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ΠΣΑ

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Editor's Preface to the Spring Edition

Here at Elon University, we are extremely grateful for the opportunity to host the *Pi Sigma Alpha Undergraduate Journal of Politics* for the coming years. We are proud to present the Spring 2021 issue, and congratulate all authors published in this issue.

This journal seeks to highlight the intellectual curiosity that has led to innovative scholarship in all subfields of political science, scholarship that addresses timely questions, is carefully crafted, and utilizes diverse methodologies. We are committed to intellectual integrity, a fair and objective review process, and a high standard of scholarship. Through this publication, we aim to accentuate student achievements in political science research and showcase the works of undergraduate scholars, some of which has been traditionally ignored in the broader field of political science literature, despite representing the future of this discipline.

As an editorial team composed entirely of women, we understand that this occurrence is not a common one. Following the lead of the all-female American Political Science Review (APSR) Editorial Board, we are excited to promote research in the areas of “American politics, comparative politics, international relations, political theory, public law and policy, racial and ethnic politics, the politics of gender and sexuality and qualitative and quantitative research methods.” This journal values the relationships formed through student-faculty collaboration and aims to inspire a culture of intellectual curiosity that expands far beyond the college campus. In addition to recognizing the academic endeavors of undergraduate students, we hope to further encourage and empower students to seek out knowledge and realize their potential in contributing to growing scholarship in a variety of disciplines.

In the journal's first year, we want to emphasize our appreciation for all the individuals who have made this first publication possible. Our advisors, Dr. Laura Roselle, Dr. Baris Kesgin, and Dr. Aaron Sparks, have been unwavering in their support of us throughout this entire process. Without their consistent support and insights, this issue would not have been possible. In addition, we would like to thank the entirety of the Political Science and Policy Studies Department at Elon University, as well as our Faculty Advisory Editorial Board reviewers for all of their hard work and support.

Going forward, we are excited to create a culture within our Editorial Board that embraces these values and continues to strive for excellence for the remainder of the journal's tenure at Elon University. Thank you for your continued support and readership of our publication, we hope you enjoy our first edition.

Sincerely,

The Editorial Board at Elon University

Submission of Manuscripts

The Journal accepts manuscripts from undergraduates of any class and major. Members of Pi Sigma Alpha are especially encouraged to enter their work. We strive to publish papers of the highest quality in all areas of political science.

Generally, selected manuscripts have been well-written works with a fully developed thesis and strong argumentation stemming from original analysis. Authors may be asked to revise their work before being accepted for publication.

Submission deadlines are October 1st for the Fall edition and February 1st for the Spring edition. Manuscripts are accepted on a rolling basis; therefore early submissions are strongly encouraged.

To submit your work, please email psajournal@elton.com with an attached Word document of the manuscript. Please include your name, university and contact details (mailing address, email address, and phone number) in a separate document.

Submitted manuscripts must include a short abstract (approximately 150 words), citations, and references that follow the *APSA Style Manual for Political Science*. Please do not exceed the maximum page length of 35 double-spaced pages, which includes references, tables, figures, and appendices.

The Journal is a student-run enterprise with editors and an Editorial Board that are undergraduate students and Pi Sigma Alpha members at Elon University.

The Editorial Board relies heavily on the help of our Faculty Advisory Board consisting of political science faculty from across the nation, including members of the Pi Sigma Alpha Executive Council. Due to the time committed to the manuscript review process, we would like to remind students to submit only one manuscript at a time.

Please direct any questions about submissions or the Journal's upcoming editions to the editors at Elon University: psajournal@elton.com.

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Sedimentation of Bias in No Promo Homo Policies: Anti-Gay Narratives in State Curriculum Laws

Meg Cummings, Wesleyan University

Before 2017, eight states retained anti-gay curriculum laws to control the discussion of homosexuality in sex education curricula: Alabama, Arizona, Louisiana, Mississippi, Oklahoma, South Carolina, Texas, and Utah. While proponents of “no promo homo” policies claim their usefulness in maintaining the neutrality of schools to social issues, the laws themselves call for the active denigration of homosexuality in the classroom. This article uses William Eskridge’s (2000) sedimentation of anti-gay bias theory to analyze the language of the eight laws’ use of the three tell-tale narratives about homosexuality: first, the “unnatural” nature of homosexual intercourse, followed by the diseased minds and bodies of homosexuals, and finally, the threat to the family and children posed by homosexuality. The anti-gay curriculum laws all utilize at least one of the three sedimentary layers in making their no promo homo arguments, transparently denigrating non-heterosexual sexual orientations despite claims to a neutral school environment.

INTRODUCTION AND BACKGROUND

In 2014, 315 copies of a Utah health textbook, costing a total of \$24,000, were shelved by district officials for violating the state’s laws on health curriculum standards. In a section titled “Building Healthy Relationships and Understanding Sexuality,” the book included several references to sexual orientation, including language such as “Gays and lesbians seek love, friendship, communication, validation, companionship, and a sense of stability just as heterosexuals do” (Donatelle 2014, 162-163). On a different page was a picture depicting two men embracing and smiling at the camera. All sections that mentioned sexual orientation were scrawled out by a pen wielded by a district official; even the photo of the two men had an “x” over their faces (Rosky, 2017). The portions of the health textbook dealing with sexual orientation were marked for elimination by the district because they violated a provision of Utah’s sex education curriculum law that banned instruction in the “advocacy of homosexuality” (Utah Code § 53A-13-101(1)(c)(iii)).

In addition to Utah, Alabama, Arizona, Louisiana, Mississippi, Oklahoma, South Carolina, and Texas restrict (or formerly restricted) homosexuality in sex education, though individual states vary in content and enforcement¹. Most of the laws were originally passed in the late 20th century throughout the 1980s and ’90s; Oklahoma and Louisiana mark the earliest in 1987 and Utah the latest in 2001. Collectively, these laws are known as “no promo homo” laws for banning the “promotion” of homosexuality in sex education classes. In spite of the differences in the language across these laws, this paper will argue that they use strikingly similar narratives to forward

anti-gay policy. Within the framework posited in Eskridge’s (2000) sedimentation theory of legal arguments levied against homosexuality, these laws limit or entirely restrict discussion of any non-normative sexual orientation in sex education class, by silencing information about queer identities or by actively promoting harmful narratives about homosexuality and queer people that they are diseased or criminals.

Sedimentation of Bias in No Promo Homo

The term “no promo homo” itself was originally coined by queer and legal theorist Nan Hunter to describe the 1978 Briggs Initiative, which diverged from previous anti-gay legislation by banning a particular viewpoint—the “advocacy” of homosexuality—rather than simply discriminating against a group of people (Hunter 1993). Legal scholar William Eskridge took Hunter’s concept of no promo homo and expanded it to explain the nature of anti-gay discourse over the past century. The result was Eskridge’s theory of the sedimentation of anti-gay discourse, which tracks three distinct strains of anti-gay prejudice that proceeded over a generation. First came the natural law argument about the “unnaturalness” of homosexuality, then the disease argument, levied against both the physical and psychological health of homosexual individuals, and then the social republican argument, which claims to protect the fabric of society, and thus positions homosexuality as a threat to families and children (Eskridge 2005). Eskridge describes how the oldest of these (natural law) served as base layer for the discourse that followed, and then the subsequent medical argument served as a base for the social republican (Eskridge 2000). Eskridge writes,

“Antigay discourse itself has changed, with social republican arguments superseding medical arguments, which earlier had superseded natural law arguments. But the old arguments do not disappear; they remain as foundational layers over which new arguments intellectually sediment” (1331). These no promo homo laws that restrict sex education curricula directly map onto the sedimentary layers of anti-gay prejudice posited by Eskridge to create what he describes as the no promo homo umbrella argument: The theory that anti-gay discourse eventually took the position that “progay changes in law or norms would encourage homosexuality or homosexual conduct. The slogan is ‘no promotion of homosexuality.’ In slang, *no promo homo*” (Eskridge 2000, 1329). The curriculum laws are a perfect distillation of Eskridge’s theory of sedimentation; each law engages with at least one of the anti-gay logics that have consolidated into the no promo homo umbrella argument. He writes,

Each new identity was linked up with other societal concerns and formed a layer over, rather than displaced, the old identity.... Law has been one mechanism for preserving the bottom layers of the identity, for connecting old concerns with new ones, and for presenting each new identity as if it always had existed as a natural regulatory category (Eskridge 2000, 1329).

The no promo homo laws of Alabama, Arizona, Louisiana, Mississippi, Oklahoma, South Carolina, Texas, and Utah each engage in the type of anti-gay rhetoric that has sedimented in Eskridge’s no promo homo theory: employing the unnaturalness, medicalization, and social republicanism arguments to varying degrees. In the following sections, the sources of these types of rhetoric are interrogated and mapped onto sections from the states’ no promo homo legislation, using statements from lawmakers at the time of passage to bolster these claims.

Natural Law Sedimentation

When describing the lowest layer in the sedimentation theory, Eskridge writes, “The original justifications for antigay policies rested in *religious natural law* traditions: Sodomy is sinful and sodomites [are] abominations” (Eskridge 2000, 1338). The American classification of sodomy as unnatural and detestable conduct is fundamentally rooted in Christian theology; the early Christian church taught that “dishonorable passions” of those who “exchanged natural relations for unnatural” went against God (Eskridge 2008, 1). The case for sodomy as a historically reviled crime, and thus serving as the basis for anti-gay discrimination, is never made more clearly than in the oral arguments and concurring opinion for *Bowers v. Hardwick* (1986), which asserted there was no right to private homosexual sodomy under the Fourteenth Amendment. Through emphasizing “centuries-old tradition” and “conventional morality,” Michael Hobbs—the Georgia assistant attorney general arguing for the state—relied heavily

on natural law reasoning in his oral arguments defending the sodomy criminalization law (Hobbs, oral arguments in *Bowers v. Hardwick* 478 U.S. 186 (1986)). “The simple fact is that homosexual sodomy, which is what is involved in this case, has never in our heritage held a place [in this country] Our legal history and our social traditions have condemned this conduct uniformly for hundreds and hundreds of years” (Hobbs, oral arguments in *Bowers v. Hardwick* 478 U.S. 186 (1986)). The repeated condemnation of sodomy as an abomination contrary to the natural laws and moral character of the nation made an impression on Chief Justice Burger’s concurring opinion, in which he writes,

As the Court notes...the proscriptions against sodomy have very ‘ancient roots....’ [Sir William] Blackstone described ‘the infamous crime against nature’ as an offense of ‘deeper malignity’ than rape, a heinous act ‘the very mention of which is a disgrace to human nature,’ and ‘a crime not fit to be named....’ To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching” (Bowers v. Hardwick 478 U.S. 186 (1986)).

The characterizations of sodomy in *Bowers v. Hardwick* exemplify the use of natural law arguments against homosexual conduct as a legal reasoning enforced against anyone who engaged in the targeted activities. It is not hard to see how this line of reasoning could be applied in the context of anti-gay curriculum laws; only two years earlier, a dissenting opinion in the Tenth Circuit Court case striking Oklahoma’s original no promo homo law had declared “Sodomy is *malum in se*, i.e., immoral and corruptible in its nature.... Any teacher who advocates, solicits, encourages or promotes the practice of *sodomy*...is in fact and in truth *inciting* school children to participate in the abominable and detestable crime against nature” (*Nat’l Gay Task Force v. Bd. of Educ.*, 729 F.2d 1276 (10th Cir. 1984)). The natural law arguments used to justify the laws that enforced the criminalization of sodomy also appeared in arguments for restriction of school curriculum.

Several of the no promo homo laws that constrain discussion of homosexuality in sex education classes specifically reference the state’s sodomy laws, despite the 2003 Supreme Court decision in *Lawrence v. Texas* that declared the criminalization of homosexual behavior unconstitutional. Alabama’s statute specifies that all curriculum materials should include “An emphasis, in a factual manner...that homosexual conduct is a criminal offense under the laws of the state” (Alabama Code § 16-40A-2(c)(8) (2020)). Texas’ curriculum laws actually mention the state’s unconstitutional sodomy ban in two places: the statute legislating AIDS prevention education materials for minors requires that they “state that homosexual conduct is not an acceptable lifestyle and is a criminal offense under Section 21.06, Penal Code” and the general sex education statute reiterates “that homosexual conduct is a criminal offense under Section 21.06, Penal Code” (Tex.

Health & Safety Code Ann. § 85.007(b)(2); § 163.002(8)). Mississippi's law doesn't specifically reference a state sodomy ban nor explicitly condemn homosexual conduct as a criminal offense, as is the case in Alabama and Texas; rather, Mississippi's statute requires that schools' abstinence-only education "teaches the current state law related to sexual conduct, including forcible rape, statutory rape, paternity establishment, child support and homosexual activity" (Miss. Code Ann. § 37-13-171(e)). Mississippi's state code still contains a prohibition on "unnatural intercourse," defined as "the detestable and abominable crime against nature committed with mankind" (Miss. Code Ann. § 97-29-59). The phrase "the detestable and abominable crime against nature" originates with the British Buggery Act of 1533 and is heavily associated with sodomy (Eskridge 2008). This inclusion of homosexual activity with a litany of other criminalized forms of sexual conduct—and the explicit condemnation of the conduct as "unnatural"—places Mississippi's curriculum law firmly within the first sedimentary layer of natural law arguments against homosexuality, along with Alabama and Texas, which depend on the natural law arguments implicit in sodomy bans.

Disease Sedimentation

Eskridge writes on the transition from the first to the next sedimentary layer of anti-gay discourse: "As religion-based arguments became disfavored in public discourse, they were supplemented—but not replaced—by *medical utilitarian ones*: Sexual and gender inverts are diseased" (Eskridge 2000, 1338). Since a substantial portion of sex education is covering sexually transmitted diseases, it might be no surprise that homosexuality comes up in the context of disease in the curriculum. However, homosexuality was associated with a medicalized and diseased body as early as when the category was being constructed. Margot Canaday's *The Straight State* (2009) explores how bodies marked for "perversion" by early twentieth century immigration enforcement officials were regulated before "the homosexual" was a stable state category. Canaday writes, "Immigration officials did not conceive homosexuality as a discrete identity but instead lumped together aliens who exhibited gender inversion, had anatomical defects, or engaged in sodomy as *degenerates*" (Canaday 2009, 22). Perversion was a racialized and classed as well as sexualized characteristic, and it was used against those determined likely to need public support: "Degeneration theory associated perversion, in other words, with 'primitive' races and lower classes, and poor immigrants and nonwhites were believed to be especially inclined toward perversion" (23). The pathologization of homosexuality fits into a larger pattern of marginalizing based on evaluations of their physical condition. The "perverse," along economic and racial lines, were early markers of a non-desirable citizen that would become the homosexual as the state bureaucracy grew defter in its categorization. Designating certain bodies or people as perverse became a way to justify classifying them as fundamentally diseased.

It wasn't only physical characteristics that marked the homosexual as a diseased individual; the conception of homosexuality as a psychological condition has perpetuated this second layer of anti-gay prejudice sedimentation. Dr. Gregory Herek, expert on homophobia and professor of psychology, writes, "By the end of the 19th century, medicine and psychiatry were effectively competing with religion and the law for jurisdiction over sexuality" (Herek 2016). Believed to be abnormal, caused by unstable family dynamics, and reversed by advocating behaviors that conformed with gender role expectations, homosexuality was pathologized as a mental disorder by the American Psychological Association (APA). A 2009 report by the APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation reviewed the history of these theories of homosexuality in classifying it as a mental disorder:

Significantly impacting psychiatric thought in the mid-20th century, these theories were part of the rationale for including homosexuality as a mental illness in both the first (1952) and second (1968) editions of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM), thus reinforcing and exacerbating sexual stigma and sexual prejudice (APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation 2009, 22).

One decade after gay rights activists launched a campaign to remove homosexuality from the DSM, the APA voted to remove homosexuality in 1973².

Law, psychiatry, and citizenship converged in the 1967 Supreme Court case of *Boutilier v. Immigration and Naturalization Service*, in which the Court determined that the provision in the Immigration and Nationality Act of 1952 that excluded persons with a "psychopathic personality" from entry was intended by Congress to include homosexuality. Justice Clark's opinion for the majority affirmed the deportation order, writing, "We, therefore, conclude that the Congress used the phrase 'psychopathic personality...' to effectuate its purpose to exclude from entry all homosexuals and other sex perverts" (*Boutilier v. Immigration and Naturalization Service* 378 U.S. 122 (1967)). Like Canaday's work on the regulation of perverse bodies for American citizenship in the early twentieth century, the designation of homosexuality as a mental disorder was used for determining the ideal U.S. citizen. The pathologization of homosexuality was codified not only in works of the psychiatric community, but the legal and social structures of the United States, entrenching homosexuality as an abnormal psychological condition and perpetuating further stigma.

Perhaps the most salient association between homosexuality and disease in the context of sex education curriculum is the emphasis on the riskiness of homosexuality in HIV/AIDS education materials. After all, it was Surgeon General C. Everett Koop's 1987 report on AIDS, urging sex education for young people to prevent AIDS, that spurred many states to enact sex education statutes. Crucially, Koop's

report explicitly called for “frank, open discussion about sexual practices—heterosexual and homosexual” (Koop 1987, 1). Koop wrote, “[Fear of AIDS] was compounded by personal feelings regarding the groups of people primarily affected—homosexual men and intravenous drug abusers.... It is time to put self-defeating attitudes aside and recognize that we are fighting a disease—not people” (1). However, other policymakers were not as insistent on erasing prejudice against groups affected by AIDS. The heavy associations between homosexuality and AIDS started early in the epidemic; AIDS was known as “the gay disease” or “the gay plague” as early as 1983 (Mendicino 1987). Douglas Crimp, queer theorist and AIDS activist, writes in “How to Have Promiscuity in an Epidemic”: “Language destined to offend gays and inflame homophobia has been, from the very beginning—in science, in the media, and in politics—the main language of AIDS discussion” (Crimp 1987, 239). The federal government’s response provided an example of rhetoric that consistently inflamed homophobia in the face of the AIDS epidemic. A domestic policy advisor in the Reagan Administration named Gary Bauer said in opposition to a gay representative on the AIDS Commission: “While it is true that homosexuals have been major victims of AIDS, they are also responsible for its spread. Recent studies show the average gay man with AIDS has had over 150 different sexual partners in the previous 12 months” (Brier 2009, 94). These examples illustrate the extent to which U.S. policymakers were committed to painting gay and bisexual men as not only the victims of AIDS, but also its greatest perpetrators, constructing the figure of the promiscuous and diseased homosexual. Through this rhetoric, gay people “remain (despite overwhelming epidemiological evidence to the contrary) not only people with AIDS but *the* people with AIDS” (Nunokawa 1991, 2).

Three states’ anti-gay sex education laws specifically mandate the discussion about homosexuality within the context of sexually transmitted diseases: Arizona, Oklahoma, and South Carolina. Arizona’s AIDS education statute included a (now-repealed) provision that read, “No district shall include in its course of study instruction which... Suggests that some methods of sex are safe methods of homosexual sex” (Ariz. Rev. Stat. § 15-716(C)(3) 2018). This statute’s insistence that gay sex is dangerous or risky reinforces the associations with disease; there are safe methods of homosexual sex, just as there are instances of heterosexual sex that can lead to the spread of sexually transmitted infections. Oklahoma’s statute follows in the same vein: the Oklahoma statute requires that AIDS prevention education specifically teach students that “engaging in homosexual activity, promiscuous sexual activity, intravenous drug use or contact with contaminated blood products is now known to be primarily responsible for contact with the AIDS virus” and “avoiding the activities specified in paragraph 1 of this subsection is the only method of preventing the spread of the virus” (Okla. Stat. Ann. tit. 70 §11-103.3(D)). This statute, similar to Arizona, paints with a broad brush: it condemns

all homosexual activity as primarily responsible for AIDS and implores students to avoid such activity if they don’t want to contract AIDS, reinforcing “homosexual acts as synonymous with disease and death” (Knauer 2000, 475). South Carolina’s statute explicitly restricts discussions of homosexuality to a disease context: “The program of instruction provided for in this section may not include a discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases” (S.C. Code Ann. 59-32-30(A)(5)). While this statute doesn’t explicitly link homosexuality and AIDS³, it does only allow any discussion of homosexuality to take place in a framework that advances the disease logic of anti-gay prejudice.

Debate of Arizona’s law in particular serves as a useful example in tracking the power of the disease discourse in AIDS education. In 1991, when the bill was originally passed, *The Arizona Daily Star* published a story on the bill’s passage, quoting the sponsor of the no promo homo amendment, Republican Representative Karen Mills: “Many people today still believe that homosexuality is not a positive, or even an alternative, lifestyle,” Mills said. “Medical science has shown that there are no safe methods of homosexual sex” (Reinhart 1991). These blatant falsehoods about the riskiness of homosexual sex served as the basis for the no promo homo law in 1991; in 2019, a similar line of reasoning was used by Arizona Senator Eddie Farnsworth, a Republican, as he explained his opposition to the repeal of the no promo homo law. He said,

[The Arizona legislature passed the original 1991 bill] because of the statistics reflecting the spread of AIDS among certain populations and demographics.... Sixty-seven percent of [people who contract AIDS in a year] are gay men. Now that’s not castigating any group; it’s just a fact.... It’s intended to reflect that a certain lifestyle actually leads to the spread of this particular disease. That’s based on the statistics.... [The statute] reflects the actual facts of how HIV is disproportionately spread (Arizona Senate Floor, 4/11/2019).

Farnsworth’s comments here exemplify Nunokawa’s theory about gay people being reduced to *the* people with AIDS. He makes no effort to acknowledge how the statute conflated homosexual sex with unprotected sex, and instead insists that the statute reflects a simple truth about HIV transmission. The consistency of the narrative of disease and homosexuality across nearly three decades illustrates the potency of the disease trope to justify anti-gay curriculum laws.

Social Republican Sedimentation

The next layer of sedimentation of anti-gay prejudice according to Eskridge’s theory is an appeal to social republicanism: Eskridge writes, “When the medical establishment voiced doubts about that antigay position,

social republican arguments were added: Homosexuals disrupt families and children's sexual development" (Eskridge 2000, 1338). To gay rights opponents, any acceptance of homosexuality—through same-sex marriage laws, anti-discrimination ordinances, or approval of homosexual teachers—signaled a threat to the family. In the course of her Save the Children campaign against Dade County's anti-discrimination law, anti-gay rights activist Anita Bryant utilized the social republican argument to emphasize the threat to the family posed by homosexuality. After her success in repealing the Florida law, Bryant traveled the country, using the same family-based rhetoric in her crusade against anti-discrimination laws, proclaiming the fight against laws that "attempt to legitimize a lifestyle that is both perverse and dangerous to the sanctity of the family, dangerous to our children...dangerous to our survival as one nation, under God" (Eskridge 2005, 1018). Bryant's narrative continued throughout the '90s: The 1992 campaign to pass Colorado's Amendment 2—which would have banned any jurisdiction from passing anti-discrimination laws—featured another iteration of the social republicanism threat. The organization Colorado for Family Values, the primary supporter of Amendment 2, distributed advertisements and pamphlets that declared "To this angry, alienated minority, the family is the symbol of everything they attack" and "'Militant' gay rights people want to destroy the family and the state's churches" (1043). While these arguments were expressed at the local level across the country, policymakers at the federal level also invoked homosexuality as a threat to the family. Advocating for the passage of the Defense of Marriage Act in 1996, Georgia Republican Representative Robert Barr made this line of reasoning explicit: "The very foundations of our society are in danger of being burned. The flames of hedonism...are licking at the very foundations of our society: the family unit" (142 Cong. Rec. H7480-82 (daily ed. July 12, 1996) (statement of Rep. Barr)). The continued reference to the threat to the family underlines the social republican layer of sedimentation: Homosexuality is a threat to the family, and therefore, to the very foundation of a moral society. Opponents to gay rights continually invoke Christian religious language and imagery to paint the threat posed by the promotion of homosexuality to the normative family. These social republican arguments have a lot in common with a lower layer of sedimentation—natural law—as both find their roots in Christian ideals of natural sexual and family relations, though social republican arguments have been modernized to appeal to a more diverse audience (Eskridge 2000).

In the social republican argument, children are also at risk should homosexuality be accepted. The homosexual as the existential threat to the family and children's sexual development are interrelated; since homosexuals cannot produce children on their own to carry out their agenda, they must recruit. A 1977 advertisement for Bryant's Save Our Children campaign makes this explicit: "This recruitment of

our children is absolutely necessary for the survival and growth of homosexuality—for since homosexuals cannot reproduce, they must freshen their ranks" (Eskridge 2005, 1017). The social republican argument works with the myth of the queer child in an effort to ensure all children are heterosexual and not recruited by predatory homosexual adults. In this way, homosexuals function as a kind of "folk devil," a constructed social figure used to drum up moral panic. In this case, the panic is the idea that children are at risk. Sociologist Kerry Robinson explains: "This folk devil is constructed as preying on and corrupting young, vulnerable, 'innocent' children. It is one seen to challenge, through the perceived hedonistic 'homosexual lifestyle,' the 'natural' and 'normal' moral social order founded upon the values and practices of the hegemonic heterosexual family" (Robinson 2008, 114). This conceptualization of homosexuality as a folk devil demonstrates the importance of children to the stability of the (heterosexual) family unit, and thus social order.

The enactment of no promo homo laws, like curriculum laws, can protect children from the influence of homosexuality. Eskridge explains, "The most popular version of the no promo homo argument is that a progay shift in state policy will be a signal to the *wavering adolescent* that homosexuality is okay, and the wavering adolescent might then *choose* homosexuality as her sexual orientation" (Eskridge 2000, 1366). If the wavering adolescent can be recruited into homosexuality, thus destroying the family unit, then precautions must be taken to ensure that they do not receive the signal that homosexuality is okay. The implementation of curriculum laws that preclude discussions of homosexuality is one way to achieve the goal of preventing homosexual recruitment of innocent children. Founded in 1983, the group Citizens for Excellence in Education, which advocates the "Christianizing" of public education, specifically targeted LGBTQ-friendly curriculum materials as a recruitment tactic of the gay rights movement. Dr. Richard Simonds, the organization's founder, writes in a plea to his supporters:

[The] gay rights movement is sweeping our nation's schools.... Students are told it is a normal acceptable life-style and that they can't criticize it because they don't know until they try it.... Children have been lied to and then RECRUITED into the homosexual/lesbian lifestyle.... Public school programs like 'Project 10,' 'Children of the Rainbow' and 'Project 21' are some of the many programs of homosexual/lesbianism promotion and recruitment...It's Sodom and Gomorrah all over again. Will we wait until our society is engulfed in homosexuality/lesbianism and AIDS, or stop it now? (People for the American Way 1996).

Simonds' inflammatory rhetoric exemplifies the connection between school curricula and homosexual recruitment. The public-school programs mentioned by Simonds in the quote above (Project 10, Children of the Rainbow, Project 21) were initiatives that introduced

accurate information about the diversity of sexual orientation and advocated for the acceptance of all sexualities in public school curricula in the 1980s and '90s. The positioning of these curriculum programs as recruitment and “Sodom and Gomorrah all over again” exemplifies the role no promo homo curriculum laws fill in the social republican stratum of anti-gay rhetoric. Fears about curriculum that acknowledges, let alone accepts, divergent sexual orientations, are made serve as the “promotion” of homosexuality to children and in their subsequent “recruitment” into the homosexual lifestyle. The core messaging is this: If children receive positive messages about homosexuality, they will abandon heterosexuality and threaten the most cherished institution—the family.

Turning to the language of the no promo homo laws themselves, the majority of state statutes engage with the social republican layer by including provisions to prevent teachers from portraying homosexuality in a positive light. Louisiana’s statute restricts any representation of homosexuality. The statute reads: “No sex education course offered in the public schools of the state shall utilize any sexually explicit materials depicting male or female homosexual activity” (La. Stat. Ann. §17:281(A)(3) 2020). The statute does not impose any similar restriction on materials depicting heterosexual sex activity. Utah’s (now-repealed) statute curtailed any positive representation of homosexuality by “prohibiting instruction in...the advocacy of homosexuality” (Utah Code § 53A-13-101(1)(c)(iii) 2016). Utah officials at the time of the bill’s passage noted the importance of avoiding student interest in controversial topics like homosexuality; then-State School Superintendent Laing gave a quote to *The Deseret News* saying, “It’s important that teachers as educators answer questions without unduly piquing interest in subjects” (Toomer-Cook 2001). These laws would silence any positive discussions of homosexuality, leaving only instruction that reinforces heterosexuality as the norm. The goal of the laws is to restrict students’ access to information about non-heterosexual sexuality—either through prohibiting the “advocacy of homosexuality” or an imbalanced presentation of instruction on sexual health. The specific phrasing in the laws evoke Simmonds’ inflammatory rhetoric about “promotion” of the homosexual lifestyle to young people, the central claim of the social republican sedimentation.

Interactions Between Multiple Layers of Sedimentation

The no promo homo laws of other states exemplify the ways in which the layers of anti-gay prejudice can intermingle social republicanism along with natural law and/or disease elements. Alabama and Texas’ statutes include not only provisions that condemned homosexual activity as illegal, citing natural law arguments about the abominable nature of sodomy, but also call on educators to describe homosexuality as unacceptable and a risk to health. Alabama’s statute includes language that requires course materials to have “An emphasis...

from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public” (Alabama Code § 16-40A-2(c)(8) (2020)). Texas’ sex education law is identical, also requiring “emphasis, provided in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public” (Tex. Health & Safety Code Ann. §163.002(8) (2020)). The laws of these two states hit on two additional layers of sedimentation; not only does the statute attempt to dissuade youth from homosexuality by portraying it as unacceptable to the public, it also grounds this in a public health framework, further associating homosexuality as a medicalized condition.

Arizona and South Carolina’s laws not only associate homosexuality with disease or dangerous sexual activity, but also prohibit portraying homosexuality as a viable alternative to heterosexuality. Arizona’s AIDS education statute reads, “No district shall include in its course of study instruction which: 1. Promotes a homosexual life-style. 2. Portrays homosexuality as a positive alternative life-style” (Ariz. Rev. Stat. § 15-716(C) 2018). This language in Arizona’s statute exemplifies the use of no promo homo laws to restrict positive descriptions of homosexuality, and thus not sway “the wavering adolescent” who might be tempted to engage in homosexuality. South Carolina’s statute ties the social republican arguments with the disease reasoning even more tightly together. Instruction in sex education classes in South Carolina “may not include a discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases” (S.C. Code Ann. 59-32-30(A)(5) 2020). Here, the wavering adolescent can be dissuaded from homosexuality as “alternate sexual lifestyles from heterosexual relationships” are only discussing in the context of disease. The sex education laws employ a number of Eskridge’s tactic in denigrating homosexuality as an unnatural and detestable sexual practice, a medicalized condition of a diseased body or mind, or a threat to the building blocks of society—the family and the child. Table 1 below illustrates how each state’s laws engages with the three layers of Eskridge’s sedimentation theory of anti-gay prejudice, including the language that demonstrates an appeal to each anti-gay logic.

No Promo Homo Umbrella Argument

Curriculum laws that utilize any of the three narratives of anti-gay prejudice employ what Eskridge conceives of as the no promo homo umbrella argument. He explains, “No promo homo incorporates all three traditions into a single all-purpose argument. Thus, no promo homo not only ‘modernizes’ antigay discourse, but also allows modern tropes to mingle with ancient ones” (Eskridge 2000, 1338). These no promo homo arguments engage with the three discourses while streamlining anti-gay bias into what Eskridge refers to as the “standard argument”:

Table 1: Layers of Eskridge's Anti-Gay Prejudice in No Promo Homo Laws

State	Statute	Natural Law	Disease	Social Republican
Alabama	Alabama Code § 16-40A-2(c)(8)	"homosexual conduct is a criminal offense under the laws of the state"	"An emphasis... from a public health perspective..."	"homosexuality is not a lifestyle acceptable to the general public"
Arizona	Ariz. Rev. Stat. § 15-716(C)		"No district shall...[suggest] that some methods of sex are safe methods of homosexual sex"	"No district shall [promote] a homosexual lifestyle... [portray] homosexuality as a positive alternative life-style"
Louisiana	La. Stat. Ann. §17:281(A)(3)			"No sex education course offered...shall utilize any sexually explicit materials depicting male or female homosexual activity"
Mississippi	Miss. Code Ann. § 37-13-171(e)	"Teaches the current state law related to... homosexual activity"		
Oklahoma	Okla. Stat. Ann. tit. 70 §11-103.3(D)		"engaging in homosexual activity...is now known to be primarily responsible for contact with the AIDS virus"	
South Carolina	S.C. Code Ann. 59-32-30(A)(5)		"may not include a discussion of alternate sexual lifestyles...except in the context of instruction concerning sexually transmitted diseases"	"may not include a discussion of alternate sexual lifestyles from heterosexual relationships including...homosexual relationships"
Texas	Tex. Health & Safety Code Ann. §§ 163.002(8)	"homosexual conduct is...a criminal offense under Section 21.06, Penal Code"	"emphasis, provided in a factual manner and from a public health perspective..."	"homosexuality is not a lifestyle acceptable to the general public"
Utah	Utah Code § 53A-13-101(1)(c)(iii) 2016			"prohibiting instruction in...the advocacy of homosexuality"

1. *If the state adopts policy x (abandons policy y), it would be endorsing and promoting homosexuality or homosexual conduct.*

2. *The state ought to endorse and promote good lives and good conduct and ought not to endorse and promote less good lives and conduct.*

3. *Homosexuality and homosexual conduct are not as good as heterosexuality and heterosexual conduct.*

Therefore, policy x should not be adopted (policy y should be retained)" (1329).

A line of reasoning advanced in the oral arguments for *Bowers v. Hardwick* presents an example of how the no promo homo argument can modernize the earlier layers of discourse sedimentation. A statement by Laurence Tribe, the attorney

defending Michael Hardwick and challenging Georgia's sodomy criminalization in *Bowers*, exemplifies how the natural law discourses become less acceptable and thus must be modernized with the more recent layers of sedimentation—in this case, the social republican argument. Tribe argues, "[It] would certainly be a legitimate argument for the state to advance, unlike the tautology it advances here, we outlaw it because we don't like it, we think it is immoral. It would be a legitimate argument, that this is a properly tailored means of encouraging marriage" (Tribe, oral arguments in *Bowers v. Hardwick* 478 U.S. 186 (1986)). Tribe characterizes the state's argument as illegitimate; "we don't like it, we think it's immoral" is a succinct distillation of the natural law argument for sodomy criminalization, rooted in the perceived immoral or abominable nature of the act. Tribe offers an updated anti-gay rhetoric that would have merit: the

social republican protection of marriage, and thus the family. In fact, he asserts that the legitimate argument for sodomy bans would be for encouraging (heterosexual) marriage. This statement maps easily onto Eskridge's standard no promo homo umbrella argument:

1. *If sodomy bans were abandoned, it would be endorsing and promoting homosexuality or homosexual conduct.*
2. *The state ought to promote good lives and good conduct.*
3. *Homosexuality and homosexual conduct are not conducive to heterosexual marriage, and are therefore not good lives and not good conduct.*

Therefore, sodomy bans should not be abandoned.

Thus, the no promo homo umbrella argument updates and modernizes the natural law argument against sodomy decriminalization, also relying on a more recent layer of anti-gay bias: the social republican argument. Arguing against the promotion of homosexuality on the grounds of encouraging a normative heterosexual marriage—and, by extension, the family unit described by Robinson (2008)—is more acceptable than using a natural law argument as the framework for the no promo homo umbrella reasoning.

Statements from Oklahoma legislators during the 1987 passage of the state's curriculum law serves as another useful example of how the no promo homo umbrella argument uses previous iterations of anti-gay discourses in the context of curriculum laws as a foundation for the arguments advanced by no promo homo proponents. In this case, it's the logic of the association between homosexuality and disease. An article in *The Oklahoman* detailing how the bill passed the House Education Committee describes an interaction between Republican Representative Frank Pitezel and state Health Department employee Dr. Greg Istre:

Pitezel, pointing to a statistic given by White that 72 percent of the Oklahoma cases involve homosexuals, asked Istre, 'If you really want to stop it, are you going to tell these children that homosexuality is not the way to go?' Other members said that not making students aware homosexuals are in a high-risk group would be tacitly condoning homosexuality (Casteel 1987).

This quote illustrates the use of Eskridge's standard argument in a no promo homo law, this time in the context of the disease discourse. This claim also maps easily onto the three-step standard argument laid out by Eskridge (applied to Tribe's comments regarding the sodomy ban above):

1. *Not including homosexuality in the statute would have been seen as condoning homosexuality.*
2. *The state should be endorsing good lives and conduct.*
3. *Homosexuality should not be encouraged specifically because of its connection to disease (in this case, AIDS).*

The purpose of the law is to not encourage or condone homosexuality, which is rationalized through the rhetoric of disease.

Eskridge contends that the standard no promo homo umbrella argument as a framing for anti-gay prejudice is necessary to sustain opposition to the gay rights movement among a diverse group of people. In addition to modernizing old tropes, the no promo homo argument is also multi-purpose. Eskridge explains:

"[No promo homo] can appeal to different conceptions of the good, including utilitarian concerns about the sexuality of children, old-fashioned natural law conceptions of acceptable sex or gender roles, and republican concerns about public culture. Therefore, the no promo homo argument not only facilitates coalitions of people with different concerns, but is also more flexible, allowing the coalition to expand as new kinds of concerns are identified (Eskridge 2000, 1343).

The flexibility of the argument allows several discourses to fall under the no promo homo umbrella, especially considering how opinions against homosexuality have evolved over the course of the past century. The sedimentation of the three anti-gay logics itself reflects how earlier arguments had to be manipulated and sublimated, influencing more recent ones but remaining unsaid in the public discourse.

South Carolina's law provides an example of the no promo homo umbrella argument's flexibility in using arguments that respond to concerns of different coalitions, yet maintaining the ultimate goal of not promoting homosexuality. While writing the original bill, the South Carolina legislature had rejected language that would have appealed to a natural law argument. A 1988 article in *The State* describes the controversy: "The sticking [point] had been...Rep. Mike Fair's push for tougher language to discourage teachers from telling students that homosexuality was merely an alternative lifestyle. Fair, R-Greenville, wanted to require teachers to say that such behavior is immoral and illegal" (LeBanc 1988). Other lawmakers were content with the existing language that restricted discussion on homosexuality strictly to the context of disease. The failure of Representative Fair to include a natural law argument—the designation of homosexual behavior as "immoral" and "illegal"—demonstrates how no promo homo arguments must be retooled to respond to cultural shifts. It was no longer acceptable to name homosexuality as immoral and illegal in the text of the law; instead, lawmakers were assured that homosexuality would not be encouraged by limiting discussion to the disease framework.

The different ways in which the states used the no promo homo argument—whether the law was situated within a natural law, disease, or social republican framework—demonstrates the flexibility of the specifics of the no promo homo argument. The core purpose, however, remains the same across the states: to restrict discussion of homosexuality unless

it occurs within the prejudice discourses set up by Eskridge. While there are variations between states, each law maps easily onto Eskridge's sedimentation theory of anti-gay prejudice. Requiring educators to reiterate narratives about homosexuality as linked to disease and immorality or prohibiting them from advancing homosexuality as a counter to the normalized narrative of heterosexuality creates a school that is actively denigrating homosexuality.

Millions of youth attend schools in which no promo homo policies are in place. Students in those schools are subject to a school curriculum that omits accurate and needed information about sexuality and reinforces a history of anti-gay rhetoric by evoking the sedimented cultural narratives surrounding homosexuality. Any scholarship looking to uncover the effect of the statutes on students cannot understand their true damage without understanding the history of homophobia that they were founded in. ■

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NOTES

- 1 Utah became the first state to remove their law from the books after a 2017 repeal, Arizona followed suit in 2019, and South Carolina halted enforcement after a court order in 2020.
- 2 In 1973, the APA did retain the diagnosis of "ego-dynastic homosexuality" which included a persistent lack of heterosexual arousal and feelings of distress surrounding homosexual contact. In 1986, this category was removed for the DSM-III; while a diagnosis of "ego-dynastic sexual orientation" remains, it does not specifically target homosexual orientation.
- 3 Both Oklahoma and Arizona's no promo homo laws are in their AIDS education provisions; South Carolina's law is in a comprehensive sex education statute, not specifically related to AIDS education.