired by the student (generally speaking, school staff and educators should inquire which terms a student may prefer and avoid terms that make the individual uncomfortable; a good general guideline is to employ those terms which the individual uses to describe themselves)
2. Restroom and locker room use
3. Participation in athletics and extracurricular activities
4. Student transition plans, if any. Each individual transitions differently (if they choose to transition at all), and transition can include social, medical, surgical, and/or legal processes
5. Other needs or requests of the student
6. Determination of a support plan coordinator when appropriate.¹²⁷

A magistrate judge for the Western District of Wisconsin also found that the Guidance included the language: "Some transgender, non-binary, and/or gender-nonconforming students are not 'open' at home for reasons that may include safety concerns or lack of acceptance. School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent/guardian."¹²⁸

Both the California "anti-snitch" law and the Administrative Guidance attempt to place the needs of children at the forefront of the policymaking. Ideally, this means placing the needs of LGBTQ children front and center in the rulemaking process. In practice, this means acknowledging the potential tradeoff between the safety of the child and the right of the parent to be informed about the goings on in their child's life.

III. Framing the Question of Rights

Justice Alito's dissent from the denial of certiorari in *Parents Protecting* exposes the nature of forced outing disputes. In his argument, Justice Alito seeks to frame the issue as one of parental rights, writing:

This case presents a question of great and growing national importance: whether a public school district violates parents' "fundamental constitutional right to make decisions concerning the rearing of" their children, *Troxel v. Granville*, 530 U. S. 57, 70 (2000) (plurality opinion), when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that

127. *Parents Protecting Our Child., v. Eau Claire Area Sch. Dist.*, 657 F. Supp. 3d 1161, 1165–66 (W.D. Wis. 2023).

128. *Id.* at 1166.

process. We are told that more than 1,000 districts have adopted such policies.¹²⁹

In doing so, Justice Alito dismisses—intentionally or otherwise—the possibility the actual question implicates the rights of children themselves. It is no secret that how a question is framed can determine how that question is answered.¹³⁰

One could accuse Justice Alito, as well as Justice Thomas who joined in the dissent,¹³¹ of giving the game away. “Parents’ Rights” has been a rallying call for conservative parents and politicians,¹³² and framing the question as one of violation of parent’s rights sets the stage for a conservative policy win. This is hardly objective judging.

What is equally interesting is that Justice Alito voices a concern that courts are hiding behind Article III standing as a means of avoiding difficult constitutional issues.¹³³ Put a different way, these two justices suggest that they would like to see courts ignore their own constitutional responsibilities in order to address a politically sensitive issue.¹³⁴ It makes sense then to consider the conflicting interests involved in the forced outing of children. This means discussing parental rights, interests, and potential harms, and considering them against the privacy interests of those children who would be outed by their teachers or counselors.

A. Parental Rights

i. The Parental Rights Movement

The Parental Rights Movement is nothing new. Even in the late 1990s legal scholars began taking note of the growing Parental Rights Movement.¹³⁵ Historically, as Professor Kristine Bowman points out, Parents’ Rights advocates have focused on opt-out policies involving their

129. *Parents Protecting Our Child. v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari).

130. See Bryan A. Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 SCRIBES J. LEGAL WRITING 1, 2 (1994–1995) (arguing that poor issue framing may confuse how a question is answered).

131. *Parents Protecting Our Child.*, 145 S. Ct. at 14 (Alito, J., dissenting from denial of certiorari).

132. See, e.g., Libby Stanford, *Parents’ Rights Groups Have Mobilized. What Does it Mean for Students?*, EDUC. WEEK (Aug. 31, 2023), <https://www.edweek.org/leadership/parents-rights-groups-have-mobilized-what-does-it-mean-for-students/2023/08> [<https://perma.cc/MNJ7-3KFQ>] (detailing the parents’ rights movement and its impacts on politics and schools).

133. *Parents Protecting Our Child.*, 145 S. Ct. at 14–15 (Alito, J., dissenting from denial of certiorari).

134. *Id.*

135. See Linda L. Lane, *The Parental Rights Movement*, 69 U. COLO. L. REV. 825, 826 (1998).

own children.¹³⁶ Bowman lists several areas where this has happened, including the ability to opt out of “newly integrated schools and into segregated ones, out of sex education, out of traditional public schools, and into charter schools, private schools, or homeschools.”¹³⁷ Each area coincides with the belief that parents should have control over the education of their children.¹³⁸

Parental rights have gained the support of the federal government through the Family Education and Privacy Rights Act (FERPA)¹³⁹ and the Protection of Pupil Rights Amendment (PPRA).¹⁴⁰ Both of these statutes, which were enacted in the 1970s, predate the current Parental Rights Movement. Yet both potentially play a role in the targeting and forced outing of transgender children.¹⁴¹

FERPA was enacted in 1974 for the purpose of regulating access to and disclosure of student records. The relevant sections state that:

(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that

136. Kristine L. Bowman, *The New Parents' Rights Movement, Education, and Equality*, 91 U. CHI. L. REV. 399, 400 (2024).

137. *Id.* (footnotes omitted).

138. *Id.*

139. 20 U.S.C. § 1232g.

140. 20 U.S.C. § 1232h.

141. President Trump's January 29, 2025, executive order titled “Ending Radical Indoctrination in K-12 Schooling” specifically invokes both FERPA and PPRA as part of its attempt to strong-arm schools into abandoning trans students. *See Exec. Order 14190*, 90 Fed. Reg. 8853 (Jan. 29, 2025).

is subject to the provisions of this section.¹⁴²

“Records” is not specifically defined in the statute, however the Code of Federal Regulations (CFR) has defined “education records” to mean records “(1) [d]irectly related to a student; and (2) [m]aintained by an educational agency or institution or by a party acting for the agency or institution.”¹⁴³ This seems to include records documenting student requests for accommodations regarding their gender identity, although it is unclear whether such requests must be documented at all.

PPRA serves a similar, though slightly different purpose. Instead of directing the disclosure of student records, PPRA seeks to protect other student information, providing that:

- (a) Inspection of instructional materials by parents or guardians. All instructional materials, including teacher’s manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children.
- (b) Limits on survey, analysis, or evaluations. No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—
 - (1) political affiliations or beliefs of the student or the student’s parent;
 - (2) mental or psychological problems of the student or the student’s family;
 - (3) sex behavior or attitudes;
 - (4) illegal, anti-social, self-incriminating, or demeaning behavior;
 - (5) critical appraisals of other individuals with whom respondents have close family relationships;
 - (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
 - (7) religious practices, affiliations, or beliefs of the student or student’s parent; or
 - (8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.¹⁴⁴

The PPRA seems less applicable to forced outing on its face, but it remains to be seen how it will be applied.

142. 20 U.S.C. § 1232g(a)(1)(A)–(B).

143. 34 C.F.R. § 99.3 (2024).

144. 20 U.S.C. § 1232h(a)–(b).

The concept of Parental Rights extends to the courts as well. The Supreme Court has found that parents have the right to oversee the “care, custody, and control” of their child.¹⁴⁵ Parents also retain the right to decide “how, where, and by whom their children are educated” and “to supplement the prescribed curriculum with other content, including religious content.”¹⁴⁶ None of these rights are particularly controversial, and each is supported by case law. For example, the ability to decide how to educate one’s children was vindicated in *Pierce v. Society of Sisters*, a 1925 case which affirmed parents’ right to choose to send their children to private schools.¹⁴⁷

It was not until 2021, however, that the Parental Rights Movement began to shift towards its current trajectory.¹⁴⁸ Since then, anti-egalitarian views have entered the Parental Rights Movement and the focus has shifted towards extending those views onto all children, rather than simply the children whose parents adhere to such views.¹⁴⁹ This has included targeting racial education and equality by inaccurately trying to tie such information to Critical Race Theory.¹⁵⁰

The Parental Rights Movement has also targeted LGBTQ children in a number of ways. One such way is by trying to censor queer material in both school and public libraries. The American Library Association’s Office of Intellectual Freedom (OIF) collects data regarding censorship of books, and the 2023 numbers are startling.¹⁵¹ OIF documented challenges to 4,240 unique titles, including a 92% increase in requests at public libraries and an 11% increase in school library numbers of 2022.¹⁵² Titles

145. *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

146. RESTATEMENT OF CHILD. & THE L. § 1.20 cmt. a (AM. L. INST., Tentative Draft No. 4, 2022).

147. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925).

148. *Bowman*, *supra* note 136 at 400–01.

149. *Id.*

150. *Id.*; see also LaToya Baldwin Clark, *The Critical Racialization of Parents’ Rights*, 132 YALE L.J. 2139, 2160 (2023) (connecting the Parents’ Rights Movement with opposition to Critical Race Theory); Joshua Gutzmann, *Fighting Orthodoxy: Challenging Critical Race Theory Bans and Supporting Critical Thinking in Schools*, 106 MINN. L. REV. HEADNOTES 333, 344 (2022) (positing that teachers are less likely to acknowledge race and sex in states banning Critical Race Theory); Vivian E. Hamilton, *Reform, Retrench, Repeat: The Campaign Against Critical Race Theory, Through the Lens of Critical Race Theory*, 28 WM. & MARY J. RACE, GENDER & SOC. JUST. 61, 74 (2021) (documenting the recent political campaign against Critical Race Theory in education).

151. *American Library Association Reports Record Number of Unique Book Titles Challenged in 2023*, AM. LIBR. ASS’N (Mar. 14, 2024), <https://www.ala.org/news/2024/03/american-library-association-reports-record-number-unique-book-titles> [https://perma.cc/RQE4-TXJM].

152. *Id.*

discussing the experiences of queer people or people of color represented 47% of the books challenged.¹⁵³

What has become clear is that the Parental Rights Movement is no longer concerned with the raising of one's own child but has extended to the raising of other people's children. But even if adherents were concerned solely with the raising of their own children, some questions still remain, including: what interest does a parent have in their child's identity, and what actual harms does a parent suffer if a school does not forcibly out their child?

ii. Parental Interests in a Child's Identity

Does a parent have a right to know if their child is gay? No, they do not. Does a parent have a right to know if their child is transgender? No, they do not. A parent does not have these rights for the simple reason that such knowledge is not a right that the state can legitimately bestow. The knowledge of a child's sexual orientation or gender identity is a privilege, earned by creating a loving and trusting relationship with the child themselves. So, what interest does a parent have in the sexual orientation or gender identity of their child?

Parents, of course have legal responsibilities towards their children, which creates an interest in the well-being of their children. These interests include the "care, custody, and control" of their children.¹⁵⁴ This includes making decisions about the child's education.¹⁵⁵ It does not, however, include making decisions about the child's gender identity or sexual orientation.¹⁵⁶ It is also important to note that while parents have an interest in making decisions about the care of their child, it is reasonable to argue that "care" should relate to the "needs" of that specific child, rather than the preferences of the parent(s).¹⁵⁷

There are also social interests that a parent might have. Acceptance by or membership in a religious or social community may be an important factor in a parent's decision to limit their child's access to information about sexual orientation or gender identity. A 2022 study by the Pew Research Center found that American attitudes towards the transgender

153. *Id.*

154. *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

155. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925).

156. Thus far, no case has identified such a right.

157. Merriam-Webster defines "care" as "charge, supervision." It then places this definition in context of "responsibility for or attention to health, well-being, and safety." *Care*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/care> [<https://perma.cc/5A5P-DGCB>].KHB9-9CAV.

community are complicated and somewhat inconsistent.¹⁵⁸ While approximately 64% of Americans favored protecting transgender individuals from discrimination, 60% also believed that a person's sex is determined at birth.¹⁵⁹ A plurality of people (43%) believed that views on issues related to transgender people was changing too rapidly.¹⁶⁰ Against this background, it is not too difficult to believe that even parents who are ambivalent towards gender identity issues might favor restricting the rights of their children in order to protect both their children and themselves as the parents of queer children.

iii. Potential Harms

It is difficult to discern what harms a parent might suffer without the benefit of policies forcing their child out of the closet. The difficulty stems not from any form of moral or medical complexity but rather from the absurdity of the premise that failing to disclose a person's gender identity or sexual orientation without that person's consent is a violation of a third party's rights.

Regardless, Parents Protecting still attempted to allege harms it had suffered by the school district's Administrative Guidance. First, they alleged that the policy transfers decision-making authority from the parents to either the school or to the parents' minor children.¹⁶¹ This transfer alone was alleged to violate the constitutional rights of parents, though the parties could only cite to a Kansas district court decision and a thirty-year-old New York case involving distribution of condoms.¹⁶²

At play in this argument is the illusion—or delusion—that parents have a say in the gender identity or sexual orientation of their child. That is not true. Mainstream medical professionals, such as the experts at the Mayo Clinic, recognize that children are able to begin identifying different

158. Kim Parker, Juliana Menasce Horowitz & Anna Brow, Pew Research Center, Americans' Complex Views on Gender Identity and Transgender Issues 4 (2022), https://www.pewresearch.org/wp-content/uploads/sites/20/2022/06/PSDT_06.28.22_GenderID_fullreport.pdf [<https://perma.cc/D9WT-ZVTA>].

159. *Id.*

160. *Id.* at 17.

161. Brief for Plaintiff-Appellant at *21, *Parents Protecting Our Child. v. Eau Claire Area Sch. Dist.*, 95 F.4th 501 (7th Cir. 2023) (No. 23-1534).

162. *Id.* at *22 n.11 (citing *Ricard v. USD 475 Geary Cnty. Sch. Bd.*, No. 5:22-CV-4015, 2022 WL 1471372, at *8 (D. Kan. May 9, 2022); *Alfonso v. Fernandez*, 195 A.D.2d 46, 48 (N.Y. App. Div. 1993)).

genders as early as 18 months.¹⁶³ By age three, children may begin to label their own gender.¹⁶⁴

Parents Protecting also alleged that parents were harmed because the school district's policy denied them access to information to which they were "entitled."¹⁶⁵ While acknowledging that case law did not support their position that schools may not withhold, or as Parents Protecting phrased it, "conspire to hide," information from parents, they nonetheless maintained the position that a child's gender identity is "serious health-related information."¹⁶⁶ They attempted to supplement this argument by claiming that parents are allowed to withdraw their children from public schools—something which was not at issue in the case—but claim they are denied information that would allow them to make such a decision.¹⁶⁷

This argument again misses the mark. First, it either misunderstands or misstates the reality of gender identity and gender dysphoria.¹⁶⁸ It attempts to pathologize being transgender in order to label information about a child's gender identity as "serious health information."¹⁶⁹ It is true that gender dysphoria is a legitimate and diagnosable medical issue.¹⁷⁰ At the same time, it is also true that some

163. *Children and Gender Identity: Supporting Your Child*, MAYO CLINIC (Oct. 1, 2022), <https://www.mayoclinic.org/healthy-lifestyle/childrens-health/in-depth/children-and-gender-identity/art-20266811> [https://perma.cc/66TT-JZ3Q].

164. *Id.*

165. Brief for Plaintiff-Appellant, *supra* note 161, at *28.

166. *Id.*

167. *Id.* at *29.

168. See Jack Drescher, *What Is Gender Dysphoria?*, AM. PSYCHIATRIC ASS'N (July 2025), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria> [https://perma.cc/37ZZ-392P] (defining gender dysphoria as "psychological distress that results from an incongruence between one's sex assigned at birth and one's gender identity").

169. Treating gender identity as a medical condition—that is to say pathologizing it—would be necessary in order to argue that a student's transgender status is "health information."

170. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 452 (5th ed. 2013). The DSM-5 includes criteria for diagnosing gender dysphoria:

- [a] marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:
 1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics
 2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender
 3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
 4. A strong desire to be of the other gender

transgender individuals will not experience gender dysphoria during their childhood.¹⁷¹ Other transgender individuals will never experience gender dysphoria and will feel comfortable in their bodies.¹⁷² Given that different people experience being transgender in different ways, the argument that a child's gender identity is "serious health information" seems rather weak.

Second, the argument clearly states that the members of Parents Protecting simply "do not want the adults around their young children for most of the day treating their children as the opposite sex."¹⁷³ This statement, which speaks to anti-trans sentiment rather than a legal right to information, is immediately followed by the argument that "[i]f this were happening, it would be directly relevant to whether [the parents] continue to send their children to public school...."¹⁷⁴ The key point here is that it wasn't happening to the plaintiffs or their children at all.

A third argument is that the policy harms parent-child relationships.¹⁷⁵ Parents Protecting argued that "[t]he very presence of this Policy, and communication by the District to students that they can keep what is happening at school secret from their parents, necessarily breeds distrust of parents and harms the parent-child relationship."¹⁷⁶ Again, this argument fails to hold water. This argument seeks to shift the blame for a poor parent-child relationship onto the school district rather than the parents themselves. Admittedly, Parents Protecting was correct in arguing that "the Constitution protects 'the relationship between parent and child'"¹⁷⁷ What the Constitution does not do is relieve parents of the responsibility to foster a safe home environment and build the trust necessary for a child to choose to share their gender identity with the parent rather than a school counselor. A person does not need to lead a "double life" between home and school if they are accepted at both places.

Undoubtedly, more litigation will follow, articulating additional potential harms which parents might sustain by policies prohibiting

5. A strong desire to be treated as the other gender....
6. A strong conviction that one has the typical feelings and reactions of the other gender,...

Id.

171. Drescher, *supra* note 168.

172. *Gender Dysphoria*, MAYO CLINIC (Jan. 1, 2025), <https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/symptoms-causes/syc-20475255> [https://perma.cc/V7S9-59XR].

173. Brief for Plaintiff-Appellant, *supra* note 161, at *29.

174. *Id.*

175. *Id.* at *32.

176. *Id.*

177. *Id.* (citing *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978)).

forced outing. While Parents Protecting's arguments fail, it is not necessarily because the alleged harms are non-existent but rather because none of the plaintiffs suffered any kind of harm.

B. Children's Rights

i. Safety

When a person makes the conscious decision not to share their sexual orientation or gender identity with their parent, there is always a reason for doing so. One of those reasons may be an assessment that the parent is not a safe person with whom to share that information. This feeling that the parent may not be safe may arise for a number of, or combination of, reasons.

A lack of physical safety or the threat of violence is the most obvious reason why a child may choose not to come out to their parents. A 2021 study found that transgender youth suffer higher rates of psychological, physical, and sexual abuse than their cisgender peers, with children assigned female at birth experiencing the highest rate of psychological and sexual abuse and people questioning their identity experiencing the highest rate of physical abuse.¹⁷⁸ Queer youth are four times more likely to attempt suicide than their non-queer peers,¹⁷⁹ a statistic related to prior experience of abuse. For a child whose family may be likely to react violently, forced outing places the child at risk of both future self-harm and harm from external sources.¹⁸⁰

Fear of rejection is another reason why a child may choose not to come out to a parent. The Trevor Project reports that only about one third of LGBTQ+ young people experience acceptance from their parents.¹⁸¹ Another third choose not to disclose their identity until adulthood.¹⁸² A man identified as Asad is one of those who chose to wait until adulthood to disclose his sexuality to his family.¹⁸³ Asad began by telling his brother

178. Jason Rafferty, *Childhood Abuse Among Transgender Youth: A Trauma Informed Approach*, PEDIATRICS, Aug. 2021, at 1, 1 (citing Brian C. Thoma, Taylor L. Rezeppa, Sophia Choukas-Bradley, Rachel H. Salk, & Michael P. Marshal, *Disparities in Childhood Abuse Between Transgender and Cisgender Adolescents*, Pediatrics, Aug. 2021, at 1, 1).

179. *Facts About Suicide Among LGBTQ+ Young People*, THE TREVOR PROJECT (Dec. 15, 2021), <https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide/> [https://perma.cc/6UVN-3JNB].

180. Misha Valencia, *Why We Need to Stop Outing LGBTQIA Students*, PARENTS (Aug. 29, 2023), <https://www.contemporarypolicyinstitute.org/wp-content/uploads/2024/01/Why-We-Need-to-Stop-Outing.pdf> [https://perma.cc/Z79M-HEW6].

181. THE TREVOR PROJECT, *supra* note 179.

182. *Id.*

183. GOSWELL & WALKER, *supra* note 2, at 30–31.

via text, which elicited a response from the brother that he felt “sick.”¹⁸⁴ While Asad and his brother were able to come to an understanding, it was several years before Asad could bring himself to tell his father, and even then he prepared by packing a bag and asking a friend to drive by and wait to pick him up just in case things went sour.¹⁸⁵ While Asad’s father accepted him, not every child is so lucky.

Rejection carries risks that stretch beyond simple emotional harm. Those LGBTQ+ young people who experience rejection are eight times more likely to report attempting suicide.¹⁸⁶ In addition, nearly 20% of transgender individuals will experience homelessness during their lifetime, often due to family rejection or violence.¹⁸⁷ Even if a child does not fear rejection outright, the lack of validation of their gender identity or sexual orientation may cause a child to lose their sense of safety.¹⁸⁸

Finally, by forcing school staff to out a student, that student loses a sense of safety at school as well. The Trevor Project reports that young people who could identify a higher number of supportive school staff experienced lower levels of depression and were less likely to consider suicide.¹⁸⁹ Forced outing takes away the ability of students to develop a trusting relationship with their teachers and ultimately deprives children of another safety net.

ii. Dignity Interests

An oft-ignored aspect of the sexuality and gender identity of children is regard for the dignity of those children. Professor Nancy Dowd writes that dignity means “respect for children, and affirmative valuing and supporting of children. Respect for children requires confronting and dealing with subordination of children based on identities.”¹⁹⁰ Going further, Dowd argues that the question is not about whether children have dignity, but rather about “recognizing, respecting, and valuing that dignity, meaning their individual self-worth and humanity.”¹⁹¹

184. *Id.* at 30.

185. *Id.* at 31–32.

186. THE TREVOR PROJECT, *supra* note 179.

187. *Housing & Homelessness, ADVOCATES FOR TRANS EQUALITY*, <https://transequality.org/issues/housing-homelessness> [<https://perma.cc/JAY5-WA9B>].

188. Valencia, *supra* note 180.

189. *The Relationship Between Caring Teachers and the Mental Health of LGBTQ+ Students*, THE TREVOR PROJECT (May 10, 2023), <https://www.thetrevorproject.org/research-briefs/the-relationship-between-caring-teachers-and-the-mental-health-of-lgbtq-students/> [<https://perma.cc/G2Q3-VTVN>].

190. Nancy Dowd, *Equality, Equity, and Dignity*, 37 LAW & INEQ. 5, 16 (2019) (emphasis omitted).

191. *Id.* at 17.

For queer people, the Supreme Court has acknowledged the liberty interest inherent in dignity. Writing for the majority in *Obergefell v. Hodges*, Justice Kennedy wrote that:

[u]nder the Due Process Clause of the Fourteenth Amendment, no State shall “deprive any person of life, liberty, or property, without due process of law.” The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. In addition these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs.¹⁹²

It stands to reason then, that the choice to openly proclaim one's sexual orientation or gender identity is one of those “personal choices central to individual dignity and autonomy.”¹⁹³

Forced outing takes away the choice element in asserting a queer identity and infringes upon a person's dignity interest. There is nothing to suggest that dignity interests are different for children than they are for adults when it comes to the decision whether to share something as personal as sexual orientation or gender identity with someone else.¹⁹⁴ Nor is there any reason for courts to ignore the dignity interests of a child when evaluating whether outing that child should be a legal requirement.

iii. Decisional Autonomy

A third consideration to take into account is a child's right to decisional autonomy. The Fourteenth Amendment's Due Process Clause “promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons . . . to define and express their identity.”¹⁹⁵ The Supreme Court has, on numerous occasions, affirmed that the Due Process Clause prohibits intrusions on deeply personal

192. *Obergefell v. Hodges*, 576 U.S. 644, 663 (2015) (citations omitted).

193. *Id.* Justice Thomas in his dissent took a different view, arguing that “human dignity cannot be taken away by the government. Slaves did not lose their dignity (any more than they lost their humanity) because the government allowed them to be enslaved. Those held in internment camps did not lose their dignity because the government confined them. And those denied governmental benefits certainly do not lose their dignity because the government denies them those benefits. The government cannot bestow dignity, and it cannot take it away.” *Id.* at 735 (Thomas, J. dissenting).

194. See U.S. CONST. amend. XIV, § 1 (extending due process, and therefore dignity interests, to “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof.”).

195. *Obergefell*, 576 U.S. at 651–52.

decisions such as marriage,¹⁹⁶ procreation,¹⁹⁷ sexual intimacy,¹⁹⁸ and child rearing.¹⁹⁹

It is true that all of these cases address the decisional autonomy of adults, yet none reject the decisional autonomy of children. Rhonda Gay Hartman has argued that the heart of the problem involving adolescent decision-making involves questions about decisional capability.²⁰⁰ And yet, the law relies on the decisional capacity of minors in courtrooms every day. A court deciding custody may consider the preferences of a child when determining with whom to place the child.²⁰¹ Children may be charged and tried as adults for crimes which meet a certain threshold.²⁰² To suggest that a child has the decisional ability to form the intent to commit a murder or to decide which parent they would prefer to spend their childhood with but not to correctly determine whether it is safe to inform their parent(s) of their own sexual orientation or gender identity beggars belief.

Courts should consider the decisional autonomy of children and adolescents when it comes to the decision to share their sexual orientation or gender identity with another person, regardless of whether that person is their parent or legal guardian. Arguably, such consideration is consistent with the Due Process Clause of the Fourteenth

196. *Id.* at 675 ("These considerations lead to the conclusion that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty."); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations.").

197. *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) ("If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.").

198. *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) ("The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government.").

199. *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923) ("While this court has not attempted to define with exactness the liberty thus guaranteed, . . . [w]ithout doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children The established doctrine is that this liberty may not be interfered with").

200. Rhonda Gay Hartman, *Adolescent Autonomy: Clarifying an Ageless Conundrum*, 51 HASTINGS L.J. 1265, 1266 (2000).

201. See, e.g., CAL. FAM. CODE § 3042(a) (stating that if a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation, the court shall consider, and give due weight to, the wishes of the child in making an order granting or modifying custody or visitation); Elizabeth S. Scott, N. Dickon Reppucci & Mark Aber, *Children's Preference in Adjudicated Custody Decisions*, 22 GA. L. REV. 1035, 1052 (1988) (characterizing adolescent preference as "often the dominant consideration in resolving disputes about their custody.").

202. See, e.g., COLO. REV. STAT. § 19-2.5-802(d)(1)(A); TEX. FAM. CODE ANN. § 54.02(h).

Amendment, the opinions of the United States Supreme Court, and basic notions of decency. To do otherwise is to tell children and adolescents that their own knowledge of themselves, their personal desires for control over their destiny, and their reasoned assessments of who is safe to tell and when it is safe to tell them are all subordinate to a parent's desire for control.

C. The Role of Advocates and Courts

As Professor Bowman has pointed out, the rights of parents are "still the starting point judges, scholars, and policymakers regularly use when considering children's interests."²⁰³ This is the wrong place to start because the individual likely to suffer the most serious and long-lasting harm from a forced outing is the child herself.

If, however, states and courts are determined to give precedence to the rights of parents over the rights of children, steps should still be taken to mitigate potential harms to the children. Three potential measures make sense: (1) a judicial bypass system; (2) the option for a student to request to be present and accompanied by a counselor or social worker at the time that the parents are informed; or (3) mandatory follow up meetings with a counselor, social worker, or other mandatory reporter at a fixed point after the parents are informed. Each has its benefits and merits some discussion.

i. A Judicial Bypass System

A judicial bypass is a legal proceeding in abortion cases which allows a judge to waive parental notification if the minor is "mature enough and well enough informed" to make the decision on their own.²⁰⁴ The judge may also grant a judicial bypass in the event that the abortion is in the minor's best interest.²⁰⁵ Guidance—either from legislatures or courts of last resort—is thin as to what factors should be considered in determining whether the judicial bypass should be granted. As a result, decisions are "left to the subjective conclusions of individual trial judges, and are often based on inconclusive factors such as the minor's grades in

203. Bowman, *supra* note 136, at 414 (citing Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1460 (2018)).

204. *Bellotti v. Baird*, 443 U.S. 622, 643 (1979) ("A pregnant minor is entitled in such a proceeding to show . . . that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes . . .").

205. *Id.* at 644.

school, participation in extracurricular activities, general plans for the future, and demeanor.”²⁰⁶

A judicial bypass could work the same way for students seeking to have their gender, pronoun, or name usage changed at school. There is no reason to even consider changing the standard. What is important, however, is to create a set of criteria to be considered when making the determination that the minor is “mature enough and well enough informed.”²⁰⁷ A non-exhaustive list of criteria might include some of the following.

First, an ability to articulate clearly the reason why the child or adolescent desires to use a different name, different pronouns, or different gender than the one assigned to them at birth. This might be demonstrated by an expression of a strong desire to be rid of the child or adolescent’s primary and/or secondary sex characteristics because of a marked incongruence with the child or adolescent’s experienced/expressed gender, a strong desire for the primary and/or secondary sex characteristics of the other gender, a strong desire to be of the other gender, a strong desire to be treated as the other gender, or a strong conviction that the child or adolescent has the typical feelings and reactions of the other gender.²⁰⁸

Second, the court could consider the amount of thought the child or adolescent has put in to how they will go about life while living as a person of a different gender. Have they decided on a name? If they have decided not to use “he/him” or “she/her” pronouns, and instead opted for different pronouns, can they articulate why it is that those pronouns feel the most appropriate?²⁰⁹

Third, can the student articulate an understanding of the social and legal implications of changing their name, gender, and/or pronouns? Is the student able to articulate that changing their gender identifier in school documentation may, in some states, result in that student no longer being able to participate in sports?²¹⁰ Are they aware of any other challenges that they may encounter?

206. Stephen Rosenberg, *Splitting the Baby: When Can a Pregnant Minor Obtain an Abortion Without Parental Consent: The Ex Parte Anonymous Cases* (Alabama 2001), 34 CONN. L. REV. 1109, 1110 (2002).

207. *Bellotti*, 443 U.S. at 643.

208. Incidentally, these are all criteria for gender dysphoria as cited in the DSM-5. AM. PSYCHIATRIC ASS’N, *supra* note 170.

209. A significant number of transgender people use she/her or he/him pronouns, while others prefer they/them, and yet others opt for less well-known neopronouns such as ze or hir. Jessica A. Clark, *They, Them, and Theirs*, 132 HARV. L. REV. 894, 957 (2019).

210. According to the Movement Advancement Project, twenty-seven states currently have laws banning participation by transgender students in sports matching the student’s

Again, these criteria should not be considered exhaustive of whether the court should grant the judicial bypass. However, a child who can answer questions related to these criteria likely demonstrates that they have both the maturity and the necessary information to make a sound decision about whether they would like to use a different name, different pronouns, or express a different gender identity. This would satisfy the standard for a judicial bypass articulated by the United States Supreme Court.²¹¹

ii. Counselor or Social Worker Support at the Time of Disclosure

A second possibility is to require that the parents be informed at the school, in the presence of the student. The student should also be given the opportunity to request the presence of a counselor or social worker for support at the time that the parents are informed. Ideally, the counselor or social worker would be someone trained in de-escalation and subject to mandatory reporting laws.²¹²

The purpose of giving the student the option of having a counselor or social worker attend is twofold. First, it can provide the student with a sense of support to have a trusted—or at least neutral—party there to back them up at a time when they may feel isolated, betrayed, uncertain, or even scared. This is particularly true for children and adolescents who fear for their safety. The second reason is to provide a witness to the actual outing who is neither a parent nor the student and who is able to act in the event that the student faces imminent harm.

gender identity. Those states include Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Montana, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming. *Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans [<https://perma.cc/GF8C-BAS7>].

211. *Bellotti*, 443 U.S. at 643–44 (“A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents’ wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests.”).

212. In many states, some individuals are, by virtue of their profession, legally required to report suspected cases of abuse or neglect. Federal law also plays a limited role in determining mandated reporter status. See *The Ultimate Guide to Mandated Reporting Laws in All 50 US States: Child & Adult Abuse/Neglect*, REMNANT COUNSELOR COLLECTIVE (Mar. 26, 2025), <https://remnantcounselorcollective.com/resources/86536/the-ultimate-guide-to-mandated-reporting-laws-in-all-50-us-states-child-adult-abuse-neglect> [<https://perma.cc/Y7N8-QPV9>]; Child Abuse Prevention and Treatment Act of 1988, Pub. L. No. 100-294, 102 Stat. 102 (1988) (codified at 42 U.S.C. §§ 5101–5106).

iii. Mandatory Follow-up with a Counselor or Social Worker

Alternatively, or in conjunction with the previous suggestion, legislative bodies requiring forced outing should consider requiring a mandatory follow-up meeting between the outed child and a counselor, social worker, or other mandatory reporter. The meeting should be conducted without the parents present in order to allow the child to honestly express their feelings, concerns, and experiences following the forced outing, without the risk of being coerced into portraying the situation in a false light. This is particularly true for children who may have expressed fears regarding their safety.

It is important that the meeting be held with a mandatory reporter, a category which often includes “health care providers, people who interact with minors in a school or daycare setting, law enforcement officials, and members of the clergy.”²¹³ By virtue of their duties, these individuals are best positioned to begin the process of getting a child help if the forced outing leads to the child being harmed in some way. At the same time, the exclusion of the parents from the meeting allows the student the opportunity for full honesty (or at least as much honesty as can be expected from a child whose privacy was violated by the very institution employing the person they are being required to meet with) regarding their true experiences at home, as well as access to resources if they have in fact been hurt.

Conclusion

The decision to come out for the first time—when, where, how, and to whom—is one of the most important decisions that a queer person can make during their lifetime. It is at the same time both an overt statement of self-determination and an act of trust and vulnerability. At the same time, it is not a singular act, instead it is an act which will be repeated, again and again, throughout that person’s life.

Coming out opens a queer person to substantial benefits. Some are psychological, as closeted individuals or those who lack a support system experience higher levels of depression.²¹⁴ Others are social, including the opportunity to find and be part of an open and accepting queer community or the ability to find a partner with whom one can live openly.

213. Ian Ayers, Sonia Quin, & Pranjal Drall, *Racial and Gender Bias in Child Maltreatment Reporting Decisions: Results of a Random Vignette Experiment*, 21 UC L.J. RACE & ECON. JUST. 183, 187 (2024).

214. See John E. Pachankis, Susan D. Cochran, & Vickie M. Mays, *The Mental Health of Sexual Minority Adults In and Out of the Closet: A Population-Based Study*, 83 J. CONSULTING AND CLINICAL PSYCH. 890, 897 (2015) <https://britecenter.org/wp-content/uploads/2017/12/The-mental-health-of-sexual-minority-adults-in-and-out-of-the-closet-A-population-based-study.pdf> [https://perma.cc/7YHS-QKNF].

Some are medical, as treatment for gender dysphoria²¹⁵ often involves living as a different gender for a period of time; something one cannot do while closeted.

Opponents of the queer community, however, have in recent years been emboldened and empowered to stifle expressions of queer identity. From censoring media such as books,²¹⁶ to banning public drag performances,²¹⁷ to attacking corporate DEI policies,²¹⁸ anti-LGBTQ activists and politicians have promoted, pushed, and passed policies aimed at preventing young people from either learning about or affirming their own queer identities.²¹⁹ In instances when those policies fail to stifle a child or adolescent's understanding of their queerness, other policies may be in place to bully or threaten those young people into silence. Forced outing of children by schools is among those policies.

Forced outing employs a callous disregard for the dignity and safety of queer children by prioritizing the rights of parents over the rights of those same children. Of course, parents should be informed about important information involving their children, and therein lies the problem that forced outing cannot solve: the gender identity or sexual orientation of a child is important information that a parent should be aware of, yet that information is best obtained through earning the trust of the child. But how can trust be established if the child's orientation or identity is revealed without the child's consent?

If the goal of legislatures were to protect children, as is often alleged by promoters of anti-LGBTQ policies,²²⁰ then forced outing laws should include measures aimed at ensuring the safety of those children at the time of disclosure. This article has discussed three potential measures: a

215. E. Coleman et al, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 INT'L J. TRANSGENDER HEALTH S1, S39 (2022) ("We suggest, as part of the assessment for gender-affirming hormonal or surgical treatment, professionals who have competencies in the assessment of transgender and gender diverse people wishing gender-related medical treatment consider the role of social transition together with the individual.").

216. See generally Eliot T. Tracz, *Censorship and Book Bans: Two Non-Constitutional Arguments Against Queer Erasure*, 52 Hofstra L. Rev. 903 (2024) (discussing local attempts to ban books with LGBTQ-related content).

217. See generally Eliot T. Tracz, *Drag: Art. Obscenity. Crime.*, 23 CONN. PUB. INT. L.J. 46 (2024) (discussing a number of state attempts to limit or ban drag performances by attempting to brand them as a form of obscenity).

218. MOVEMENT ADVANCEMENT PROJECT, DISMANTLING DEI: A COORDINATED ATTACK ON AMERICAN VALUES (2024), <https://www.mapresearch.org/file/2024-DEI-report-MAP.pdf> <https://www.mapresearch.org/2024-dei-report> [<https://perma.cc/UL7A-T5P6>].

219. Michael S. Broder, Anti-LGBTQ Laws Claiming to Protect Children Actually Harm Them, University Experts Say, S.F. STATE UNIV.: SFSU NEWS (June 12, 2023), <https://news.sfsu.edu/news/anti-lgbtq-laws-claiming-protect-children-actually-harm-them-university-experts-say> [<https://perma.cc/V992-TFC9>.F3SR-DE8S].

220. *Id.*

judicial bypass option, offering the student the support of a counselor or social worker at the time of disclosure, and mandatory follow-up with a mandatory reporter. Such steps would send the message that the goal of forced outing laws is not to target queer young people for disparate treatment, although there is little evidence to suggest that there is any other legitimate purpose of these laws, but rather to allow parents the information necessary to fulfill their responsibilities towards their children.

Alternatively, policymakers could leave the decision to come out to those people to whom the decision matters most—those queer children or adolescents themselves. Respect for the autonomy, dignity, and humanity of individuals demands that a person be afforded the opportunity to decide for themselves when to share their identity and orientation, which often requires a difficult personal journey of self-reflection and self-discovery. So, why not grant queer, young people the right to decide if and when to come out? After all, self-determination is the American way, and individuals, not federal, state, or local government, should decide when to break free of the closet.