

Winter 2019

## A Damaging Cure: Queer Youth and Conversion Therapy

Follow this and additional works at: <https://commons.law.famu.edu/famulawreview>



Part of the [Civil Rights and Discrimination Commons](#), [Human Rights Law Commons](#), [Law and Gender Commons](#), and the [Sexuality and the Law Commons](#)

---

### Recommended Citation

*A Damaging Cure: Queer Youth and Conversion Therapy*, 14 Fla. A&M U. L. Rev. 23 ().  
Available at: <https://commons.law.famu.edu/famulawreview/vol14/iss1/3>

This Article is brought to you for free and open access by Scholarly Commons @ FAMU Law. It has been accepted for inclusion in Florida A & M University Law Review by an authorized editor of Scholarly Commons @ FAMU Law. For more information, please contact [paul.mclaughlin@famu.edu](mailto:paul.mclaughlin@famu.edu).

# A DAMAGING CURE: QUEER YOUTH AND CONVERSION THERAPY

*Ernie D. Mejia\**

INTRODUCTION .....	24	R
I. QUEER ROOTS AND DAMAGING CURES .....	27	R
A. <i>The Fear Contagion</i> .....	28	R
B. <i>Within the Gender Norm</i> .....	30	R
C. <i>Cured Passing</i> .....	32	R
II. THE LGBTQ MOVEMENT’S PROGRESSION .....	33	R
A. <i>Legal Progression</i> .....	33	R
B. <i>Social Progression</i> .....	35	R
III. CONVERSION THERAPY: AN ORIGIN STORY .....	38	R
A. <i>Homosexuality’s Coming-Out Of the DSM</i> .....	38	R
B. <i>Therapy (Mal)Treatment</i> .....	39	R
C. <i>A Right to Be Queer</i> .....	42	R
IV. LEGISLATION AND LITIGATION CHANGE EFFORTS .....	43	R
V. AN ATTACK ON CONVERSION THERAPY .....	46	R
A. <i>Consumer Fraud</i> .....	47	R
B. <i>Involuntary Manslaughter</i> .....	49	R
C. <i>Parens Patriae Doctrice</i> .....	52	R
D. <i>Family Acceptance Project</i> .....	54	R
CONCLUSION .....	55	R

*Before the age of eighteen, 57,000 minors will receive conversion therapy from religious or spiritual advisors across all fifty states. In 1973, the American Psychiatric Association (APA) removed homosexuality from the Diagnostic and Statistics Manual of Mental Disorders. Today, conversion therapy has been disavowed by all professional health organizations. Conversion therapy is consistently proven as an ineffective technique in causing true conversion of the sexual orientation of minors. Yet, conversion therapy has been coined by survivors as “physical and mental torture” – leading numerous participants to partake in life-long therapy programs and even in some grave cases, pushing survivors to take their own life.*

---

\* Ernie is a graduate of the University of San Francisco School of Law, where he worked in support and retention of queer students of color through his participation in the Academic Support Program, Law Review, Moot Court, and La Raza Student Association. He would like to give special thanks to Professor Luke A. Boso and Professor Julie Nice for providing the necessary guidance and support to publish this paper. Ernie writes to not only protect queer children but to inspire them to create scholarship, it is through our collective voice that change occurs.

*Despite these side effects, conversion therapy remains legal and common in most states in the United States of America. At the heels of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) activists achieving marriage equality, the LGBTQ community is at an important juncture where they must redirect their focus to the more vulnerable and less visible sector of their community – queer children.*

*Past and current litigation efforts have resulted in mixed outcomes as conversion therapy claims tread into the murky waters of First Amendment constitutional claims – including claims under both the Freedom of Speech Clause and the Establishment Clause. These First Amendment arguments are fraught with heavy jurisprudence as to the appropriate level of scrutiny and leaves queer youth unprotected as legal scholars argue. However, tortious and criminal avenues circumvent these constitutional barriers, allowing for survivors and their representatives to receive their necessary remedy and protection sooner. This Article looks at successful claims against proponents of conversion therapy through Texas’s Deceptive Trade Practices Consumer Protection Act. Furthermore, and in response to the alarming rate of queer children committing suicide, this Article further discusses the potential charge of voluntary manslaughter under California law against parents who knowingly place their children in dangerous conversion therapy programs. This Article also dissects the parens patriae doctrine by addressing the truth that parent’s do not necessarily always have the best interest of their queer child in mind.*

*It is now 2019 and the practice of conversion therapy on minors has gone on for far too long. Conversion therapy and other like programs need to be completely banned especially in light of the well-documented physical and psychological harms it inflicts on the vulnerable LGBTQ youth. The Supreme Court has long established that it is the nation who suffers for generations when society imposes hardship on a discrete class of children who are not accountable for their disabling status. It is along these lines that I propose an all hands-on approach is needed when it comes to attacking conversion therapy. A single strategy cannot carry out that task alone.*

## INTRODUCTION

When I was 10, my parents took me to a conversion therapist who promised them he could make me straight. The therapist told me that I was sick, that God hated me, and that the government had exterminated all other gay people. . . . But hard as I tried to change, I couldn’t. Then the physical abuse began. He tied down my hands and placed ice on them while showing me erotic pictures of men. He wrapped my hands in hot coils, stuck needles in my fingers, and shocked me with electricity. Through all of this, I

remained gay but became suicidal. I learned to lie and through that, survive, but many aren't so lucky.<sup>1</sup>

With tears rolling down his face, conversion therapy survivor, Samuel Brinton, recounts his harrowing time spent in conversion therapy from his adolescence in front of hundreds at the United Nations Committee Against Torture (UNCAT).<sup>2</sup> Samuel first experienced a rudimentary version of conversion efforts at an early age – initially, by his father who beat Samuel in a futile attempt to rid him of his homosexual feelings.<sup>3</sup> To little surprise of no one, this “home remedy” failed.<sup>4</sup> At the realization that his beatings alone could not “change” his son, Samuel’s father then placed him in a conversion therapy program, which Samuel could only describe as, “mental torture.”<sup>5</sup> Samuel recounts, “to this day, I still have light pain when I shake hands with another male.”<sup>6</sup> Samuel, like so many survivors, has knowingly, intentionally and being fully aware of its connotation, named conversion therapy to be physical and psychological torture. The lasting harms experienced by survivors like Samuel are a common result of participation in conversion therapy programs.<sup>7</sup> Conversion therapy programs leave both physical and emotional scars that affect the health of generations of LGBT youth and adults as well as other individuals they have in their lives.<sup>8</sup>

Broadly speaking, conversion therapy refers to various methods used to “cure” a person’s sexual orientation and/or sexual identity.<sup>9</sup>

---

1. National Center for Lesbian Rights, *#BornPerfect Campaign Leader Samuel Brinton Addresses U.N. Committee Against Torture*, YouTube (Nov. 18, 2014), <https://www.youtube.com/watch?v=YHT5Jb879lc&t=0s&index=18&list=WL> [hereinafter NC-LRights, *Samuel Brinton Address*].

2. *Id.*

3. Katy Steinmetz, *The New Campaign to End Gay Conversion Therapy*, TIME (June 23, 2014, 6:59 PM), <http://time.com/2907989/bornperfect-gay-conversion-reparative-therapy/>.

4. *Id.*

5. *Id.*

6. *Id.*

7. *See generally What is Conversion Therapy?*, CONVERSION THERAPY SURVIVORS, <http://conversiontherapysurvivors.org/what-is-conversion-therapy> (last visited Dec. 18, 2020) (describing in general terms what methods constitute conversion therapy, including but not limited to reparative therapy, “ex-gay” counseling, religious exorcism, sexual orientation change efforts) [hereinafter *Learn*].

8. *See generally What Harm Does Conversion Therapy Cause?*, CONVERSION THERAPY SURVIVORS, <http://conversiontherapysurvivors.org/what-harm-is-it> (last visited Dec. 18, 2020) (describing the unintended consequences many survivors report as a result of their participation in conversion therapy, including but not limited to shame/guilt, depression, parental blame, loss of self-confidence, loss of trust, loss of faith, self-imposed isolation, and loneliness).

9. *What is Conversion Therapy?*, *supra* note 7.

Conversion therapy includes many curative methods targeting non-heterosexual attractions as well as people who identify as transgender or bisexual.<sup>10</sup> Conversion therapy not only endorses a homophobic stigma throughout society, it also causes or exacerbates many mental health disorders, such as anxiety, depression, and suicidal behavior.<sup>11</sup> Despite a field-wide proclamation by all major associations of mental health professionals that conversion therapy is unethical and unscientific,<sup>12</sup> conversion therapy still remains legal in forty-one states.<sup>13</sup>

Unfortunately, Samuel's story is not unique, as approximately 350,000 LGBT adults report experiencing conversion therapy at one point during their adolescence.<sup>14</sup> Although there are several statewide and local bans, it is still estimated that in the remaining forty-one states where conversion therapy is not banned 20,000 LGBT children are expected to be affected by conversion therapy yearly.<sup>15</sup> In addition, before the age of eighteen, approximately another 57,000 minors will receive conversion therapy from religious or spiritual advisors across all fifty states.<sup>16</sup> These statistics are shocking and disheartening. The number of minors who are subjected to conversion therapy or other like programs run by non-licensed religious counselors are staggering, currently exceeding the population of some small cities, such as West Sacramento, CA for instance where the population is roughly 53,000 residents.<sup>17</sup> The national discussion surrounding conversion therapy is often positioned as a grand battle between the State, parents, and the Church, or as between conservatives and liberals. This framing over-

---

10. *Id.*

11. See Jacob M. Victor, *Regulating Sexual Orientation Change Efforts: The California Approach, its Limitations, and Potential Alternatives*, 123 YALE L.J. 1532, 1542-46 (2014) (noting that California's bill (SB 1172) prohibiting the practice of sexual orientation change efforts was, in part, enacted due to California's legislature understanding conversion therapy programs enhanced stigma and hatred toward the LBGTQ community).

12. See Marie-Amélie George, *Expressive Ends: Understanding Conversion Therapy Bans*, 68 ALA. L. REV. 793, 805-10 (2017) (describing the history of the American Psychiatric Association (APA) and its take on conversion therapy; noting that in 1993 the APA rejected conversion therapy as extreme, unjustified, and unethical).

13. Christy Mallory, Taylor N.T. Brown & Keith J. Conron, *Conversion Therapy and LGBT Youth*, WILLIAMS INST. 1, 3 (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Conversion-Therapy-Jan-2018.pdf>.

14. *Id.* at 2 ("As estimated 698,000 adults in the U.S. have received conversion therapy either from a licensed profession or a religious advisor or from both at some point in their lives, including about 350,000 LGBT adults who received conversion therapy as adolescents.").

15. *Id.* at 3.

16. *Id.*

17. See *Top 500 Cities in California by Population*, WORLD POPULATION REV., <http://worldpopulationreview.com/states/california-population/cities/> (last visited Dec. 18, 2020).

looks and distances lawmakers and constituents from the true victims of conversion therapy – the thousands of queer youth that conversion therapy negatively affects every year.

This article proceeds in six parts. Part I dissects the development of the conservative narrative that queerness is a contagious trait, how the gender norm perpetuates a broad rejection of homosexuality, and the concept of “cured passing” in terms of conversion therapy success stories. Part II examines the progression of the general LGBT rights movement by highlighting its historic adult-centered victories and elaborating how these victories allowed for the necessary space and momentum for the contemporary movement of state conversion therapy bans to gain traction. Part III provides the background and history of conversion therapy by exploring its medical origin and contemporary implementation. Further, Part III analyzes in-depth the many real harms experienced by participants due to conversion therapy. Part IV examines the current legislative and litigation efforts by LGBT activists in ending conversion therapy. Part V proposes various tortious and criminal charges that LGBT advocates may consider bringing on behalf of conversion therapy survivors. Additionally, Part V highlights contemporary programs aimed at educating those about non-heterosexual attractions and promotes the acceptance of queer youth. The article concludes with a call to protect queer youth and notes the most current state to pass a state-wide conversion therapy ban in 2020. Through a careful analysis of the harm to LGBT adolescents, this Article’s ambition is to provide a legal context for possible protections for queer youth and their allies.

## I. QUEER ROOTS AND DAMAGING CURES

This Article begins with a retrospective look at society’s relationship and developing understanding of the queer identity. In Professor Clifford Rosky’s article, *Fear of the Queer Child*, Rosky begins with an excerpt from historian David Halperin: “we can only diffuse these fears [of children being queer] if we are willing to analyze them, to understand them, to figure where they come from . . . how they are connected systematically to the social and discursive structures that organize our culture.”<sup>18</sup> This quote provides a backdrop to the development of conversion therapy from an early fear of the exis-

---

18. Clifford J. Rosky, *Fear of the Queer Child*, 61 BUFFALO L. REV. 607, 608 (2013) (discussing how LGBT movement advocates responded to the society’s fear of raising queer children).

tence of queer children and the ensuing medicalization of homosexuality.

This Part follows in three subsections. First, Subsection A takes a brief exploration of the historical fear and cultivation of an understanding of queerness as an alienation of the innate heterosexuality of humans. Subsection B examines the deeply rooted gender hierarchies and norms in society and how they contribute to a rejection of homosexuality. Subsection C points out that conversion therapies consistently fail at its single proposed goal – actual conversion of an individual’s sexual orientation.

### A. *The Fear Contagion*

Early attempts to define and explore human sexuality allowed a surprisingly fluid and abstract understanding of sexuality in the post-industrial era. Famed psychoanalyst Sigmund Freud, for instance, claimed that human beings are universally bisexual due to the shared traits amongst the different sexes.<sup>19</sup> This fluid understanding was short-lived. Following Freud’s death in 1939, other psychoanalysts began challenging Freud’s views and argued that heterosexuality is innate to all human beings, thus re-defining and associating non-hetero attraction with unnaturalness.<sup>20</sup> At the height of this paradigm shift, two psychiatrists and scholars developed new models which attempted to explain triggering causes of homosexuality further perpetuating an understanding of non-hetero attraction as inherently abnormal.<sup>21</sup> In reaction to this “abnormal and unnatural” narrative pushed by scholars, various misguided and uninformed explanations regarding the “cause” of homosexuality began to arise and influence society’s understanding of queer folk.

Early scholars anchored themselves to the concept of parental psychopathology and to the premise that the failure of appropriate parenting would result in homosexuality in the child.<sup>22</sup> As such, psychologists believed that parents’ suppression of minors’ sexual activity created “psychological anxiety that overwhelmed the heterosexual

---

19. Sigmund Freud, *Three Essays on the Theory of Sexuality* (1905), reprinted in 7 THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 133-34 (James Strachey trans. & ed., 1953).

20. See Rosky, *supra* note 18, at 634.

21. See *id.* at 634-35 (discussing two models, one where homosexuality developed in males with domineering mothers and absent fathers, and the other model categorized homosexuality as a psychiatric disease).

22. Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 795 (2002).

drive.”<sup>23</sup> In other words, not encouraging a young teenager’s sexual activity could result in a skewed and disenchanting perception of the opposite sex’s genitalia. This theory further supports the notion that teaching restraint and caution to young girls navigating their sexuality ultimately conveys a fear of “the destructive male organ” and ushers them to identify as lesbian for safety.<sup>24</sup>

Alongside the development of the parental psychopathology narrative arose additional and alternative models for understanding the triggering cause of homosexuality in children. Some psychoanalysts and scholars coined the theory that adolescents were actively inducted into queerness by participating in same-sex sexual activity with adults,<sup>25</sup> while others pedaled the idea that homosexual adults were in some form actively recruiting children into queerness by some method to “have children” since they could not have children of their own.<sup>26</sup> In other words, early scholars believed the existence of queer children meant children were being, essentially, subjected to acts akin to sexual assault or subject to active brainwashing by queer adults.

Additionally, as the conceptualization of homosexuality developed, so did the perceived vulnerability of children.<sup>27</sup> The development of homosexuality is pinpointed to a period of a child’s lives where they are impressionable and innocent, at risk of hypersexuality, and the development of other vices that were commonly associated with sexual excess.<sup>28</sup> The states’ age of consent laws highlights this notion.<sup>29</sup> The legislature created consent laws to protect minors from the potential harm of participating in sexual activities with adults due to their lack of life experience, maturity, and overall inability to understand the consequences of sexual activity.<sup>30</sup> These laws are demonstrative of society’s continued, deeply embedded, and self-justified regulation of children’s sexuality. As a result of the natural comingling of society’s relentless need to protect children from sexual activities and the wide

---

23. *Id.*

24. *Id.*

25. *See* Rosky, *supra* note 18, at 641 (“Even as early as the 1950s and 1960s terms like “indoctrination,” “recruitment,” and “proselytizing” had been used as euphemism for soliciting and seducing minors.”).

26. *See id.* at 645-46.

27. *Id.* at 627.

28. *Id.*

29. CAL. PENAL CODE § 261.5 (explaining that a minor must be eighteen to consent to sexual activities).

30. Brittany Logino Smith & Glen A. Kercher, *Adolescent Sexual Behavior and the Law*, CRIME VICTIM’S INSTIT. 1, 7 (2011), [http://www.crimevictimsinstitute.org/documents/Adolescent\\_Behavior\\_3.1.11.pdf](http://www.crimevictimsinstitute.org/documents/Adolescent_Behavior_3.1.11.pdf).



dissipation of queerness as a contagion narrative conversion therapy proponents had little difficulty gaining momentum for their validity arguments amongst people and organizations. This narrative implies that regulating a child's sexual identity/activities is a justified in order to protect them.

### B. *Within the Gender Norm*

The fear of queerness in youth propelled the medicalization of homosexuality. Using "recruitment" and "seduction" as a baseline, psychotherapists categorized queerness as a literal contagion infecting children.<sup>31</sup> On the premise of heterosexuality as the default sexual orientation, homosexuality became known as the collapse of healthy sexual development in an individual. Thus, conversion therapy developed as a cure to this collapse.

It is the prison of gender normativity that contributes to the contagion fear and a rejection of homosexuality more broadly. Gender expression is in many ways fluid, meaning that in some circumstances an individual may be coded by external parties as "more" or "less" masculine or feminine, despite no change in an individual's self-gender identity. This results in individuals constantly performing their desired gender identity in a manner they believe others would understand, a man with aggression or silence and a woman by enhancing traditional beauty features. Men harass other men to prove their own masculinity and, thus, maintain their dominance by coding the victim as weak and feminine.<sup>32</sup> This same-sex harassment serves as a policing function where men and women who successfully live within the gender norm "punish those who stray from acceptable gender" presentation, which ultimately reinforces their own role in the gender norm.<sup>33</sup> Gender and sexual orientation are inextricably tied together. Heterosexuality is the most common identifier of normative masculinity due to the simple fact that "most men are straight."<sup>34</sup> The divide created by a lack of heterosexual inclinations in some men implies that gay men at their very core are not real men, but failed men in society.<sup>35</sup> Thus, homosexuality is not just a difference in sexual attraction but is

---

31. See Rosky, *supra* note 18.

32. See Luke A. Boso, *Real Men*, 37 U. HAW. L. REV. 107, 130 (2015) (describing the harassment of gay men).

33. *Id.* at 131.

34. *Id.*

35. See *id.* ("Men who exhibit weak qualities are not only easy targets for would-be harassers who hope to bolster their own masculinity, but are also penalized for defying male gender privilege and therefore calling other men's status into question.").

often mischaracterized as a failure of simply being human. This understanding is continually perpetuated by society instilling a fear in individuals “catching” queerness and motivating a search for a “cure.”

Although many “successful” conversion therapy outcomes are only conversion by name but passing in nature, this result is still preferred over the existence of a flamboyant queer individual. The commitment to conversion therapy, despite its lack of success in truly converting a queer individual, reflects society’s commitment to the enforcement of one traditional gender hierarchy. This gender hierarchy (i.e., women should act in a feminine manner and men in a masculine manner) is affirmed by the general acceptance by society of gay men who behave in a normatively masculine manner since their behavior remains within the constraints of the preferred hierarchy. The LGBTQ community has succeeded in instances where queer issues fall squarely within the mold and parameters of the traditional gender roles, which in some way reinforces these traditional notions are desired over less-conventional practices. This point is most notably highlighted by the victory of marriage equality. The movement towards marriage equality, although a great victory in many ways is a reflection of the LGBTQ community adopting heterosexual norms and stepping away from the “chosen family” culture that has developed uniquely for queer survival.<sup>36</sup> The LGBTQ community gaining the right to marry, among other things, is a result of the community’s active attempt to achieve complete integration in society. However, this victory demonstrates queer individuals only gain acceptance if they are not too queer and their desires and practices do not stray too far from the gender norm. By denying their queer identity or masking it so as to conform to traditional stereotypes, the LGBTQ community only does a disservice to itself, because only by noting these differences can society ever be expected to evolve and address them.<sup>37</sup>

Furthermore, a parent choosing to place their child in harmful conversion therapy programs serves as further indication of the pressure placed on them by society for their children to act in a traditional masculine or feminine manner. When asked for their rationalization in placing their child in conversion therapy, a survivor’s parents answered: “we just didn’t know . . . [we] shouldn’t have done it,” “[we] felt

---

36. See generally MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER* 52 (1999) (discussing the new wave of queers who cannot learn from their predecessors due to the previous generations demise, and overall sexual shame).

37. Ernie Mejia, *El Peligro De Ser Igual: The Danger of Being the “Same”*, WILLAMETTE J. OF SOC. JUST. & EQUITY L. 117, 159 (2018).

responsible.”<sup>38</sup> All things considered society may have never fully shaken off the parental psychopathology guilt from the post-Freud area understanding of homosexuality, feeling responsible to cause a “change.”<sup>39</sup> Therefore, opponents of conversion therapy face an uphill battle against society’s gender hierarchy and overall understanding of homosexuality. Enrollment in conversion therapy will only stop when it is no longer an option, which is why an absolute nationwide prohibition prohibiting the practice of conversion therapy is a necessary solution.

### C. Cured Passing

Proponents of conversion therapy frequently boast about success stories of individuals who have altered their same-sex attraction by either becoming celibate or successfully entering into a heterosexual relationship.<sup>40</sup> However, these outcomes often prove to be unstable. Celibacy does not change an individual’s sexual orientation, but instead just suppresses it. Proponents of conversion therapy though still consider celibacy a victory, not for its conversive characteristics, but because it is considered better to be celibate than gay.<sup>41</sup> Celibacy does not make one as aberrant or immoral in the same way that homosexuality does.

Additionally, entering into heterosexual relationships is not necessarily indicative of a successful conversion. For instance, in 2013, a former advocate of the “ex-gay movement”, John Paulk, who had claimed to have successfully achieved a complete sexual orientation change himself, came out as still having homosexual inclinations while “in the process of divorcing his wife.”<sup>42</sup> Reports of positive conversion therapy results have often been found to be biased reflecting self-reporting errors.<sup>43</sup> In fact, empirical studies have demonstrated there is

---

38. See Yoshino, *supra* note 22, at 784 (interviewing Anon asking him to recount whether or not his parents feel guilty now committing him to shock treatment).

39. *Id.* at 795.

40. George, *supra* note 12, at 816.

41. *Id.*

42. Arcangelo S. Cella, *A Voice in the Room: The Function of State Legislative Bans on Sexual Orientation Change Efforts for Minors*, 40 AM. J.L. & MED. 113, 124 (2014) (introducing the various types of therapy implemented in sexual orientation change efforts).

43. See Christian S. Cyphers, *Banning Sexual Orientation Therapy: Constitutionally Supported and Socially Necessary*, 35 J. LEGAL MED. 539, 544 (2014) (noting that a significant number of conversion therapy clients report they have lied to their therapists just to “please them”).

not even a scintilla of evidence that conversion therapy can consistently change sexual orientation.<sup>44</sup>

Professor Kenji Yoshino explains the goal of conversion is a complete embrace or surrender, not only changing “the expression of an identity, but the underlying substance of it.”<sup>45</sup> Therefore, at its very root, conversion therapy continually fails to reach its only goal—conversion. Yet, conversion therapy programs still boast patients with positive heterosexual outcomes. These successes are falsely labeled as conversion, and instead, they represent a patient’s successful “passing.” Passing is not a truly converting one’s underlying homosexual identity but rather describes one’s ability to present a separate, more desired face to the outside world.<sup>46</sup> In practice, passing involves faking an interest in sports for men or creating fictitious partners who are of the opposite sex while simultaneously repressing behaviors that might be deemed to be “gay,” such as a love for theater for a man.<sup>47</sup> Here, Brinton’s words echo: “as hard as I tried to change, I couldn’t . . . I learned to lie, and through that, survived.”<sup>48</sup> For most, heterosexual passing is the only escape from conversion therapy and although an empty change it is still a success embraced by the proponents of conversion therapy.

## II. THE LGBTQ MOVEMENT’S PROGRESSION

### A. *Legal Progression*

In 2018, the LGBTQ community reached a level of visibility and acceptance that many, even a decade ago, would have deemed unattainable during their lifetimes.<sup>49</sup> This modern level of acceptance is owed to the progression of the LGBT community’s representation in both the legal and social spheres of society.

---

44. See Jonathan Sacks, Note, “Pray Away the Gay?” *An Analysis of the Legality of Conversion Therapy by Homophobic Religious Organizations*, 13 RUTGERS J.L. & RELIGION 67, 74 (2011).

45. Yoshino, *supra* note 22, at 786. Passing means “to be judged, or, more precisely, to be misjudged, ‘to be held or accepted as a member of a group other than one’s own.’”; see also Yoshino, *supra* note 22, at 813.

46. Yoshino, *supra* note 22, at 813.

47. *Id.*

48. NCLRights, *Samuel Brinton Address*, *supra* note 1.

49. See generally Tina Fetner, *U.S. Attitudes Toward Lesbian and Gay People are Better than Ever*, 15 CONTEXTS 20, <https://journals.sagepub.com/doi/full/10.1177/1536504216648147> (describing that in the 70s and 80s the percentage of LGBTQ acceptance was extremely low, but the numbers have seen a steady increase since 1990s).

A necessary and influential shift in the advocacy of LGBT rights and equality started in 1973 when the American Psychiatric Association (“APA”) removed homosexuality, or same-sex attraction, as a mental disorder from the Diagnostic and Statistics Manual of Mental Disorders (“DSM”).<sup>50</sup> Building off of this momentum, in 1983, Lambda Legal, an LGBT rights advocacy group, also won the nation’s first HIV/AIDS discrimination suit in *People v. 49 West 12 Tenants Corporation*.<sup>51</sup> In 1995, the Hate Crimes Sentencing Act was passed, which allows a judge to enhance sentences for hate crimes where the defendant intentionally selects his or her victim due to their actual or perceived sexual orientation, among other protected characteristics.<sup>52</sup> Further, in 2010, following seventeen years of the Don’t Ask Don’t Tell regime where President Reagan barred qualified openly queer Americans from serving in the military, lawmakers finally repealed the Don’t Ask Don’t Tell policy.<sup>53</sup> With this repeal, men and women could serve the country they love despite who they loved. Following in the footsteps of the repeal of the Don’t Ask Don’t Tell regime, “by the close of 2016, [twenty] states plus DC [had] banned discrimination based on sexual orientation and gender identity or expression in employment, housing, and public accommodations, and an additional three states [had] provided incomplete statewide nondiscrimination protections.”<sup>54</sup>

In the twenty-first century, the LGBT community has already won three pivotal Supreme Court cases, including: (1) *Lawrence v. Texas*,<sup>55</sup> which de-criminalized same-sex sexual conduct; (2) *U.S. v. Windsor*,<sup>56</sup> which struck down as unconstitutional the federal government’s limiting definition of “marriage” as between one man and one woman; and (3) *Obergefell v. Hodges*,<sup>57</sup> which established that states can no longer ban same-sex marriage.

---

50. See Sacks, *supra* note 44, at 72-73.

51. See *Lambda Legal History*, LAMBDA LEGAL, <https://www.lambdalegal.org/about-us/history> (last visited Dec. 18, 2020).

52. *Hate Crimes Sentencing Act of 1993: Hearing on H.R. 1152 Before the H. Comm. on the Judiciary*, 103d Cong. 1, 2 (1993) (statement of Rep. Charles Schumer D-NY-9).

53. *Repeal of Don’t Ask, Don’t Tell*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/our-work/stories/repeal-of-dont-ask-dont-tell> (last visited Dec. 31, 2020).

54. *Past LGBT Nondiscrimination and Anti-LGBT Bills Across the Country (2016)*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/other/past-lgbt-nondiscrimination-and-anti-lgbt-bills-across-country-2016?redirectN°de/4200> (last visited Dec. 31, 2020).

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

56. See generally *U.S. v. Windsor*, 570 U.S. 744 (2013).

57. See generally *Obergefell v. Hodges*, 135 S. Ct. 2548 (2015).

The positive legal trajectory described above illustrates the level of success LGBT activists have had in establishing formal rights and protections tied to sexual orientation and gender identity over the past few years. The benefits and aftermath of these victories, however, have primarily been experienced by adults, leaving the vulnerable and less-visible sector of LGBT community – minors – defenseless to state and parental and/or guardian harm.<sup>58</sup> This adult centered fight is not unique to the LGBT movement. For example, in the desegregation movement, race-based civil rights groups first fought for racial integration in law schools and universities realizing they would face an uphill battle integrating elementary schools.<sup>59</sup> The NAACP knew that a strong white resistance existed to exposing their children – specifically their young, white girls – to “overgrown,” black boys.<sup>60</sup> Therefore, the NAACP’s strategy to change society’s perception of racial integration of schools came through advocacy for adult’s rights rather than those of children.<sup>61</sup> Seemingly mirroring the child-related concerns and strategic responses regarding integration battles, the earliest LGBT advocates insisted that sodomy laws had nothing to do with children and marriage restrictions had nothing to do with schools—perhaps realizing that these omissions were necessary to secure victories in those fields.<sup>62</sup> Perhaps America first had to learn to accept the queer adult and then it could begin to make space for the queer child.

### B. Social Progression

Coming on the heels of the LGBT community’s victory of marriage equality, the LGBT rights narrative has begun a necessary redirection by focusing on LGBT youth, and more specifically, to stopping conversion therapy programs involving minors. Reaching the LGBT milestones in the past few years have allowed for the refocusing of larger organizational resources to issues other than marriage equality. These victories, though important, have taken up a large amount of space in the queer activism sphere. In large part, this may be due to

---

58. Julie A. Nice, *The Responsibility of Victory: Confronting the Systemic Subordination of LGBT Youth and Considering a Positive Role for the State*, 23 TEMP. POL. & CIV. RTS. L. REV. 373, 375 (2014) (describing the LGBT movement largely for adult benefit, not for LGBT youth).

59. See Frederick P. Aguirre et al., *Mendez v. Westminster: A Living History*, 2014 MICH. ST. L. REV. 401, 407-08 (2015) (discussing NAACP’s strategy to first integrate institutions of higher education expecting little to no success in K-12).

60. *Id.* at 408.

61. *Id.*

62. See Rosky, *supra* note 18, at 609.

the ease in which society at large, and specifically heterosexual people, could identify with a queer individual's desire to marry their significant other freely. The LGBTQ community's victory of marriage equality is two-fold. First, allowing same-sex marriage ends the years of work towards that specific form of equality. Secondly, the LGBTQ community gaining the right to marry reinforces that under the law queer individuals do have rights that are protected, even without a society-wide acceptance of the community. This undeniable declaration of queer support by the judicial system opens the door to larger movements for queer protection from discrimination and harm.

Though the campaign to end conversion therapy can hardly be characterized as a new interest of the LGBT community,<sup>63</sup> its debut in pop culture films is one of the many catalysts for reaching its current notoriety in the mainstream media and politics. Mainstream media, both television and cinema, play a large role in the enculturation of the majority population on their understanding of minorities.<sup>64</sup> For instance, former Vice President Joe Biden once said, "'I think 'Will & Grace' probably did more to educate the American public than almost anything anybody has ever done so far."<sup>65</sup> This representation of the LGBT community throughout mainstream media helps cultivate a level of understanding and familiarity and essentially normalizes "queerness" to most of the American population who are heavy watchers of television and cinema.<sup>66</sup>

Films create and provide an avenue for the public to engage and begin to understand sectors of the LGBT community and their respective difficulties. The first notable conversion therapy film, "But I'm a Cheerleader," was released in 2000.<sup>67</sup> The movie's plotline follows a cheerleader who did not realize she was lesbian until she is at "True Directions," a boot camp dedicated to altering the sexual orientation of its campers. Megan, the film's protagonist, at first did not understand the lesbian accusations, after all she had checked every desired box for

---

63. See generally *Our Work – Born Perfect: The Campaign to End Conversion Therapy*, NAT'L CTR. FOR LESBIAN RTS., <https://bornperfect.org/aboutus/> (last visited Dec. 31, 2020) (describing NCLR's work to end conversion therapy going back over twenty years) [hereinafter "*Our Work*"].

64. See Larry Gross, *Out of the Mainstream: Sexual Minorities and the Mass Media*, 21 J. HOMOSEXUALITY 19, 22 (1991).

65. Jane Borden, 'Will & Grace' Reduced Homophobia, But Can it Still Have an Impact Today?, WASH. POST, (Sept. 15, 2017), [https://www.washingtonpost.com/entertainment/will-and-grace-reduced-homophobia-but-can-it-still-have-an-impact-today/2017/09/14/0e6b0994-9704-11e7-82e4-f1076f6d6152\\_story.html](https://www.washingtonpost.com/entertainment/will-and-grace-reduced-homophobia-but-can-it-still-have-an-impact-today/2017/09/14/0e6b0994-9704-11e7-82e4-f1076f6d6152_story.html).

66. See Gross, *supra* note 64, at 22-23.

67. BUT I'M A CHEERLEADER (Lionsgate 2000).

the traditional stereotype of a teenage girl – becoming a cheerleader and dating a handsome football player. Director Jamie Babbit introduced conversion therapy to both straight and gay audiences on a national level. The film tells the story of young Megan’s time in conversion therapy in a manner that is digestible to a wider audience by using lighthearted jokes and humorous, sexually suggestive gestures. Though the film intentionally glosses over any outright maltreatment within the program, it begins to garner national attention regarding the ineffectiveness of conversion therapy.

Alongside the media depiction of conversion therapy, in 2014, the National Center for Lesbian Rights (“NCLR”) formalized the #BornPerfect social-media campaign, a contemporary mission to end conversion therapy for minors.<sup>68</sup> The NCLR’s primary focus is mass awareness and aims to provide access to psychological experts to those parents and guardians considering conversion therapy for their queer dependent.<sup>69</sup> #BornPerfect involves ongoing efforts to push legislative bills to ban conversion therapy or implementing varying forms of restrictive regulations on those who practice it.<sup>70</sup> NCLR’s campaign serves as a catalyst to the widespread shift in combatting conversion therapy following recent legal victories.

Now, in 2018, two conversion therapy centered films have been released, “The Miseducation of Cameron Post” and “Boy Erased.” Both of these films follow two minors through their time in conversion therapy.<sup>71</sup> The Miseducation of Cameron Post tells the story of the young girl, Cameron Post, who is sent to conversion therapy by her religious aunt after her male prom date caught her being intimate on prom night with another girl.<sup>72</sup> Though the film highlights the de-queering regime implemented by the camp advisors to its young participants, the trauma is presented in such a subtle and almost incidental manner that essentially minimizes the harm felt by participants in real life.<sup>73</sup>

---

68. *Our Work*, *supra* note 63 (noting #BornPerfect consists of varying components such as using contemporary forms of communication and promoting an easily recognizable hashtag on online forums).

69. Steinmetz, *supra* note 3.

70. *Id.*

71. Spencer Kornhaber, *The Queer Coming-of-Age Movie Arrives*, ATL. (Dec. 2018), <https://www.theatlantic.com/magazine/archive/2018/12/the-queer-coming-of-age-movie-arrives/573925/>.

72. K. Austin Collins, *The Miseducation of Cameron Post Takes Queer Repression for Granted*, VANITY FAIR (Aug. 3, 2018), <https://www.vanityfair.com/hollywood/2018/08/the-miseducation-of-cameron-post-review>.

73. *See id.* (“Cameron Post is set in the early 90s, but gay conversion therapy . . . has become so widely acknowledged and debated over that the movie feels somewhat contemporary, and potentially urgent for that fact. Maybe that [is] what makes its closing stretch – in



Due to the films more played-down nature, Cameron Post ultimately compliments “Boy Erased’s” box office breakthrough.

“Boy Erased,” follows the story of a preacher’s son who is outed by his sexual assaulter. Following his “outing,” he meets with the religious elders of his community who “dealt” with this sort of affliction in the past.<sup>74</sup> Young and impressionable Jared is eager to enroll in conversion therapy in the hopes of curing his homosexuality in order to live a better life under God.<sup>75</sup> Unlike “Cameron Post” and “But I’m a Cheerleader,” “Boy Erased” is void of humor, instead using its national platform to explore the intricacies, pitfalls, and the gentleness of queer sexuality, all while narrating the painful experience of being trapped in a conversion therapy program. Movies such as these are essential for the public to understand and begin to support the opponents of conversion therapy. These movies go beyond the typical coming-out narratives that the media often defaults to when telling stories of queer youth; instead, these movies tell the simple yet often minimized truth that coming-out or being discovered as LGBTQ can have catastrophic results for queer children.<sup>76</sup> These painful yet honest stories of queer children told through these movies are a strong tool in garnering public support for an absolute nationwide prohibition against conversion therapy. Taking into consideration both the legal and social progression for LGBT equality experienced within the last decade, the time is ripe for a push to end conversion therapy programs for minors in all fifty states and American territories.

### III. ]CONVERSION THERAPY: AN ORIGIN STORY

#### A. *Homosexuality’s coming-out of the DSM*

From the original conception of sexual duality by Freud to the modern understanding of heterosexuality, post-Freudian scholars’ found support in the Diagnostic and Statistical Manual (“DSM”) in 1952 when the American Psychological Association (“APA”) officially categorized homosexuality as a sociopathic personality disorder.<sup>77</sup> Once society had a recognizable name for this “disease,” the well-inten-

---

which one of the campers, forbidden from coming home by his father, mutilates him in shame – such a letdown . . . there [has] been too little tactile sense of what [is] at stake for these young people, spiritually and psychologically, for violence to make sense to us.”).

74. Kornhaber, *supra* note 71.

75. Kornhaber, *supra* note 71.

76. Kornhaber, *supra* note 71.

77. See Rosky, *supra* note 18, at 634-35.

tioned but deeply flawed goals to cure this so-called disease followed; therapists sought to convert male patients in an attempt to “cure” them of maternal influences and effeminate characteristics, which were believed to cause misdirection from “the heterosexual path.”<sup>78</sup> Seventeen years following the first diagnosis of homosexuality, on June 29, 1969, the first brick was thrown at the Stonewall riots and resulted in the modern LGBTQ movement.<sup>79</sup> Reflective of the changing sentiments in society, in 1973 the APA removed the diagnosis of homosexuality from the DSM.<sup>80</sup>

Due to the conflation of gender and sexuality, conversion therapy encompasses not only people who identify as homosexual or bisexual but also transgender.<sup>81</sup> Unfortunately, unlike homosexuality, there is currently a psychological diagnosis on the books of the DSM-5 regarding the self-identification as transgender called Gender Dysphoria.<sup>82</sup> Diagnosing one with Gender Dysphoria is generally reserved only for those individuals who experience extreme discomfort either with their body or the roles that they are expected to live by due to their sex assigned at birth.<sup>83</sup> This diagnosis serves as a stark reminder of the lack of understanding and acceptance for individuals who identify as transgender. Despite full support from the APA for the elimination of homosexuality as a disorder, psychiatrists still persist in treating same-sex attraction and identifying as transgender as mental ailments.<sup>84</sup>

### B. Therapy (Mal)treatment

It is easy to imagine medical scenes in medieval times in Europe where doctors injected their patients with animal organ extracts

---

78. *Id.* at 635.

79. *See id.* at 639 (“In the wake of these demonstrations, the gay liberation movement rapidly organized and mobilized; within the next decade, the cause began to make remarkable gains.”).

80. *See id.*

81. *Id.* at 615.

82. *See generally* *What is Gender Dysphoria?*, AM. PSYCHIATRIC ASS’N, <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria> (last visited Dec. 31, 2020) (defining Gender Dysphoria and describing its effects on people and distinguishing the same from gender nonconformity).

83. Kenneth Zucker, *THE DSM-5 DIAGNOSTIC CRITERIA FOR GENDER DYSPHORIA*, 1, 33-37 (2015).

84. *See* Laura A. Gans, *Inverts, Perverts, and Converts: Sexual Orientation Conversion Therapy and Liability*, 8 B.U. PUB. INT. L.J. 219, 222-23 (1999) (“The stubborn refusal to adopt the prevailing opinion that homosexuality is not an illness has carried over into the present day. The current practice of conversion therapy attests to the antiquated belief that homosexuality is a disease.”).

or performed castrations in attempts to cure whatever unknown disease they happened to come across.<sup>85</sup> Even though one can sleep comfortably knowing no present day doctor is practicing these truly barbaric and dangerous cures on their patients, survivors of conversion therapy can attest to experiences not too dissimilar. The earliest forms of conversion therapy in America include: injecting patients with testosterone or estrogen; surgically removing the ovaries and clitoris; performing lobotomies; and practicing aversive conditioning by administering electric shocks or inducing vomit while concurrently showing patients homoerotic stimuli.<sup>86</sup> Advisors actively tried to rearrange a patient's sexual responses to heterosexual photos or activities.<sup>87</sup>

Though conversion therapy has moved away from its barbaric physical treatment, its current medium of psychotherapy practice is not as benign as one may be led to believe.<sup>88</sup> Conversion therapy treatments range from talk therapy to forms of behavioral therapy.<sup>89</sup> However, the progression to a seemingly gentle style of treatment still involves several problematic activities. These activities include masturbatory reconditioning, visits to prostitutes, and standing naked in front of other men while reenacting past sexual abuse and simultaneously being taunted with homophobic slurs.<sup>90</sup> Although harm from conversion therapy no longer primarily takes the form of physical torture, the horrific acts performed under the guise of conversion therapy should still shock and appall us as they continue today and were even relevant in a court case tried just a few short years ago in 2015.<sup>91</sup>

Most recently, TC, a nineteen-year-old gay man and survivor of conversion therapy recounted what daily life looked like for him while

---

85. See Elma Brenner, *Kill or Cure? 10 Medieval Medical Practices and their Effectiveness*, HIST. EXTRA (Aug. 10, 2018, 10:30 AM), <https://www.historyextra.com/period/medieval/kill-or-cure-10-medieval-medical-practices-and-their-effectiveness/> (describing dangerous medieval medical practices such as bloodletting and sticking needles in a patient's eye).

86. Gans, *supra* note 83, at 223.

87. See *id.* ("The goal . . . was to 'strengthen heterosexual feelings in the sexual response hierarchy.'").

88. Christina Ludwig, *Conversion Therapy, Its Detrimental Consequences, and Its place in the National Spotlight*, 18 RUTGERS J. L. & RELIGION 257, 258-59 (2017) (describing the progression of treatment over time).

89. Cella, *supra* note 42, at 114.

90. See *id.*; see also John M. Satira, *Determining the Deception of Sexual Orientation Change Efforts*, 58 WM. & MARY L. REV. 641, 643 (2016) (describing conversion therapy program that took place in *Ferguson v. JONAH*).

91. *Ferguson v. JONAH*, No. HUDL547312, 2015 WL 609436, at \*1 (N.J. Super. Ct. Law Div. Feb. 5, 2015); see also *JONAH Conversion Therapy Case*, S. POVERTY L. CTR., <https://www.splcenter.org/seeking-justice/case-docket/michael-ferguson-et-al-v-jonah-et-al> (last visited Dec. 18, 2020).

in the program.<sup>92</sup> He stated, the first step usually lasts about six months and consists of active deconstruction of the participant as a person.<sup>93</sup> This step typically involves aversion and shock therapy and in some scenarios the participants experience physical abuse at the hands of their counselors.<sup>94</sup> “Conversion therapy sessions would take place every weekday, with therapy treatments lasting approximately an hour [and] aversion therapy lasting three.”<sup>95</sup> In this step, the harm the participant experiences is strong but the true pain derives from being forced to associate the cause of harm to his or her sexual identity – but for the participants abnormal sexual tendencies they would not be in this horrible position. The first step essentially causes one to hate themselves and forces them to want to become someone else.<sup>96</sup> Following the deconstruction, the program proceeds with step two where the participant is “re-built” in conformity with being heterosexual.<sup>97</sup> Participants go through a repetitive indoctrination of religious values and become a “walking, talking, robot[] for Jesus.”<sup>98</sup> TC’s story in many ways mirrors Samuel’s in the insistent cultivation of self-hatred in order to be “cured.”

In the juvenile justice system, conversion therapy is sometimes included in the sentencing of gay and transgender youth.<sup>99</sup> This misguided and uninformed intervention inherently criminalizes the minor not for his actions but for his sexuality.<sup>100</sup> These type of judicial sentences have placed children in grave danger.<sup>101</sup> While it is clear that conversion therapy’s place in the juvenile justice system speaks

---

92. James Michael Nichols, *A Survivor of Gay Conversion Therapy Shares His Chilling Story*, HUFFINGTON POST (Nov. 17, 2016, 11:05 AM), [https://www.huffpost.com/entry/realitiesofconversiontherapy\\_us\\_582b6cf2e4b01d8a014aea66](https://www.huffpost.com/entry/realitiesofconversiontherapy_us_582b6cf2e4b01d8a014aea66).

93. *Id.*

94. *Id.*

95. *Id.*

96. *See id.* (recounting his (T.C.’s) perception of what the goal of the first step was meant to do).

97. *Id.*

98. *Id.*

99. Jerome Hunt & Aisha Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LBGT Youth in the Juvenile Justice System*, CTR. FOR AM. PROGRESS 1, 7 (June 29, 2012), [https://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile\\_justice.pdf](https://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf).

100. *See generally id.* (arguing that current policies and the juvenile system overlooks gay youth which results in a stigma and bias that can leads to gay and transgender youth being treated in a harmful and discriminatory manner).

101. For example, some courts have placed girls in private hospitals to be treated for their homosexual behavior, while another court placed a male-to-female transgender youth in a boy’s facility for a treatment plan to assist in aiding with his “gender confusion.” *See* Hunt & Moodi-Mills, *supra* note 98, at 7.

levels to its danger it ultimately demonstrates society's conflation of the cause of delinquency with a deviancy from traditional gender norms.

### C. *A Right to be Queer*

This Article serves as a call for an absolute nationwide prohibition on conversion therapy as doing so would be in the best interest of the safety and well-being of America's queer youth. This Article further argues that one's queerness is not something that needs to be addressed, avoided, or "cured."

While some individuals actively seek out conversion therapy and voluntarily attend, due to family or religious motivations, these situations are few and far between and should not provide a basis for the continued practice of conversion therapy.<sup>102</sup> Considering the life-long harm experienced by survivors of conversion therapy programs, the legality of these programs must end. "[R]esearch on conversion therapy findings suggest that efforts to repair homosexuals are nothing more than social prejudice garbed in psychological accouterments."<sup>103</sup> While individuals seek to attend conversion therapy because of legal and societal conditioning, which teaches them that being queer is bad or wrong, the law cannot give these private prejudices effect.<sup>104</sup>

Conversion therapy programs are *per se* harmful due to their impactful role in the continuing stigmatization of LGBTQ individuals, perpetuating the notion that queerness is something that requires "fixing."<sup>105</sup> It can be a life or death decision for many queer youths in America to take a stand and identify as LGBTQ. The legislature must take a stand, for the protection of queer youth, and declare conversion therapy programs illegitimate and illegal for the harm inflicted on children for their actual, or perceived, sexual orientation or gender variance.<sup>106</sup>

LGBT advocates should not rely solely on empirical data and immutability claims to combat "root cause" arguments, but instead should focus on challenging the notion that children are better off

---

102. George, *supra* note 12, at 813-14.

103. Sacks, *supra* note 44, at 73.

104. See, e.g., *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

105. Victor, *supra* note 11, at 1542-43 (explaining the text of California's bill SB 1172 shows the California legislature understood the harm caused by conversion therapy as they reinforce biases and stigmas and promote self-hatred).

106. Victor, *supra* note 11, at 1543.

straight.<sup>107</sup> As Professor Rosky claims, “every child [should have] a right to an open future in sexual and gender development – an equal liberty to be straight or queer.”<sup>108</sup> This is similar to critiques of the “separate but equal” doctrine, where litigators took issue with the “equal” part of the doctrine, instead of challenging the justification of “separate.”<sup>109</sup> The LGBTQ community must promote the narrative that the queer children, are not only free from any illness but also are not inferior to their straight counterpart. Activists must challenge the premise of heterosexuality being the default sexual orientation, or that any sexual orientation should be considered default at all. At the most fundamental level the government gains nothing from discouraging queerness in childhood, much like there is nothing to gain from discouraging queerness at any age.<sup>110</sup>

#### IV. LEGISLATION AND LITIGATION CHANGE EFFORTS

As progression at the federal level is almost non-existent, states have taken the lead in putting an end to conversion therapy. Many state statutes already recognize the unconscionability of the physical “treatments” occurring in conversion therapy, enforcing either a full blown ban on licensed professionals performing conversion therapy or giving minors full agency to refuse such treatments.<sup>111</sup> According to a recent study conducted by Williams Institute, as of January 2018, nine states, the District of Columbia, and thirty-two localities within states have banned conversion therapy.<sup>112</sup> For example, New York took a unique approach to battling conversion therapy participation by prohibiting Medicaid programs and private health insurance carriers from covering conversion therapy, forcing families looking to participate to pay for the programs strictly from their own funds without subsidy.<sup>113</sup> This method creates a financial burden that ultimately de-

---

107. Rosky, *supra* note 18, at 611.

108. See Clifford J. Rosky, *No Promo Hetero: Children’s Right to be Queer*, 35 CARDOZO L. REV. 425, 428 (2013) (describing the government’s inability to provide a legitimate interest in encouraging children to be straight or in discouraging them from being queer).

109. See generally Juan F. Perea, *Buscando América: Why Integration and Equal Protection Fail to Protect Latinos*, 117 HARV. L. REV. 1420 (2004) (discussing the case of Mendez v. Westminster School District, an important precursor to the Brown v. Board of Education where the “separate but equal” doctrine would be struck down).

110. Rosky, *supra* note 18, at 698.

111. Sean Young, *Does “Reparative” Therapy Really Constitute Child Abuse?: A Closer Look*, 6 J. HEALTH POL’Y L. & ETHICS 163, 168 (2006) (describing how the state has given autonomy to children).

112. Mallory, *supra* note 13, at 2-3.

113. *Id.* at 3.

ters families from placing their child in conversion therapy. In the legislative sphere a continual ripple of change is felt as anti-conversion therapy advocates continue to tirelessly work; it is expected more states and localities will draft new bans in 2019.<sup>114</sup>

Conservatives first affirmed conversion therapy proponents in 2016, by supporting “the right of parents to determine the proper medical treatment and therapy for their minor children.”<sup>115</sup> Conservatives disguise their support by advocating for programs like conversion therapy as a necessary solution to end the spread of the HIV/AIDS virus to minors.<sup>116</sup> These tactics are the most notable forms in which proponents of conversion therapy persuade concerned, gullible parents into believing that conversion therapy is beneficial for their child. In states where proponents of conversion therapy fail to block the passage of conversion therapy bans, they turn to legal remedies to invalidate the law.

Part V examines *Pickup v. Brown* and *King v. Governor of the State of New Jersey*, where proponents of conversion therapy attempt to call for strict scrutiny protection under the First Amendment’s freedom of speech clause. In both cases, the plaintiffs were unsuccessful and the state laws are upheld as constitutional when reviewed under the lowest level of scrutiny – rational basis. The state bans in California and New Jersey were met with immediate backlash from mental health professionals who are proponents of conversion therapy.<sup>117</sup> The most notable of cases arising out of California concerning this backlash is *Pickup v. Brown*.<sup>118</sup> In *Pickup*, plaintiffs alleged that California’s state ban (SB 1172) violated the First and Fourteenth Amendments of the United States Constitution by infringing on practitioners’ right to free speech, minors’ right to receive information, and parents’ right to direct the upbringing of their children and that the law was unconstitutionally vague.<sup>119</sup> Notably, the Ninth Circuit held that the First Amendment protection did not apply.<sup>120</sup> The Ninth Circuit reasoned

---

114. Mallory, *supra* note 13, at 3; see also *Equality Maps: Conversion Therapy Laws, MOVEMENT ADVANCEMENT PROJECT*, [http://www.lgbtmap.org/equality-maps/conversion\\_therapy](http://www.lgbtmap.org/equality-maps/conversion_therapy) (last visited Dec. 18, 2020) (describing that in 2018 an additional five states have passed state-wide bans and an additional fifteen localities have passed bans in states without state-wide bans).

115. Liam Stack, *Mike Pence and ‘Conversion Therapy’: A History*, N.Y. TIMES (Nov. 30, 2016), <https://www.nytimes.com/2016/11/30/us/politics/mike-pence-and-conversion-therapy-a-history.html>.

116. *Id.*

117. Cella, *supra* note 42, at 115.

118. *Pickup v. Brown*, 740 F.3d 1208 (2013).

119. *Id.* at 1225.

120. *Id.* at 1230.

that although communications between doctors and patients are entitled to constitutional protection, they are not immune from regulation.<sup>121</sup> The court found SB 1172's effects on free speech are merely incidental and therefore subject to the lower level of scrutiny, rational basis review.<sup>122</sup> The court readily found that SB 1172's professed interest of protecting the well-being of minors is a legitimate government interest, meeting the rational basis standard.<sup>123</sup> Ultimately, the court accepted the legislature's reliance on various reports from major psychiatric organizations as to the harm and ineffectiveness of conversion therapy and reasoned that the absolute prohibition was related to its legitimate interest.<sup>124</sup>

As to the right to control the upbringing of one's children, the court found: "the fundamental right of parents do[es] not include the right to choose a specific type of provider for a specific medical or mental health treatment that the state has reasonably deemed harmful."<sup>125</sup> The Ninth Circuit reasoned that although parents have a broad right to control the upbringing of their children, the judiciary cannot bestow upon parents more rights than what the judiciary has bestowed to control themselves as adults.<sup>126</sup>

Following California's victory against those in favor of conversion therapy, New Jersey implemented the second full-state ban in 2013.<sup>127</sup> Similar to California, two licensed counselors and founders of Christian counseling centers alleged that Assembly Bill A3371 violated their First Amendment rights to free speech and free exercise of religion.<sup>128</sup> Additionally the plaintiffs asserted claims on behalf of their clients for similar violations under the First and Fourteenth Amendments.<sup>129</sup> Applying a more stringent intermediate level of scrutiny the court reached a similar conclusion to *Pickup*—the New Jersey statute's regulation of conversion therapy was permissible.<sup>130</sup> The most notable of conclusions reached was the proponents' attempt to carve out an exception for informed consent participation, which would allow minors to partake if they are provided with all necessary information concern-

---

121. *Id.* at 1231.

122. *Id.*

123. *Pickup*, 740 F.3d at 1231.

124. *Id.* at 1232.

125. *Id.* at 1236.

126. *Id.* at 1236.

127. Cella, *supra* note 42, at 115.

128. *King v. Governor of New Jersey*, 767 F.3d 216, 220 (3d Cir. 2014).

129. *Id.*

130. *Id.* at 246.



ing the program prior to enrolling.<sup>131</sup> The court concluded no informed consent requirement could adequately ensure safe practices for minors.<sup>132</sup> The court continued on to affirm the lower court's findings on all other claims as well.<sup>133</sup> These two cases demonstrate a strategic pattern by conversion therapy proponents, to allege high-level constitutional violations that would drive the judiciary to implement high levels of scrutiny when reviewing state statutes. However, these two cases highlight a possible change in the manner in which the Judiciary will interpret these statutes, pointing to a general unwillingness to apply high levels of scrutiny to such statutes aimed at protecting children.

## V. AN ATTACK ON CONVERSION THERAPY

Part V analyzes several claims attorneys may bring on behalf of these minor children in addition to the current progressive legislation-oriented momentum described above. In addressing the legal theories in which opponents of conversion therapy may claim, this Article does not seek to comprehensively catalog all claims. Instead, this Article primarily focuses on potential tortious and criminal charges. The more notable and widely litigated claims of constitutional issues demand a complex level of scrutiny determination that is beyond the scope of this paper. Rather, this Article takes note of *Amato v. Greenquist*, where the Illinois Court of Appeal expressed an uneasiness to analyze religious constitutional claims and instead encouraged the parties to bring lawsuits alleging tortious conduct by religious figures.<sup>134</sup> At a superficial level, when addressing constitutional claims concerning the free exercise of religion, a court must explore whether the general proposition of the law is neutral and of general applicability and to what extent the law affects the particular religion and its practice.<sup>135</sup> This skeletal explanation just begins to highlight the multilayered analysis that is required in religious claims, an analysis courts often find difficult to define and rule on. Therefore, this Article actively bypasses the religious aspects of conversion therapy claims when proposing solutions to explore the validity of tortious and criminal charges.

---

131. *Id.* at 240.

132. *Id.*

133. *King*, 767 F.3d at 246-47.

134. Gans, *supra* note 83, at 229-30.

135. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993).

### A. Consumer Fraud

Recently examined in *Ferguson v. JONAH*,<sup>136</sup> a New Jersey court found that the faith-based organization known as Jews Offering New Alternatives for Healing's (JONAH) advertisement for conversion therapy violated New Jersey's Consumer Fraud Act.<sup>137</sup> The Act prohibits: "any unconscionable commercial practice, deception, fraud, false pretense, false promise, [or] misrepresentation . . . in connection with the sale or advertisement of any merchandise."<sup>138</sup> The court found JONAH's representation that homosexuality is a "mental disorder" that could be "cured" was a misrepresentation in violation of their consumer fraud law if used in the sale or advertising of JONAH's services.<sup>139</sup> This victory introduced consumer protection litigation as a viable and unique strategy for redress to a wider range of participants than those already protected by state bans.

This Article also examines Texas's Deceptive Trade Practices Consumer Protection Act<sup>140</sup> ("DTPA"). Texas currently does not have an anti-discrimination law statute protecting LGBT employees or customers.<sup>141</sup> Texas's largely conservative history leaves the LGBT community largely unprotected. Consumer fraud litigation offers a solution to fill the gaps left by the slow moving and highly partisan Texas legislature.

The DTPA provides: "(a) False, misleading, or deceptive acts . . . in the conduct of any . . . commerce are . . . unlawful and are subject to action by the consumer protection division."<sup>142</sup> To recover under § 17.50(a)(1) of the DTPA,<sup>143</sup> the plaintiff must establish the following three elements: (1) the plaintiff was a consumer of the defendant's goods or services; (2) the defendant committed false, misleading, or deceptive acts in connection with the lease or sale of goods or services;

---

136. *Ferguson v. JONAH*, No. HUDL547312, 2015 WL 609436, at \*1 (N.J. Super. Ct. Law Div. Feb. 5, 2015).

137. *Statement of Reasons for the Court's February 10, 2015 Orders at 11–12, Ferguson v. JONAH*, No. L-5473-12 (N.J. Feb. 10, 2015); see also *JONAH Conversion Therapy Case*, *supra* note 91.

138. Consumer Fraud Act, N.J. STAT. § 56:8-2 (2019).

139. *Id.* at 11.

140. TEX. BUS. & COM. CODE § 17.46 (2019).

141. Frank Bruni, *The Worst (and Best) Places to be Gay in America*, N.Y. TIMES, <https://www.nytimes.com/interactive/2017/08/25/opinion/sunday/worst-and-best-places-to-be-gay.html> (last visited Dec. 18, 2020).

142. TEX. BUS. & COM. CODE. § 17.46(a) (2019).

143. TEX. BUS. & COM. CODE § 17.50(a)(1) (2019).

and (3) the defendant's false, misleading, or deceptive act was a producing cause of actual damages to the plaintiff.<sup>144</sup>

For a minor to bring a claim under the DPTA, there must be a consumer relationship between the individual paying for the conversion therapy and the program coordinators. This relationship is established by an exchange of consideration, usually money, for goods or services.<sup>145</sup> Generally, an affirmative misrepresentation of fact constitutes a deceptive trade practice, especially when the misrepresentation was false or misleading.<sup>146</sup>

The DTPA proceeds to list explicit examples of deceptive trade practices in §17.46(b) but notes, “[it] is not limited to, the following acts,”<sup>147</sup> thus, indicating a broad opportunity for protection. Imagine a situation where a young queer child in Texas is placed in conversion therapy and his/her/their parents believe the program's advertised promise that they have the ability to “cure” their child's “abnormal sexual behavior.” Knowing that there are children suffering in conversion therapy and Texas's lack of specific LGBT protection laws, a lawyer could approach suit under the DTPA.

As discussed above, the first element to such a claim under the DPTA serves no obstacle as a consumer relationship is easily established by the most rudimentary transaction between a conversion therapy counselor and the minor's parent or guardian. Here, claims could be made similar to those in *JONAH*, where a service provider's advertisement that homosexuality is an illness or alterable in some way can be considered misleading and a patently false statement.<sup>148</sup> This false statement satisfies the DTPA's “false, misleading, or deceptive act” requirement. Lastly, the improper psychotherapy that is practiced in conversion therapy inflicts a great degree of harm or injury on the child and leaves the individual with a life-long need for therapy.<sup>149</sup> Some individuals suffer physical manifestations of the harm they have experienced from conversion therapy. These physical manifestations may be resultant of activities like exorcisms, which may also leave bodily scars or an overwhelming sense of failure to change and, therefore, leads some to self-mutilation. Under the DTPA, targeting conversion therapy programs that claim to change an indi-

---

144. *Larsen v. Carlene Langford & Assocs., Inc.*, 41 S.W.3d 245, 250 (2001).

145. TEX. BUS. & COM. CODE § 17.46(b)(23) (2019).

146. Satira, *supra* note 89, at 658.

147. TEX. BUS. & COM. CODE § 17.46(b) (2019).

148. Satira, *supra* note 89, at 658.

149. Gans, *supra* note 83, at 225.

vidual's sexual orientation can be easily attacked through consumer fraud litigation.

Consumer fraud litigation is promising for various reasons. Primarily these laws are currently available in almost every state.<sup>150</sup> These laws provide protection in states with no legislative bans or conversion therapy regulation for minors.<sup>151</sup> Additionally, this litigation creates avenues for redress even in states with bans in place by addressing religious counselors outside the traditional scope of conversion therapy bans. Consumer fraud litigation may provide a powerful sword to LGBT advocates and conversion therapy survivors in their fight for the protection of queer youth in Texas.

### B. *Involuntary Manslaughter*

Homosexual, bisexual, and transgender minors suffer from depression at significantly higher rates than their heterosexual counterparts.<sup>152</sup> For example, a startling 28.1% of gay males have attempted suicide in their life, while only 4.2% of heterosexual males have.<sup>153</sup> An estimate "5,000 LGBTQ youth take their lives each year with the number believed to be significantly higher if deliberate auto accidents and other precipitated events are counted."<sup>154</sup> Placing queer children in conversion therapy, therefore, enhances their depression, anxiety, and self-hatred to levels that drive some minors to suicide. This reality is simply unacceptable.

This Article suggests, in alignment with the California Penal Code, suicides connected to a minor's participation and/or experience in conversion therapy could create a foundation for an involuntary manslaughter charge against the very parents who place their children in the program.<sup>155</sup> Although a charge of homicide may seem unnecessary and elicit a dramatic reaction, it is ultimately proportional to the recklessness of conservative parents and their choices when placing their queer children in conversion therapy. Although conversion ther-

---

150. Satira, *supra* note 89, at 655.

151. Melissa Ballengee Alexander, *Autonomy and Accountability: Why Informed Consent, Consumer Protection, and Defunding May Beat Conversion Therapy Bans*, 55 U. LOUISVILLE L. REV. 283, 316 (2017) (describing the value of consumer protection claims as a source of immediate relief for survivors).

152. Satira, *supra* note 89, at 655.

153. Young, *supra* note 110, at 189.

154. John G. Taylor, *Dying for Acceptance: Suicide Rates in the LGBTQ Community*, PSYCHOL. TODAY (Mar. 19, 2013), <https://www.psychologytoday.com/us/blog/the-reality-corner/201303/dying-acceptance-suicide-rates-in-the-lgbtq-community>.

155. CAL. PENAL CODE § 192(b) (2015).

apy bans provide some level of necessary protection for queer children in varying parts of the country, these bans alone do not appear to provide a message and consequence strong enough to stop all parents from placing their children in conversion therapy.

As mentioned earlier, 20,000 children will still experience conversion therapy in states where there is no ban.<sup>156</sup> Drawing on the fact that 5,000 LGBTQ children take their lives each year, it is necessary to get the criminal justice system involved. Fundamentally, one of the original criminal justice system's goals is to deter general or specific behavior through the threat and implementation of punishment.<sup>157</sup> Seeing as children have less autonomy than adults under the law, it is the law's duty to protect them from harm, which may be done by discouraging the unrestricted control parents' may have over their children. Although involuntary manslaughter may sound harsh, it can be easily avoided by parents simply never placing their children in conversion therapy. There is no accidental placing of a child in conversion therapy, nor can a parent or guardian place a child who is not legally under their control; placing a child in conversion therapy is done with a conscious mind and effort. Thus, the end goal of implementing a homicide charge for the death of those children placed in conversion therapy is not parental incarceration per se, but instead creating a blaring association in the minds of all law-abiding and reasonable people the danger that can come from placing your child in conversion therapy—their unwanted death.

Involuntary manslaughter is a lesser offense than murder, distinguished by its *mens rea*—intent to kill.<sup>158</sup> In this hypothetical, it is not assumed parents and guardians are consciously orchestrating the death of their children. The Penal Code reads: “manslaughter is the unlawful killing of a human being without malice . . . in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.”<sup>159</sup> Involuntary manslaughter requires the *mens rea* of criminal negligence, which is defined in various ways.<sup>160</sup> For the purposes of this essay, criminal negligence is defined as existing “when a man of ordinary prudence would foresee that the act would cause a high degree of risk of death or

---

156. Mallory, *supra* note 13, at 3.

157. Tom Stacy, *Changing Paradigms in the Law of Homicide*, 62 OHIO ST. L.J. 1007, 1026 (2001) (explaining the views of criminal punishment that inspire the criminal process.)

158. *People v. Rios*, 2 P.3d 1066, 1073 (Cal. 2000).

159. CAL. PENAL CODE § 192(b) (2015).

160. *People v. Penny*, 285 P.2d 926, 937 (Cal. 1955).

great bodily harm.”<sup>161</sup> In other words, the charge of involuntary manslaughter disregards a subjective good faith belief that the perpetrator’s actions posed no risk in favor of an objective standard.<sup>162</sup>

Currently, there are numerous published studies describing the program’s various ways of attempting to change one’s sexual orientation has left life-debilitating harm on its participants.<sup>163</sup> Although enrolling a child in conversion therapy may be a lawful act in most states, it would be naïve of parents, guardians, and therapists to claim that they were/are unaware of the anti-conversion therapy scholarship and data doubting the success of conversion therapy. Conversion therapy survivors reported that 71% have experienced depression, while 62% have experienced some level of re-enforced self-hatred.<sup>164</sup> Therefore, a parent’s good faith belief that a program may provide a conversion experience free from harm is objectively unreasonable in the face of all the data to the contrary. Under this objective standard, parents should or should have known of the heightened risk of harm or death by placing their children in conversion therapy, satisfying the *mens rea* of criminal negligence.

Involuntary manslaughter requires a showing that the defendant’s conduct proximately caused the victim’s death.<sup>165</sup> The defendant’s conduct does not need to be the primary cause of death; it only needs to be a substantial factor in causing the death.<sup>166</sup> The issue of causation in involuntary manslaughter proves to be more challenging absent a clear intentional act but, causation issues alone cannot defeat an involuntary manslaughter claim.<sup>167</sup> To reiterate, conversion therapy does not have to be the sole cause of death only a substantial factor. In a testimonial, a survivor described their experience as “two months of complete emotional and mental breakdown.”<sup>168</sup> Conversion therapy is typically an immersive experience and could reasonably be deduced to be at least a factor in a child’s suicidal ideation. This causation correlation heightens if the death occurs during or reasonably following their time in conversion therapy. Moreover, whether a defendant’s conduct was the proximate cause of the death is ordinarily a

---

161. *People v. Rodriguez*, 186 Cal. App. 2d 433, 440 (1960).

162. *Walker v. Super. Ct.*, 763 P.2d 852, 868 (Cal. 1988).

163. *George*, *supra* note 12, at 802.

164. *Learn*, *supra* note 7.

165. *People v. Sanchez*, 29 P.3d 209, 216 (Cal. 2001).

166. *People v. Jennings*, 237 P.3d 474, 496 (Cal. 2010).

167. *People v. Butler*, 114 Cal. Rptr. 3d 696, 705 (Cal. Ct. App. 2010) (explaining that although causation is a necessary element of involuntary manslaughter there are many forms in which a court may consider causation present in a case).

168. *Sacks*, *supra* note 44, at 70.

question for a jury.<sup>169</sup> Tellingly, a recent poll found that 71% of Florida residents and 64% of Virginia residents believed that conversion therapy for minors should be illegal.<sup>170</sup> These polls are indicative of a shift in national opinion steering away from the acceptance of conversion therapy. Additionally, this shift may possibly be demonstrated in jury verdicts if prosecutors were to bring cases forward.

This charge is reflective of manslaughter and medical neglect claims brought against parents who avoided medical care and vaccination for their children due to their religious beliefs.<sup>171</sup> Some of these parents were convicted.<sup>172</sup> The distinction between parents who do not allow their bleeding child to get medical attention and a parent who places their child in conversion therapy can be easily distinguished. However, cases that have resulted in a parental conviction demonstrate that parental prosecution is appropriate when there is a clear correlation between the parent's choice and the unintentional death of their child.

### C. *Parens Patriae Doctrine*

A state is sometimes recognized as the proper party to bring an action as *parens patriae* or "parent of the country."<sup>173</sup> The state's *parens patriae* interest is to guard the health and well-being of the state's youth.<sup>174</sup> These interests have previously justified restrictions on a parent's control over school attendance and prohibited child labor.<sup>175</sup> In most cases, the state allows parents and legal guardians great leeway when deciding matters for their minor children,<sup>176</sup> which

---

169. *People v. Brady*, 29 Cal. Rptr. 3d 286, 296 (Cal. Ct. App. 2005).

170. Mallory, *supra* note 13, at 2.

171. *See generally* Daniel J. Kearny, *Parental Failure to Provide Child with Medical Assistance Based on Religious Beliefs Causing Child's Death – Involuntary Manslaughter in Pennsylvania*, 90 DICK. L. REV. 861 (1986) (describing cases where parents relied on religion at the exclusion of modern medicine to heal their children which resulted in their death and the parent's conviction).

172. *See id.*

173. *See, e.g.*, *Pierce v. Massachusetts*, 321 U.S. 158, 166 (1944); *see generally* Jim Ryan & Don R. Sampen, *Suing on Behalf of the State: A Parens Patriae Primer*, 86 ILL. B.J. 684 (1998) (describing the definition and history of *parens patriae*).

174. Lynn D. Wardle, *Controversial Medical Treatments for Children: The Roles of Parents and of the State*, 49 FAM. L.Q. 509, 520 (2015) (describing the conflicts between parental rights and the state's *parens patriae* interest).

175. *Pierce*, 321 U.S. at 166.

176. *See Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding that Amish parents have a constitutional right to exempt their children from a compulsory school attendance law); *see also Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925) (holding parents have the right to choose whether to send their children to public school).

is generally based on the presumption that parents inherently act in the best interest of their children.<sup>177</sup> The Supreme Court of the United States has acknowledged, “the child is not a mere creature of the state;” but, instead places a high duty on “those who nurture him and prepare her for the additional obligations of life.”<sup>178</sup>

Professor Lynn Wardle claims the presumption favoring parental control is a result of the natural bonds between parent and child, which lead parents to always act in the best interest of their child.<sup>179</sup> I challenge this presumption specifically when parents demonstrate a homophobic response to their LGBT child. Parents seeking to place their child in conversion therapy indicates a high-level of disapproval of their child’s same-sex attraction or gender variance.<sup>180</sup> These homophobic responses often perpetrate through different responses such as family rejection, child abuse, or other psychological harm even prior to enrollment in conversion therapy.<sup>181</sup> Although there is no explicit state duty to act, the *parens patriae* doctrine suggests that in certain situations where children are placed in exceptionally dangerous conversion therapy programs it “not only warrants but demands state intervention.”<sup>182</sup> The state has an interest in promoting health both by preventing diseases and mental disorders.<sup>183</sup> Participants of conversion therapy continually experience heightened levels of mental disorders generally because of their experience in conversion therapy programs.<sup>184</sup> When dealing with health, the state’s power of infringing on the parents’ right to control the upbringing of their child is most easily demonstrated by state statutes regulating pregnancy and abortion.<sup>185</sup> Therefore, a state’s implementation of absolute prohibition on the practice of conversion therapy within its borders is a valid exercise

---

177. Sana Loue, *Faith-Based Mental Health Treatment of Minors*, 31 J. LEGAL MED. 171, 193 (2010) (describing the *parens patriae* doctrine with regards to conversion therapy).

178. *Pierce*, 268 U.S. 510 at 573.

179. *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

180. Cella, *supra* note 42, at 126.

181. *Id.*

182. *See DeShaney v. Winnebago Cty. Dept. of Soc. Serv.*, 489 U.S. 189 (1989) (describing that nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors); *see also Loue, supra* note 176, at 194.

183. Loue, *supra* note 174, at 194.

184. Victor, *supra* note 11, at 1542.

185. *An Overview of Minor’s Consent Law*, GUTTMACHER INST., <https://www.guttmacher.org/state-policy/explore/overview-minors-consent-law> (explaining 2 states and the District of Columbia explicitly allow all minors to consent to abortion services and 21 states require that at least one parent consent to a minor’s abortion, while 10 states require prior notification of at least one parent) (last updated Dec. 1, 2020).



of their powers under the *parens patriae* doctrine and should be considered a viable defense in future litigation against claims of by parents.

Relying on *Parham v. J.R.*, which states “some parents may at times be acting against the interests of their children [which] creates a basis for caution, but it is hardly a reason to discard . . . that parents generally do act in the child’s best interest.”<sup>186</sup> However, *Parham* is starkly different from placing children in conversion therapy. *Parham* deals with placing children in state administered mental health institutions and under the Georgia code requires clear evidence of a mental illness suitable for treatment.<sup>187</sup> As noted above, homosexuality is no longer considered a mental illness since its exclusion of the DSM in 1973. This distinction must warrant less deferential treatment to a parent’s choice to place their queer child in conversion therapy. Conversion therapy is not in the best interest of a child. Therefore, placing minors in conversion therapy is not just a basis for caution but also a call for action to stop parents who support conversion.

At the very core, a parent’s unfettered agency over their LGBT child can sometimes cause the greatest harm to their child. Therefore, parents attempting to place their queer children in conversion therapy should be subjected to more intrusive oversight by the state. The government serves as a neutral third party who is objectively free of religious and societal pressure when dealing with a queer child and can adequately step in when necessary for the child’s well-being.

#### D. Family Acceptance Project

Although this Article primarily calls for absolute nationwide prohibition on the practice of conversion therapy, a part of this process still requires a continued effort in educating parents on accepting their queer children. In San Francisco, California, Dr. Caitlin Ryan directs the Family Acceptance Project (“FAP”).<sup>188</sup> FAP focuses on a queer minor and their family, primarily studying how family reactions to their LGBT child affects their child’s health and well-being.<sup>189</sup> With research-based training, FAP aims to intervene with families and caregivers to build an understanding of their impact of acceptance and

---

186. *Parham v. J.R.*, 442 U.S. 584 (1979) (describing what type of due process must be accorded to children when their parents commit them to a mental institution); *see also* Wardle, *supra* note 171, at 530-31.

187. *Parham*, 442 U.S. at 591.

188. *Overview*, FAM. ACCEPTANCE PROJECT, <https://familyproject.sfsu.edu/overview> (last visited Dec. 18, 2020).

189. *Id.*

rejection of their child's queer identity on their welfare.<sup>190</sup> FAP's research is inclusive of youth living in gated communities; low income, rural communities; immigrant families; foster care; and even those who are homeless youth and their families.<sup>191</sup>

In a recent study, it was found 53% of LGBT non-Latino white and Latino young adults, ages 21-25, experienced some form of sexual orientation change efforts during adolescence.<sup>192</sup> A startling 21% of these experiences were at the hands of their parents or caregivers in their home.<sup>193</sup> Further, minors from highly religious and lower socioeconomic status families were most likely to experience home-based conversion efforts.<sup>194</sup> Evident from these findings is the need to educate and address parents whose actions may go unnoticed in the privacy of their own home. Through FAP's initiatives, FAP hopes to implement and disseminate family models of wellness to prevent risk, including suicide and homelessness in LGBT youth.<sup>195</sup>

#### CONCLUSION

In 2019, the practice of conversion therapy on minors has gone on for far too long. Sexual orientation change efforts need to be completely banned in response to the well-documented physical and psychological harms it inflicts on the vulnerable LGBT youth. The Supreme Court has long established that it is the nation who suffers for generations when society imposes hardship on a discrete class of children who are not accountable for their disabling status.<sup>196</sup> It is along these lines that I argue that an all hands-on approach is needed when it comes to attacking conversion therapy. A single strategy cannot carry out this task alone. There is value in both the offensive approach of litigation and the defensive approach of educating families. Both these solutions play a necessary role in the battle against conversion therapy.

---

190. *Id.*

191. *Research—In-depth Family Interviews, Case Studies and Surveys*, FAM. ACCEPTANCE PROJECT, <https://familyproject.sfsu.edu/research> (last visited Dec. 18, 2020).

192. Cathy Renna, *First Study shows Pivotal Role of Parents in Conversion Efforts to Change LGBT Adolescents' Sexual Orientation*, FAM. ACCEPTANCE PROJECT (Nov. 8, 2018, 11:19 AM), <https://familyproject.sfsu.edu/conversion-therapy-begins-at-home>.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Plyler v. Doe*, 457 U.S. 202, 223-24 (1982).

In January, 2019, New York joined the ranks of states with a traditional state-wide ban on conversion therapy.<sup>197</sup> New York lawmakers began proposing bills addressing conversion therapy as early as 2003, but failed for approximately sixteen years to enact a state-wide prohibition on the practice of conversion therapy.<sup>198</sup> Lawmakers expressed that the lack of approval was a result of a lack of knowledge regarding the harms of conversion therapy and essentially left many lawmakers to believe it was not a modern problem in their state.<sup>199</sup> New York sends us a timely reminder that the time to protect LGBT children is now, although it may have taken them sixteen years to provide state-wide protection, it is still protection that is unavailable to so many children. While queer children face many unsafe spaces as they navigate a heteronormative society, banning conversion therapy is a vital step in making the world a safer space for queer children. Minors are a less visible sector of society as is, and the queer subgroup is even less. It is for this discrete group of children that LGBT advocates must use their voice to protect queer children who are being continually put in danger by their state's or community's inaction.

---

197. Michael Gold, *New York Passes a Ban on Conversion Therapy After Years-Long Efforts*, N.Y. TIMES (Jan. 21, 2019), <https://www.nytimes.com/2019/01/21/nyregion/conversion-therapy-ban.html>.

198. *Id.*

199. *Id.*