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COMMENT

From Child Protection to Children's Rights: Rethinking Homosexual Propaganda Bans in Human Rights Law

On June 29, 2013, Russian President Vladimir Putin signed into law a bill prohibiting "propaganda of non-traditional sexual relations among minors," including supportive statements about gay, lesbian, bisexual, and transgender persons.[1] The legislation, which included fines of up to one million roubles (equivalent to roughly $31,000 at the time of passage) and possible jail time for offenders, sailed through the Duma on a vote of 436-0 and the Federation Council on a vote of 137-0, with roughly eighty-eight percent of respondents voicing support for the bill in public polling.[2]

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1. O Vnesenii Izmenenij v Stat'ju 5 Federal'nogo Zakona "O Zaŝite Detej ot Informacii, Pričin-Jajuŝej Vred ih Zdorov'ju i Razvitiju" i Otdel'nye Zakonodatel'nye Akty Rossijskoj Federacii v Celjah Zaŝity Detej ot Informacii, Propagandirujuŝej Otricanie Tradicionnyh Semejnyh Cennostej [On Amendments to Article 5 of the Federal Law "On Protection of Children from Information Harmful to Their Health and Development" and to Certain Legislative Acts of the Russian Federation with the Aim of Protecting Children from Information that Promotes the Denial of Traditional Family Values], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2013, No. 26, Item 3208, http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=44554-6&02 [http://perma.cc/Y2WQ-EFXH]. For an unofficial translation of the law, see *Russia's "Gay Prop[a]ganda" Law: Russian Federal Law #135-FZ*, SCH. RUSS. & ASIAN STUD. (Aug. 21, 2013) (Erin Decker trans.), http://www.sras.org/russia_gay_propaganda_law [http://perma.cc/9KXN-PMHV]. *See also Russia: Reject Discriminatory Bill*, HUM. RTS. WATCH (July 1, 2013), http://www.hrw.org/news/2013/06/23/russia-reject-discriminatory-bill [http://perma.cc/T7Z5-F5UR].

2. *Russian Duma Passes Ban on "Homosexual Propaganda,"* RADIO FREE EUR./RADIO LIBERTY, June 11, 2013, http://www.rferl.org/content/russia-homosexuality-law-duma-protest/25013537.html [http://perma.cc/V7NG-HGJT]; *Russian Senators Give Green Light to "Gay Propaganda" Ban*, RT NEWS, June 26, 2013, http://rt.com/politics/gay-propaganda-ban-senators-284 [http://perma.cc/M6FE-F8ZH].

The outcry from human rights activists was swift. Some groups staged disruptive protests,[3] while others used the fast-approaching Sochi Olympics to invite pressure from supranational bodies, governments, corporations, and civil society, directed toward urging Russia to repeal the law.[4] Graeme Reid, the director of the LGBT Program at Human Rights Watch, called the legislation "regressive and discriminatory," echoing condemnation from the European Union, the Council of Europe, and the Venice Commission.[5]

Russia's law sought to restrict gay advocacy in the name of child protection – an effort with a longstanding historical pedigree and contemporary resonance. Laws like the one in Russia are "child-protective" not because of their actual empirical effects, but because their proponents deploy the protection of children, whether rhetorically or out of genuine concern, as a central justification for the laws' existence. Some of the first efforts to restrict gay advocacy in the name of child protection arose in the United States and United Kingdom,[6]

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3. *See, e.g.*, Michael Cooper, *Gay Rights Protest Greets Opening Night at the Met*, N.Y. TIMES, Sept. 23, 2013, http://www.nytimes.com/2013/09/24/nyregion/gay-rights-protest-greets-opening-night-at-the-met.html [http://perma.cc/9EP4-AGYP]; Michelle Garcia, *ACT UP Crashes Stoli Event*, ADVOCATE (July 31, 2013, 5:27 PM), http://www.advocate.com/society/activism/2013/07/31/act-crashes-stoli-event [http://perma.cc/C9ER-9GKM]; Roxanna Scott, *Small Group Tries To Disrupt Olympic Celebration*, USA TODAY, Oct. 29, 2013, http://www.usatoday.com/story/sports/olympics/2013/10/29/sochi-gay-rights-protest-disrupt-winter-games/3297245 [http://perma.cc/EF58-SCKX].

4. *See, e.g.*, Stuart Elliott, *Merchandise Uses Olympics Principles Against Russian Anti-Gay Laws*, N.Y. TIMES, Dec. 2, 2013, http://www.nytimes.com/2013/12/02/business/media/merchandise-uses-olympics-principles-against-russian-anti-gay-laws.html [http://perma.cc/CS6S-JPGF]; *Russia: Pressure Escalates on Sochi Corporate Sponsors*, HUM. RTS. WATCH (Jan. 31, 2014), http://www.hrw.org/news/2014/01/31/russia-pressure-escalates-sochi-corporate-sponsors [http://perma.cc/AD5K-AW54].

5. HUM. RTS. WATCH, *supra* note 1.

6. Anita Bryant's "Save our Children" campaign, which led to the repeal of a Dade County ordinance prohibiting discrimination on the basis of sexual orientation, heavily relied on child-protective rhetoric. William N. Eskridge, Jr., *No Promo Homo: The Sedimentation of Antigay Discourse and the Channeling Effect of Judicial Review*, 75 N.Y.U. L. REV. 1327, 1351-52 (2000). After its passage, similar arguments were used successfully elsewhere. *Id.* at 1352-53. California's Briggs Initiative of 1978, which ultimately failed, would have prohibited "the advocating, soliciting, imposing, encouraging or promoting of private or public homosexual activity directed at, or likely to come to the attention of, schoolchildren and/or other employees." Cal. Proposition 6, § 3(b)(2) (1978). In Margaret Thatcher's Britain, Section 28 was enacted in 1988 to ensure that local authorities "shall not . . . intentionally promote homosexuality or publish material with the intention of promoting homosexuality" or "promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship." Local Government Act, 1988, c. 9, § 28(1) (U.K.), http://www.legislation.gov.uk/ukpga/1988/9/pdfs/ukpga_19880009_en.pdf [http://perma.cc/E4KG-7JU3]. Section 28 remained law until it was repealed in Scotland in 2000 and the rest of Great Britain in 2003. Local Government Act, 2003, c. 26, §§ 122 & 127,

and many of these laws remain on the books.[7] These kinds of laws have been met with hearty approval in a range of other sociopolitical contexts globally; Russia's law was passed amidst a recent surge of proposed child-protective propaganda laws in sub-Saharan Africa and across Eastern Europe.[8]

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sch. 8, pt. 1 (U.K.), http://www.legislation.gov.uk/ukpga/2003/26/pdfs/ukpga_20030026_en.pdf [http://perma.cc/5PAS-L3Y8].

7. Laws prohibiting positive discussion of homosexuality in school instruction, for example, remain on the books in multiple states. *See, e.g.*, TEX. HEALTH & SAFETY CODE ANN. § 85.007(b) (West 2013) ("The materials in the education programs intended for persons younger than 18 years of age must . . . state that homosexual conduct is not an acceptable lifestyle and is a criminal offense under Section 21.06, Penal Code."); *see also* ALA. CODE § 16-40A-2(c)(8) (2014); ARIZ. REV. STAT. ANN. § 15-716(c) (2014); LA. REV. STAT. ANN. § 17:281(A)(1)(b)(3) (2014); MISS. CODE ANN. § 37-13-171(2)(e) (2014); OKLA. STAT. tit. 70, § 11-103.3(D) (2014); UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) (West 2014). Such laws are not historical anachronisms; legislators in Tennessee, Missouri, and Utah have recently sought to pass legislation restricting discussions of homosexuality in schools. Zack Ford, *Utah Governor Vetoes Abstinence-Only Sex Ed Bill*, THINK PROGRESS (Mar. 19, 2012, 4:27 PM), http://thinkprogress.org/lgbt/2012/03/19/447430/utah-governor-vetoes-abstinence-only-sex-ed-bill [http://perma.cc/WF22-R7JF]; Katie McDonough, *Tennessee "Don't Say Gay" Bill Dies, Again*, SALON (Mar. 27, 2013, 3:33 PM), http://www.salon.com/2013/03/27/tennessee_dont_say_gay_bill_dies_again [http://perma.cc/4YZG-9XCN]; Igor Volsky, *Missouri Advances "Don't Say Gay" Bill*, THINK PROGRESS (Apr. 20, 2012, 3:51 PM), http://thinkprogress.org/lgbt/2012/04/20/468102/missouri-dont-say-gay [http://perma.cc/3MUW-6295]; *see also* Ian Ayres & William Eskridge, *U.S. Hypocrisy over Russia's Anti-Gay Laws*, WASH. POST, Jan. 31, 2014, http://www.washingtonpost.com/opinions/us-hypocrisy-over-russias-anti-gay-laws/2014/01/31/3dfobafo-8548-11e3-9dd4-e7278db80d86_story.html [http://perma.cc/34L9-JFK6].

8. For propaganda laws in Eastern Europe see *Armenian Police Propose Gay "Propaganda" Ban*, RADIO FREE EUR./RADIO LIBERTY, Aug. 7, 2013, http://www.rferl.org/content/armenia-police-gay-propaganda/25069284.html [http://perma.cc/S6HQ-K4QF]; Lucia Diaconu & Mircea Ticudean, *Battle over Moldovan Antidiscrimination Bill Reaches Fevered Pitch*, RADIO FREE EUR./RADIO LIBERTY, Apr. 8, 2012, http://www.rferl.org/content/moldova_gay_antidiscrimination_law_opposition/24541486.html [http://perma.cc/FY74-PVZD]; Olga Dzyubenko, *U.S. Raps Kyrgyzstan for Proposed "Gay Propaganda" Law*, REUTERS (Oct. 13, 2014), http://www.reuters.com/article/2014/10/13/rights-kyrgyzstan-gay-idUSL6N0S80O920141013 [http://perma.cc/3UL9-ZP5P]; *Lithuania: New Move Towards Penalizing Homosexuality*, AMNESTY INT'L (Nov. 26, 2010), http://www.amnesty.org/en/library/asset/EUR53/008/2010/en/2026b841-736d-463b-b5e9-4ffebc6392dd/eur530082010en.pdf [http://perma.cc/EC7W-UD4V]; *Lithuanian Parliament Passes Homophobic Law*, AMNESTY INT'L (July 14, 2009), http://www.amnesty.org/en/news-and-updates/news/lithuanian-parliament-passes-homophobic-law-20090714 [http://perma.cc/U37F-27TM]; Andrew Potts, *Lithuania Blocks Attempt at "Gay Propaganda" Ban*, GAY STAR NEWS (Aug. 6, 2013), http://www.gaystarnews.com/article/lithuania-blocks-attempt-%E2%80%98gay-propaganda%E2%80%99-ban060813 [http://perma.cc/57Y8-BF5H]; and *Ukraine Moves Toward Gay Propaganda Law*, RIANOVOSTI (Oct. 2, 2012, 4:49 PM), http://en.rian.ru/world/20121002/176360014.html [http://perma.cc/U4AM-6T6Y]. Child-protective rhetoric was also extremely influential in the success of Uganda's Anti-Homosexuality Act, including its revivification by Speaker Rebecca Kadaga in 2012. *See* Sokari Ekine, *Uganda Will Pass Anti-Homosexuality Bill*

By the time Russia's federal legislation drew the ire of activists around the globe, nearly identical laws had already been passed across Russia, and lawmakers stated that they were necessary to protect minors.[9] As President Putin objected to the Associated Press:

> [W]e have no laws against people with non-traditional sexual orientation. . . . [Y]ou kind of create an illusion among millions of spectators that we do have such laws, but we do not have such laws in Russia. Russia has adopted the law banning propaganda of non-traditional sexual relations among minors, but these are completely different things.[10]

This Year, Says Speaker, GUARDIAN (Lon.), Nov. 26, 2012, http://www.theguardian.com/world/2012/nov/26/uganda-anti-homosexuality-bill [http://perma.cc/DQW6-3WU8]; *see also* Anti-Homosexuality Act, No. (14) (2014) 107 UGANDA GAZETTE; Anti-Homosexuality Bill, No. (47) (2009) 102 UGANDA GAZETTE. The Anti-Homosexuality Act was later annulled on legislative procedure grounds by Uganda's Constitutional Court. *See Uganda Court Annuls Anti-Homosexuality Law*, BBC NEWS, Aug. 1, 2014, http://www.bbc.com/news/world-africa-28605400 [http://perma.cc/W632-937N].

9. Andrew E. Kramer, *Russia Passes Bill Targeting Some Discussions of Homosexuality*, N.Y. TIMES, June 11, 2013, http://www.nytimes.com/2013/06/12/world/europe/russia-passes-bill-targeting-some-discussions-of-homosexuality.html [http://perma.cc/Q4TH-6NJL]. In 2006, Ryazan was the first oblast to enact an anti-LGBT law for the protection of minors, followed by Arkhangelsk in 2011; Kostroma, St. Petersburg, Magadan, Novosibirsk, Krasnodar, Samara, and Bashkortostan in 2012; and Kaliningrad in 2013. *See "Homosexual Propaganda" Bans: Analysis and Recommendations*, INT'L COMM'N OF JURISTS & ILGA-EUR. 2, 14 (2012), http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/06/Joint-briefing-paper-ICJ-IE-propaganda-bans-25-June.pdf [http://perma.cc/A52B-4L8E]; *"Homosexual Propaganda" Bans in Russia*, ILGA-EUR. (Oct. 9, 2012), http://lib.ohchr.org/HRBodies/UPR/Documents/Session16/RU/ILGA_UPR_RUS_S16_2013_ILGAEurope_E.pdf [http://perma.cc/NBG7-G9JL].

10. *Interview to Channel One and Associated Press News Agency*, PRESIDENT RUSS. (Sept. 4, 2013, 9:00 AM), http://eng.kremlin.ru/news/5935 [http://perma.cc/VKH5-NRHU]; *see also* Associated Press, *Russia: Putin Says Sochi Welcomes Gays*, N.Y. TIMES, Oct. 28, 2013, http://www.nytimes.com/2013/10/29/world/europe/russia-putin-says-sochi-welcomes-gays.html [http://perma.cc/39M9-MTHC]. Some U.S.-based religious leaders and groups have reiterated this distinction. *See* Stefano Gennarini, *Media Howl as Russia Protects Its Children from Gay Propaganda*, LIFESITENEWS (June 14, 2013, 11:29 AM), https://www.lifesitenews.com/news/media-howl-as-russia-protects-its-children-from-gay-propaganda [http://perma.cc/48XT-296N] ("The law prohibiting the promotion of homosexuality among children simply codifies that Russia truly is interested in protecting its children, not that [it] is interested in persecuting homosexuals."); Franklin Graham, *Putin's Olympic Controversy*, DECISION MAG., Mar. 2014, http://billygraham.org/decision-magazine/march-2014/putins-olympic-controversy [http://perma.cc/7FC3-YAG5] ("In my opinion, Putin is right on these issues. Obviously, he may be wrong about many things, but he has taken a stand to protect his nation's children from the damaging effects of any gay and lesbian agenda.").

Activists dismissed this distinction, arguing that protecting children is a flimsy justification to crack down on LGBT individuals.[11] Yet the tension between these competing understandings of Russia's law is not new, and it persistently haunts sexual rights efforts globally. Recent decisions by supranational bodies have done little to relieve this tension, in part because they have failed to grasp the most central interests at stake when child-protective laws are introduced: the rights of children themselves.

In this Comment, I argue that a stronger emphasis on children's rights illustrates why supranational human rights bodies should consider child-protective restrictions on sexual rights presumptively invalid. In Part I, I chart the way in which the idea of a tension between protecting children and respecting sexual rights became firmly entrenched in human rights jurisprudence. In Part II, I look at recent decisions by the U.N. Human Rights Committee (HRC)[12] and the European Court of Human Rights (ECtHR)[13] that attempt to navigate this tension. Finally, in Part III, I argue that adjudicatory bodies have overlooked the already-recognized rights of children themselves—rights that tip the balance in favor of sexual rights claimants. In light of contemporary children's rights guarantees, states and supranational bodies should discard an approach that pits the interests of children against the rights of LGBT adults in favor of a more holistic assessment of the rights at stake. Such an assessment makes apparent that child-protective restrictions on sexual rights cannot with-

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11. *See, e.g.*, *Russia: Anti-LGBT Law a Tool for Discrimination*, HUM. RTS. WATCH (June 30, 2014), http://www.hrw.org/news/2014/06/29/russia-anti-lgbt-law-tool-discrimination [http://perma.cc/6Z7E-8BXC] (quoting Hugh Williamson, the Europe and Central Asia Director at Human Rights Watch, as saying, "it has been clear from the start that this law was not conceived out of concern for children . . . . This law only jeopardizes the safety and rights of Russia's LGBT community, and it should be immediately repealed."). Activists point to the example of Dmitry Isakov, the first person convicted under the law, who was arrested in Kazan on July 30, 2013 for protesting while holding a sign that said, "Being gay and loving gays is normal. Beating gays and killing gays is a crime!" *See* Sunny Peter, *Anti-Gay Violence in Moscow*, INT'L BUS. TIMES, Oct. 14, 2013, http://au.ibtimes.com/articles/513527/20131014/russia-lgbt-gay-rights-violence-pride-rally.htm [http://perma.cc/5Q4L-9JTT].

12. The HRC was established under the International Covenant on Civil and Political Rights (ICCPR). It hears complaints from individuals from the 115 states parties that have ratified the First Optional Protocol to the ICCPR and issues judgments that are non-binding but widely understood to be authoritative interpretations of the ICCPR. *See* Optional Protocol to the International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

13. The ECtHR was established under the European Convention on Human Rights. It hears complaints from both individuals and states from the forty-seven member states of the Council of Europe, and it issues binding judgments that are treated as precedent by the Court. *See The ECHR in 50 Questions*, EUR. CT. HUM. RTS. 4, 6, 9 (2014), http://www.echr.coe.int/Documents/50Questions_ENG.pdf [http://perma.cc/9Z3E-SEPT].

stand scrutiny by any institution that takes seriously contemporary human rights guarantees.

I. STATE ASSERTIONS OF CHILD-PROTECTIVE RATIONALES

Proponents of laws restricting LGBT advocacy have used child-protective rationales before, insisting that the moral and physical development of minors requires careful circumscription of discussions of homosexuality and gender nonconformity. Opponents have portrayed these laws as thinly veiled assaults on LGBT rights,[14] but child-protective arguments in fact had meaningful support in human rights jurisprudence of the 1970s and 1980s. The initial challenges to child-protective laws established the principle that states enjoy some discretion in fulfilling their human rights commitments in particular areas, including morality, and the repercussions of these arguments resonate in the present day.

One of the earliest and most doctrinally important cases on the protection of children's morals was *Handyside v. United Kingdom*, decided by the ECtHR in 1976.[15] In *Handyside*, the Court considered the legality of the United Kingdom's seizure of a book intended for schoolchildren, parts of which spoke frankly and openly about homosexuality, sex, and drug use. The ECtHR ultimately deferred to the United Kingdom's regulatory powers in the realm of morality. Notably, it began by finding that the aim of the judgment and the initial seizures of the book – that is, "the protection of the morals of the young" – was legitimate.[16] The Court then determined that the measures used were sufficiently "necessary" to pursue that aim, and it ultimately concluded that no violation of the European Convention had taken place.[17]

The result in *Handyside* was not an aberration. Just six years later, the HRC reached a similar conclusion in *Hertzberg v. Finland*.[18] The complainants in *Hertzberg* had produced or appeared in television or radio programs related to homosexuality – programs that were censored by the state-controlled Finnish Broadcasting Company.[19] In its ruling, the HRC noted that

14. *See supra* note 11.

15. Handyside v. United Kingdom, App. No. 5493/72, 24 Eur. Ct. H.R. (ser. A) (1976).

16. *Id.* ¶ 52.

17. *See id.* ¶¶ 53-59.

18. Human Rights Comm., Hertzberg v. Finland, Comm. No. R.14/61, U.N. Doc. A/37/40 (Apr. 2, 1982), http://www.ohchr.org/documents/publications/seldec_1_en.pdf [http://perma.cc/TD4P-SXZN] (internal numbering omitted).

19. *Id.* ¶¶ 2.2-2.6.

> public morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities.
>
> The Committee finds that it cannot question the decision of the responsible organs of the Finnish Broadcasting Corporation that radio and TV are not the appropriate forums to discuss issues related to homosexuality, as far as a programme could be judged as encouraging homosexual behaviour. . . . In particular, harmful effects on minors cannot be excluded.[20]

In *Hertzberg* and *Handyside*, then, influential human rights bodies recognized that states have an interest in protecting children and determined that this interest in child protection outweighed the expressive rights of adults with regard to public information about sex and sexuality. In the 1970s and 1980s, child-protective rationales for restrictions on LGBT advocacy were not simply *plausible*, but *decisive* as a matter of human rights doctrine. Both decisions suggested supranational bodies were prepared to give wide latitude to states where issues of moral – which usually meant sexual – regulation were concerned.

When *Handyside* and *Hertzberg* were decided, sexual rights were virtually unrecognized as a category of human rights law. Today, women's rights and LGBT rights claims have gained ground at the domestic level and also have been increasingly recognized by supranational bodies.[21] In *Dudgeon v. United Kingdom*, decided in 1981, the ECtHR ruled that Northern Ireland's sodomy law violated the European Convention's guarantee of privacy.[22] The Court's analysis in *Dudgeon* was echoed in 1988, when the ECtHR struck down a sodomy law on similar grounds in *Norris v. Ireland*.[23] The HRC confronted its own sodomy law challenge in 1994, ultimately ruling in *Toonen v. Australia* that Tasmania's sodomy law was an invasion of privacy.[24] Each of these decisions established that LGBT individuals had some rights that could not be infringed in the name of an alleged public good.

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20. *Id.* ¶¶ 10.3-10.4.

21. *See, e.g.*, U.N. Office of the High Comm'r for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, U.N. Doc. HR/PUB/12/06 (2012); Human Rights Council Res. 17/19, Rep. of the Human Rights Council, 17th Sess., June 17, 2011, U.N. Doc. A/HRC/RES/17/19 (July 14, 2011).

22. Dudgeon v. United Kingdom, App. No. 7525/76, 45 Eur. Ct. H.R. (ser. A), ¶ 63 (1981).

23. Norris v. Ireland, App. No. 10581/83, 142 Eur. Ct. H.R. (ser. A) (1988).

24. Human Rights Comm., Toonen v. Australia, Comm. No. 488/1992, ¶¶ 8.1, 11, U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31, 1994), http://www.ohchr.org/documents/publications/sdecisionsvol5en.pdf [http://perma.cc/FFR7-QKL3] [hereinafter *Toonen*].

It is sometimes assumed that later sexual rights decisions implicitly repudiated *Handyside* and *Hertzberg*, by virtue of removing morality from the sole purview of states and exposing it to supranational scrutiny.[25] Yet the "margin of appreciation" – *Handyside*'s term for the degree of discretion that states enjoy in fulfilling their obligations under the European Convention, particularly on issues of morality, national security, and public order[26] – remains a tenet of supranational human rights jurisprudence. *Handyside* continues to be cited by the ECtHR,[27] and the issues *Handyside* and *Hertzberg* decided are in many ways broader than the narrow sodomy law question posed by *Toonen*, *Dudgeon*, and *Norris*. Recent decisions on child-protective laws, which I discuss below, have underscored the unresolved questions in these lines of canonical human rights cases. Collectively, the cases establish a strong right to sexual privacy, but they potentially leave states a wide berth to regulate public expressions of sexuality, particularly when children may witness them.[28] Under this interpretive synthesis, the proper balance between child protection and the rights of LGBT individuals remains an open question.

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25. *See, e.g.*, Laurence R. Helfer & Alice M. Miller, *Sexual Orientation and Human Rights: Toward a United States and Transnational Jurisprudence*, 9 HARV. HUM. RTS. J. 61, 73-74 (1996) (suggesting a reconciliation of the two seemingly contradictory precedents in *Hertzberg* and *Toonen* which "centers on the Committee's maturation as a human rights institution").

26. *See* Handyside v. United Kingdom, App. No. 5493/72, 24 Eur. Ct. H.R. (ser. A) at 15-18, 21, ¶¶ 47-49, 54, 57 (1976).

27. Recent decisions invoking *Handyside* include *Nemtsov v. Russia*, App. No. 1774/11, ¶ 112 (Eur. Ct. H.R. July 31, 2014), http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145784 [http://perma.cc/LXW6-FBTT] (citing *Handyside* for the proposition that "the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights"); *Brincat v. Malta*, Apps. Nos. 60908/11, 62110/11, 62129/11, 62312/11 & 62338/11, ¶ 55 (Eur. Ct. H.R. July 24, 2014), http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145790 [http://perma.cc/8DJ7-9T3J] (citing *Handyside* for a similar proposition); and *Hamalainen v. Finland*, App. No. 37359/09, ¶ 18 (Eur. Ct. H.R. July 16, 2014), http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145768 [http://perma.cc/PQJ3-EMHC] (applying the margin of appreciation concept, noting that "transforming the institution of marriage into a gender-neutral one brought significant ethical and religious values into play," and declining to recognize a right to same-sex marriage).

28. In the United States, this phenomenon is evident in the child-protective arguments in the litigation over same-sex marriage. *See* United States v. Windsor, 133 S. Ct. 2675, 2694 (2013); Reva B. Siegel, *The Supreme Court, 2012 Term – Foreword: Equality Divided*, 127 HARV. L. REV. 1, 83 n.422 (2013).

II. BALANCING CHILD-PROTECTIVE RATIONALES AND SEXUAL RIGHTS

Although various European organs have spoken out against the passage of Russia's federal propaganda law, neither the ECtHR nor the HRC has yet ruled on its legality. The bodies have, however, addressed other regional and municipal child-protective laws, also passed in Russia. These decisions—*Alekseyev v. Russia* and *Fedotova v. Russian Federation*—offer reasons why propaganda laws may violate human rights guarantees, and therefore may be indicative of how the ECtHR and the HRC might approach Russia's recent federal legislation. Both cases suggest supranational bodies rely too heavily on the presentation of empirical proof, and illustrate the importance of a more holistic analysis.

In *Alekseyev v. Russia*, the ECtHR considered a claim that banning LGBT parades in Moscow infringed upon Article 11 of the European Convention.[29] Russian officials claimed they were worried about both public order and public morality.[30] The state argued that LGBT parades should be understood as public displays of sexuality to which children and other unwilling viewers might be exposed.[31] The ECtHR disagreed. It stressed that "the participants had not intended to exhibit nudity, engage in sexually provocative behaviour or criticise public morals or religious views."[32] On that basis, the Court distinguished the case from precedents like *Müller v. Switzerland*, where the display of obscene artwork justified restrictions of expression, in part because the artwork would be visible to the public without any age limit.[33] The Court then explained that while European countries had not reached a consensus on all substantive questions of LGBT equality—for example, same-sex marriage and adoption—there *was* a consensus that LGBT persons enjoyed freedom of peaceful assembly. Such a consensus narrowed the margin of appreciation afforded to Russia and justified supranational review.[34]

Having made these findings, the Court reiterated "that any decision restricting the exercise of freedom of assembly must be based on an acceptable

29. Alekseyev v. Russia, Apps. Nos. 4916/07, 25924/08 & 14599/09 (Eur. Ct. H.R. Oct. 21, 2010), http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101257 [http://perma.cc/3SSH-BN3C].

30. *Id.* ¶¶ 56-60.

31. *Id.* ¶¶ 61-62.

32. *Id.* ¶ 82.

33. *Id.*; *see* Müller v. Switzerland, App. No. 10737/84, 133 Eur. Ct. H.R. (ser. A) (1988).

34. *Alekseyev*, Apps. Nos. 4916/07, 25924/08 & 14599/09, ¶¶ 83-85.

assessment of the relevant facts."[35] The Court emphasized that the state had failed to provide actual evidence that mentioning or debating homosexuality or the status of LGBT people would adversely affect children.[36] Without proof that the restriction at hand was necessary to protect youth, the Court determined "the authorities' decisions to ban the events in question were not based on an acceptable assessment of the relevant facts."[37] The Court therefore concluded the bans had violated Alekseyev's freedom of assembly under the European Convention.[38] Although the Court invalidated a ban on assertions of LGBT rights in the public sphere, it did so primarily because the government had failed to provide sufficient evidence, and not because such bans inherently violate human rights.

Shortly after *Alekseyev*, the HRC confronted the regional law prohibiting homosexual propaganda in the Russian oblast of Ryazan. In *Fedotova v. Russian Federation*, the claimant had been convicted by a court in Russia for exhibiting posters that said "Homosexuality is normal" and "I am proud of my homosexuality" near a secondary school, and was fined 1,500 roubles.[39] The HRC found the law contravened the International Covenant on Civil and Political Rights, concluding that Russia had failed to show that restricting propaganda regarding homosexuality, but not heterosexuality or sexuality generally, was the product of "reasonable and objective" criteria.[40] Like *Alekseyev*'s demand for more evidence that LGBT advocacy hurt children, the ruling in *Fedotova* was equivocal. The decision "recognize[d] the role of the State party's authorities in protecting the welfare of minors" and suggested that a determination of necessity should be made based on the facts of the case.[41] Like the ECtHR, the HRC observed in its reasoning "that the State party has not shown that a restriction on the right to freedom of expression in relation to 'propaganda of homosexuality'—as opposed to propaganda of heterosexuality or sexuality generally—among minors is based on reasonable and objective criteria."[42] The HRC did not articulate what kind of distinctions it would consider sufficiently "objective" or "reasonable" to validate bans on LGBT advocacy. Nor did it indicate

35. *Id.* ¶ 85.

36. *Id.* ¶ 86.

37. *Id.*

38. *Id.* ¶ 118.

39. Human Rights Comm., Fedotova v. Russian Fed'n, Comm. No. 1932/2010, ¶¶ 2.2-2.3, U.N. Doc. CCPR/C/106/D/1932/2010 (Oct. 31, 2012), http://www2.ohchr.org/english/bodies/hrc/docs/CaseLaw/CCPR-C-106-D-1932-2010.doc [http://perma.cc/F5U7-W9KL].

40. *Id.* ¶ 10.6.

41. *Id.* ¶ 10.8.

42. *Id.* ¶ 10.6.

why a ban on all public discussions of sexuality, however even-handed and nondiscriminatory, would still violate fundamental human rights guarantees.

Although *Fedotova* reflects skepticism toward the kinds of laws that have now been federally instituted in Russia, it does not provide an especially rigorous account of why these laws might be invalid, particularly in light of precedents like *Hertzberg* and *Handyside*. The HRC pointedly suggested that Fedotova "ha[d] not made any public actions aimed at involving minors in any particular sexual activity or at advocating any particular sexual orientation," laying to rest any fears of seduction or recruitment.[43] The Committee determined she was merely "giving expression to her sexual identity and seeking understanding for it."[44] The HRC affirmed the state's interest in protecting minors, but ultimately found it was not strong enough, in this particular case, to deny Fedotova her own freedom of expression. Like *Alekseyev*, *Fedotova* deemed restrictions on advocacy invalid, but did so on fairly tentative grounds.

III. CENTERING CHILDREN'S RIGHTS IN DEBATES OVER CHILD-PROTECTIVE LAWS

Alekseyev and *Fedotova* invalidated restrictions on LGBT advocacy, but neither case fully explains why such restrictions inherently violate human rights. Decades after *Handyside*, *Hertzberg*, *Dudgeon*, *Norris*, and *Toonen*, these decisions do little to define the relationship between the state's interest in protecting children and the human rights of LGBT persons. As child-protective rationales enjoy a resurgence in Eastern Europe and sub-Saharan Africa, a more holistic assessment is needed to define the human rights at stake in these debates.

The debate over child-protective laws and sexual rights tends to pit the power of the state against the individual rights of LGBT persons. Few advocates – on either side – have foregrounded the rights of children, which are codified domestically in constitutions and statutes and enshrined internationally in supranational agreements like the Convention on the Rights of the Child (CRC).[45] In *Alekseyev* and *Fedotova*, for example, the state's interest in protect-

43. *Id.* ¶ 10.7.

44. *Id.* ¶¶ 10.7-10.8.

45. The Convention on the Rights of the Child, which came into force in 1990, is among the most widely ratified human rights agreements in history. The 194 parties to the Convention include all UN states except the United States, South Sudan, and Somalia. The Committee on the Rights of the Child is a body of experts that reviews periodic reports from states parties and issues General Comments. Although these are not binding, they constitute authoritative guidance regarding interpretation of, and adherence to, the CRC. *See Fact Sheet No. 10 (Rev.1), The Rights of the Child*, OFF. HIGH COMMISSIONER FOR HUM. RTS., http://www

ing children was simply weighed against the rights of LGBT individuals, and the rights of the child were not asserted or discussed at any length.[46] As I argue in this Part, however, propaganda laws infringe the established rights of children, and recognizing this fact illuminates why they should be treated as presumptively invalid under human rights law.

The growth of children's rights jurisprudence has accelerated dramatically since the 1970s, in parallel with the emergence of sexual rights. Children now enjoy widely recognized rights that courts have imbued with increasingly detailed meaning and content. When the new homosexual propaganda laws begin to reach the ECtHR and HRC, these rights should be included in the analysis of the rights that are infringed when the state purports to protect children.

Under the CRC, children enjoy a right to freedom of expression, including the right to "receive and impart information and ideas of all kinds," enshrined in Article 13,[47] as well as a related right of "access to information," enshrined in Article 17.[48] Both rights create a presumption that the state should not shield children from information without a strong justification for doing so. The conditions for overriding this presumption are narrow and specific. Article 13(2)(b) allows the child's right to expression to be curtailed when this is necessary to protect public morals,[49] while Article 17(e) specifies that states should

.ohchr.org/Documents/Publications/FactSheet10rev.1en.pdf [http://perma.cc/6FLK-C44F]; *see also Committee on the Rights of the Child*, OFF. HIGH COMMISSIONER FOR HUM. RTS., http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx [http://perma.cc/YJR8-XHQK] (providing an overview of the activities of the Committee).

46. Notably, the International Commission of Jurists filed a brief in *Fedotova* that expressly raised the rights of children; it stressed that children have a recognized right to receive age-appropriate information about sexuality. Legal Opinion of Int'l Comm'n of Jurists on Section 3.10 of the Ryazan Oblast Law ¶¶ 30-33, Fedotova v. Russian Fed'n, Comm. No. 1932/2010, ¶¶ 2.2-2.3, U.N. Doc. CCPR/C/106/D/1932/2010 (Oct. 31, 2012), http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/06/Russian-Federation-ICJ-opinion-legal-submission-2010.pdf [http://perma.cc/WK7F-ARPY]. Although the HRC noted this argument in the descriptive section of the decision, *see Fedotova*, U.N. Doc. CCPR/C/106/D/1932/2010, ¶¶ 5.13-5.14, it avoided any mention or discussion of the rights of children in its reasoning on the merits.

47. "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice." Convention on the Rights of the Child art. 13, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

48. "States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health." *Id.* art. 17.

49. *Id.* art. 13(2)(b).

protect each child "from information and material injurious to his or her well-being."[50]

The heart of the debate over child-protective laws, in many ways, revolves around the extent to which states have latitude to define "public morals" and "well-being" in this context. As *Toonen*, *Dudgeon*, and *Norris* all demonstrate, supranational bodies have declined to give states free rein to police the sexual morality of relationships between consenting adults.[51] These bodies have not, however, defined the permissible scope of morals legislation targeted at children. In contrast, the Committee on the Rights of the Child has fleshed out the concept of harmful information through its practice over time. It has defined harmful information through examples, like "pornographic materials and materials that portray or reinforce violence, discrimination and sexualized images of children,"[52] and "pornographic material and material that promotes xenophobia or any other form of discrimination and could potentially reinforce prejudices."[53] The Committee's emphasis on discrimination, pornography, and violence reflects the concerns of Article 17(e)'s drafters, who sought to shield children from the promulgation of "apartheid, racist theories and ideologies and the like,"[54] and not to suppress age-appropriate information about sex education, discussions of pregnancy and HIV/AIDS, and LGBT advocacy.[55]

If individual rights are to have meaning, states should not be permitted to define standards such as "morality" and "harmful information" as they see fit.

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50. *Id.* art. 17(e).

51. *See* Norris v. Ireland, App. No. 10581/83, 142 Eur. Ct. H.R. (ser. A) (1988); Dudgeon v. United Kingdom, App. No. 7525/76, 45 Eur. Ct. H.R. (ser. A) (1981); Human Rights Comm., Toonen v. Australia, Comm. No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31, 1994), http://www.ohchr.org/documents/publications/sdecisionsvol5en.pdf [http://perma.cc/FFR7-QKL3].

52. Comm. on the Rights of the Child, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights, ¶ 58, U.N. Doc. CRC/C/GC/16 (Apr. 17, 2013).

53. Comm. on the Rights of the Child, General Comment No. 9 (2006): The Rights of Children with Disabilities, ¶ 38, U.N. Doc. CRC/C/GC/9 (Feb. 27, 2007).

54. Office of the U.N. High Comm'r for Human Rights, *Legislative History of the Convention on the Rights of the Child*, U.N. Doc. HR/PUB/07/1 (Vol. 1), at 483 (2007), http://www.ohchr.org/documents/publications/legislativehistorycrc1en.pdf [http://perma.cc/MN6B-SFEY]. Sexuality is virtually absent from the legislative history. *Id.* at 480-93.

55. There is a paucity of analysis, by both supporters and opponents of homosexual propaganda laws, on what it means for information to be "age-appropriate." At the very least, opponents of these laws have argued, children reaching the age of sexual maturity should be equipped with the knowledge about their bodies and their sexuality necessary to protect themselves and others, particularly in the context of pregnancy, STIs, and HIV/AIDS. *See infra* notes 62-63 and accompanying text.

Rather, supranational bodies should hold states accountable after surveying the degree of consensus among states and reasoning from first principles of necessity, democracy, and proportionality. As I discuss below, international bodies increasingly acknowledge that the right to information about sexuality, including homosexuality, is a critical part of children's right to information. In addition, advocates have widely endorsed the imposition of procedural standards in defining morality and harmful information, such as requiring transparency, participation of children themselves, participation of NGO networks, and a role for supranational bodies.[56] Both developments undermine state assertions that it is their prerogative to label information about sexuality "harmful" for children.

Indeed, children's right to receive and impart information related to sexuality has been endorsed by the authoritative supranational body working on children's rights.[57] In *General Comment 4 on Adolescent Health and Development*, the Committee on the Rights of the Child clarified:

> It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other sub-

56. *See Access Denied: Protect Rights – Unblock Children's Access to Information*, CHILD RTS. INT'L NETWORK 3 (2014), https://www.crin.org/sites/default/files/access_to_information_final_layout.pdf [http://perma.cc/Y4TA-66EX] ("Where restrictions do exist, they should be transparent, adhere to all children's rights and be determined with input from civil society and children themselves."); *International Technical Guidance on Sexuality Education: The Rationale for Sexuality Education*, UNITED NATIONS EDUC., SCI. & CULTURAL ORG. 32 (2009), http://unesdoc.unesco.org/images/0018/001832/183281e.pdf [http://perma.cc/9D3N-UCYJ] (noting that the International Conference on Population and Development Programme of Action calls for state collaboration with NGOs in developing sexual and reproductive health programming).

57. Of course, such a conclusion does not mean that *any* restrictions on information fail a proportionality test. Laws protecting children from pornography, for example, serve a proper purpose, bear a rational connection to that aim, and can be necessary to achieve it. *See* AHARON BARAK, PROPORTIONALITY: CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS 3 (2012). When the balancing test is reached, *see id.*, the marginal interest in protecting children from pornography – which may affect their moral development, distort their views of gender equality, or violate their dignity – far outweighs any rights that minors might claim to viewership. Unlike LGBT advocacy, the pornography example involves a widely recognized detriment to minors, a kind of information that has little to no benefit for children, and no disparaged minority population whose rights are meaningfully infringed by the child-protective law.

stances, safe and respectful social and sexual behaviours, diet and physical activity.[58]

In *General Comment 12*, the Committee reiterated that the right to information is a prerequisite to the exercise of the right to be heard, and that such information is conveyed in large part through the media.[59] When a state bars public discussion of homosexuality in the media, it bars children from exercising both their right to information and their right to be heard.

Laws prohibiting homosexual propaganda violate not only children's rights to impart and receive information, but also potentially the right to education under the CRC.[60] *General Comment 3* extends to the realm of education, requiring that "States parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality."[61] U.N. Special Rapporteur on the Right to Education Vernor Muñoz has opposed homosexual propaganda laws on this ground, emphasizing in particular that children have a right to access sexual and reproductive education.[62] Violations of the rights to information and education are particu-

58. Comm. on the Rights of the Child, General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, ¶ 26, U.N. Doc. CRC/GC/2003/4 (July 1, 2003), http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/427/24/PDF/G0342724.pdf?OpenElement [http://perma.cc/2QBV-WZV4]. The state obligation is reiterated in paragraph 39(b). *See id.* ¶ 39(b).

59. Comm. on the Rights of the Child, General Comment No. 12 (2009): The Right of the Child To Be Heard, ¶¶ 82-83, U.N. Doc. CRC/C/GC/12 (July 1, 2009), http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf [http://perma.cc/ZU88-93ZV].

60. *See* CRC, *supra* note 47, at art. 28.

61. Comm. on the Rights of the Child, General Comment No 3 (2003): HIV/AIDS and the Rights of the Child, ¶ 16, U.N. Doc. CRC/GC/2003/3 (Mar. 17, 2003), http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/408/16/PDF/G0340816.pdf?OpenElement [http://perma.cc/TAA6-PASQ].

62. Special Rapporteur on the Right to Education, *Promotion and Protection of Human Rights: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, transmitted by Note of the Secretary-General*, ¶¶ 79-84, U.N. Doc. A/65/162 (July 23, 2010) (by Vernor Muñoz), http://documents.un.org/welcome.asp?language=E [http://perma.cc/RM34-X3B9] (click "Advanced Search;" in the search field labeled "symbol" insert the document symbol, "A/65/162," and click "Search;" click on the link associated with the symbol number; then select the desired document language and file format); Special Rapporteur on the Right to Education, *Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/8/10/Add.1 (May 13, 2008) (by Vernor Muñoz), http://www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A.HRC.8.10.Add1.doc [http://perma.cc/RA46-6HA4]. Other Special Rapporteurs – human rights experts who monitor and report on specific country-based or thematic mandates – have similarly spoken out against homosexual propaganda bans, including the

larly acute for LGBT children, who are largely absent from legislative debates but bear the brunt of laws that prevent any discussion of LGBT sexuality.

The right to education is of crucial importance in light of HIV/AIDS and sexual health concerns, especially for young gay men and transgender people. As the Committee on the Rights of the Child's *General Comment 3 on HIV/AIDS and the Rights of the Child* notes:

> State obligation to realize the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviours and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms for a particular age group. . . . Effective prevention programmes are only those that acknowledge the realities of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills, and to preventive measures.[63]

If protecting children is understood to require the protection of *all* children, including LGBT children, then frank and open discussion about homosexuality, sexual health, and LGBT rights is recast as an asset rather than a liability.[64]

When children's rights are factored into evaluations of child-protective laws, the rights-restricting effects of these initiatives are even more apparent. Proponents of these laws argue that, although the laws may limit the rights of LGBT persons, they are justified because they safeguard the interests of children. Opponents reject this argument and insist that child-protective laws' dubious impact on the morality of children is grossly outweighed by the dramatic and immediate constraints that these laws place on the rights of LGBT persons. The calculus shifts considerably, however, if we recognize that children's rights to expression, information, and education are imperiled when LGBT issues

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Special Representative of the Secretary-General on the Situation of Human Rights Defenders and the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. *See* INT'L COMM'N OF JURISTS & ILGA-EUR., *supra* note 9, at 20 n.45.

63. Comm. on the Rights of the Child, *supra* note 61, ¶ 11.

64. Efforts to protect children almost inevitably assume that those children are straight and rarely ask what would best protect children who are LGBT. *See* Clifford J. Rosky, *Fear of the Queer Child*, 61 BUFF. L. REV. 607, 609-10 (2013) (documenting the pervasive fear of children becoming gay and noting that the LGBT movement's tepid response "entertains the troubling assumption that queerness is immoral, harmful, or inferior, and thus that the state may legitimately discourage children from being or becoming queer"); Teemu Ruskola, *Minor Disregard: The Legal Construction of the Fantasy that Gay and Lesbian Youth Do Not Exist*, 8 YALE J.L. & FEMINISM 269, 270 (1996) (identifying a widespread assumption that all children are heterosexual and stressing that "[t]he consequence of the fantasy of gay kids' nonexistence is the discursive and material violence that gay kids confront in their lives").

cannot be discussed publicly.[65] Laws prohibiting gay propaganda hamper the rights of not only LGBT persons, but also of children themselves. By recognizing that fact, it becomes evident that such laws do not really protect children at all.

CONCLUSION

The idea of a tension between protecting children and recognizing sexual rights in the public sphere has produced explosive conflicts in domestic and transnational legal systems—and yet, amid conflicting precedents from the late 1970s onward, supranational bodies have not articulated an overarching principle to resolve these competing assertions of rights. The emergence of Russia's law offers a unique opportunity for human rights defenders to articulate the proper relationship between the state's interest in protecting children and the human rights of LGBT persons. When children's rights are added to the balance alongside the state's interest in child protection and the rights of LGBT persons, the analysis changes. The state's avowed interest in protecting children is weakened by the recognition that children's rights are infringed in the process.

As child-protective laws proliferate, both sides will likely make commonsense appeals to the protection of children and the protection of rights, each of which has firm foundations in human rights jurisprudence. To avoid talking past each other, activists and legislators must turn to frameworks that can systematically synthesize and balance these competing views. A holistic analysis that takes the good-faith views of all parties seriously can affirm that the state has a genuine interest, and perhaps good intentions, in its efforts to protect children. At the same time, such an approach gives credence to more recent developments in sexual rights and children's rights law, which make clear that such efforts can be severely rights-restricting for children as well as LGBT per-

65. The Siracusa Principles, a soft law instrument drafted by human rights experts in 1984, illustrate why such a paradigm shift is potentially important. *See* U.N. Econ. & Soc. Council, Status of the International Covenants on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. E/CN.4/1985/4, Annex (Sept. 28, 1984), http://documents.un.org/welcome.asp?language=E [http://perma.cc/RM34-X3B9] (click "Advanced Search;" in the search field labeled "symbol" insert the document symbol, "E/CN.4/1985/4," and click "Search;" click on the link associated with the symbol number; then select the desired document language and file format). The Principles permit states invoking public morality "a certain margin of discretion," *id.* at 5, but also dictate that "any restrictions be consistent with other rights recognized in the Covenant," *id.* at 3. Broadening the inquiry beyond a right and its limitation to the adverse effects the limitation has on other rights illustrates why many restrictions should be considered presumptively invalid.

sons. Taking the wider repercussions of these laws into account underscores the point that child-protective bans on LGBT advocacy are a counterproductive and impermissible means to achieve child-protective ends.

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