

LIMINALITY, POLITICAL PSYCHOLOGY, AND ATTACKS ON TRANSGENDER LIVES

Kyle C. Velte*

I. INTRODUCTION

After a period of important successes over the past twenty years, such as winning marriage equality,¹ workplace protections,² and striking down sodomy laws,³ the Lesbian, Gay, Bisexual, Transgender, and Queer (“LGBTQ”) community has more recently faced significant backlash. Spurred on by their anger and indignation about the U.S. Supreme Court’s holding in *Obergefell v. Hodges* that same-sex couples share in the fundamental right to marry,⁴ opponents of LGBTQ rights launched a multi-pronged attack on LGBTQ rights and people.⁵

The multi-pronged nature of this attack is seen in the breadth of LGBTQ-rights issues that opponents have targeted, which include but are not limited to (1) seeking religious exemptions from state public accommodations laws to permit discrimination against same-sex couples;⁶ (2) seeking religious exemptions from Title VII, the federal law that prohibits discrimination because of sexual orientation and gender identity (“SOGI”) in the workplace;⁷ (3) failing to remove same-sex marriage bans from state law or

* Kyle C. Velte, Associate Dean, Karelitz Chair in Evidence Law, and Professor, University of Kansas School of Law. This article was inspired by the work of Jennifer Ananda, JD, MSW, and PhD candidate at the University of Kansas. Many thanks to the student editors at *The Southwestern Law Review* for organizing a timely and important symposium and for their outstanding feedback and editing on the article.

1. See *Obergefell v. Hodges*, 576 U.S. 644 (2015).

2. See *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020).

3. See *Lawrence v. Tex.*, 539 U.S. 558 (2003).

4. *Obergefell*, 576 U.S. 644 (2015).

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

6. See, e.g., *Masterpiece Cakeshop v. Colo. Civ. Rts. Comm’n*, 584 U.S. 617 (2018); *Fulton v. City of Phila.*, 593 U.S. 522 (2021); *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

7. See, e.g., *Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm’n*, 70 F.4th 914 (5th Cir. 2023).

state constitutions;⁸ (4) passing laws banning transgender girls and women from participating on girls' and women's sports teams;⁹ (5) passing laws banning gender-affirming care for transgender minors;¹⁰ and (6) passing "don't say gay" school censorship laws.¹¹

These efforts at retrenchment and subordination are part of a national, coordinated campaign by the white Christian nationalism movement.¹² White Christian nationalism "seeks a total fusion of religion and politics[.]"¹³ This movement has received increasing attention from mainstream media and academics over the past several years as the broad scope of its agenda and its growing infiltration of all three branches of state and federal

8. See Julia Mueller, *Is Same Sex Marriage Legal in All 50 States?*, HILL (Dec. 1, 2022), <https://thehill.com/changing-america/respect/equality/3758722-is-same-sex-marriage-legal-in-all-50-states/>.

9. See LGBTQ Youth: Bans on Transgender Youth Participation in Sports, MOVEMENT ADVANCEMENT PROJECT (2024), <https://www.lgbtmap.org/img/maps/citations-sports-participation-bans.pdf>.

10. See Healthcare Laws and Policies: Bans on Best Practice Medical Care for Transgender Youth, MOVEMENT ADVANCEMENT PROJECT (2024), <https://www.lgbtmap.org/img/maps/citations-youth-medical-care-bans.pdf>.

11. See LGBTQ Youth: LGBTQ Curricular Laws, MOVEMENT ADVANCEMENT PROJECT (2024), <https://www.lgbtmap.org/img/maps/citations-curricular-laws.pdf>.

12. See, e.g., Kyle C. Velte, *The Supreme Court's Gaslight Docket*, 96 TEMP. L. REV. 391, 407-11 (2024) [hereinafter Velte, *Gaslight Docket*]. I use "white Christian nationalism" as a term of art, described by journalist Katherine Stewart as a political ideology rather than a religious creed, that "promotes the myth that the American republic was founded as a Christian nation." See KATHERINE STEWART, *THE POWER WORSHIPPERS: INSIDE THE DANGEROUS RISE OF RELIGIOUS NATIONALISM* 4 (1st ed., Bloomsbury Publ'g, 2020). It is a kind of nationalism because it claims that its legitimacy arises from its assertion that it represents "a specific identity unique to and representative of the American nation." *Id.* at 5. It is "Christian" in nature based on the "movement's own understanding of this national identity, which it sees as inextricably bound up with a particular religion." *Id.* Importantly, as does Stewart, "I do not mean to suggest that Christian nationalism is representative of American Christianity as a whole. Indeed, a great many people who identify as Christians oppose the movement, and quite a few even question whether it is authentically Christian in the first place." *Id.* I add "white" to Stewart's concept of "Christian" nationalism because opposition to racial desegregation was the genesis of that movement and because its present political and judicial goals are permeated with white supremacist norms. See OBERY M. HENDRICKS, *CHRISTIANS AGAINST CHRISTIANITY: HOW RIGHT-WING EVANGELICALS ARE DESTROYING OUR NATION AND OUR FAITH* 4-5 (1st ed., Beacon Press, 2021); see generally David Simson, *Most Favored Racial Hierarchy: The Ever-Evolving Ways of the Supreme Court's Superordination of Whiteness*, 120 MICH. L. REV. 1629, 1629-65 (2022); ELIZABETH DIAS & LISA LERER, *THE FALL OF ROE: THE RISE OF A NEW AMERICA* 31 (1st ed., Flatiron Books, 2024). See also Christopher Wiggins, *Leaked Emails Show GOP Lawmaker, Anti-Trans Activists Discuss Holy War*, ADVOCATE (Mar. 23, 2023), <https://www.advocate.com/news/north-dakota-anti-trans-emails> ("Recently leaked emails reveal an alarming coalition of far right-wing extremists, Christian nationalists, anti-trans lobbyists, and elected officials in cahoots, using language rooted in religion to paint Americans at war with the LGBTQ+ community.").

13. Jesse Smith & Gary J. Adler, Jr., *What Isn't Christian Nationalism? A Call for Conceptual and Empirical Splitting*, SOCIUS, 1, 6 (2022).

governments—and thus the true reach of its power to reorder American society—becomes clearer.¹⁴ Commentators and scholars, including myself, have written about both anti-LGBTQ backlash and its connection to white Christian nationalism.¹⁵

This article seeks to add to that conversation by analyzing white Christian nationalism's backlash against LGBTQ people, and specifically against transgender and nonbinary people, through a lens of liminality, framed by research from the field of political psychology that reveals differences in tolerance for ambiguity between conservatives and liberals. It contends that theories of liminality and evidence from the field of political psychology can provide insights into the rise of the white Christian nationalist legal movement against both LGBTQ rights and the connected issue of abortion rights. Liminality theory illuminates the motivations, anxieties, and strategies underlying the anti-equality, pro-subordination legal

14. See, e.g., Velte, *Gaslight Docket*, *supra* note 12; DANNAGAL GOLDWAITE YOUNG, *WRONG: HOW MEDIA, POLITICS, AND IDENTITY DRIVE OUR APPETITE FOR MISINFORMATION* 66-69, 111, 235 (1st ed., Johns Hopkins Univ. Press, 2023); Smith & Adler, *supra* note 13; DIAS & LERER, *supra* note 12; Maura Casey, *Project 2025: The Blueprint for Christian Nationalist Regime Change*, KETTERING FOUND. (Aug. 19, 2024), <https://kettering.org/project-2025-the-blueprint-for-christian-nationalist-regime-change/>.

15. See, e.g., Mike Hixenbaugh & Antonia Hylton, *Inside the Anti-LGBTQ Effort to Put Christianity Back in Schools*, NBC NEWS (Oct. 4, 2023), <https://www.nbcnews.com/news/us-news/christianity-evangelical-schools-anti-lgbtq-grapevine-podcast-rcna118114>; Keegan Beamish, *Why Christian Nationalism Is a Feminist Issue*, NOW (Nov. 14, 2023), <https://now.org/blog/why-christian-nationalism-is-a-feminist-issue/>; Katherine Stewart, *Christian Nationalists Are Excited About What Comes Next*, N.Y. TIMES (July 5, 2022) <https://www.nytimes.com/2022/07/05/opinion/dobbs-christian-nationalism.html>; Melissa Gira Grant, *Call Attacks on Pride What They Are: Political Violence*, NAT'L REV. (June 19, 2024), <https://newrepublic.com/article/182865/pride-attacks-proud-boys-lgbtq-violence>; Jonathan Wilson-Hartgrove, *The Evangelical Case Against Judge Kavanaugh*, N.Y. TIMES (Sept. 3, 2018), <https://www.nytimes.com/2018/09/03/opinion/evangelical-brett-kavanaugh-civil-rights.html>; Kyle C. Velte, *Why the Religious Right Can't Have Its (Straight Wedding) Cake and Eat it Too: Breaking the Preservation-Through-Transformation Dynamic in Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 36 LAW & INEQ. 67, 67-68 (2018); Velte, *Gaslight Docket*, *supra* note 12; Kyle C. Velte, *Debunking the Narrowness Narrative in LGBTQ Religious Exemption Claims*, 68 ST. LOUIS U. L.J. 885 (2024); Stephen M. Feldman, *Who Belongs?: "We the People" in the Twenty-First Century*, 52 FORDHAM URB. L.J. 1, 1-2 (2024); Richard Schragger & Micah Schwartzman, *Religious Antiliberalism and the First Amendment*, 104 MINN. L. REV. 1341, 1342-43 (2020); Caroline Mala Corbin, *The Supreme Court's Facilitation of White Christian Nationalism*, 71 ALA. L. REV. 833, 834-36 (2020); Caroline Mala Corbin, *Christian Legislative Prayers and Christian Nationalism*, 76 WASH. & LEE L. REV. 453, 454-55 (2019); Stephen M. Feldman, *White Christian Nationalism Enters the Political Mainstream: Implications for the Roberts Court and Religious Freedom*, 53 SETON HALL L. REV. 667, 668-70 (2023); Elizabeth Sepper & James D. Nelson, *Religion Law and Political Economy*, 108 IOWA L. REV. 2341, 2341-43 (2023); Ruth Colker, *Christian Domination*, 73 AM. U. L. REV. 1717, 1717-18 (2024); Gilad Abiri, *Divisiveness, National Narratives, and the Establishment Clause*, 40 PACE L. REV. 399, 399-401 (2020); Elizabeth Dias, *The Far-Right Christian Quest for Power: 'We Are Seeing Them Emboldened'*, N.Y. TIMES (July 13, 2022), <https://www.nytimes.com/2022/07/08/us/christian-nationalism-politicians.html>.

campaigns of white Christian nationalism elites.¹⁶ Political psychology explains why the cultural, political, and gender liminality engendered by transgender and nonbinary people—which creates ambiguity around sex, gender, and their roles in law and society—provoke white Christian nationalists’ legal and political backlash against LGBTQ rights generally and transgender and nonbinary people more specifically.

II. WHITE CHRISTIAN NATIONALISM AND ITS ATTACKS ON WOMEN AND LGBTQ PEOPLE

The following brief overview of the tenets of white Christian nationalism and the movement’s recent increasing power provides necessary political and historical context for the analysis that follows.

A. *A Short History of White Christian Nationalism*

In the modern era, white Christian nationalism has been a part of the American political and cultural milieu since at least the middle of the twentieth century.¹⁷ It has a cyclical nature that causes it to surge and resurge over time, leading one scholar to describe it “zombie nationalism.”¹⁸ White Christian nationalism thus “persists by self-protectively morphing and resurging socio-politically, at distinctive points in time, and by reigniting in response to specific issues.”¹⁹ In the United States, “religious nationalists have long argued that only a ‘good Christian’ can be a ‘real American.’”²⁰

White Christian nationalism’s central organizing belief is that the United States was founded as a Christian nation and should be governed based on Biblical canons and teachings²¹—despite contrary evidence from the

16. DIAS & LERER, *supra* note 12, at 319.

17. See HENDRICKS, *supra* note 12, at 3.

18. Jason A. Springs, *Zombie Nationalism: The Sexual Politics of White Evangelical Christian Nihilism*, in 53 RELIGION, POPULISM, AND MODERNITY: CONFRONTING WHITE CHRISTIAN NATIONALISM AND RACISM 51 (Atalia Omer & Joshua Lupu eds., Univ. of Notre Dame Press, 2023).

19. *Id.*; see also Philip Gorski, *Religious Nationalism and Right-Wing Populism*, in 23 RELIGION, POPULISM, AND MODERNITY: CONFRONTING WHITE CHRISTIAN NATIONALISM AND RACISM 2 (Atalia Omer & Joshua Lupu eds., Univ. of Notre Dame Press, 2023) (“[T]here are hidden links between religion and nation that can always be reactivated, even if they have lain dormant for some time.”).

20. Gorski, *supra* note 19.

21. HENDRICKS, *supra* note 12, at 4; see also Corbin, *The Supreme Court’s Facilitation*, *supra* note 15, at 841.

founding era that proves otherwise.²² White Christian nationalism is a political ideology that galvanizes and informs the movement's quest for its political and social goals.²³ These goals often relate to "culture war" issues such as racial civil rights, women's rights, sexual liberation, and LGBTQ civil rights.²⁴ The white Christian nationalism movement insists that the United States government is illegitimate and that it cannot be legitimate "until its laws and policies are thoroughly consistent with the Christian nationalists' narrow . . . readings of the biblical text."²⁵

The movement's end goal is "to force every aspect of American life to genuflect at the alter of their narrow brand of Christianity."²⁶ Movement adherents are thus accurately described as "Christian supremacists."²⁷ White Christian nationalists, in particular white Christian nationalist lawyers, see their work "as part of a much bigger religious project to enact God's kingdom on earth, a way to use the law to reshape the country around the tenets of Christianity."²⁸

The current iteration of white Christian nationalism has occurred in the context of demographic shifts.²⁹ In 2012, white Christians became less than a majority of the American population for the first time.³⁰ That decline stood in stark contrast to a time just two decades earlier, when white Christians made up nearly 66% of the population.³¹ By 2012, though, the country had also experienced a decided shift toward secularization,³² with declining church membership, lower rates of marriage, and the diminished centrality of the values that white Christian nationalism's viewed as the core of life in

22. HENDRICKS, *supra* note 12, at 4 ("They routinely ignore all evidence to the contrary, no matter how compelling, including the testimony of founding fathers like Thomas Jefferson and John Adams that America was *not* founded as a Christian nation.").

23. HENDRICKS, *supra* note 12, at 4.

24. See, e.g., Kiara Alfonseca, *Culture Wars: How Identity became the Center of Politics in America*, ABC NEWS (July 7, 2023), <https://abcnews.go.com/US/culture-wars-identity-center-politics-america/story?id=100768380>.

25. HENDRICKS, *supra* note 12, at 4.

26. HENDRICKS, *supra* note 12, at 6.

27. HENDRICKS, *supra* note 12, at 4.

28. DIAS & LERER, *supra* note 12, at 159.

29. Springs, *supra* note 18, at 54.

30. Springs, *supra* note 18, at 56.

31. DIAS & LERER, *supra* note 12, at 11.

32. See Gorski, *supra* note 19, at 2 ("[R]eligious nationalism emerges as a specific type only in opposition to a secular nationalism, that is, to a form of nationalism based on ideas of civic belonging . . . These conceptions first arise during the democratic revolutions of the late eighteenth century and the romantic movements of the nineteenth century, respectively . . . [B]ecause the category of religion as we now understand it arguably first emerges during this same period as a means of conceptualizing the relationship of Christianity to other traditions, and its superiority to them.").

the United States—“where family was made by a husband and wife who had children and went to church on Sundays.”³³ Moreover, today’s white Christian nationalism movement is cognizant of the demographic fact that white people will make less than half of the population of the United States by 2050.³⁴

While the origin of white Christian nationalism can be traced back at least to the abolition of slavery,³⁵ this article focuses on the agenda of the more contemporary movement beginning in the 1960s, during which “[m]arginalized groups in the Civil Rights, Black power, Chicano, feminist and gay rights movements were demanding equal rights and challenging the ‘normative American culture’ of the ‘50s that had begun to solidify.”³⁶ Both the literature on white Christian nationalism and the goals of the movement itself are extensive;³⁷ this article focuses more narrowly on the movement’s

33. DIAS & LERER, *supra* note 12, at 11.

34. *Id.* at 10.

35. See, e.g., Alfonso, *supra* note 24.

36. *Id.*

37. See, e.g., Berta Esperanza Hernández-Truyol, *Hemipsheric Justice: Awakening to 303 Creative’s Troubles: A Glocalization Critical Analysis*, 22 SEATTLE J. SOC. JUST. 705, 735-36 (2024); Feldman, *White Christian Nationalism Enters*, *supra* note 15, at 668; Velte, *Debunking*, *supra* note 15; PHILIP S. GORSKI & SAMUEL L. PERRY, *THE FLAG AND THE CROSS: WHITE CHRISTIAN NATIONALISM AND THE THREAT TO AMERICAN DEMOCRACY* 68-71 (1st ed., Oxford Univ. Press, 2022); Katherine Stewart, *How Christian Nationalism Perverted the Judicial System and Gutted Our Rights*, NEW REPUBLIC (May 10, 2022), <https://newrepublic.com/article/166404/christian-right-roe-alito-abortion> [<https://perma.cc/UK45-FWRT>]; AMANDA HOLLIS-BRUSKY, *IDEAS WITH CONSEQUENCES: THE FEDERALIST SOCIETY AND THE CONSERVATIVE COUNTERREVOLUTION* 6-8 (1st ed., Steven Teles ed., 2015); Margaret Talbot, *Amy Coney Barrett’s Long Game*, NEW YORKER (Feb. 7, 2022), <https://www.newyorker.com/magazine/2022/02/14/amy-coney-barrets-long-game>; Linda Greenhouse, *Alito’s Call to Arms to Secure Religious Liberty*, N.Y. TIMES (Aug. 11, 2022), <https://www.nytimes.com/2022/08/11/opinion/religion-supreme-court-alito.html>; Samuel L. Perry & Philip S. Gorski, *With the Buffalo Massacre, White Christian Nationalism Strikes Again*, WASH. POST (May 20, 2022), <https://www.washingtonpost.com/outlook/2022/05/20/white-christian-nationalism-buffalo-abortion/> (“For a segment of Christians, the battle over abortion is just one front in a wider war to make America Christian again - by any means necessary. They are not pro-life so much as pro-control.”); Sophie Bjork-James, *Christian Nationalism and LGBTQ Structural Violence in the United States*, 7 J. RELIGION & VIOLENCE 278-302 (2019); Terry Gross, *How One Christian Legal Group is Shaping Policy, from Abortion to LGBTQ Rights*, NPR (Oct. 18, 2023, 1:32 PM), <https://www.npr.org/2023/10/18/1206760032/how-one-christian-legal-group-is-shaping-policy-from-abortion-to-lgbtq-rights>; Adam Gabbatt, *Well-Funded Christian Group Behind US Effort to Roll Back LGBTQ+ Rights*, GUARDIAN (June 19, 2023), <https://www.theguardian.com/world/2023/jun/19/alliance-defending-freedom-lgbtq-rights-america>; David D. Kirkpatrick, *The Next Targets for the Group that Overturned Roe: Alliance Defending Freedom Has Won Fifteen Supreme Court Cases. Now It Wants Religious Exemptions to Anti-Discrimination Laws - and is Going After Trans Rights*, NEW YORKER (Oct. 9, 2023), <https://www.newyorker.com/magazine/2023/10/09/alliance-defending-freedoms-legal-crusade>; Katherine Stewart, *Christian Nationalism Is One of Trump’s Most Powerful Weapons*, N.Y. TIMES (Jan. 6, 2022), <https://www.nytimes.com/2022/01/06/opinion/jan-6-christian-nationalism.html>;

attacks on LGBTQ rights, as well as the connected issue of abortion rights and relies on the brief foregoing summary of these goals of the movement to situate its analysis.

B. White Christian Nationalism and the Connection Between Its Attacks on LGBTQ Civil Rights and Abortion Rights

“Whiteness and Christianity have long endured as legitimating forms”³⁸ of white Christian nationalism; however, “[a]ttending to gender norms and sexual politics as drivers”³⁹ of white Christian nationalism “is equally indispensable”⁴⁰ in any analysis of the movement’s agenda, and particularly pertinent when considering the movement’s attacks on abortion rights and LGBTQ rights.⁴¹ Binary and clear gender roles—and the adherence to the same—are core values of white Christian nationalism, values that inform the fundamental patriarchal worldview of that movement.⁴² This article posits that “zombie” white Christian nationalism has resurged in the current moment, at least in part, because of the gender-threatening liminality created by (1) increasing numbers of LGBTQ people living openly, gaining power, and winning legal protections and social respect and acceptance, and (2) increasing numbers of (cisgender) women exercising the freedoms created by the sexual revolution of the 1960s, which in 1973 led to the right to abortion in *Roe v. Wade*. *Roe*, in turn, created a freedom and autonomy for women to participate in civic and economic life in ways never before contemplated, thus destabilizing the traditional sex and gender roles that scaffold patriarchy.⁴³

It is by now no secret that a central and foundational goal of the white Christian nationalism movement was the reversal of *Roe*.⁴⁴ The right to abortion and the organizations that supported it, such as Planned Parenthood,

Jared A. Goldstein, *How the Constitution Became Christian*, 68 HASTINGS L.J. 259, 259-308 (2017); Springs, *supra* note 18.

38. Springs, *supra* note 18.

39. *Id.*

40. *Id.*

41. *Id.*

42. See, e.g., Feldman, *White Christian Nationalism Enters*, *supra* note 15, at 684.

43. See, e.g., Olivia Roat, *Drawing Connections Between “Separate Cubbyholes”: Ruth Bader Ginsburg’s Multifaceted Approach to Reproductive Rights*, 32 CORNELL J.L. & PUB. POL’Y 63, 94-95 (2022); Neil S. Siegel, *The New Textualism, Progressive Constitutionalism, and Abortion Rights: A Reply to Jeffrey Rosen*, 25 YALE J.L. & HUM. 55, 63 & n.55 (“Progressive legal scholars have identified links between prohibitions on abortion and the perpetuation of the sex-role stereotypes of the separate spheres tradition—the dyadic structuring of sex roles in which men are expected to perform as breadwinners and women are expected to perform as economically dependent caregivers.”) (collecting articles).

44. *Roe v. Wade*, 410 U.S. 113, 147-51 (1973).

exemplified the larger sexual revolution that had unfolded over decades in the United States,⁴⁵ a revolution that white Christian nationalists vigorously opposed.⁴⁶

In 2022, in *Dobbs v. Jackson Women's Health Organization*, Justice Alito, writing for a majority of the Court, sided with the white Christian nationalism movement and overruled fifty years of precedent when he wrote that *Roe* was wrongly decided.⁴⁷ While Justice Alito did not explicitly ground his holding on the Bible or within Christianity—he instead purported to engage in constitutional analysis to reach his conclusion that *Roe* was “egregiously wrong from the start”⁴⁸—that constitutional analysis is steeped in a white Christian nationalism worldview.

Dobbs, does in fact, however, force every American to be beholden to the views of one narrow faith tradition—that of white Christian nationalism—on when life begins even though that question at its core is a deeply personal one, and the answer to which may vary based on other faith traditions or on no faith tradition at all.⁴⁹ Journalists Elizabeth Dias and Lisa Lerer have noted that “[t]he story of Christianity [was] at the heart of” the mission of the white Christian nationalism who sought to overturn *Roe*.⁵⁰ As a result, any restrictions on the right to abortion—a result countenanced by *Dobbs*—necessarily impose the view that life begins at conceptions, a faith-based view rooted in one subset of Christianity, to the exclusion of other faith traditions such as Judaism, which centers the life of the pregnant person and considers “the fetus . . . to be a part of her body, not a person with preferential rights.”⁵¹ *Dobbs* thus has the fingerprints of the white Christian nationalism movement all over it.

White Christian nationalism’s opposition to abortion is connected with and linked to its opposition to LGBTQ rights.⁵² As far back as 1979, pastor

45. DIAS & LERER, *supra* note 12, at 74.

46. DIAS & LERER, *supra* note 12, at 73.

47. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

48. *Id.*

49. See Velte, *Gaslight Docket*, *supra* note 12, at 432 (“[T]he *Dobbs* majority opinion arguably is grounded on a theological assumption, or at least on a religiously informed background norm: there is no need to permit states to outlaw abortion unless one believes that life begins at conception, and it is *that* religious belief that the majority is thrusting onto the nation [T]he majority’s opinion supports the imposition of the particular theory of Christianity (that life begins at conception) on *everyone*.”). DIAS & LERER, *supra* note 12, at 13-14 (“[T]he political fight over abortion was at heart a spiritual battle, about the essence of being human and saving America’s soul.”).

50. DIAS & LERER, *supra* note 12, at 14 (alteration in original).

51. DIAS & LERER, *supra* note 12, at 22.

52. See generally Genevieve Siegel-Hawley et al., *When Public Meets Private: Private School Enrollment and Segregation in Virginia*, 30 WASH. & LEE J. CIV. RTS. & SOC. JUST. 95, 124 (2024);

and televangelist Jerry Falwell, the founder of the white Christian nationalism organization known as the Moral Majority, identified both issues as central and fundamental targets.⁵³ His Moral Majority group focused on “‘moral and religious decay,’ tying it to abortion, the Equal Rights Amendment . . . and homosexuality.”⁵⁴ Fast forward nearly fifty years to *Dobbs*, which marked the success of the white Christian nationalism movement’s efforts “to engraft a pro-business Christian nationalism onto our constitutional order.”⁵⁵

The close connectedness of abortion rights and LGBTQ rights is grounded in the freedom and autonomy that both sets of rights afford—freedoms and autonomy that are contrary to patriarchy, a central organizing belief of white Christian nationalism.⁵⁶ Both sets of rights grew out of the sexual revolution of the 1960s, and both sets of rights have been the target of white Christian nationalism backlash.⁵⁷ Abortion rights engender sexual autonomy and freedom for women, just as LGBTQ rights allow sexual autonomy and freedom for LGBTQ people.⁵⁸ In each of these contexts, the bright line between (cis) men and (cis) women is blurred, which in turn

Shannon Dunn, *Appropriation, Opting Out, and the Common Good in Public Debates: An Analysis of Christian Ethical Arguments*, 38 J.L. & RELIGION 403, 409 (2023).

53. See Siegel-Hawley et al., *supra* note 52, at 123-24.

54. *Id.*

55. David S. Cohen et al., *Abortion at the Crossroads: Reproductive Rights and Justice on the Precipice of Roe’s Demise*, 14 DREXEL L. REV. 787, 805-06 (2022); see also Jon D. Michaels & David L. Noll, *Blue State Exodus?*, 2023 PEPP. L. REV. 58, 61 (2023) (“[R]ed state legislatures are increasingly enacting policies that run roughshod over local governments’ authority to set local policy, particularly on matters central to the White, Christian nationalism of today’s MAGA movement. Emblematic of this new wave of state legislation is Texas’ infamous S.B. 8, which offers lucrative bounties to ‘any person’ who sues abortion providers, insurers, and friends of people seeking reproductive healthcare, circumventing local DAs’ ability to exercise prosecutorial discretion.”) (footnote omitted).

56. See, e.g., Dunn, *supra* note 52, at 408 (“As an ideology, white Christian nationalism supports the promotion of white male bodies in public spaces and the reordering of other bodies below them in a hierarchy.”); ANDREW L. WHITEHEAD & SAMUEL L. PERRY, TAKING BACK AMERICA FOR GOD: CHRISTIAN NATIONALISM IN THE UNITED STATES 10 (2020) (describing White Christian nationalism as a movement that includes “nativism, white supremacy, patriarchy, and heteronormativity, along with divine sanction for authoritarian control and militarism.”); Siegel-Hawley et al., *supra* note 52, at 124 (noting that an early White Christian nationalism organization, the Moral Majority, “drew on central tenets of white Christian nationalism by merging a hierarchical, authoritarian and patriarchal version of Christianity with civic institutions and public policy”); Berta Esperanza Hernández-Truyol, *Awakening the Law: Unmasking Free Exercise Exceptionalism*, 72 EMORY L.J. 1061, 1064-65 (2023).

57. See generally Schragger & Schwartzman, *supra* note 15, at 1416 (noting the “backlash against the sexual revolution with its increasingly militant opposition to abortion, contraception, and the LGBT civil rights movement”).

58. See Schragger & Schwartzman, *supra* note 15, at 1418.

destabilizes patriarchal norms and practices.⁵⁹ Thus, opposition to abortion is “often part of a broader package of beliefs about marriage and sexuality.”⁶⁰ So while the campaign to end *Roe* was to end abortion, the white Christian nationalism movement’s “larger mission was to shape the unit that governs most people’s day-to-day lives: the family.”⁶¹ For white Christian nationalism, the family is headed by men.

The freedom and autonomy afforded by abortion rights and LGBTQ rights are thus an affront to patriarchy.⁶² Women’s sexual freedom and

59. See generally Tatsiana Ziniakova, *Gender-Based Violence in International Human Rights Law: Evolution Towards a Binding Post-Binary Framework*, 27 WM. & MARY J. RACE, GENDER & SOC. JUST. 709, 739-40 (“Gender-based violence is an embodiment of patriarchy, a manifestation of full power some men have over women as a group, over ‘weaker’ men, and over ‘queers’ who do not fit into a predetermined binary gender role.”); Andrew Proctor, *Anti-Transgender Legislation and the Politics of Patriarchy*, GENDER POL’Y REP. (July 6, 2021), <https://genderpolicyreport.umn.edu/anti-transgender-legislation-and-the-politics-of-patriarchy> (“Anti-trans sports legislation denies transgender women recognition as women, which reinforces biological sex binaries that contribute to systems of patriarchy Accepting that trans and cis girls and women can play sports together challenges the very logics and power structures that cis men benefit from.”); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society*, 83 CALIF. L. REV. 1, 272-73 (1995); Mary Coombs, *Sexual Dis-Orientation: Transgendered People and Same-Sex Marriage*, 8 UCLA WOMEN’S L.J. 219 (1998) (arguing that candid consideration of transgender people and their marital relationships would disrupt the gender patriarchy on which traditional marriage rests, thereby liberating transgender people as well as gays, lesbians, and heterosexual women); Jeremiah A. Ho, *Queering Bostock*, 29 AM. U. J. GENDER SOC. POL’Y & L. 283, 315-16 (2021) (“Stereotypes against queer minorities share some overlap with gender stereotypes because anti-queer stereotypes also stem from heteronormativity. However, where gender stereotypes often oppress by folding gender categories into a patriarchal hierarchy, anti-queer stereotypes aim to exclude queer individuals by drawing attention to how queer identities potentially threaten the heteronormative status quo.”) (footnote omitted).

60. DIAS & LERER, *supra* note 12, at 156.

61. *Id.*

62. See Anja Alexander, *Bans Beyond Borders: Entrenching Out-of-State Abortion Bans and California’s Attempt to Shield its Medical Providers from Liability*, 57 LOY. L.A. L. REV. 83, 93 (2024) (“Abortion was generally legal in the United States until the Victorian era. During this period, midwives and homeopaths who performed abortions—and were typically female—were criminalized to the benefit of ‘male-dominated scientific medicine.’ With women increasingly gaining independence, which ‘threatened male power and patriarchy,’ the procedure was made illegal and would not become legal again until *Roe* in 1973. But forty-nine years later, we have reverted back to the whims of Victorian jurisprudence: criminalizing the doctors who perform the procedure.”) (footnotes omitted). Summarizing some of the scholarship on this issue, John C. Mccaffrey and Julie Novkov note:

Kristin Luker, in her book *Abortion and the Politics of Motherhood*, contends that differences between pro-life and pro-choice activists can be related to their views about women’s appropriate place in the legal and social order In a similar vein, Rosalind Petchesky argues that abortion politics “acquire volatility in periods when the social position of women generally is under siege.” For Petchesky, this occurs because “the abortion decision epitomizes the capacity of individual women and women collectively to control fertility and . . . the consequences of heterosexual sex . . . and therefore represents a threat to patriarchal power. In our view, which draws on these two perspectives, the abortion debate is significantly about

autonomy created by a right to abortion means that women may order their personal and working lives as they see fit, which may not include marriage or children; if it does include marriage or children, those choices can be made on the terms of a woman's own choosing. In the absence of forced pregnancy, women have the freedom and opportunity to become self-sufficient by participating in the workforce.⁶³ This bodily freedom and autonomy, which leads to economic freedom and autonomy, destabilizes traditional, rigid gender roles, according to which men are the head of the family and women are subservient caregivers.⁶⁴ Because white Christian nationalists see becoming a mother as a "social milestone,"⁶⁵ one that some have described as the "motherhood mandate,"⁶⁶ the right to abortion—which allows women the choice to avoid that mandate—contradicts what white Christian nationalists view as the natural order of society.⁶⁷ For some white Christian nationalists, the right to abortion was about "unwinding the entire sexual revolution to a time when women had fewer rights and far less control over their bodies. They were the 'foundational issue upon which everything else is built.'"⁶⁸

Similarly, white Christian nationalists viewed LGBTQ rights, which were the result of LGBTQ people living more openly and proudly than ever, as a threat to their core beliefs about gender, sexuality, and the definition of family (and the sanctity of the heterosexual nuclear family).⁶⁹ The recognition of the constitutional right to engage in same-sex intimate sexual

conflicting views of women's roles both as mothers and as liberal citizens in modern American culture.

John C. McCaffrey & Julie Novkov, Book Note, *The Emperor Wears No Clothes: Life's Dominion and Dworkin's Integrity*, 21 N.Y.U. REV. L. & SOC. CHANGE 183 224-25 (1993-1994) (footnotes omitted); see also Jeneanne Orłowski, *Beyond Gratification: The Benefits of Pornography and the Demedicalization of Female Sexuality*, 8 MOD. AM. 53, 57 (2012) ("Similar to birth control, abortion also gave women a means to control pregnancy and the blood line, which threatened men's patriarchal social dominance.").

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

64. See Gila Stople, "A Rank Usurpation of Power"—*The Role of Patriarchal Religion and Culture in the Subordination of Women*, 15 DUKE J. GENDER L. & POL'Y 365, 378 (2008).

65. See generally, Sophia Moskalenko et al., *Gender-Bender Narratives: Radicalizing Effects of Disinformation that Threatens Gender-Normative Views*, CRIME & DELINQ., 6 (2024).

66. *Id.*

67. *Id.* ("[M]otherhood, more than any other societal role, defines a 'real woman' in the eyes of patriarchal society.").

68. DIAS & LERER, *supra* note 12, at 174.

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

conduct in 2003 further expanded the freedom of LGBTQ people to live and love openly, with the concomitant effect of further chipping away at the centrality of the sex/gender binary and the centrality of the heterosexual family.⁷⁰ That freedom expanded even further in 2015 when the U.S. Supreme Court held that same-sex couples have a constitutional right to marry,⁷¹ a result decried by white Christian nationalists as against Biblical teachings,⁷² as a signal of declining American morality, and as an indication of the diminishing power of their movement and their members.⁷³ If marriage didn't mean a union of one man and one woman, what did that mean for the gender binary and the place of men and women in the hierarchy of a patriarchal society? That uncertainty was a grave gender threat for white Christian nationalists.

Antidiscrimination protections for transgender people—so that they may partake in sex-segregated activities and exist in sex-segregated spaces that align with their gender identity and access gender affirming medical care—create and reflect an autonomy and freedom to live an authentic life co-equal with their cisgender counterparts. This is yet another threat to white Christian nationalists' view that sex and gender are God-given and fixed.⁷⁴ It is thus no surprise that transgender rights was the first issue tackled by white Christian nationalists after *Obergefell*.⁷⁵

White Christian nationalism's opposition to and discomfort with the burgeoning freedom and legal rights of women and LGBTQ people are Biblically-based: God declares that life begins at conception; that sex/gender is binary, stable, and established at birth; and that the only valid marriage is one between a man and a woman.⁷⁶ As such, LGBTQ rights are an affront

70. See *id.*; Melissa Murray, *Rights and Regulation: The Evolution of Sexual Regulation*, 116 COLUM. L. REV. 573, 582-83 (2016). See generally *Lawrence v. Tex.*, 539 U.S. 558 (2003).

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

72. See, e.g., John Huleatt, *After Obergefell: Liberating Christian Witness*, PLOUGH (Aug. 14, 2015), <https://www.plough.com/en/topics/life/marriage/after-obergefell>.

73. See, e.g., *id.*; see generally Schragger & Schwartzman, *supra* note 15.

74. See, e.g., *God's View of Gender Dysphoria and the Transgender Movement*, ERIC GEIGER (Feb. 14, 2023), <https://ericgeiger.com/2023/02/14/gods-view-of-gender-dysphoria-and-the-transgender-movement/>; Andrew T. Walker, *Gender and Sexuality*, GOSPEL COAL., <https://www.thegospelcoalition.org/essay/gender-and-sexuality/> (last visited Jan. 25, 2025).

75. See Sarah Posner, *Overturing Roe Is the Crowning Achievement of Christian Nationalism*, NATION (May 9, 2022) <https://www.thenation.com/article/society/dobbs-christian-right/>.

76. See generally Angela L. Padilla & Jennifer J. Winrich, *Christianity, Feminism, and the Law*, 1 COLUM. J. GENDER & L. 67, 104 (1991) (“[T]he Bible continues to underlie and influence the perceptions and attitudes of secular society and persists in functioning as a religious/ideological justification for patriarchy.”) (footnote omitted).

to Biblical commands *and* to the “natural” gendered status hierarchies reflected in patriarchy, a regime that itself is said to have divine origins.⁷⁷

Thus, abortion rights and LGBTQ civil rights are inextricably linked together in the minds of white Christian nationalists.⁷⁸ These movements, and the organizations that support them, are viewed by white Christian nationalists as symbols of “the diminished power of traditional religion, gender roles, and families in American life.”⁷⁹ The white Christian nationalism movement considers these movements and their organizations to be “chipping away” at what white Christian nationalists view as the “core values of American life: traditional marriage, religious faith, and family.”⁸⁰

The abortion rights movement has been described as “a proxy for conservative America to project its anxieties about gender dynamics and families in a changing and increasingly secular country.”⁸¹ I contend that the LGBTQ rights movement serves as a similar proxy for white Christian nationalism. Thus, taken together, abortion rights and LGBTQ rights represent an existential threat to the traditional, gendered family, the cornerstone of the social order according to white Christian nationalism. This is why the white Christian nationalism movement zealously opposes abortion rights *and* LGBTQ rights.⁸² And it is why the white Christian nationalism’s *legal* backlash against these groups, although “cast . . . in legal terms[,]” is really about an effort “to push back against cultural change[s] that [have] swept the country since the 1960s and 1970s.”⁸³

In sum, the successes of both the abortion rights and LGBTQ rights movements threatened the heteronormative worldview of white Christian nationalists. The gender threats posed by these movement gave rise to white Christian nationalist organizations like the Alliance Defending Freedom, a self-described “religious ministry” legal organization formed in 1992 to “push back against liberal efforts to expand sexual freedoms and ‘radically reshape America.’”⁸⁴ These movements also gave rise to the creation of the

77. See generally *id.* at 88 (“[T]he connection between patriarchy in religion and patriarchy in law forms the basis of the political agenda of today’s New Religious Right. This agenda centers on the defense and advocacy of specifically patriarchal social relationships between men and women within both the family and society at large. It advocates the return to a ‘biblical morality’ where women were wives and mothers, without access to careers and reproductive rights, and where men ruled both their homes and the world.”).

78. See Schragger & Schwartzman, *supra* note 15, at 1417-18.

79. DIAS & LERER, *supra* note 12, at 85.

80. *Id.*

81. DIAS & LERER, *supra* note 12, at 87.

82. See generally Schragger and Schwartzman, *supra* note 15, at 1417-20.

83. DIAS & LERER, *supra* note 12, at 107-08.

84. *Id.* at 76.

Federalist Society, which set its sights on undoing the gender-threatening gains of the feminist and LGBTQ movements through drafting model legislation and packing the courts with judges who are aligned with the goals of the white Christian nationalism movement.⁸⁵

III. LIMINALITY

Liminality, frequently explored in anthropology and political theory, refers to the ambiguous, transitional state individuals or societies occupy when they are between one state of being and another.⁸⁶ Anthropologist Victor Turner described liminality as a state of being “neither here nor there” and as a state in which entities or communities are “betwixt and between the positions assigned and arrayed by law, custom, convention, and ceremonial.”⁸⁷ The concept has been adopted and utilized by a variety of disciplines and, at its most general level, describes a “state of in-betweenness and ambiguity.”⁸⁸

Political scientist Anne Norton describes liminality as an explanatory device that helps us understand shifting socio-legal statuses.⁸⁹ At the highest level of generality, Norton notes that “[c]hange comes from the liminal.”⁹⁰ More specifically, she described the racial civil rights movement and women’s rights movement that grew out of the tumultuous 1960s as a lesson in liminality: “Not only scholarship, but practical politics, drew attention away from the center to the periphery . . . These events made the constitutive role of the periphery visible.”⁹¹ These burgeoning civil rights movements, which soon included the LGBTQ civil rights movement,⁹²

instructed us to look for change not at the center, but at the periphery. It enabled those who studied politics to recognize the power of the liminal, or marginal, groups. These were excluded or, as in the case of the liminal, only partially or ambivalently included in social and political structures and institutions. Nevertheless, they played a significant role in changing

85. See *id.* at 106-08.

86. See generally VICTOR TURNER, *THE RITUAL PROCESS: STRUCTURE AND ANTI-STRUCTURE* 95-97 (1969).

87. *Id.* at 95.

88. Nic Beech, *Liminality and the Practices of Identity Reconstruction*, 64 *HUM. RELS.* 285 (2011).

89. See ANNE NORTON, 95 *THESES ON POLITICS, CULTURE, AND METHOD* 41-42 (2004).

90. *Id.* at 41.

91. *Id.* (“Change came to the empire from the colonies, to the metropole from the periphery, to the state from the streets, to old men from adolescents.”).

92. See generally Erin Blakemore, *What Was the Stonewall Uprising?*, *NAT’L GEOGRAPHIC* (June 1, 2023), <https://www.nationalgeographic.com/history/article/stonewall-uprising-ignited-modern-lgbtq-rights-movement>.

structures and institutions The liminal can become the epicenter of political change.⁹³

This Part summarizes legal scholarship on liminality and proposes an application of liminality theory to white Christian nationalism that departs from that prior scholarship.

A. *Prior Legal Scholarship on Liminality*

Legal scholars have addressed liminality in several contexts that are related, though not identical, to the liminality frame I propose here.⁹⁴ This prior legal scholarship has used the concept of liminality to frame and describe the precarious, unstable, and contested rights of marginalized groups.⁹⁵

For example, legal scholars of immigration law have used the theory of liminality to expose the precarity of living as an immigrant in the United States.⁹⁶ One scholar notes that immigration law acts to produce liminal legal subjects, such as Deferred Action for Childhood Arrivals recipients, who move “in and out of protective states of administrative grace” whereby they are protected from immigration and criminal law enforcement but are nonetheless “structurally . . . ‘invisible,’” “neither here nor there.”⁹⁷ Other scholars “identify liminal rules that shape not just liminal status, but the larger tapestry of the governance of migration in the United States.”⁹⁸

93. NORTON, *supra* note 89, at 41.

94. *See, e.g.*, Nina Rabin, *Legal Limbo as Subordination: Immigrants, Caste, and the Precarity of Liminal Status in the Trump Era*, 35 GEO. IMMIGR. L.J. 567 (2021); Lihi Yona, *Identity at Work*, 43 BERKELEY J. EMP. & LAB. L. 139 (2022); Marie-Amélie George, *Expanding LGBT*, 73 FLA. L. REV. 243 (2021); Tracy Feldman, *Native American Gravesites: Shielding Liminal Spaces Through Expansion of Historic Preservation Ordinances & Zoning Codes that Designate Cultural Resources Protection Overlay Districts & Readapt Cemetery Dedication Laws Within Their Provisions*, 51 REAL EST. L.J. 203 (2023); Michael M. Oswald, *Liminal Labor Law*, 110 CALIF. L. REV. 1855 (2022); Jonas-Sébastien Beaudry, *Welcoming Monsters: Disability as a Liminal Legal Concept*, 29 YALE J.L. & HUMS. 291 (2017).

95. *See* sources cited *supra* note 94.

96. *See, e.g.*, Rabin, *supra* note 94, at 575-76; Geoffrey Heeren, *The Status of Nonstatus*, 64 AM. U. L. REV. 1115, 1125 (2015); Cecilia Menjivar & Susan Bibler Coutin, *Challenges of Recognition, Participation, and Representation for the Legally Liminal: A Comment*, in 9 MIGRATION, GENDER AND SOCIAL JUSTICE: PERSPECTIVES ON HUMAN INSECURITY 325 (Thanh-Dam Truong et al. eds., 2014) (addressing the liminal legality of migrant workers and its effect on access to justice); Rose Cuison-Villazor, *Creating a Racialized Liminal Status: The 1790 and Interstitial Citizenship*, 65 WM. & MARY L. REV. 1157 (2024).

97. Jennifer M. Chacón, *Producing Liminal Legality*, 92 DENV. U. L. REV. 709, 715-16 (2015).

98. Juliet P. Stumpf & Stephen Manning, *Liminal Immigration Law*, 108 IOWA L. REV. 1531, 1536 (2023).

Liminality has also been applied to legal scholarship on employment law.⁹⁹ In this context, liminality theory “examines the site of liminally recognized groups, i.e., groups in the process of gaining recognition, as a methodological lens through which to critically assess recognition’s relationship to identities and the law.”¹⁰⁰ In the employment discrimination context, LGBTQ employees were in a liminal state—at the margins of the federal antidiscrimination law, Title VII—until 2020, when the Court held that sexual orientation and gender identity fell into Title VII’s prohibition of employment discrimination “because of . . . sex.”¹⁰¹ Thus, LGBTQ employees are no longer in a liminal and precarious state under Title VII, at least when the employment discrimination at issue is termination of employment.

Additionally, LGBTQ rights scholars have used the concept of liminality, particularly with regard to bisexual, trans, and nonbinary people.¹⁰² Uses of liminality in this scholarship highlight the marginalization of LGBTQ people and the precarity of LGBTQ existence under a legal regime that only ambiguously applies to these segments of the LGBTQ community.¹⁰³ Scholars focusing on transgender rights have used the concept of liminality to explain the shortcomings of the law for this part of the LGBTQ community, given the law’s general default position of a sex/gender binary.¹⁰⁴ In the time between the decriminalization of same-sex

99. Yona, *supra* note 94, at 142-43.

100. *Id.* at 143.

101. *Bostock v. Clayton Cnty.*, 590 U.S. 664, 681 (2020).

102. *See, e.g.*, George, *supra* note 94, at 319 (“National organizations’ transgender rights advocacy either ignores nonbinary needs or makes them less likely to come into being by focusing on those issues that reinforce gender as binary. The groups’ goals and strategies imply that individuals live as either men or women, rather than inhabit the liminal space between.”).

103. *See, e.g.*, Ann E. Tweedy, *Bisexual Erasure, Marjorie Rowland, and the Evolution of LGBTQ Rights*, 46 HARV. J. L. & GENDER 265, 293 (2023) (“Scholars such as Ruth Colker, Naomi Mezey, Kenji Yoshino, Nancy Marcus, and myself, among others, have documented bisexual erasure, a phenomenon which is undoubtedly fueled in part by the liminal space bisexuality occupies and by the fact that its very existence thwarts attempts to clearly demarcate gay and straight sexual orientations.”); Lauren M. DesRosiers, *Out of Bounds: Gender Outlaws, Immigration & the Limits of Assimilation*, 24 GEO. J. GENDER & L. 117, 119 n.3, 157 (2022).

104. *See* Aimee Wodda & Vanessa R. Panfil, “Don’t Talk to Me About Deception”: *The Necessary Erosion of the Trans* Panic Defense*, 78 ALB. L. REV. 927, 938–39 (2015) (noting that anti-trans attitudes, “[C]ombined with societal prejudice against persons who do not conform to gender norms, often cause trans* persons to experience a ‘basic denial of authenticity.’ This denial . . . leads to a precarious situation where trans* persons fall outside the strict limitations of the gender binary, and due to the restrictions of our dichotomous sex/gender system, occupy a liminal space within the law.”) (quoting Talia Mae Bettcher, *Appearance, Reality and Gender Deception: Reflections on Transphobic Violence and the Politics of Pretence*, in 181 VIOLENCE, VICTIMS, JUSTIFICATIONS: PHILOSOPHICAL APPROACHES 175 (Felix Ó. Murchadha ed., 2006)); *Id.* at 939 n.57 (quoting Stephen Wittle, RESPECT AND EQUALITY: TRANSSEXUAL AND TRANSGENDER

sodomy and marriage equality, the concept of liminality aptly described the in-between-ness of LGBTQ people, who had a constitutional right to engage in same-sex intimate conduct yet were denied legal recognition of their relationships.¹⁰⁵ Other scholars used legal liminality to propose possible paths to legal protection for queer people.¹⁰⁶

Still other legal scholars have addressed liminality in labor law,¹⁰⁷ Native American issues,¹⁰⁸ and disability law.¹⁰⁹

A common theme in these scholars' use of liminality as an explanatory device is to shine a light on the ways that law can act to marginalize identity groups, like immigrants and LGBTQ people, so that these communities are not squarely within the protections of the law.¹¹⁰ Instead, these communities occupy an ambiguous, in-between place—a liminal place—that creates precarity and marginalization and thus maintains unequal status hierarchies to keep these communities at the margins of law and society. As I address next, my use of liminality departs from this common theme.

RIGHTS 2 (2002)) (“Liminal subjects live outside traditional categories, occupying a legal gray zone.”); Abigail W. Lloyd, *Defining the Human: Are Transgendered People Strangers to the Law?*, 20 BERKELEY J. GENDER L. & JUST. 150, 152 (2005) (“At a systemic level, the law fails to recognize liminal subjects; faced with a transgender person who challenges traditional categories of normalcy, the law makes his or her identity so impossible, invisible, and monstrous as to be outside of the law’s protection.”).

105. See Murray, *supra* note 70, at 582 (noting that *Lawrence* “[D]ecriminalized same-sex sodomy, it made clear that the conduct (and those engaged in it) were not eligible for marriage. In stark contrast to *Griswold* and *Loving*, where formerly criminal sexual conduct was recast as legitimate marital conduct, *Lawrence* restructured the marriage-crime binary to interpose a space between these two sites of regulation for sex that was neither marital nor criminal. Lodged between marriage and crime, the two traditional sites of legal governance, this interstitial space was distinct in that it existed outside of the state’s regulatory presence.”). Even *Obergefell* left those who eschew the institution of marriage in a liminal place: “In one telling passage, the *Obergefell* majority noted that in decriminalizing sodomy, *Lawrence* had merely transformed LGBT persons, who remained ineligible for marriage, from ‘[o]utlaw[s] to outcast [s].’ On this rendering, life outside of marriage remains liminal and marginalized--perhaps less vilified than criminal sexuality, but still the absolute antithesis of venerated and valued marriage.” *Id.* at 632 n.232 (quoting *Obergefell v. Hodges*, 576 U.S. 644, 667 (2015)).

106. See, e.g., Marc S. Spindelman, *Reorienting Bowers v. Hardwick*, 79 N.C. L. REV. 359, 368, 491 n.14 (2001) (collecting authority viewing privacy as a liminal right or doorway enabling people to come out of the closet); Scott Skinner-Thompson, *Privacy’s Double Standards*, 93 WASH. L. REV. 2051, 2055 (2018) (arguing that privacy law “[Is] a uniquely appropriate area for examining inequality because privacy rights are particularly important for marginalized communities And privacy can serve as a liminal or transitional right until such communities gain both formal anti-discrimination protections and lived equality.”).

107. See Oswalt, *supra* note 94.

108. See Feldman, *supra* note 94.

109. See Beaudry, *supra* note 94.

110. Stumpf & Manning, *supra* note 98, at 1536; DesRosiers, *supra* note 102, at 119-20.

B. Flipping the Liminality Script: LGBTQ Civil Rights Move Sex & Gender from the Margins to the Center

As scholars have noted, for many centuries LGBTQ people occupied liminal spaces in law and society—not full citizens with equal political power and social capital, yet nonetheless still Americans with some rights.¹¹¹ For example, until *Lawrence v. Texas* was decided in 2003, the Court’s 1986 decision in *Bowers v. Hardwick* meant that it was constitutional to criminalize adult same-sex intimate conduct.¹¹² *Bowers* created a “bedrock of legal discrimination against gay men and lesbians”¹¹³ that extended beyond the criminalization of same-sex conduct to permit discrimination in more public spheres, such as housing, employment, the military, and parenting.¹¹⁴ This expressly discriminatory legal regime meant that many LGBTQ people stayed “in the closet” to avoid such discrimination, thus relegating LGBTQ people and their legal protections to ambiguity and liminality.¹¹⁵

But times changed. The 1960s saw a racial and sexual revolution that has persisted to the present day.¹¹⁶ More LGBTQ people came out of the closet, lived openly and proudly, and agitated for legal rights.¹¹⁷ Some ran for office, others entered the cultural consciousness through television, movies and music, and the growing openness of LGBTQ people shifted public opinion on LGBTQ people and issues.¹¹⁸ States began including sexual orientation, and later gender identity, in their public accommodations

111. See George, *supra* note 94, at 319 n.32; Tweedy, *supra* note 103, at 293; DesRosiers, *supra* note 103, at 119 n.3, 157; Wodda & Panfil, *supra* note 104, at 938-39 n.57; Lloyd, *supra* note 104, at 152; Murray, *supra* note 105, at 582, 632 n.232; Spindelman, *supra* note 106, at 368, 491 n.14; Skinner-Thompson, *supra* note 106, at 2055.

112. See *Bowers v. Hardwick*, 478 U.S. 186 (1986).

113. Patricia A. Cain, *Litigating for Lesbian and Gay Rights: A Legal History*, 79 VA. L. REV. 1551, 1587 (1993).

114. See Velte, *Cake*, *supra* note 15, at 75-76.

115. See, e.g., Sylvia R. Lazos Vargas, *Democracy and Inclusion: Reconceptualizing the Role of the Judge in a Pluralistic Polity*, 58 MD. L. REV. 150, 206 (1999) (“[T]he Court’s overbroad and unnuanced decision in *Bowers* requires gay men and lesbians to leave an important part of their humanity in the closet.”); Toni M. Massaro, *History Unbecoming History*, 98 MICH. L. REV. 1564, 1569 (2000) (“Cases like *Bowers v. Hardwick* actually may promote closeted behaviors by treating homosexuals as presumptive sodomites, rather than as co-citizens.”).

116. See Velte, *Cake*, *supra* note 15, at 75.

117. See generally, Out for America 2022: A Census of LGBTQ Elected Officials Nationwide, LGBTQ+ VICTORY INST. (2022), <https://victoryinstitute.org/wp-content/uploads/2022/09/Out-for-America-Report-2022-web.pdf>; Scottie Andrew, *More US Adults Identify as LGBTQ Now Than at Any Time in the Past Decade, a New Poll Says*, CNN (Feb. 17, 2022, 2:36 PM EST), <https://www.cnn.com/2022/02/17/us/lgbtq-population-increase-gallup-cec/index.html>.

118. See Out for America 2022 *supra* note 117; LGBTQ+ Rights, *infra* note 132; Deerwater, *infra* note 138.

and employment nondiscrimination laws.¹¹⁹ The marriage equality movement picked up steam and, in 2015, won the battle for marriage rights in *Obergefell*.¹²⁰ Most recently, in 2020, the LGBTQ civil rights movement prevailed in *Bostock*, which held that Title VII's employment nondiscrimination protections applied not only to "sex" but also to "sexual orientation and gender identity."¹²¹

As the LGBTQ rights movement made these legal gains over the past fifty years, LGBTQ people and their issues became more mainstream and thus less liminal.¹²² While this contention arguably is more precisely descriptive with regard to cisgender LGB individuals and legal issues than with regard to trans and nonbinary individuals, I contend that as a general proposition, the LGBTQ movement has made inroads in both law and society in ways that have diminished the liminality of that community. That contention is supported both by law and by social/cultural markers. The legal markers of diminished liminality include:

- Same-sex marriage is permitted in all fifty states;¹²³
- More than half of the LGBTQ population live in states prohibiting discrimination in public accommodations based on sexual orientation and gender identity;¹²⁴
- More than half of LGBTQ youth live in states that ban conversion therapy for minors;¹²⁵
- 54% of the LGBTQ population lives in states that have hate crime laws covering sexual orientation and gender identity;¹²⁶

119. See Jon W. Davidson, *A Brief History of the Path to Securing LGBTQ Rights*, ABA (July 5, 2022), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/intersection-of-lgbtq-rights-and-religious-freedom/a-brief-history-of-the-path-to-securing-lgbtq-rights/.

120. *Obergefell v. Hodges*, 576 U.S. 644, 680-81 (2015).

121. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 655 (2020).

122. See Davidson, *supra* note 119.

123. *Equality Maps: Marriage & Relationship Recognition Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/marriage_relationship_laws (last visited Jan. 24, 2025).

124. *Equality Maps: Public Accommodations Nondiscrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/non_discrimination_laws/public-accommodations (last visited Jan. 24, 2025).

125. *Equality Maps: Conversion Therapy Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/conversion_therapy (last visited Jan. 24, 2025).

126. *Equality Maps: Hate Crime Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/hate_crime_laws (last visited Jan. 24, 2025).

- LGBTQ people in all states who work for an employer covered by Title VII are protected from employment discrimination based on their status as an LGBTQ person;¹²⁷

- 53% of the LGBTQ population lives in states prohibiting housing discrimination based on sexual orientation and gender identity;¹²⁸

- 51% of transgender people (ages 18+) live in states that allow residents to mark M, F, or X on their driver's license;¹²⁹

- 40% of transgender people (ages 18+) live in states that allow residents to mark M, F, or X on their birth certificates;¹³⁰ and

- 51% of the LGBTQ population lives in states that have laws prohibiting discrimination in schools on the basis of sexual orientation and gender identity.¹³¹

The social markers of that diminished liminality include:

- Polling shows that support for same-sex marriage increased from 27% in 1996 to 69% in 2024;¹³²

- Polling shows that the response to the question of whether gay and lesbian relations are morally acceptable has increased from 40% in 2001 to 64% in 2024;¹³³

- Polling shows a shift in responses to the question of whether gay or lesbian relations between consenting adults should be legal from 32% in 1986 to 79% in 2021;¹³⁴

- Polling shows a shift in responses to the question of whether gay men and lesbian women should have equal rights to non-gays or non-lesbians from 56% in 1977 to 93% in 2019;¹³⁵

127. *Equality Maps: Employment Nondiscrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/employment_non_discrimination_laws (last visited Jan. 24, 2025).

128. *Equality Maps: Housing Nondiscrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/non_discrimination_laws/housing (last visited Jan. 24, 2025).

129. *Equality Maps: Identity Document Laws and Policies*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/identity_documents/ (last visited Jan. 24, 2025).

130. *Id.*

131. *Equality Maps: Safe Schools Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/safe_school_laws/discrimination (last visited Jan. 24, 2025).

132. *LGBTQ+ Rights*, GALLUP, <https://news.gallup.com/poll/1651/gay-lesbian-rights.aspx#:~:text=Over%20the%20years%2C%20there%20has,1996%20to%2029%25%20in%202024> (last visited Jan. 24, 2025).

133. *Id.*

134. *Id.*

135. *Id.*

- Polling shows a shift in responses to the question of whether gay men and lesbian women should be able to adopt children from 14% in 1977 to 75% in 2019;¹³⁶

- Polling shows a shift in responses to the question of whether any friends have told you that they are gay or lesbian from 24% in 1985 to 75% in 2013;¹³⁷

- Representation of LGBTQ people on television,¹³⁸ movies,¹³⁹ and in social media spaces has increased significantly;¹⁴⁰ and

- The numbers of openly LGBTQ candidates in political office has increased significantly.¹⁴¹

Of course, these positively trending data do not indicate LGBTQ rights and individuals have been *completely* centered in law and society such that they no longer face legal precarity. It is progress, not complete victory. But the progress—and its resultant *diminished* liminality—is significant for its impact on white Christian nationalists.¹⁴²

During the era of high LGBTQ liminality and nearly no civil rights, the white Christian nationalism movement deployed a expressly hostile and discriminatory rhetoric when discussing LGBTQ people and denying that community the protection of the law.¹⁴³ However, as the LGBTQ civil rights movement scored victories and LGBTQ people lived more openly, and became more accepted by and integrated into their communities, the white Christian nationalism movement shifted its rhetoric: It now centers white Christian as the victims in need of legal protection.¹⁴⁴ White Christian nationalists see themselves as victims of secular society, which has cast them as bigots and pariahs; the victim- and grievance-based narratives have been embraced by the white Christian nationalism movement at all levels,

136. *Id.*

137. *Id.*

138. See Raina Deerwater, *GLAAD's 2021-2022 Where We Are in TV Report: LGBTQ Representation Reaches New Record Highs*, GLAAD (Feb. 16, 2022), <https://glaad.org/glaads-2021-2022-where-we-are-tv-report-lgbtq-representation-reaches-new-record-highs/>.

139. See Chris Garnder, *GLAAD's 2023 Studio Responsibility Index Reports Increase in LGBTQ Characters of Color*, HOLLYWOOD REP. (Sept. 17, 2024, 6:00 AM), <https://www.hollywoodreporter.com/movies/movie-news/glaad-2023-report-studio-responsibility-index-lgbtq-characters-of-color-1236000999/>.

140. See *The LGBTQ+ Media Landscape: From Social Media to Streaming, Podcasts to Print*, MEDIA CULTURE (June 26, 2024), <https://www.mediaculture.com/insights/the-lgbtq-media-landscape-from-social-media-to-streaming-podcasts-to-print>.

141. See, e.g., Sarah Prager, *LGBTQ Candidates Saw Big Election Wins, with Several Historic Victories*, NBC NEWS (Nov. 9, 2024, 1:36 PM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/lgbtq-candidates-saw-big-election-wins-several-historic-victories-rcna179310>.

142. See Velte, *Cake*, *supra* note 15, at 71-81.

143. See *id.* at 71-74.

144. See *id.* at 80-81.

including by some justices of the U.S. Supreme Court.¹⁴⁵ Key players in the white Christian nationalism movement have built “a public identity around the idea of Christians being under siege, especially as American values on sexuality, marriage, and family expanded in the wake of the *Obergefell* decision making same-sex marriage legal.”¹⁴⁶ As I have written elsewhere, this flipped victimhood narrative of the white Christian nationalist movement is inaccurate as a matter of fact given that members of the movement continue to sit atop the U.S. status hierarchy.¹⁴⁷ The shifts in law and society “explain why many [white Christian nationalists] feel persecuted, and also why such claims seem preposterous to many nonevangelicals. For what is really at issue is not so much (Christian) persecution as (White) privilege. Wedding cakes are not the moral equivalent of lynching.”¹⁴⁸

Although white Christian nationalists are not objectively victims of oppression, what is clear is that they feel as if they are victims under attack by an increasingly secular society.¹⁴⁹ I contend that liminality theory may help us understand why white Christian nationalists are subjectively feeling as if they are oppressed victims in a thicker way than explaining that perceived victimhood by demographic shifts alone.

I propose that we may view gender liminality as having entered the center rather than being relegated to the margins, at least in the subjective experiences of white Christian nationalists. For so long, the white Christian nationalist movement and its core values—rigid, binary gender roles; heteronormativity; and patriarchy—have been centered in law and society.¹⁵⁰ Because white Christian nationalist values have, until relatively recently, been so powerful and domineering, white Christian nationalists have been comfortable.¹⁵¹ That comfort came from the fact that society largely reflected

145. See Margaret Talbot, *Justice Alito's Crusade Against a Secular America Isn't Over*, NEW YORKER (Aug. 28, 2022), <https://www.newyorker.com/magazine/2022/09/05/justice-alitos-crusade-against-a-secular-america-isnt-over> [hereinafter Talbot, *Justice Alito's Crusade*]; Sophie Bjork-James, *Christian Nationalism and LGBTQ Structural Violence in the United States*, 7 J. RELIGION & VIOLENCE 278, 281 (2019), (“Perpetuating a similar logic to that which has defined much Religious Right rhetoric, individuals described Christian culture as victimized by a radical gay-rights movement that aimed to change US culture and limit Christian authority.”).

146. DIAS & LERER, *supra* note 12, at 203. See also Gorski, *supra* note 19, at 22 (“[E]vangelicals now believe—truly and fervently believe—that Christians are the single ‘most persecuted group in America.’”).

147. See Velte, *Gaslight Docket*, *supra* note 12, at 443-44.

148. Gorski, *supra* note 19, at 22.

149. See Velte, *Gaslight Docket*, *supra* note 12, at 443.

150. See generally, Bjork-James, *supra* note 145 (discussing how White Evangelical Christian Nationalism has historically shaped law and society to privilege rigid gender norms, heteronormativity, and patriarchal authority).

151. Bjork-James, *supra* note 145.

white Christian nationalist values, in both law and culture.¹⁵² Law and social life were settled and predictable for white Christian nationalists during this era, an era when LGBTQ people (and women's sexual freedom) were, in fact, legally and socially liminal.¹⁵³

That sense of comfort dwindled as cisgender women gained the right to abortion and made legal gains in areas such as employment, family law, economic rights, and criminal sexual assault laws. And, during that same time, LGBTQ people were more out and open.¹⁵⁴ As women and LGBTQ people lived openly and proudly, agitated for equality and dignity under the law, the role and meaning of sex and gender shifted dramatically.¹⁵⁵ No longer was patriarchy the only widely accepted and valued way to organize social and legal relations; no longer was the sex/gender binary unanimously presumed to be the natural, correct, or only way to understand sex and gender or to regulate sex-segregated spaces in society.

I contend that these social and legal shifts have placed LGBTQ people—and the challenges to traditional understandings of sex and gender that they represent—in the mainstream of society, and that this “mainstreaming” of LGBTQ people has made society *feel* liminal to white Christian nationalists. In other words, white Christian nationalists are subjectively perceiving and experiencing the modern era—in which there are well-known, open LGBTQ people in all realms of life and in which LGBTQ people have made progress in securing legal protections—as a place of ambiguity, a place of in-betweenness. LGBTQ people and the ways in which they complicate traditional ideas about gender, sex, and patriarchy, engender in white Christian nationalists feelings of uneasiness, fear, and discomfort.¹⁵⁶ These feelings arise from the fact that traditional ideas about sex, gender, and patriarchy have been rendered no longer settled—and thus ambiguous—as those notions are contested by LGBTQ people and legal victories.¹⁵⁷ It makes sense that this shift in society to one where ideas around sex and gender have morphed from stable, rigid, and bright-lined to ambiguous and contested, has made white Christian nationalists feel as if they have been unmoored from a system of beliefs and legal structures that have heretofore gone largely unchallenged.¹⁵⁸ They feel that they are in a gender threatening liminal space.¹⁵⁹

152. *See id.* at 291, 295.

153. *See id.* at 292-93, 295.

154. *See* Velte, *Cake*, *supra* note 15, at 75-76.

155. *See* Velte, *Gaslight Docket*, *supra* note 12, at 443.

156. *See* Padilla, *supra* note 76, at 88.

157. *See* Velte, *Gaslight Docket*, *supra* note 12, at 443; e.g., Bjork-James, *supra* note 37.

158. *See* Velte, *Gaslight Docket*, *supra* note 12, at 443.

159. *See id.*

This conception of liminality turns the traditional comprehension of liminality on its head. Traditional legal liminality theory seeks to situate and explain the lived experiences of marginalized communities as a way to explain the gaps in legal recognition and protection of these marginalized people.¹⁶⁰ In contrast, my proposed liminality lens centers the experience and feelings of a politically powerful group: White Christian nationalists, who feel that they are living in a world full of ambiguity when it comes to sex, gender, and the socio-legal hierarchy, and this ambiguity is disquieting.

Why might white Christian nationalists feel as if they are living in a liminal, ambiguous state that in turn creates feelings of discomfort and victimization? Because the mere existence of LGBTQ people, and in particular trans and nonbinary people, destabilizes what most white Christian nationalists have considered a rigid, natural, and normal gender binary, which in turn destabilizes patriarchy.¹⁶¹ And when those newly present¹⁶² LGBTQ people go a step further and demand equal rights under the law, the liminality and ambiguity is ratcheted up. For example, when transgender people seek legal protection to use sex-segregated spaces that align with their gender identity rather than their sex assigned at birth, white Christian nationalists may feel disorientated and as if they have entered an ambiguous world of gender liminality, where “men” are allowed in “women’s” spaces.¹⁶³ From the perspective of white Christian nationalists, they have been thrust into a world in which it is difficult to tell who is a “real” woman and a “real” man, and in which some people are nonbinary or gender fluid—a world where gender norms have been turned upside down and where gender ambiguity and gender in-between-ness (in the case of nonbinary and gender fluid people) have brought sex and gender liminality from the margins to the center.¹⁶⁴

Critically, there is a difference between white Christian nationalists feeling and experiencing this gender liminality and the factual reality, which is that the white Christian nationalism movement continues to wield outsized power in all three branches of the federal government and in many state and

160. See *supra* Part III.A.

161. See Velte, *Gaslight Docket*, *supra* note 12, at 443-44.

162. Of course, LGBTQ people have existed since the beginning of humankind. This “newly present” descriptor is from the perspective of white Christian nationalists. See, e.g., Kiara Alfonseca, *LGBTQ People Have ‘Been Around for Forever,’ Historians Say*, ABC NEWS (Mar. 27, 2023, 7:17 AM), <https://abcnews.go.com/US/transgender-gender-diverse-people-world/story?id=98017443>.

163. See, e.g., *Ted Cruz Says Not Having ‘Bathroom Bill’ Is ‘Opening the Door for Predators,’* ABC NEWS (Apr. 23, 2016, 7:05 PM), <https://abcnews.go.com/Politics/ted-cruz-bathroom-bill-opening-door-predators/story?id=38626340>.

164. See Moskalenko et al., *supra* note 65, at 5-6.

local governments.¹⁶⁵ There is thus a disconnect between the feeling of victimhood (as a result of white Christian nationalists experiencing what they perceive as a liminal and ambiguous state of affairs) and what is actually happening on the ground in many states and at the federal level, namely a resurgence of anti-LGBTQ laws, especially anti-trans laws that are *successfully introduced and passed by white Christian nationalist lawmakers*.¹⁶⁶ So, while it is accurate that white Christian nationalism values are presently being *contested* as American society becomes more secular and sex/gender,¹⁶⁷ the current debate over these white Christian nationalism values is not the same as being deprived of power and privilege.¹⁶⁸

White Christian nationalists have staunch beliefs regarding abortion and LGBTQ people—the success of allowing rights and freedoms that white Christian nationalism must abide by is what feels like discrimination. They have to “share” the center/freedoms/space with liminal peoples with whom they vehemently disagree. White Christian nationalists may feel like they have less political power. But they don’t have fewer rights under the law. They simply must treat all people—Black, Mormon, Islamic, trans—the same, whether they want to or not.

Having laid out my proposed liminality frame, I next turn to political psychology, which teaches that most political conservatives, which includes white Christian nationalists, share a psychological trait known as a “need for closure.”¹⁶⁹ This need for closure stems from discomfort with ambiguity. Taken together, my proposed liminality frame and this commonly-shared white Christian nationalist psychological trait provide a thicker understanding of today’s rampant anti-LGBTQ backlash.

165. See generally Michael Sozan & Ben Olinsky, *Project 2025 Would Destroy the U.S. System of Checks and Balances and Create an Imperial Presidency*, CTR. FOR AM. PROGRESS (Oct. 1, 2024), <https://www.americanprogress.org/article/project-2025-would-destroy-the-u-s-system-of-checks-and-balances-and-create-an-imperial-presidency/>.

166. See, e.g., Sarah Posner, *The Christian Nationalist Boot Camp Pushing Anti-Trans Laws Across America*, TYPEINVESTIGATIONS (Sept. 21, 2022), <https://www.typeinvestigations.org/investigation/2022/09/21/christian-nationalism-anti-trans-laws/>.

167. See Talbot, *Justice Alito’s Crusade*, *supra* note 145 (“In the end, Alito may be angry for the same reasons that many conservatives of his demographic are angry—because they find their values increasingly contested; because they feel less culturally authoritative than they once were; because they want to exclude who they want to exclude, and resent it when others push back.”).

168. See Velte, *Gaslight Docket*, *supra* note 12, at 443.

169. See YOUNG, *supra* note 14, at 38, 109.

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

Political psychology teaches that people fall into two general categories when faced with ambiguity and uncertainty: those who are comfortable with ambiguity and those who are uncomfortable with it.¹⁷⁰ Both of these approaches to dealing with ambiguity are grounded in needs that *all* of us share no matter our response to ambiguity: the need for comprehension (to understand our world), control (to have agency), and community (to be “socially connected with a sense of belonging”).¹⁷¹ Our social identity influences the manner in which we satisfy those needs.¹⁷² Here, I focus on the first two needs: comprehension and control.

Motivation for comprehension, known as epistemic motives, “capture our desire to feel as though the world makes sense to us.”¹⁷³ While fulfilling the need for comprehension has a positive adaptive quality, it also can lead us “to identify casual relationships where they don’t exist” because we may gravitate toward the *feeling* of comprehending our world more than on “actually being accurate in what we comprehend.”¹⁷⁴

Buttressing the need for comprehension is the need for control. That need, also known as an “existential” motive, implicates “our desire to feel as though we are safe or in control—[though], not necessarily to *be safe or have control*.”¹⁷⁵ The need for control stems from a desire “to feel like we have control over things that seem chaotic.”¹⁷⁶

These opposite tendencies toward ambiguity and uncertainty (tolerant and intolerant) stem from the “meaningful variation in the way that people interact with and understand their worlds.”¹⁷⁷ Those who have a higher tolerance for ambiguity and uncertainty—and thus are more comfortable with liminality—also have higher levels of a psychological trait known as “need for cognition.”¹⁷⁸ This “trait . . . captures how much people enjoy—or get satisfaction from—thinking hard and solving problems.”¹⁷⁹ Such people “are more likely to evaluate and reevaluate information before updating their

170. See generally YOUNG, *supra* note 14.

171. *Id.* at 21, 31.

172. *Id.* at 9.

173. *Id.* at 34.

174. *Id.* (“It is enough for us to feel like we ‘get it,’ without having to verify that our understanding is correct.”).

175. *Id.*

176. *Id.* at 31.

177. *Id.* at 38.

178. *Id.* at 37.

179. *Id.*

beliefs.”¹⁸⁰ Similarly, those with this trait also are more likely to exhibit cognitive reflection, a practice that makes it less likely to believe false information.¹⁸¹

In contrast, those who have a lower tolerance for uncertainty and ambiguity have a higher need for closure compared with those with a higher need for cognition.¹⁸² This need for closure manifests in the use of heuristics (cognitive shortcuts) to arrive at conclusions and answers quickly, without the need to absorb various information and points of view, and then to reflect on how that information might influence conclusions and answers.¹⁸³ Because those uncomfortable with ambiguity and liminality—and subsequently have a lower need for cognition and higher need for closure—“prefer to have answers sooner rather than later[.]” they “tend to use their emotions to guide their beliefs and behaviors.”¹⁸⁴ The result is that, notwithstanding the efficiency of the need for closure trait, “this approach is . . . more likely to result in errors in judgment and recall.”¹⁸⁵

Moreover, those with a higher need for cognition tend to be actively open-minded thinkers who resist immediately going with their “gut” feeling on issues.¹⁸⁶ These individuals more readily accept science and are apt to be politically liberal.¹⁸⁷ In contrast those with a high need for closure (and lower need for cognition) tend to eschew active, open-minded thinking in favor of following their gut and intuition.¹⁸⁸ They are apt to be politically conservative.

Because the concept of liminality includes ambiguity and uncertainty—concepts that reflect the “in-between-ness” characterizing liminality¹⁸⁹—the political psychology literature addressing and explaining the divide between the need for cognition trait and the need for closure trait overlays nicely with the liminality lens deployed here.¹⁹⁰ This political psychology research reveals that the *cognitive* divide tracks *political* divides: There is an epistemic division between the political parties, wherein conservatives in the Republican party are more likely to fall into the “need for closure” category and liberals in the Democratic party are more likely to fall into the “need for

180. *Id.*

181. *Id.* at 38.

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.* at 106-07.

187. *Id.* at 107.

188. *Id.* at 106-07.

189. *Id.* at 38.

190. *Id.*

cognition” category.¹⁹¹ As a result, conservatives (which include those in the white Christian nationalism movement) are “more likely than liberals to be motivated by efficiency and to form judgments based on emotions and intuition[,]” whereas “[l]iberals . . . have a higher tolerance for ambiguity and engage in more cognitive reflection when faced with new information.”¹⁹²

Religion is a system rooted in faith, which no form of evidence can prove or disprove; this reality aligns with the cognitive disposition of “need for closure” rather than need for cognition.¹⁹³ Therefore, members of the white Christian nationalism movement sit on the “need for closure” side of this epistemic divide.¹⁹⁴ Empirical evidence overwhelmingly demonstrates the connection between religiosity and the “need for closure” cognitive profile, which means that these individuals “exhibit reduced analytic and actively open-minded thinking.”¹⁹⁵

In fact, the general conservative discomfort with ambiguity likely is amplified for those within the white Christian nationalism movement, given their unshakable conviction that God has chosen the United States as an exceptional “city on a hill”¹⁹⁶ that must not merely reflect the values of conservative Christianity but must be organized around and guided by such values.¹⁹⁷

Recall that white Christian nationalism is a “black-and-white and good-versus-evil” worldview.¹⁹⁸ It not only claims that the Bible provides the literal and absolute truth, it “goes much further, extrapolating a total political program from that truth, and yoking that program”¹⁹⁹ to the Republican party. It is a thus a “conflation of scripture and politics that sees America’s triumphs as confirmation of the truth of the Christian religion, and America’s struggles

191. *Id.* at 108-09.

192. *Id.* at 109.

193. *Id.* at 38.

194. *Id.* at 107 (“Individuals with this psychological trait ‘are more likely to embrace traditional moral values and religious fundamentalism.’”).

195. *Id.* at 38, 108.

196. *See, e.g.*, Keegan Beamish, *Why Christian Nationalism Is a Feminist Issue*, NOW (Nov. 14, 2023), <https://now.org/blog/why-christian-nationalism-is-a-feminist-issue/>.

197. *See, e.g.*, Gorski, *supra* note 19, at 25 (“Claims of national chosenness are still alive even today in the semi-secular ideology of ‘American Exceptionalism,’ which insists that the United States is a ‘nation like no other’ upon which a special ‘mission’ has been conferred, a ‘crusade’ to defend freedom.”).

198. *See, e.g.*, Leslie Cohen, *Fear and Power: Christian Nationalism in America*, CAIRO REV. GLOB. AFFAIRS (Feb. 8, 2023), <https://www.thecairoreview.com/essays/fear-and-power-christian-nationalism-in-america/>.

199. MICHELLE GOLDBERG, KINGDOM COMING: THE RISE OF CHRISTIAN NATIONALISM 6 (2006).

as part of a cosmic contest between God and the devil.”²⁰⁰ It “claims supernatural sanction for its campaign of national renewal and speaks rapturously about vanquishing the millions of Americans who would stand in its way.”²⁰¹ This stubbornly held view that America was founded as a Christian nation is one example of lack of tolerance for ambiguity in white Christian nationalism. That movement resists, if not completely rejects, evidence contrary to their worldview that American was founded as a Christian nation.²⁰²

V. LIMINALITY, AMBIGUITY, AND THE MOVEMENT TO ERASE TRANSGENDER PEOPLE FROM AMERICAN LIFE

The tendency of those in the white Christian nationalism movement to exhibit the “need for closure” cognitive trait connects with and supports my contention that the current cultural and political moment—in which LGBTQ people are living openly, have gained important legal protections, and are being more widely accepted in society—is experienced by white Christian nationalists as an ambiguous and liminal one. Now that LGBTQ people and issues are more mainstream and less in the margins, white Christian nationalists cannot avoid facing the ways in which LGBTQ people challenge and destabilize traditional understandings of sex and gender. This gender-threatening liminality creates feelings of uncertainty and ambiguity for white Christian nationalists. The ambiguity-inducing liminality triggers white Christian nationalists’ cognitive need for closure, to the exclusion of cognition, consideration of other views, or assessment of evidence. As a result, white Christian nationalism worldview triggers opposition and backlash to LGBTQ rights (and abortion).²⁰³

As described more fully above, white Christian nationalists likely are experiencing today’s world as one that is liminal and ambiguous because LGBTQ people by our mere presence in society, are gender-threatening to white Christian nationalists. Transgender and nonbinary people create arguably an even starker sense of gender-threatening liminality for white Christian nationalists than do gay, lesbian, and bisexual people. Why? Because trans and nonbinary people inherently challenge traditional notions of sex and gender. The very existence of trans and nonbinary people disrupts a belief, long held by many (non-Indigenous) communities, but as pertinent

200. *Id.*

201. *Id.*

202. See SPRINGS, *supra* note 18, at 56 & 85 n.17; HENDRICKS, *supra* note 12, at 4 & 168 n.5

203. YOUNG, *supra* note 14, at 110. In contrast, the need for cognition exhibited by most liberals results in support for LGBTQ and abortion rights.

here by the majority of white Christian nationalists, that sex and gender are firmly established at birth, stable and static, and binary.²⁰⁴ In addition to what white Christian nationalists see as an open-and-shut case of pure biological determinism, they also believe that God created the (in their view) immutable binary as the only real and natural order of sex and gender, that of men and women.²⁰⁵

Moreover, the mere presence of trans people, who literally transgress what white Christian nationalists see as the immutable sex/gender binary ordained by God, represent not only heretical gender threats in the Biblical sense but also gender threats to established gender hierarchies, where men sit atop the social, political, and cultural hierarchy and women sit in a subordinated role, with less social, political, and cultural power, not just in the church, but in the halls of power in civic life as well.²⁰⁶ Nonbinary people arguably pose a similarly existential gender threat to white Christian nationalists: Someone with *no* gender has no way of being slotted into the “correct” or “appropriate” sex/gender box, and thus are a destabilizing threat to male supremacy in society, culture, and politics—in sum, a threat to the patriarchal structure in which white Christian nationalism exists and thrives.

Add to the increasing *presence* of LGBTQ people in public life the *legal victories* and burgeoning social and political status that the queer community has attained over the past two decades, and the case for characterizing today’s society as liminal vis-a-vis white Christian nationalists gains added purchase. It makes sense that white Christian nationalists feel “betwixt and between” when law and society have shifted in ways that would have been unthinkable to a white Christian nationalist a generation ago.²⁰⁷ As such, legal gains by LGBTQ people—same-sex marriage and nondiscrimination protections for trans and nonbinary people—deeply threaten patriarchy, the core organizing principle for white Christian nationalists.²⁰⁸ Add to this mix the rampant misinformation about trans and nonbinary people and the radicalization of white Christian nationalists on the issue of LGBTQ rights makes sense.²⁰⁹

Given the religiously-based and entrenched beliefs about gender—its Godly and biologically-determined origin, its immutability, and its patriarchal hierarchy—it makes sense that white Christian nationalists feel

204. See SPRINGS, *supra* note 18, at 71-72.

205. See *id.* at 73.

206. See *id.* at 63.

207. See, e.g., Moskalenko, et al., *supra* note 65, at 2 (“The changes in cultural norms around gender and sexuality have challenged established worldviews. This cultural shift toward evolving gender norms and fluid gender identities contributed to a cultural ‘unfreezing[.]’”).

208. See Moskalenko, et al., *supra* note 65, at 2.

209. See *id.* at 1.

uneasy, confused, anxious, unsettled, unstable, and apprehensive about the present state of the world with regard to sex and gender—that they experience society as liminal. Old patriarchal gender hierarchies have been challenged and destabilized. When there are members of the community with no gender at all, these nonbinary people upend a central organizing feature of white Christian nationalism—patriarchy.²¹⁰ This in turn, creates a society that *feels* to white Christian nationalists to be liminal and in-between—no longer in the stability of the binary patriarchy but not yet reorganized into different ways of being, interacting, and sharing power and privilege—“an emotionally tumultuous state [where] norms and expectations of the past are no longer valid while the new ones have not yet solidified.”²¹¹

Layered upon this felt sense of gender liminality is the common white Christian nationalist psychological trait of a need for closure, a trait directly linked to people with a low tolerance for ambiguity.²¹² This trait eschews cognition and evidence and instead employs a closed-minded approach to resolving ambiguity/liminality.²¹³ In the place of cognition and evidence-based approaches to navigating ambiguity and liminality, white Christian nationalism, with its need for closure, relies on “gut” instincts about sex and gender; an instinct that is informed by traditional religious teachings on those issues.

I contend that this combination of a liminality frame and the psychological need for closure provides a new and thicker way to understand the recent wave of anti-transgender laws.

Before 2020, no state banned gender-affirming care for minors.²¹⁴ Today, twenty-four states ban such care.²¹⁵ All mainstream medical associations agree that such bans are contrary to evidence-based best practices for treating trans youth experiencing gender dysphoria.²¹⁶ Considered through the lens of liminality proposed here, coupled with the “need for closure” psychological profile of most white Christian nationalists,

210. See Moskalenko, et al., *supra* note 65, at 2.

211. See, e.g., *id.* at 2.

212. See YOUNG, *supra* note 14, at 38.

213. See *id.* at 38, 108.

214. See *Healthcare Laws and Policies: Bans on Best Practice Medical Care for Transgender Youth*, MOVEMENT ADVANCEMENT PROJECT (Nov. 1, 2024), www.mapresearch.org/equality-maps/healthcare/youth_medical_care_bans.

215. See *Bans on Best Practice Medical Care for Transgender Youth*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/healthcare/youth_medical_care_bans (last visited Jan. 12, 2025).

216. See, e.g., *Every Major Medical Association Supports Health Care for Transgender People and Youth: The Facts Finally Catch Up to States Passing Discriminatory Bills*, GLAAD (June 21, 2023), <https://glaad.org/ak-antitrans-law-struck/>.

it is unsurprising that these bans have made their way into the lawbooks.²¹⁷ When lawmakers' decisions are driven by a discomfort with liminality and a psychology that tends to reject evidence in favor of quick decisions that are based on "gut" and intuition, passage of these harmful laws is the expected result.

Beyond bans on gender affirming care for minors, 2024 saw the introduction of 668 anti-trans bills in forty-three states, forty-seven of which passed and 139 of which are still active.²¹⁸ Contrast those numbers with the year 2015, during which only twenty-one anti-trans bills were introduced.²¹⁹ These efforts have been described as ones to "erase transgender people from public life"²²⁰ and span a variety of areas of life "seeking to deny access to basic healthcare, legal recognition, education, bathrooms, athletics, or the right to openly exist in public schools."²²¹ Again, when viewed through the dual lens proposed here—gender threatening liminality and the psychological trait of a need for closure that often rejects evidence-based decision-making—these legislative attacks gain added context, nuance, and legibility.

White Christian nationalists experience today's period of sex/gender liminality as a threat, which leads to the political backlash of the current moment—the wave of anti-LGBTQ laws that largely target trans and nonbinary people.²²² As a result, "the recent emphasis on gender norms in political rhetoric"²²³ is not surprising; instead, it is an expected outcome of the shift to sex/gender liminality, which in turn grew out of LGBTQ visibility and civil rights gains.²²⁴ In sum, "[s]exual politics . . . infuse the sociopolitical processes by which [white Christian nationalism] asserts and

217. See YOUNG, *supra* note 14, at 38; MOVEMENT ADVANCEMENT PROJECT, *supra* note 216.

218. See *2024 anti-trans bills tracker*, TRANS LEGIS. TRACKER, <https://translegislation.com/> (last visited Jan. 22, 2025).

219. *Id.* (click on "The Rise of Anti-trans Bills").

220. See *id.*

221. See *id.*; see also generally ELANA REDFIELD ET AL., THE IMPACT OF 2024 ANTI-TRANSGENDER LEGISLATION ON YOUTH (2024).

222. See, e.g., Moskalenko et al., *supra* note 65, at 2 (2024) ("Sizeable segments of the society have rejected these [sex and gender] changes, at times engaging in political action to undermine and challenge the media that support the shifting gender norms, such as public library offerings, school curricula, pop culture, and even scientific notions.") (citation omitted). While these laws don't always, or even often, explicitly target nonbinary people, their interests are nonetheless negatively impacted by such laws. See Rafael Langer-Osuna et al., *Anti-Trans and Non-Binary Legislation: What NALP Members Should Know*, NALP (Oct. 2021), <https://www.nalp.org/anti-trans-non-binary-legislation>.

223. See, e.g., Moskalenko et al., *supra* note 65, at 4.

224. See *id.* at 16 ("[P]olitical operatives in the U.S . . . have often leveraged the threat to gender norms related to transgender and LGBTQ issues.") (internal citations omitted).

reasserts itself . . . in rapidly changing context[;]”²²⁵ that rapidly changing context is the engine of the gender-threatening liminality of the current moment, amplified by the psychological trait of “need for closure” often exhibited by ambiguity-averse white Christian nationalists.²²⁶

VI. CONCLUSION

Although extreme to many, the views and goals of white Christian nationalism have made significant headway into American law and politics since the election of Donald Trump in 2016.²²⁷ Progressives’ worries about Trump’s 2024 re-election—about the rights of women,²²⁸ people of color,²²⁹ immigrants,²³⁰ and LGBTQ people,²³¹ and the survival of democracy itself²³²—are well founded given that Trump’s “Make America Great Again” slogan “carried an implicit promise to undo the sexual revolution and return the country to an idealized version of 1950s America.”²³³ “A time before sexual mores shifted, before second-wave feminism, before women flooded into professional life. A time before *Roe*.”²³⁴ Also arguably implicit in that slogan is a promise to return to a time before LGBTQ visibility, acceptability, and rights. It is a promise to return to a time before gender-threatening liminality: The MAGA rallying cry “represented a promise to restore the

225. SPRINGS, *supra* note 18, at 53.

226. See YOUNG, *supra* note 14, at 38, 108.

227. See Macarena Saez & Amy Braunschweiger, *Interview: Women’s Rights Under Trump*, HUM. RIGHTS WATCH, (Nov. 18, 2024), <https://www.hrw.org/news/2024/>.

228. See, e.g., *id.*; Clare Duffy, “Your Body, My Choice”: Attacks on Women Surge on Social Media Following Election, CNN (Nov. 13, 2024), <https://www.cnn.com/2024/11/11/business/your-body-my-choice-movement-election/index.html>; Aria Bendix & Randi Richardson, *What Trump’s Victory Could Mean for the Future of Abortion Rights*, NBC NEWS (Nov. 8, 2024), <https://www.nbcnews.com/health/womens-health/abortion-rights-under-trump-rcna178998>.

229. See, e.g., Tim Reid et al., *Black Americans Express Fears, Resolve after Trump’s Victory*, REUTERS (Nov. 7, 2024), <https://www.reuters.com/world/us/black-americans-express-fears-resolve-after-trumps-victory-2024-11-07/>.

230. See, e.g., Brian Osgood, *US Migrant Rights Advocates Raise Alarm Over Trump’s Appointments*, ALJAZEERA (Nov. 12, 2024), <https://www.aljazeera.com/news/2024/11/12/us-migrant-rights-advocates-raise-alarm-over-trump-appointments>.

231. See, e.g., Nico Lang, *What You Need to Know About Trump’s Extreme Anti-LGBTQ+ Agenda for a Second Term*, THEM (Nov. 6, 2024), <https://www.them.us/story/donald-trump-jd-vance-president-vice-president-2024-election>; Sam Levin, *The Stakes*, GUARDIAN (Sept. 24, 2024), <https://www.theguardian.com/us-news/ng-interactive/2024/sep/24/donald-trump-presidency-republican-lawmakers-targeting-lgbtq-policies>.

232. See, e.g., Sarah Ellison, *Trump’s triumph threatens an already battered democracy, experts say*, WASH. POST (Nov. 6, 2024), <https://www.washingtonpost.com/politics/2024/11/06/trump-victory-threatens-democracy/>.

233. DIAS & LERER, *supra* note 12, at 123.

234. *Id.* at 143.

country to a time before . . . when the values of Christians on the relationship between women and men were prevalent and powerful.”²³⁵

For white Christian nationalists, Trump’s promise that “Christianity will have power again”²³⁶ offers a salve against the liminality I have proposed in this article. That promise also provides comfort to the many white Christian nationalists who share the psychological trait of low tolerance for ambiguity and high need for closure. Trump’s opposition to abortion certainly mattered to white Christian nationalists, but what mattered more was that he “would be their weapon against an America fighting against them on a host of issues . . . from transgender rights to the place of religion in public life”²³⁷—issues I have attempted to demonstrate create ambiguity and liminal states that create discomfort for white Christian nationalists, who respond by relying on their psychological trait for the “need for closure” and “gut”-based decision-making.

The scores of anti-trans bills and anti-LGBTQ bills passed over the past five years are thus part of a larger social, political, and legal context, one that seeks to erase liminality and restore rigid, predictable order of things—an order that satisfies the psychological need for closure prevalent in most white Christian nationalists—by restoring the gender binary and the roles that neatly accompany that binary (women marry men, and give birth to and raise children; people are born with a static sex and gender identity; patriarchy thrives because there is no ambiguity—no liminality—about issues surrounding sex and gender or, for that matter, about who is a “real” man or a “real” woman).²³⁸

The white Christian nationalism backlash to gender liminality illustrates that the “relationships between psychological traits, on the one hand, and political ideology, on the other . . . are most pronounced in the context of social and cultural ideology—that is, issues related to gender [and]

235. *Id.*

236. *Id.* at 119.

237. *Id.* at 140.

238. This legal retrenchment for LGBTQ people, and specifically for trans and nonbinary people, is part of the long-term agenda of the white Christian nationalism movement: By the time of the first Trump election, legal actors in that movement:

had been developing a wide-scale approach to change laws around sexuality—first, writing model legislation to push back on expanding gay rights, then getting states to pass the bills, and then providing those states with legal defense in court when they were sued. It was a one-two-three punch that took full advantage of the Democrats’ weakness in the states Since late 2014, the [Alliance Defending Freedom] had been using that strategy to advance so-called bathroom bills, laws that required people to use the public restrooms of the sex they were assigned at birth. There was a state where those efforts had been especially effective: Mississippi. With its strong opposition to abortion, Mississippi could be fertile ground for [the Alliance Defending Freedom] to run a similar play on *Roe*.

DIAS & LERER, *supra* note 12, at 148.

sexuality[.]”²³⁹ This need for closure and aversion to cognition undergirds the white Christian nationalism legal movement to roll back LGBTQ rights’ success in those efforts would reduce liminality and restore rigidity and predictability on issues of sexuality and gender, and thus reinvigorate patriarchal society.

By analyzing the wave of anti-trans bills through the interlocking theories of liminality and political psychology, I hope that I have provided another, thicker way to consider this recent retrenchment. I hope that my weaving together of these theories of liminality and political psychology to create this thicker account makes this regressive legal trend legible in a new and different way for progressive scholars, activists, practitioners, judges, and lawmakers as they think about strategies and tactics to fight back against the white Christian nationalism attack on trans lives.

239. YOUNG, *supra* note 14, at 110.