

YOUTH MOVEMENT LAW: THE CASE FOR INTERPRETING THE CONSTITUTION WITH MOBILIZED YOUTH

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As the threat of authoritarianism continues to rise, legal scholars have looked to more creative interventions to renew a decaying constitution. However, legal scholarship has not yet included the work of youth-led social movements as an interpretive authority to realize, reform, and reimagine the Constitution. Without including these uniquely marginalized and mobilized communities, scholars risk overlooking new possibilities for constitutional change and legitimizing youth suffering under the rule of law.

As an intervention, this article makes the case for the methodology of youth movement law by elevating the experience and imagination of historically marginalized youth at the center of the vitriolic culture wars. Drawing on the traditions of movement law, critical legal studies, and youth social movements, this article explores the material limitations of focusing only on court interpretations of constitutional law for marginalized and mobilized youth. Further, the article presents the normative claim that scholars working to stop the rise of authoritarianism should consider youth freedom dreams in tandem with litigation and traditional scholarship. As a case study, this article highlights the material limits of existing jurisprudence for Transgender and Gender Expansive Youth and elevates the freedom dreams of Transgender and Gender Expansive Youth mobilized for change. The article concludes with an invitation to scholars to attend to the bold visions of mobilized and marginalized youth, who imagine a Constitution that abolishes state-sanctioned separation and caging, guarantees the material needs of marginalized youth, and includes youth as coauthors of civic life.

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INTRODUCTION

When I was a teacher-organizer, a student named “Z” would often visit me after our weekly Gender and Sexuality Alliance (GSA)¹ meetings. Usually, “Z” wore a rainbow sweatband and a “#WontBeErased” campaign button.² Upon entering my classroom, they³ would often share a new injustice that they had

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- ¹ GSAs are student-led and student-organized school clubs that aim to create a safe, welcoming, and accepting school environment for all youth, regardless of sexual orientation or gender identity for LGBTQ+ youth in K–12 and often serve as vehicles for youth imagining social change in racial, gender, and educational justice. *What is a GSA Club?*, GSA NETWORK, <https://gsanetwork.org/what-is-a-gsa/> [<https://perma.cc/Z3VW-95Y7>]; see generally #GSADay4GJ, INSTAGRAM, <https://www.instagram.com/explore/tags/gsaday4gj/> [<https://perma.cc/YWL7-DUTF>].
 - ² See Julie Moreau, *#WontBeErased: LGBTQ Advocates Mobilize Following Leaked Memo*, NBC NEWS (Oct. 22, 2018, 6:56 PM), <https://www.nbcnews.com/feature/nbc-out/wontbeerased-lgbtq-advocates-mobilize-following-leaked-memo-n923096> [<https://perma.cc/39QY-XBKG>] (discussing the #WontBeErased campaign created by LGBT advocates to resist news that the Trump administration planned to legally define transgender people as “out of existence”).
 - ³ Youth who experience their gender identity as beyond the binary of male or female may use “they” as gender neutral pronouns to acknowledge gender fluidity. Recent studies demonstrate that many young people understand that gender extends beyond the gender binary or strictly biological notions. See *Supporting and Caring for Our Gender Expansive Youth: Lessons from the Human Rights Campaign’s Youth Survey*, HUM. RTS. CAMPAIGN & GENDER SPECTRUM (2012) [hereinafter HRC & GENDER SPECTRUM], <https://assets2.hrc.org/files/assets/resources/Gender-expansive-youth-report-final.pdf> [<https://perma.cc/PZ4D-AF2A>]; see also Jessica A. Clarke, *They, Them, and Theirs*, 132 HARV. L. REV. 894, 895 (2019) (arguing that visibility of nonbinary people “open[s] up new avenues for feminist and LGBT advocacy”).

uncovered as a Young,⁴ Trans/Gender Expansive⁵ person—“Did you know if my grandma doesn’t want me to be transgender,⁶ then I can’t be? . . . Did you

⁴ “Young” throughout this article refers broadly to people between the ages of 12–24 years old—the age band when Youth have increased capacity for advocacy *and* when the Endocrine Society suggests considering medical interventions for Trans/Gender Expansive Youth who ask for them. See DANIEL J. SIEGEL, BRAINSTORM: THE POWER AND PURPOSE OF THE TEENAGE BRAIN 25–27 (2013) (explaining how adolescence spans across the ages of 12–24 years old, during which the frontal cortex develops, and people present a higher proclivity for novelty, risk, social cohesion, and intense emotions). See also F. Lee Francis, *Who Decides: What the Constitution Says About Parental Authority and the Rights of Minor Children to Seek Gender Transition Treatment*, 46 S. ILL. U. L.J. 535, 565 (2022) (citing Priyanka Boghani, *When Transgender Kids Transition, Medical Risks Are Both Known and Unknown*, PBS (June 30, 2015), <https://www.pbs.org/wgbh/frontline/article/when-transgender-kids-transition-medical-risks-are-both-known-and-unknown/>) [<https://perma.cc/ZJZ3-QDKS>] (“The Endocrine Society’s guidelines suggest starting puberty blockers for transgender children when they hit a stage of development known as Tanner stage 2—usually around 10 or 11 years old for a girl and 11 or 12 years old for a boy.”). Note, however, that many youth advocacy and social movement organizations include young people ages 9–11 in their definition of youth. *But see Definition of Youth*, UNITED NATIONS YOUTH, <https://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf> [<https://perma.cc/CUS3-X7JJ>] (noting that “[s]everal UN entities, instruments and regional organizations have somewhat different definitions of youth, which the United Nations secretariat recognizes . . . [including] UNICEF/WHO/UNFPA defining, Young People: 10–24.”); *but cf. 4-H Programs At a Glance*, 4H, <https://4-h.org/programs/> [<https://perma.cc/R43L-3QQV>] (“4-H is America’s largest youth development organization—empowering nearly six million young people with the skills to lead for a lifetime. 4-H programs are available for children ages 8–18.”). See generally Alexander A. Boni-Saenz, *The Age of Racism*, 100 WASH. U. L. REV. 1583 (2023) (introducing the concept of aged racism to capture the distinct ways that systemic racism shifts with its intersection with age).

⁵ “Gender expansive” refers broadly to youth who identify and express their gender through a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system, including Transgender and Nonbinary youth. This term is used by many youth-centered organizations advocating for youth who express their gender beyond the gender binary. To acknowledge the unique attacks on Transgender Youth as well as the impact on Gender Expansive youth more broadly, this article uses the term “Trans/Gender Expansive.” Angie Martell, *Legal Issues Facing Transgender and Gender-Expansive Youth*, MICH. BAR J. 30, (Dec. 2017) (citing PFLAG glossary); see, e.g., *Our Mission*, GIRLS FOR GENDER EQUITY, www.ggenyc.org (working to “center the leadership of Black girls and gender-expansive young people of color”); see Rhodes Perry & Eli R. Green, *Safe & Respected: Policy, Best Practices & Guidance for Serving Transgender, Gender Expansive, and Non-Binary Children and Youth Involved in the Child Welfare, Detention, and Juvenile Justice Systems*, N.Y.C. ADMIN. CHILD. SERV., 2017, at 5 (explaining how the “authors of [the] guide use the terms transgender, gender expansive, and non-binary to serve as umbrella

know my teacher can kick me out of class for not wearing a girl’s uniform? . . . Did you know the school can make me use a separate bathroom from the rest of the students?” Each time “Z” visited me, they expressed how they did not feel that the law protected Trans/Gender Expansive Youth of Color⁷ living in poverty. As a teacher in segregated schools, I knew that many Youth of Color rarely realized their rights.⁸ But “Z” felt especially vulnerable. During their sophomore year, “Z”’s family institutionalized them against their will. Soon

terms describing gender identities (i.e., a person’s innate sense of being male, female, or a different gender) and gender expressions (i.e., the way a person communicates their gender through hairstyles, dress, speech patterns, and mannerisms) other than those of cisgender and gender-conforming identities.”); *see also* *Creating Inclusive Classrooms for Trans, Nonbinary, and Gender Expansive Students*, U.C. BERKELEY: CTRS. FOR EDUC. JUST. & CMTY. ENGAGEMENT, <https://cejce.berkeley.edu/geneq/resources/publications-media-faqs/resources-classrooms-and-groups> [<https://perma.cc/4BDZ-7JLV>] (last visited Apr. 14, 2024) (discussing how “creating an inclusive space for transgender, nonbinary and gender expansive students requires instructors to intentionally use gender inclusive practices in their classrooms”). The term also accounts for the fact that, developmentally, youth are exploring and developing their own individual identities. Over time, their gender identities and expressions will evolve and develop, influenced by societal gender roles, life circumstances, and their own internal sense of self. Although not all transgender and nonbinary youth identify as gender expansive, the term Trans/Gender Expansive is used throughout to include all mobilized youth who experience or express gender that challenges cisgender heteropatriarchal norms.

- ⁶ When a minor’s gender identity differs from the one assigned at birth or by one’s guardians, the child may identify as transgender. *See* Tracy A. Becerra-Culqui et al., *Mental Health of Transgender and Gender Nonconforming Youth Compared with Their Peers*, 141 *PEDIATRICS* 2 (May 2018) (“As gender identity develops, it may not match the gender of rearing . . .”).
- ⁷ *See* Subini Ancy Annamma & Jamelia Morgan, *Youth Incarceration & Abolition*, 45 *N.Y.U. REV. L. & SOC. CHANGE* 471, 474 (2022) (explaining that the authors capitalize “Youth of Color” or similar variations of the terms in line with Loretta Ross, who argues it is a solidarity term to demonstrate “a commitment to work in collaboration with other oppressed women of color who have been minoritized.”). This article also capitalizes the term “Transgender and Gender Expansive Youth” to demonstrate a recognition of how the law minoritizes and oppresses Transgender and Gender Expansive Youth.
- ⁸ *See* JUSTIN DRIVER, *THE SCHOOLHOUSE GATE: PUBLIC EDUCATION, THE SUPREME COURT, AND THE BATTLE FOR THE AMERICAN MIND* 22 (2018) (explaining how constitutional interpretations have upheld and normalized corporal punishment, drug testing without grounds, searches without probable cause, and the suppression of free speech in public schools); *cf.* Zoe Masters, *After Denial: Imagining with Education Justice Movements*, 25 *U. PA. J. L. & SOC. CHANGE* 219, 249–52 (2022) (discussing youth movements that have addressed these concerns).

after, “Z” refused to return to school. “Z”’s resistance, courage, and imagination animate this article.⁹

Every day, multiply marginalized¹⁰ youth like “Z” endure new threats of a decaying constitution and a republic that fails to respond to its people.¹¹ While multiply marginalized young people have always endured administrative violence,¹² the recent trend among elected officials to use them as political

⁹ See Amna A. Akbar et al., *Movement Law*, 73 STAN. L. REV. 821, 877 (2021) (“Movement law often centers narrative in part because storytelling is central to what social movements do. Just as critical scholars deployed and defended storytelling, so too do we seek to elevate movement-based narratives”); *id.* at 824 (defining “a social movement as a collective effort to change the social structure that uses extra-institutional methods at least some of the time”) (citations omitted).

¹⁰ This article uses the term “multiply marginalized” to refer to those communities “at the intersections of myriad oppressions.” See Mildred Boveda & Subini Ancy Annamma, *Beyond Making a Statement: An Intersectional Framing of the Power and Possibilities of Positioning*, 52 EDUC. RESEARCHER 306 (2023); see also Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2322 (1989) (arguing that “outsider jurisprudence—jurisprudence derived from considering stories from the bottom—will help resolve the seemingly irresolvable conflicts of value and doctrine that characterize liberal thought”).

¹¹ JACK M. BALKIN, *THE CYCLES OF CONSTITUTIONAL TIME* 44 (2020) [hereinafter BALKIN, *CYCLES*] (arguing that the United States is experiencing constitutional rot and defining constitutional decay or rot as “[w]hen a republic . . . loses its connection to the joint pursuit of the public good”); see also Jack M. Balkin, *A Symposium On Jack M. Balkin’s The Cycles Of Constitutional Time: How To Do Constitutional Theory While Your House Burns Down*, 101 B.U. L. REV. 1723, 1756 (2021) [hereinafter Balkin, *Symposium*] (“Constitutional rot refers to the processes by which governments become increasingly less democratic and less republican. Rot is endemic to republics. A long tradition of political thought holds that republics are delicate institutions that are easily corrupted and hard to keep going. The people lose civic virtue, the institutions break down, and the norms of trust that are necessary for multiparty competition decay.”); *id.* at 1759 (“Issues of race, culture, religion, and identity have only made the problems worse. Over the course of four decades, the Republican Party increasingly has become a White person’s party, and politicians have used issues of race, culture, religion, and identity to motivate the Party’s base of White voters.”).

¹² DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW* 2 (2015) (“Social movements engaged in resistance have given us a very different portrayal of the United States than what is taught in most elementary school classrooms and textbooks They have shown that the United States has always had laws that arrange people through categories of indigeneity, race, gender, ability, and national origin to produce populations with different levels of vulnerability to economic exploitation, violence, and poverty.”); see generally Kimberlé W. Crenshaw, *The First Decade: Critical Reflections, or “A Foot in a Closing Door,”* 49 UCLA L. REV. 1343 (2002) (explaining the history of the critical race theory movement and its central critique of rights as the vindication of the Constitution for People of Color, especially at the intersection of race and gender).

targets¹³ presents a unique danger.¹⁴ Without the right to consent to their own medical treatment, vote, run for office, make campaign contributions, or serve on juries, multiply marginalized Trans/Gender Expansive Youth lack the “safeguards” necessary to protect their lives—a safeguard “that others enjoy or may seek without constraint.”¹⁵

Despite successful litigation to expand the constitutional rights of transgender litigants in lower courts,¹⁶ state lawmakers continue to wage war on multiply marginalized Trans/Gender Expansive Youth through hostile legislation, school board regulations, and mass media.¹⁷ Within the first two weeks of 2023, legislatures around the country proposed more anti-trans bills than the entire year before and more than 2018–2020 combined.¹⁸ In

¹³ Katie Eyer, *Transgender Constitutional Law*, 171 U. PA. L. REV. 1405, 1505 (2023) (discussing how transgender youth live as the “favorite objects of attack” across state legislatures).

¹⁴ BALKIN, CYCLES, *supra* note 11, at 53–54 (explaining how demagogues wield constitutional rot to gain political power and stay in power).

¹⁵ *Romer v. Evans*, 517 U.S. 620, 631 (1996) (“Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint.”); *see infra* Part I (outlining the failures of existing federal and local laws to protect transgender youth even in progressive jurisdictions like New York City).

¹⁶ Eyer, *supra* note 13, at 1498 (demonstrating how “meaningful constitutional protections for the transgender community have arrived, at least in the lower federal courts.”)

¹⁷ Sneha Day & Karen Brooks Harper, *Transgender Texas Kids Are Terrified After Governor Orders That Parents Be Investigated for Child Abuse*, TEX. TRIB. (Feb. 28, 2022, 11:00 AM), <https://www.texastribune.org/2022/02/28/texas-transgender-child-abuse/> [<https://perma.cc/LQ8G-3KA9>] (discussing reactions from families with trans-identifying children to Governor Greg Abbot’s order); *see* Kelly Field, *Under New Laws, Some Teachers Worry Supporting LGBTQ Students Will Get Them Sued or Fired*, USA TODAY (May 23, 2022), <https://www.usatoday.com/story/news/nation/2022/05/23/lgbtq-civil-rights-laws-worry-some-teachers-who-fear-punishment/9859737002/?gnt-cfr=1>; *see also* Elliot Imse & Nicole Demchishin, *Few & Under Fire: LGBTQ School Board Members in the U.S.*, LGBTQ VICTORY INST. (July 2022), <https://victoryinstitute.org/wp-content/uploads/2022/07/2022SB-Report-070522.pdf> [<https://perma.cc/NAT9-2GVD>] (finding LGBTQ people are severely underrepresented on school boards in the U.S. at “just 0.1% of all school board members[,]” and of that 0.1%, “47% had been the target of anti-LGBTQ verbal attacks as a school board candidate, 51% had been the target of anti-LGBTQ verbal attacks as a school board member.”).

¹⁸ Alejandra Caraballo (@Esqueer_), TWITTER (Jan. 19, 2023, 5:24 PM), https://twitter.com/Esqueer_/status/1616199846448476160/photo/1 [<https://perma.cc/TMQ3-QKSR>] [hereinafter Caraballo Tweet 1] (“We’re barely halfway through January and more anti-trans laws have been proposed than in all of 2022. We’re tracking at least 158 introduced bills so far. This is more than 2018–2020 combined. This is what a

response, Trans/Gender Expansive Youth and their families have fled hostile states¹⁹ to escape skyrocketing rates of harassment,²⁰ hate crimes,²¹ criminalization,²² suicide,²³ and other efforts “to eradicate trans people from public life.”²⁴

To fight these interlocking crises, some formally trained legal scholars and professionals have tried to “shoehorn” these attacks “into neat claims about

movement to eradicate trans people from public life looks like.”); see Alejandra Caraballo (@Esqueer_), TWITTER (Jan. 19, 2023, 1:22 PM) [hereinafter Caraballo Tweet 2], https://twitter.com/Esqueer_/status/1616139023130710017 [<https://perma.cc/2T38-RPK6>] (“These people pushing anti-LGBTQ laws don’t actually care about LGBTQ youth. The debates around these bills are severely harming the mental health of LGBTQ youth with 86% stating it negatively affected them in a new Trevor Project poll.”). See also Caraballo Tweet 2 citing Trevor News, *New Poll Emphasizes Negative Impacts of Anti-LGBTQ Policies on LGBTQ Youth*, TREVOR PROJECT (Jan. 19, 2023) [hereinafter News], <https://www.thetrevorproject.org/blog/new-poll-emphasizes-negative-impacts-of-anti-lgbtq-policies-on-lgbtq-youth/> [<https://perma.cc/5VS8-VAFH>] (“86% of transgender and nonbinary youth say recent debates around anti-trans bills have negatively impacted their mental health; as a result of these policies and debates in the last year, 45% of trans youth experienced cyberbullying, and nearly 1 in 3 reported not feeling safe to go to the doctor or hospital when they were sick or injured.”).

¹⁹ Jordan Vonderhaar, *Photos: “We Don’t Feel Safe Here.” A Transgender Teen and Their Family Flee Texas*, TEX. TRIB. (Dec. 2, 2022, 5:00 AM), <https://www.texastribune.org/2022/12/02/trans-kids-leave-texas/> [<https://perma.cc/BH2C-42ED>].

²⁰ See News, *supra* note 18 (“Among all LGBTQ youth, 1 in 3 reported cyberbullying or online harassment, 1 in 4 reported that they stopped speaking to a family member or relative, and 1 in 5 reported bullying.”).

²¹ *Fatal Violence Against the Transgender and Gender-Expansive Community in 2022*, HUM. RTS. CAMPAIGN FOUND. (2022), <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-expansive-community-in-2022> [<https://perma.cc/A4CH-X3GK>] (“In 2021, the Human Rights Campaign tracked a record number of violent fatal incidents against transgender and gender-expansive people—with 59 fatalities tracked.”); see generally SEL J. HWANG & MICHELLE KAUFMAN, *GLOBAL LGBTQ HEALTH: RESEARCH, POLICY, PRACTICE, AND PATHWAYS* (discussing the significant stigma that LGBTQ+ people experience globally and highlighting the murder of Vicky Gutierrez, a young immigrant transwoman killed in 2018 in the United States) (2024).

²² Benjamin C. Park et al., *Increasing Criminalization of Gender-Affirming Care for Transgender Youths—A Politically Motivated Crisis*, 175 [J]AMA PEDIATRICS 1205 (2021) (discussing anti-trans health care bills in the United States).

²³ See Sam Levin, *More Than 50% of Trans and Non-Binary Youth in US Considered Suicide This Year, Survey Says*, GUARDIAN (Dec. 17, 2022, 1:00 AM), <https://www.theguardian.com/us-news/2022/dec/16/us-trans-non-binary-youth-suicide-mental-health> [<https://perma.cc/87JW-MV3N>] (discussing the prevalence of suicide rates among transgender and non-binary youth).

²⁴ Caraballo Tweet 1, *supra* note 18.

equal protection or due process,”²⁵ or frame federal courts as a site of revolution.²⁶ On the contrary, others have critiqued federal courts as “part of the problem,”²⁷ suggesting that the decaying Constitution requires far more than court-centric strategies.²⁸ However, legal scholars have not yet included mobilized and marginalized youth as key interpreters of the Constitution, its limits, and its possibilities.

This article intervenes by making the case for *youth movement law*—an emerging branch of movement law that maps the limits of current jurisprudence for marginalized youth and advances youth movement demands to expand the landscape of law.²⁹ In doing so, this article demonstrates how mobilized youth play an essential role in transforming the present “political crisis” into an opportunity to reimagine American democracy.³⁰ Without the

²⁵ Amanda Alexander, *Nurturing Freedom Dreams: An Approach to Movement Lawyering in the Black Lives Matter Era*, 5 HOW. HUM. & CIV. RTS. L. REV. 101, 102 (2021).

²⁶ Eyer, *supra* note 13, at 1498 (arguing that “meaningful constitutional protections for the transgender community have arrived, at least in the lower federal courts[]” from a constitutional “revolution”).

²⁷ BALKIN, CYCLES, *supra* note 11, at 71, 135–42 (explaining that federal courts are “part of the problem” in periods of “constitutional rot” because “they will either do little to help or actively make things worse...[as] the courts are a special prize in these periods and politicians are likely to engage in ever more outrageous hardball tactics to entrench their power in the judiciary”).

²⁸ *Id.* (explaining how relying on litigation in federal courts alone can become “part of the problem” rather than part of the solution of constitutional decay).

²⁹ The tradition of democratic constitutionalism supports the idea that the legitimacy of the Constitution also depends on the interpretation of mobilized and marginalized communities. See Robert C. Post & Reva B. Siegel, *Democratic Constitutionalism*, in THE CONSTITUTION IN 2020, at 26–27 (Jack M. Balkin & Reva B. Siegel, eds., 2009) [hereinafter Post & Siegel, *Democratic Constitutionalism*] (using the term “democratic constitutionalism” to articulate the “paradox that constitutional authority depends on both its democratic responsiveness and its legitimacy as law”); see also Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA*, 94 CALIF. L. REV. 1323 (2006) (“Social movement conflict, enabled and constrained by constitutional culture, can create new forms of constitutional understanding”); see generally BRUCE ACKERMAN, WE THE PEOPLE: THE CIVIL RIGHTS REVOLUTION 542 (2014) (outlining how the means of constitutional change in different movements have different institutional arrangements, different leaders, and different roles of law, but what revolutions share is a constitutional moment).

³⁰ See Aziz Rana, *How We Study the Constitution: Rethinking the Insular Cases and Modern American Empire*, 130 YALE L.J. F. 312, 333 (2020) (calling on scholars to bring “far greater creativity” to respond to this moment of interlocking crises in our democratic institutions); see also Balkin, *Symposium, supra* note 11, at 1731 (discussing how this moment is one that could either result in more serious decay of the constitution or the potential for renewal as a second Progressive Era of reform or a Third Reconstruction).

youth “outsider” critique of constitutional failures and the vision of youth freedom dreams,³¹ this moment of political crisis may only worsen.³²

In the spirit of freedom dreaming, multiply marginalized Trans/Gender Expansive Youth have envisioned new ways to “constitute ourselves” under law.³³ In doing so, youth have mobilized for the abolition of family policing, prefigured affirmative rights to basic needs, and developed youth leadership to co-lead institutions. However, scholars have not yet looked seriously at youth freedom dreams as an interpretative authority for a constitutional

³¹ See ROBIN D. G. KELLEY, *FREEDOM DREAMS* xii (1st elec. ed. 2002) (“Without new visions we don’t know what to build, only what to knock down. We not only end up confused, rudderless, and cynical, but we forget that making a revolution is not a series of clever maneuvers and tactics, but a process that can and must transform us.”) (emphasis added); see also Transcript of “Freedom Dreams”: *Historian Robin D. G. Kelley on 20th Anniversary of His Book & Why Movements Matter*, DEMOCRACY NOW! (Aug. 31, 2022) [hereinafter DEMOCRACY NOW!], https://www.democracynow.org/2022/8/31/robin_dg_kelley_freedom_dreams_the (“[T]he latest wave of intellectual McCarthyism . . . [i]s driven by white heteropatriarchal nationalism . . . it convinces a large segment of the country that the real threat to their lives are nonwhite people, queer people, and our history . . . [N]ot privatized healthcare, not climate catastrophe, not crimes of the state, not global recession, not food and housing insecurity, not the threat of war . . .”).

³² The tradition of Critical Legal Studies has established the critical role that “outsider” jurisprudence plays in creating an accurate assessment of law and its material implications. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 391 (1987) (Arguing that “[t]he price of a continuing failure to recognize the experience of those at the bottom is the social dislocation and even violence that follows when outsiders conclude they can gain nothing by participating in existing governmental processes.”); see also Devon W. Carbado, *Race to the Bottom*, 49 UCLA L. Rev. 1283, 1284 (2002) (arguing that while looking to marginalized voices on “the bottom” is more difficult than scholars may like to believe, it is possible).

³³ GARY JEFFREY JACOBSON & YANIV ROZNAI, *CONSTITUTIONAL REVOLUTION* 45 (2020) (citation omitted); see also Hanna Fenichel Pitkin, *The Idea of a Constitution*, 37 J. LEGAL EDUC. 167 (June 1987) (“[T]o understand what a constitution is, one must look . . . precisely at the ambiguities, the specific oppositions that this specific concept helps us to hold in tension.”).

revolution,³⁴ nor have they considered the consequences of ignoring them.³⁵ In fact, legal scholarship has almost entirely overlooked how young “freedom dreamers are basically building that society [by] creating new human beings [and] new ways of being together that don’t fall into the same old trap[s]” of youth injustice under law.³⁶ To avoid these traps, youth movement law focuses less on how youth movements have explicitly interpreted different constitutional provisions or whether their interpretations have yet meaningfully impacted law and society. Instead, youth movement law focuses more on the youth critique of the failures of court-centric interventions and the resistance of youth-led movements to understand what kinds of constitutional interpretation might win the “confidence of citizens.”³⁷ Specifically, youth movement law explores how “courts [have] interpret[ed] the Constitution in terms that diverge from the deeply held convictions” of young people and identifies ways that they can “communicate their objections

³⁴ Alexander, *supra* note 25 at 117–118 (While Alexander reflects on how mobilized youth provide “enormously instructive” examples to better “frame problems, decide on demands, and go about achieving them” regarding mass incarceration in Detroit, she does not discuss the implications for constitutional law); see BALKIN, CYCLES, *supra* note 11, at 7 (While Balkin argues that “the path out of constitutional rot will be political mobilization and reform movements” he does not discuss the unique potential of youth movements); see also Masters, *supra* note 8 at 226, 232 (While Masters argues that “denialist constitutional law” keeps schools segregated and censors curriculum and suggests that scholars look to the resistance of youth movements, she does not investigate the constitutional implications of youth demsprudence). *Cf.* Eyer, *supra* note 13, at 1405, 1414 (describing “a constitutional law revolution in transgender rights” without including “the LGBTQ movement’s current legal arguments or strategies, or the ways that judicial decisions have engaged with those arguments and strategies”).

³⁵ See Amanpour & Co., *Trans People Are the Canary in the Coal Mine This Midterm Cycle, Says Expert*, YOUTUBE (Oct. 13, 2022), https://youtu.be/WW_1Y6P6gSU [<https://perma.cc/9R4K-4FZW>] (explaining that “trans people are the canary in the coal mine”) (referencing LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* (2002)); *cf.* Olivia Juliana (@0liviajuliana), TIKTOK (May 12, 2022) https://www.tiktok.com/@0liviajuliana/video/7096975108232744235?is_copy_url=1&is_from_webapp=v1&lang=en [<https://perma.cc/X68J-AQ2E>] (showing a Latina queer activist warning straight, male adult viewers about how the bans on bodily autonomy for people with uterus and the LGBTQ+ community foreshadow a future of an attack on everyone’s rights to bodily autonomy by stating: “Have you ever had your bodily autonomy stripped from you? Oh you haven’t? Alright wait.”).

³⁶ DEMOCRACY NOW!, *supra* note 31 (interviewing Robin D. G. Kelley).

³⁷ Robert Post & Reva Siegel, *Roe Rage: Democratic Constitutionalism and Backlash*, 42 HARV. C.R.-C.L. L. REV. 373, 374 (2007) [hereinafter, Post & Siegel, *Roe Rage*].

and resist judicial judgments.”³⁸ Youth movement law assumes that by not heeding the demosprudence of multiply marginalized youth today, we risk descending deeper into distrust and dysfunction in our democratic institutions and missing an opportunity for radical change.³⁹

This article contributes to movement law,⁴⁰ democratic constitutionalism,⁴¹ children and the law,⁴² and transgender constitutional law⁴³ by making the case for why legal scholars should interpret the Constitution alongside marginalized and mobilized Trans/Gender Expansive Youth.⁴⁴ Through this collaborative process, legal scholars could reimagine a constitutional revolution—one that stops the present constitutional rot⁴⁵ and extends the promise of and

³⁸ *Id.*

³⁹ See Rana, *supra* note 30, at 333 (“[T]he present moment—marked by institutional dysfunction and popular discontent—speaks to the need for scholars to approach their work with far greater creativity than simply adding new cases at the margins.”); see also Akbar et al., *supra* note 9, at 878 (“[T]hose who believe we live in a robust democracy, who trust our current institutions of governance to represent all people fairly, are unlikely to be sympathetic to grassroots social movements demanding alternative visions.”).

⁴⁰ For an approach to legal scholarship that builds knowledge in solidarity with grassroots organizing and left social movements, see generally Akbar et al., *supra* note 9; and Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L. REV. 2740 (2014).

⁴¹ Akbar et al., *supra* note 9, at n.37 (citing Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA*, 94 CALIF. L. REV. 1323, 1418 (2006)) (“One premise of democratic constitutionalism is that social movement contestation over legal meaning is not simply integral to stories of constitutional change, but also essential to the legitimacy of the Constitution itself.”). See generally Post & Siegel, *Democratic Constitutionalism*, *supra* note 29, and BALKIN, CYCLES, *supra* note 11.

⁴² See generally Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448 (2018) [hereinafter Dailey & Rosenbury, *The New Law of the Child*]; Martin Guggenheim, *The (Not so) New Law of the Child*, 127 YALE L.J. F. 942 (2018); Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L.J. 75 (2021) [hereinafter Dailey & Rosenbury, *The New Parental Rights*].

⁴³ See generally Eyer, *supra* note 13, at 1408 (providing a descriptive account of transgender constitutional rights litigation from 2017-2021 in equal protection and due process).

⁴⁴ This article draws on the definition of “social movement” as defined by Akbar, Ashar, and Simonson in *Movement Law*—“a collective effort to change the social structure that uses extra-institutional methods at least some of the time.” Akbar et al., *supra* note 9, at 824 n.1 (citing Debra C. Minkoff, *The Sequencing of Social Movements*, 62 AM. SOCIO. REV. 779, 780 n.3 (1997)).

⁴⁵ BALKIN, CYCLES, *supra* note 11, at 11 (“Our current case of constitution rot is not and need not be a fatal condition. But the future of our democracy is not guaranteed, and we still have a long way to go to restore it.”).

participation in democracy to those who are most marginalized.⁴⁶ *Youth movement law* also contributes to scholarship on rightism⁴⁷ and critical youth studies⁴⁸ by demonstrating how creative forms of youth resistance and community building offer unique interpretations of the law⁴⁹ and create opportunities for scholars and practitioners to reimagine the possibilities for justice and conflict resolution under the law.⁵⁰

Drawing on the traditions of movement law, critical legal studies, and youth social movements, this article explores the material limitations of focusing only

- ⁴⁶ Subini Ancy Annamma et al., *Disability Critical Race Theory: Exploring the Intersectional Lineage, Emergence, and Potential Futures of DisCrit in Education*, 42 REV. RSCH. EDUC. 46 (2018) (discussing the ways in which the compounded inequalities of race, inability, and gender cause severe harm in schools, carceral facilities, and communities for low-income young people of color); see, e.g., Dean Spade, *Continuing Legal Education Talk at Penn State Law School: What's Wrong with Trans Rights?*, PENN ST. L. SCH. (2011), https://pennstatelaw.psu.edu/_file/Justice_for_All/CLE_Professor_Dean_Spade.pdf [<https://perma.cc/8473-4HN2>] (distinguishing the “least marginalized of the marginalized” people experiencing “intersecting vectors of harm”); see Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) (illuminating how people who hold intersecting marginalized identities of race and gender experience unique and overlooked structural harms); see also JACOBSON & ROZNAI, *supra* note 33, at 48 (2020) (citing James Madison, who sanctioned “‘informal and unauthorized’ actions to secure the harmony between form and substance, as our aspirations for a just constitutional settlement requires”); see generally Post & Siegel, *Roe Rage*, *supra* note 37.
- ⁴⁷ JAMAL GREENE, HOW RIGHTS WENT WRONG: WHY OUR OBSESSION WITH RIGHTS IS TEARING AMERICA APART 13, 251 (2021) (arguing that “the [Framers] . . . were not primarily concerned with ‘rights’ as we understand them today[.]” so if we can only look to constitutional law to help after a radical shift in our legal system so that constitutional rights “stops being about judges peering at law books and dictionaries and starts being about the rest of us.”).
- ⁴⁸ See generally AWAD IBRAHIM & SHIRLEY STEINBERG, CRITICAL YOUTH STUDIES READER (2012) (expanding on the existing interdisciplinary work on youth studies by calling for more robust engagement with young adults in formal and informal pedagogical settings to establish a more meaningful twenty-first century critical youth studies).
- ⁴⁹ See Guinier & Torres, *supra* note 40, at 2760 (“Demosprudence examines this interdependence between lawmaking and social movements by rethinking the way mobilized constituencies, often at the local level, challenge basic constitutive understandings of justice in our democracy. Rather than deferring to appointed judges as the preeminent authority for understanding or applying the Constitution, these local movements often introduce new sources of interpretative authority that ultimately change the cultural norms of the larger society.”).
- ⁵⁰ See *id.* at 2800 (“When a ‘dynamic’ constituency names its own reality by, for example, singing spirituals in the church choir, composing its own anthems in the call and response of the amen corner, or summoning in plain English, before a television audience, the brutal hardship of trying to register to vote in Mississippi, movement activists supply additional sources of authority for the lawyer and a new source of accountability for both the lawyer and ‘the law.’”). Legal scholars have not yet explored how to write with an ethos of solidarity and accountability for *youth-led* social movements.

on court interpretations of constitutional law for young marginalized and mobilized people. Further, the article presents the normative claim that constitutional law scholars working to stop the rise of authoritarianism and promote radical change should employ a framework for constitutionalism⁵¹ that includes youth freedom dreams in addition to litigation and traditional scholarship.⁵² *Youth movement law* provides one methodology within a larger, emergent project of *Critical Youth Theory*⁵³—an effort to integrate youth epistemology of law into Movement Law,⁵⁴ Critical Race Theory,⁵⁵ and

⁵¹ See Dorothy Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 109 (2019) (“The Constitution is not the standard of justice we should faithfully uphold; equal citizenship is.”); see also JACOBSON & ROZNAI, *supra* note 33, at 56 (noting the account of “revolutionary displacement of one regime by another . . . followed by a codification of the fruits of victory, which is to say the principles and commitments that came to define the transformational moment . . . needs refinement” so to include people impacted by “sanctioned human inequality” presenting a better prospect for realizing its aspirations). Note that Jacobson and Roberts digress that the “true completion of the American Revolution” was after the Civil War Amendments, as Roberts proposes that the revolution continues. This article uses Jacobson’s insights to critique the existing framework of the constitutional revolution for transgender people, but it aligns with Robert’s assertion that the revolution is continuing, and that human inequality is still deeply sanctioned in our present constitution.

⁵² Akbar et al., *supra* note 9, at 841 (citing Gerald P. López, *Transform—Don’t Just Tinker With—Legal Education (pt. 1)*, 24 CLINICAL L. REV. 247, 285 (2018)) (“The problem solving at the heart of all lawyering inevitably responds to and deploys power.”); see also Highline College, *Fight to Win! Critical Trans Resistance in Scary Times*, YOUTUBE (Oct. 18, 2017), <https://www.youtube.com/watch?v=J14Rp9s0v5s> [<https://perma.cc/TG39-3VFE>] (“The myth we tell in this country is that if you want to change people’s lives, you have to change the law.”).

⁵³ Sarah Medina Camiscoli & Kia Turner, *Critical Youth Theory: Toward the Abolition of Infantilization and Adulthood Under Law*, CRITICAL YOUTH THEORY (Mar. 2024), <https://www.criticalyouththeory.org/> [<https://perma.cc/VY6G-BVBZ>] (unpublished paper) (on file with author).

⁵⁴ See Akbar et al., *supra* note 9, at 826, 843 (“[M]ovement law builds on the work of jurisprudential schools of thought such as critical legal studies (CLS), critical race theory (CRT), Latina/o critical theory (LatCrit), feminist legal theory, critical lawyering, and democratic constitutionalism [M]ovement law [as a legal discipline] gives scholars permission to ground their work in movement organizing and ideation as an initial matter, rather than beginning within our siloed legal understandings.”).

⁵⁵ See Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1256–59 (2011) (discussing the watershed contribution of intersectionality to critical legal studies); see generally AWAD IBRAHIM & SHIRLEY STEINBERG, CRITICAL YOUTH STUDIES READER (2012) (expanding on the existing interdisciplinary work on youth studies by calling for more robust engagement with young adults in formal and informal pedagogical settings to establish a more meaningful twenty-first century critical youth studies.).

Participatory Law Scholarship⁵⁶—by thinking and writing in solidarity *with* youth mobilizing for progressive change.

The article proceeds as follows: Part I outlines the method of *youth* movement law, discussing how it contributes to movement law with three additional moves: 1) expanding the landscape of constitutional law to include *youth* resistance, 2) elevating the unique values driving *youth* interpretation of law, and 3) building skills to forge intergenerational collaborations.

Part II focuses on the limits of legal scholarship that fold justice and revolutionary change for Trans/Gender Expansive Youth into “neat claims”⁵⁷ that marginalized and mobilized youth have not expressly endorsed. Part II outlines the case for how an epistemology of constitutional law that excludes youth resistance may exacerbate harm and further disempower already marginalized youth.⁵⁸ In doing so, Part II makes the normative case for why legal scholars of movement law, like practitioners of movement lawyering, should write and teach “under one roof”⁵⁹ to play “defense, offense, and drea[m]”⁶⁰ with youth movement leaders, integrating more traditional scholarship with more radical, intergenerational collaborative projects.

⁵⁶ See generally Rachel López, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795 (2023); Michelle Fine & María Elena Torre, *Critical Participatory Action Research: A Feminist Project for Validity and Solidarity*, 43 PSYCH. WOMEN Q. 433 (2019); and Madeline Fox et al., *Critical Youth Engagement: Participatory Action Research and Organizing*, in HANDBOOK OF RESEARCH ON CIVIC ENGAGEMENT IN YOUTH, 621–49 (Lonnie R. Sherrod et al. eds., 2010).

⁵⁷ Alexander, *supra* note 25, at 102 (critiquing the impulse to fold complex issues of marginalization into “neat claims” of Equal Protection).

⁵⁸ Eyer, *supra* note 13, at 1405 (claiming that the “litigation revolution” in the lower federal courts has fundamentally reshaped the “constitutional landscape with respect to the equality and liberty rights of transgender litigants, recognizing the transgender community as constitutionally protected subjects entitled to meaningful rights.”); cf. William N. Eskridge Jr. & John A. Ferejohn, *Super-Statutes*, 50 DUKE L.J. 1215, 1215–1276 (2001) (explaining how legislatures are constitutional actors too and must be considered as such to assess the field of constitutional law); Robert Post, *Theorizing Disagreement: Reconceiving the Relationship Between Law and Politics*, 94 CALIF. L. REV. 1319, 1344–45 (2010) (“At any given moment, constitutional values can be in play in legal institutions, in political institutions, or in both simultaneously.”).

⁵⁹ Remarks by Amanda Alexander to attendees of Smart on Crime Conference at John Jay College, *Centering our Freedom Dreams*, DET. JUST. CTR. (Sept. 24, 2019), <https://detroitjustice.org/centeringourfreedomdreams/> [https://perma.cc/9KXH-7KSQ] [hereinafter Alexander Conference] (“At the Detroit Justice Center we use a three-pronged strategy we call ‘Defense, Offense, and Dreaming.’ Because we need all three under one roof.”).

⁶⁰ *Id.*

Part III elevates youth freedom dreams as opportunities to build collaborative scholarly projects that elevate the resistance, campaigns, and prefigurative strategies of U.S. Trans/Gender Expansive Youth movements. While some of the young movement leaders cited make direct critiques of or demands regarding constitutional law, others do not. Regardless of their stated relationship to constitutional law, this article argues that the resistance, strategies, and epistemology of youth social movements provide critical opportunities to pursue a revolutionary vision for a Constitution that better responds to its people and enhances democracy—one that abolishes involuntary family separation and incarceration,⁶¹ builds youth autonomy to meet their material needs,⁶² and includes civically engaged youth to co-author laws and mediate conflicts in public life.⁶³ The article concludes with an invitation to build solidarity with mobilized and marginalized Trans/Gender Expansive Youth to interpret the laws that impact their lives, as well as an inventory of social movement organizations and intergenerational projects around the United States whose resistance inspired this article.

61 See *infra* Part III.C (elevating the work of Movement4BlackLives, Movement Family Power, Project Nia Youth, and Peer Defense Project as interpretative authorities for considering how the Constitution might be used instrumentally towards this end); see generally DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022).

62 Guggenheim, *supra* note 42, at 952 (criticizing the United States legal system for remaining the only country in the world that “refuses to recognize a child’s right to the basic necessities of life—food, clothing, shelter and health care”); see generally DEAN SPADE, *MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS AND THE NEXT* 285 (2020) (discussing the practice of mutual aid as a way for people across identities and marginalized communities to meet their basic needs that the state fails to meet).

63 GREENE, *supra* note 47, at 8 (arguing that the Americans “outsourc[e] rights recognition and enforcement to judges, who are not well suited to performing the sensitive mediation needed to reconcile the rights of diverse citizens”); see Dailey & Rosenbury, *The New Law of the Child*, *supra* note 42, at 1511 (suggesting a framework that reflects “recognizes and promotes children’s capacities to develop relationships; explore the world of ideas; express their identities; feel secure in their bodily integrity and personal privacy; and be fulfilled through work and political engagement”); see also *infra* Part III (highlighting the work of gender expansive youth at GGE to build transformative intergenerational processes of conflict mediation).

I. EMERGING METHODOLOGY OF YOUTH MOVEMENT LAW

Youth movement law expands on the methods of movement law⁶⁴ to include the ways that mobilized youth understand, interpret, and wield law to build power. This method assumes movement law’s critique of racial capitalism⁶⁵—as well as the “four methodological moves[:]”⁶⁶

First, *youth movement law* focuses specifically on the unique ways that *youth-led* and intergenerational social movements⁶⁷ interpret law⁶⁸ and how those interpretations catalyze social change.⁶⁹ *Youth movement law* defines

⁶⁴ See Akbar et al., *supra* note 9, at 830 (“The moves are (1) locating resistance; (2) thinking alongside strategies, tactics, and experiments for justice; (3) shifting epistemes; and (4) adopting a solidaristic stance. These four moves may not exist in every piece of movement law scholarship. But the moves build on and deepen one another, resulting in scholarship that we believe has the potential to contribute to political, economic, and social transformation.”).

⁶⁵ Amna A. Akbar, *Toward A Radical Imagination of Law*, 96 N.Y.U. L. REV. 405, 448 (2018) (describing an analysis of racial capitalism as an “integrated analysis of how racial subordination, specifically of Black people, has been central to the development of capitalism and the United States). See also Akbar et al., *supra* note 9, at 821–822 (The four methodological moves include 1) looking to the resistance of social and grassroots movements, 2) analyzing the tactics, demands and efforts, 3) elevating the epistemology of those movements instead of the traditional court-centered jurisprudence; and 4) building relationships and solidarity with the people leading those movements.)

⁶⁶ Akbar et al., *supra* note 9, at 821.

⁶⁷ *Id.* at 824 n.1 (defining social movements as—“a collective effort to change the social structure that uses extra-institutional methods at least some of the time”) (citing Debra C. Minkoff, *The Sequencing of Social Movements*, 62 AM. SOCIO. REV. 779, 780 n.3 (1997)).

⁶⁸ Christina John et al., *Subversive Legal Education: Reformist Steps Toward Abolitionist Visions*, 90 FORDHAM L. REV. 2089, 2092 (2022) (“Based on Antonio Gramsci’s concept of ‘organic intellectuals,’ an *organic jurist* ‘studies, analyzes, and comments on the law’ Professional intellectuals, those with formal education and certification, function to ‘maintain[] and reproduce[] a given economic and social order.’ To counter hegemony, the oppressed classes generate ‘organic intellectuals,’ whatever their training, who are organic to the oppressed classes and have the ‘capacity’ to ‘oppos[e] and transform the existing social order.’ We define and elevate *organic jurists* as legal scholars without traditional educational prerequisites.”).

⁶⁹ See *Cosmic Possibilities: An Intergalactic Youth Guide to Abolition*, PROJECT NIA (Apr. 19, 2021), https://issuu.com/projectnia/docs/_2021_ayo-final-combined [<https://perma.cc/6WTC-S8LQ>] (providing facilitation tools for intergenerational communities to invite youth to share “[w]hat comes to mind when you hear the word ‘revolution[]’”); see also Guinier & Torres, *supra* note 40, at 2745 n.12 (explaining how social movements have created “both constituencies of accountability and alternative and authoritative interpretative communities”).

youth as people between the ages of twelve to twenty-four⁷⁰ and youth social movements as collective efforts where young people mobilize to resist power dynamics and social structures through “extra institutional methods at least some of the time.”⁷¹ In doing so, *youth movement law* analyzes how mobilized youth, just like their older counterparts, “develop[] a shared analysis and vision, forg[e] relationships and organizational structures, and cultivate . . . capacity” to understand the material realities of law, resist its injustice, and dream of alternatives.⁷²

Second, *youth movement law* draws on the campaigns, tactics, and prefigurative strategies⁷³ of youth-led movements to explore the legal interpretations that “restructure[] the politics of the possible”⁷⁴ and credit those youth for their insights.⁷⁵ Importantly, *youth movement law* critiques the failures of existing court-centric interpretations of the Constitution for marginalized youth and broadens the landscape of constitutionalism to better include the interpretation of young people, who the laws exclude from the existing constitutional system. *Youth movement law* adopts a broad interpretation of the Constitution as a framework that structures youth understanding of a shared “way of life” and “the aspect of human capacity to

⁷⁰ See *supra* note 4 for a discussion of the definition of “youth”; see also NAT’L ACAD. SCI. ET AL., THE PROMISE OF ADOLESCENCE: REALIZING OPPORTUNITY FOR ALL YOUTH 37 (Emily P. Backes & Richard J. Bonnie eds., 2019) (“Adolescence is a period of significant development that begins with the onset of puberty and ends in the mid-20s. Consider how different a person is at the age of 12 from the person he or she is at age 24. The trajectory between those two ages involves a profound amount of change in all domains of development—biological, cognitive, psychosocial, and emotional.”).

⁷¹ Debra C. Minkoff, *The Sequencing of Social Movements*, 62 AM. SOCIO. REV. 779, 780 n.3 (1997) (“I define *social movement* as a collective effort to change the social structure that uses extra-institutional methods at least some of the time. Social movement organizations (SMOs) are formal organizations that attempt to implement movement goals.”).

⁷² Alexander, *supra* note 25, at 115.

⁷³ See Akbar et al., *supra* note 9, at 856 n.135 (“Relationships prefiguring in the transformational arrangements within social movements can then make their way into formal institutional arrangements.”) (citation omitted).

⁷⁴ See Guinier & Torres, *supra* note 40, at 2797. Youth movement law acknowledges that youth who do not participate in social movements also produce knowledge about the law. However, youth movement law focuses specifically on youth engaged in progressive organizing, which provides insight on the “instrumental use of the Constitution” and other laws. Roberts, *supra* note 51, at 109.

⁷⁵ See Sarah Medina Camiscoli, *Demanding Due Process with Student Movements*, GEO J.L. & MOD. CRITICAL RACE PERSP. (forthcoming 2024) (on file with author).

innovate, to break the causal chain of process and launch something unprecedented.”⁷⁶

Third, *youth movement law* asserts that legal scholars who seek to cure the present constitutional rot⁷⁷ should integrate youth interpretation of law where courts and other legal institutions fail to do so.⁷⁸ Mobilized youth provide unmatched insight on the failures of law that impact them most since they have “no other realistic means of expressing their frustrations”⁷⁹ outside of protest and resistance.⁸⁰ Youth, specifically minors aged fourteen to seventeen, are most egregiously excluded from the formal constitutional system as they face blanket prohibitions on voting, running for office, serving on juries, and filing administrative complaints, despite paying taxes to state and

⁷⁶ Pitkin, *supra* note 33, at 168 (arguing that a constitution is less something “we have than something we are” and thus reflective of a characteristic “way of life”); *see also* Tom Donnelly, *Popular Constitutional Argument*, 73 VAND. L. REV. 73 (2020) (explaining debates in the interpretations of popular constitutionalism such as “whether the written Constitution remains the ultimate source of constitutional authority or whether courts (and officials) should recognize acts of popular sovereignty outside of it.” Further, the article articulates how some interpretations “recogniz[e] extraconstitutional acts might include a new American Revolution—overthrowing the existing Constitution and replacing it with a new one[,]” while more traditional interpretations “often turn on actions taken within the existing constitutional system, transforming the Constitution’s meaning outside of the formal Article V amendment process—often through social movements, elections, public debates, judicial appointments, landmark statutes, and transformative Supreme Court opinions.”).

⁷⁷ Donnelly, *supra* note 76, at 77 (explaining how one strand of popular constitutionalism studies “the relationship between the Supreme Court, the elected branches, and the American people...argu[ing] that the Supreme Court’s decisions often track public opinion”); *see generally* Jack M. Balkin, *How to Do Constitutional Theory While Your House Burns Down*, *How to Do Constitutional Theory While Your House Burns Down*, 101 BOS. U. L. REV. 1723 (2021).

⁷⁸ *See* Guinier & Torres, *supra* note 40, at 2760 (“Demosprudence examines this interdependence between lawmaking and social movements by rethinking the way mobilized constituencies, often at the local level, challenge basic constitutive understandings of justice in our democracy. Rather than deferring to appointed judges as the preeminent authority for understanding or applying the Constitution, these local movements often introduce new sources of interpretative authority that ultimately change the cultural norms of the larger society.”).

⁷⁹ *Id.*

⁸⁰ While youth have no realistic means of expressing their political discontent through voting, running for office, or litigation without adult support, this does not mean youth do not demonstrate political frustration in a series of ways outside of social movements or protest. *See* Sarah Medina Camiscoli et al., *Youth Dignity Takings: How Book and Trans Bans Take Youth Property and Dignity*, LOY. INTERDISC. J. OF P. INT. L. (forthcoming 2024) (identifying various examples of “disobedience” as forms of student political resistance to carceral school logics).

federal governments.⁸¹ Importantly, when lawmakers craft politically-motivated laws to restrict youth rights and their autonomy, those restrictions are not about protecting children or democracy.⁸² Thus, youth-led social movements represent a critical constituency of interpretation for legal scholars seeking to fight authoritarianism and “(re)shape”⁸³ the Constitution to redress the interlocking crises of our time.⁸⁴ Through intergenerational collaborations, formally trained legal scholars can support youth movements by extending the resources of legal academia to their movements,⁸⁵ and youth leaders can support scholars to expand their imagination of law in a moment of interlocking crises.

Fourth, youth movement law practices a unique ethos of solidarity⁸⁶ that includes building skills so that legal scholars can transgress generational divides to produce knowledge about youth movements *with* marginalized and

⁸¹ *What Are Youth Rights?*, NAT'L YOUTH RIGHTS ASS'N (Feb. 5, 2023, 6:17 PM) [hereinafter *What Are Youth Rights?*] <https://www.youthrights.org/about/what-are-youth-rights/> [https://perma.cc/5QJR-VSXP] (“Youth rights are the rights that everyone should have, but that are denied to some of us because of our young age. These rights include the right to be full participants in our representative democracy through voting, the right to privacy, the right to be free from physical punishment, the right to make decisions about our own lives, the right to be outdoors, the right to prove ourselves, and the right to receive the same amount of respect as anyone else. These rights and many others, however, are denied to us because of ageism.”); see *Youth Voting Rights*, YOUTH POWER COALITION, <https://www.youthpowercoalition.org/> [https://perma.cc/65WH-BNUL] (“We, young people at the Youth Power Coalition, fight for participation on Community Boards and for lowering the voting age. Nothing about us without us, we deserve the right to vote!”); and see generally GENERATION CITIZEN, YOUNG VOICES AT THE BALLOT BOX: AMPLIFYING YOUTH ACTIVISM TO LOWER THE VOTING AGE IN 2020 AND BEYOND (3d ed. 2020), <https://vote16usa.org/wp-content/uploads/2020/05/white-paper-5.14.20.pdf> [https://perma.cc/C2JJ-KV8W].

⁸² Caraballo Tweet 2, *supra* note 18; and see News, *supra* note 18.

⁸³ Pitkin, *supra* note 33, at 168.

⁸⁴ See Rana, *supra* note 30, at 314 (describing the interlocking crises and “constitutional dysfunctions that have shaped recent years”).

⁸⁵ Akbar et al., *supra* note 9, at 881 (“Movement law facilitates cogeneration of ideas necessary for large-scale change. Legal scholars are assimilated into an intellectual universe that assumes its own primacy in debates about the construction and governance of the social. Movement law disrupts our uncritical incorporation into that universe.”).

⁸⁶ *Id.* at 864 (explaining how a “solidaristic stance requires commitment to experimentation, transformation, and collectivity...writing in conversation rather than from above in critique: participating in a collective process for generating and testing ideas and strategies for transformative change”).

mobilized youth.⁸⁷ Elevating the power, self-determination, and knowledge of *youth* movements requires building collaborative, mutually supportive, and trusting relationships that support youth development.⁸⁸ Legal scholarship can reflect these relationships by citing youth movements,⁸⁹ compensating youth to serve as community readers,⁹⁰ engaging with directly impacted research

⁸⁷ See Alexander, *supra* note 25, at 113–14 (“[I]t all came down to power—the power to make decisions that determine who can be part of the city’s future, and who will be caged, dispossessed, and cast out.”) (citation omitted).

⁸⁸ See López, *supra* note 56, at 1801 (arguing that “trusting and solidaristic partnerships is the key to ensuring that” participatory methods are “nonexploitative”); see also TRUE COLORS UNITED, YOUTH COLLABORATION TOOLKIT 3–4 (2019), <https://truecolorsunited.org/wp-content/uploads/Youth-Collaboration-Toolkit.pdf> [<https://perma.cc/F26U-QGJM>] (providing training for adult allies looking to work with mobilized youth).

⁸⁹ See Masters, *supra* note 8, at 256 (citing youth movement leaders from IntegrateNYC as a key interpretative authority of state constitutional law); see also Alexander, *supra* note 25, at 117 (citing “Black Youth Project 100 (“BYP100”), the Movement for Black Lives, Fearless Leading by the Youth, Greenlight Black Futures, Assata’s Daughters” for their visionary demands for state divestment from carceral institutions and investment in basic necessities).

⁹⁰ The term “community reader” refers to a community leader without formal legal training who an author asks to review citations or references to their community work for accuracy and alignment. The term “community reader” is meant to elevate how community leaders without formal legal training provide insights on their work that are as essential to the revision process as the insights that traditional scholars provide when they agree to serve as “readers” for their colleagues. See Camiscoli, *supra* note 75 (exploring how youth movement leaders in Texas wield procedural due process to block book bans and protect public education and crediting those movement leaders for their role as community readers who provided insight and feedback on the paper); see also Kia Turner et al., *Towards Black Abolition Theory Within Radical Abolition Studies: Upending Practices, Structures, and Epistemes of Domination in Education, the World, and Beyond*, J. MULTICULTURAL EDUC. (forthcoming 2024) (introducing a similar role of a youth community review board where traditionally trained scholars educate young people about the ways in which they are discussing their contributions or critique of education law and policy within an abolitionist context and facilitate consent-based practices to get feedback).

assistants as collaborative dialogic partners,⁹¹ and joining youth without formal legal training as co-authors.⁹²

This article employed three strategies to build on the emerging method of youth movement law. First, the author hired directly impacted and mobilized students to work as research assistants. Second, the author worked with those research assistants to co-create working relationships that honored their lived experience and cited their contributions as dialogic collaborative partners.⁹³ Third, those research assistants identified and analyzed the public work of over 80 organizations, strategies, and campaigns centering Trans/Gender Expansive Youth and sent them to the author who identified patterns relevant to the interpretation of constitutional law. Per the research assistants' suggestion, the author sent the final draft of the article to the research assistants and cited organizational leaders for comments along with an invitation to collaborate on future projects to support their work.

⁹¹ The collaborative dialogic partner is an enhanced version of a traditional research assistant role, fostering inclusivity between a professor and student. Unlike the traditional role of research assistant, which often overlooks a student's unique perspective and undervalues their work, recognizing an RA as a collaborative dialogic partner values and requires impacted RA's perspectives. Lisa G. Lerman, *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*, 42 S. TEX. L. REV. 467, 471-472 (2001). This concept, inspired by Participatory Law Scholarship, focuses on those impacted by the scholarship and seeks to push academic boundaries to build more participatory practices. See, e.g., López, *supra* note 56, at 1800. The concept was co-created with and inspired by Ash Barcus, who worked as the RA on this article and drew on their experiences as a disabled, trans-nonbinary survivor of foster care. See also Ash Barcus, *Collaborative Dialogic Partner Expanding Academic Scholarship and Valuing Student Experience*, FOSTER ACAD., https://thefosteracademic.substack.com/p/collaborative-dialogic-partner?r=1hntzt&utm_campaign=post&utm_medium=web&triedRedirect=true [<https://perma.cc/5W3V-LHBV>].

⁹² Sarah Medina Camiscoli & Sa'Real McRae, *Youth Participatory Law Scholarship*, VA. L. REV. ONLINE (forthcoming 2024) (discussing how coauthoring legal scholarship with mobilized young people both recognizes youth interpretation of law and disrupts racial capitalism and adultism); see also John et al., *supra* note 68 (publishing the first article ever co-written by directly impacted organic jurists without formal legal training, including youth organizers and formerly incarcerated legal workers); see generally López, *supra* note 56.

⁹³ Harlene Anderson, *Collaborative-Dialogue Based Research as Everyday Practice: Questioning our Myths*, in SYSTEMIC INQUIRY: INNOVATIONS IN REFLEXIVE PRAC. RSCH., 60 (Gail Simon & Alex Chard eds., 2014) (discussing collaborative-dialogue practice as an interdisciplinary, alternative method to teaching, research that disrupts hierarchies, assumptions of objectivity, and methods of sharing and exchanging knowledge). See Sameer M. Ashar, *Pedagogy of Prefiguration*, 132 YALE L.J. F. 869 (2023) (explaining the power of dialogic practice for prefiguring new worlds); see also Rose M. Cole & Walter F. Heinecke, *Higher Education After Neoliberalism: Student Activism as a Guiding Light*, 18 POL'Y FUTUR. EDUC. 90 (2018) (explaining the power of student activists in universities to provide "sophisticated understanding of current socio-political, [and] cultural realities").

II. NEGATIVE RIGHTS AND REALITIES UNDER A DECAYING CONSTITUTION

The U.S. Constitution fails to protect Trans/Gender Expansive Youth by denying them a right to bodily autonomy without parental consent.⁹⁴ Despite the fact that “[m]inors, as well as adults, are protected by the Constitution,”⁹⁵ courts generally do not afford children the right to bodily autonomy or the indispensable resources necessary to make decisions regarding medical care.⁹⁶ The Due Process Clause requires that courts defer to parents concerning child-rearing decisions because parents have “a liberty interest in being able to raise their children as they see fit.”⁹⁷ Parents enjoy a “rebuttable presumption that they are acting in their minor child’s best interests”⁹⁸ because courts believe

⁹⁴ Sonja Shield, *The Doctor Won’t See You Now: Rights of Transgender Adolescents to Sex Reassignment Treatment*, 31 N.Y.U. REV. L. & SOC. CHANGE 361, 363 (2007) (explaining how the law “bar[s] transgender minors from consenting to their own health” by providing their parents with “an absolute, and possibly arbitrary, veto” over their medical decision-making). *See also* 597 U.S. at 257 (rejecting “a broader right to autonomy” that the Court decides may lack “any claim to being deeply rooted in history”) (citations omitted).

⁹⁵ *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976); *see also In re Gault*, 387 U.S. 1, 13 (1967) (“the Bill of Rights is [not] for adults alone”).

⁹⁶ *Thompson v. Oklahoma*, 487 U.S. 815, 824–825 (1988) (asserting that “the experience of mankind, as well as the long history of our law, [indicates] that the normal 15-year-old is not prepared to assume the full responsibilities of an adult.”); and *id.* at n.23 (“Children, the insane, and those who are irreversibly ill with loss of brain function, for instance, all retain ‘rights,’ to be sure, but often such rights are only meaningful as they are exercised by agents acting with the best interests of their principals in mind...[A] child who is not quite ready to take on the fully rational and considered task of shaping his or her own life.”) (citations omitted); *see Camiscoli et al., supra* note 80, at 9 (arguing that that race and sex-based bans on gender affirming medical care “coupled with the state-sanctioned degradation of Youth of Color and Gender Expansive Youth, constitute a form of ‘property confiscation [that] result[s] in dehumanization.’”) (citations omitted); *see also What are Youth Rights?*, *supra* note 81 (advocating against age-based discrimination that “prevents young people from enjoying many rights that are considered universal or inalienable, such as ... [t]he right to bodily integrity, including the right to consent to or refuse medical treatment.”).

⁹⁷ Shield, *supra* note 94, at 395.

⁹⁸ *Bellotti v. Baird (Bellotti I)*, 428 U.S. 132, 147 (1976). The “best interests” of the child is a standard defined by statutory law, precedent, court interpretation, and personal and societal beliefs. The most widely accepted definition of “best interests” focuses on making decisions that reflect the child’s concept of time and protecting the most critical adult relationship in a child’s life. *See* JOSEPH GOLDSTEIN ET AL., *IN THE BEST INTEREST OF THE CHILD* 19, 43 (1986). *See also* Shield, *supra* note 94, at 396 (explaining how Trans/Gender Expansive Youth in foster care face a unique barrier as they must “seek the consent of the local commissioner in order to receive transgender-related medical treatment.”).

that minors demonstrate “unquestionably greater risks of inability to give informed consent” than adults.⁹⁹ Within this constitutional doctrine, Trans/Gender Expansive Youth lack *legal autonomy* to pursue medical choices, despite their capacity to make critical decisions about their physical and mental health.¹⁰⁰ Generally, the primary decision-maker in a minor’s healthcare will be a parent or guardian, regardless of whether those guardians will make medical decisions that support their children and reflect gender-affirming standards of care.¹⁰¹

Although some states have identified specific contexts where adolescents have bodily autonomy—if they need lifesaving treatment, if they need sexual assault care, if they seek contraception; if they are pregnant or married, if they seek substance abuse treatment, or mental health treatment;¹⁰² or if courts deem them a “mature minor”¹⁰³—state laws and federal courts are neither consistent nor comprehensive when applying these standards (especially to

⁹⁹ Bellotti I, 428 U.S. at 147.

¹⁰⁰ When the law sees autonomy as an “on-off switch” based on age, the infinite differences between child development and capacity go ignored. Dailey & Rosenbury, *The New Law of the Child*, *supra* note 42, at 1476 (“... autonomy acts as an on-off switch, obscuring the fact that certain capacities for independent thought and action—what we might call “agency”—often exist alongside dependency”). This can be particularly harmful to transgender youth who do not receive gender-affirming treatment when their autonomy switch is considered “off” by guardians and courts. *Id.* at 136 (“[R]esearch shows that ‘[u]ntreated [gender] dysphoria in trans youth is associated with . . . depression, social anxiety, and suicidal thoughts and behavior . . .’ Moreover, transgender children without access to identity-affirming care may suffer serious psychological distress.”); *see generally* STANDARDS OF CARE FOR THE HEALTH OF TRANSGENDER AND GENDER DIVERSE PEOPLE, WORLD PRO. ASS’N FOR TRANSGENDER HEALTH (8th ed. 2022) [hereinafter WPATH, 2022].

¹⁰¹ Dailey & Rosenbury, *The New Law of the Child*, *supra* note 42, at 1479 (“... transgender youth are also harmed when law leaves children’s caregiving to the private realm of parental power. The all-or-nothing conception of parental rights ties children’s life opportunities to their parents’ resources, thereby reinforcing family inequality and absolving the state of more robust duties to support parents and children before problems arise.”); *see also* Suegee Tamar-Mattis & Kyle Knight, “*I Want to Be Like Nature Made Me*” *Medically Unnecessary Surgeries on Intersex Children in the U.S.*, HUM. RTS. WATCH & INTERACT (July 25, 2017), https://www.hrw.org/sites/default/files/report_pdf/lgbtintersex0717_web_0.pdf [<https://perma.cc/M39X-HYYM>] (explaining how the law authorizes parents to make unnecessary and harmful decisions regarding gender mutilating surgeries for intersex youth).

¹⁰² Marianne Sharko et al., *State-by-State Variability in Adolescent Privacy Laws*, 149 PEDIATRICS 1, 3 (May 9, 2022) (reviewing all state laws regarding minors’ right to consent to medical services for sexual assault evaluation, STI testing, contraceptive care, prenatal care, substance abuse treatment, and mental healthcare).

¹⁰³ *Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416, 440 (1983).

Trans/Gender Expansive minors).¹⁰⁴ Notably, statutes that provide these exceptions have not established sensible procedures and standards to ensure that courts know how to protect Trans/Gender Expansive minors' constitutional and health care rights based on evidence-based treatments.¹⁰⁵ The most recent scholarship that suggests the transgender community is now experiencing a "constitutional law revolution"¹⁰⁶ overlooks three key aspects for young trans/gender expansive people between the ages of twelve and seventeen years.

First, Trans/Gender Expansive minors enjoy significantly fewer protections under Equal Protection and Due Process due to state and parental control,¹⁰⁷ despite the popular opinion and will of these constituents.¹⁰⁸ While the most recent study on transgender constitutional law accounts for the "numerous ways that [the] government arguably burdens the gender autonomy of the transgender community today," it fails to acknowledge the second authority that mediates and thus burdens the gender autonomy of young Trans/Gender Expansive people—their guardians.¹⁰⁹ For example, Trans/Gender Expansive Youth under the age of eighteen may not even realize existing due process rights or equal protection rights when their *guardians* refuse them access to "appropriate identity documentation," gender-affirming medical care, or recreational sports teams that align with their

¹⁰⁴ See generally Doriane Lambelet Coleman & Philip M. Rosoff, *The Legal Authority of Mature Minors to Consent to General Medical Treatment*, 131 PEDIATRICS 786 (Apr. 4, 2013) (discussing how the underlying differences between medical ethics and law cause confusion and finding parental consent continues to be required by most jurisdictions, even when the minor can be considered cognitively "mature" under specific statutory or common law in a given district).

¹⁰⁵ *Bellotti I*, 428 U.S. at 132 (holding that a Massachusetts statute created an ambiguous policy regarding a "parental veto," which affected the constitutional rights of minors seeking reproductive healthcare without parent consent); see also WPATH, 2022, *supra* note 100, at 16 (asserting that "[h]ealth professionals should support clients and their families as educators and advocates in their interactions with . . . authorities such as teachers, school boards, and courts.").

¹⁰⁶ Eyer, *supra* note 13, at 1405.

¹⁰⁷ *Id.* at 1445; cf. Dailey & Rosenbury, *The New Law of the Child*, *supra* note 42, at 1448 (criticizing the authorities doctrine for its failure to acknowledge oppressive limitations on youth rights via unfettered court and guardian discretion).

¹⁰⁸ BALKIN, CYCLES, *supra* note 11, at 44 (arguing that the United States is experiencing constitutional rot and defining constitutional decay or rot as "[w]hen a republic . . . loses its connection to the joint pursuit of the public good").

¹⁰⁹ See Dailey & Rosenbury, *The New Law of the Child*, *supra* note 42, at 1448 (critiquing the authorities doctrine allowing court and parental rights full discretion to mediate the rights of children).

gender.¹¹⁰ By focusing only on wins in litigation regarding restrooms and athletics, scholars obfuscate how Trans/Gender Expansive Youth can have their equal protection and due process rights vetoed by their guardians. Thus, while important, the most recent study's inclusion of student locker room and restroom access and trans athlete bans does not tend to the lived experiences of Trans/Gender Expansive Youth.¹¹¹ Without a guardian who will allow a young person access to the medical support often necessary to realize one's gender identity, a young Trans/Gender Expansive person may never dare participate in a sports team or attempt to use a restroom that aligns with their gender identity.

Second, the recent scholarship accepts a Constitution of negative rights as being capable of a constitutional revolution, even when a negative constitution will always fail to serve Trans/Gender Expansive Youth's *most* basic needs.¹¹² Scholars have acknowledged how the lack of positive rights to income, healthcare, education, and housing harms marginalized youth across identities.¹¹³ In the United States, nearly eleven million children are poor— young people comprise almost one-third of all people living in poverty.¹¹⁴ Furthermore, U.S. law begins to structure “grossly unequal” lives

¹¹⁰ Eyer, *supra* note 13, at 1447.

¹¹¹ See Camiscoli et al., *supra* note 80, at 24 (explaining that students have called out the failure of the law to protect them from unjust interference and arbitrary deprivation. These callouts serve as powerful critiques of the tension between the constitutional promise and the material limits of due process for marginalized people in the face of right-wing authoritarianism.).

¹¹² Eyer, *supra* note 13, at 1478 (“ . . . there were very few cases in the study sample that addressed issues like discrimination in public housing, or in foster care systems, . . . or trans bias in urban public schools—all contexts where multiply marginalized individuals might experience meaningful benefits from legal change.”); *id.* at n.357 (“[T]he focus of the study itself—i.e., transgender constitutional law cases—may have excluded from the sample some cases that are likely to be of greater benefit to intersectionally disadvantaged parts of the community, such as, for example, lawsuits challenging exclusion from sex-segregated private shelters.”). Given that youth in general represent the largest population of people living in poverty in the United States, one of the least represented constituencies of litigants, and the largest bodies of public school students in the country exist in “urban” districts, Eyer’s study sample seems to only address the rights of the least marginalized young gender expansive people.

¹¹³ Guggenheim, *supra* note 42, at 952 (arguing that the United States refusal “to recognize a child’s right to the basic necessities of life—food, clothing, shelter and health care—unlike every other country in the world, should be considerably more unacceptable than the extent to which parents’ views on child-rearing will be honored by state officials”).

¹¹⁴ Areeba Haider, *The Basic Facts About Children in Poverty*, CTR. FOR AM. PROGRESS (Jan. 12, 2021), <https://www.americanprogress.org/article/basic-facts-children-poverty/> [<https://perma.cc/W885-86SH>].

for children upon birth.¹¹⁵ Instead of considering how social movements have demanded positive rights, abolition of carceral systems, and participation in the design and mediation of civic life and law, constitutional scholars suggest that wins in lower federal courts for equal protection and due process demonstrate that “the constitutional tide has turned for the transgender community.”¹¹⁶ While clever maneuvers to play “defense”¹¹⁷ through the courts may provide helpful strategies, they should not represent the landscape of possibilities for a constitutional revolution that serves the Trans/Gender Expansive community across age, class, and gender.

Third, this framing of constitutional revolution does not sufficiently assess constitutional law’s material impact on Trans/Gender Expansive minors living as “the favorite objects of political attack”¹¹⁸ in a post-*Dobbs* system.¹¹⁹ As Trans/Gender Expansive Youth lose protections through conservative

¹¹⁵ See Guggenheim, *supra* note 42, at 953 (“The United States is currently arranged to ensure inequality for children upon birth. . . . The unlucky ones will be relegated to a very poorly financed system of public education that is inadequate on its own terms and grossly unequal compared with children born into wealthy homes.”); see also Anne L. Alstott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 LAW & CONTEMP. PROBS. 25 (2014) (“Even seemingly progressive landmarks in family law remain within the neoliberal frame. *Loving v. Virginia*, *Lawrence v. Texas*, and *United States v. Windsor*, for instance, mark true victories for social progressives, protecting important rights long denied to persecuted groups. And yet, none of them challenges in any deep way the three core ideals of neoliberal family law: negative liberty, laissez-faire market distributions and the minimal state.”).

¹¹⁶ Eyer, *supra* note 13, at 149894; see also *infra* Part III.C.

¹¹⁷ See *infra* Part III (exploring a tripartite strategy to elevate the contributions of mobilized youth by looking to litigation, reform, and youth freedom dreams).

¹¹⁸ Eyer, *supra* note 13, at 80. See also *Past Legislation Affecting LGBTQ Rights Across the Country 2022*, ACLU, <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country-2022/> [<https://perma.cc/QHY6-GECE>] (“ . . . transgender and queer people in America continue to face discrimination in their daily lives. While more states every year work to pass laws to protect LGBTQ people, we continue to see state legislatures advancing bills that target transgender people, limit local protections, and allow the use of religion to discriminate.”).

¹¹⁹ See Eyer, *supra* note 13, at 1505 (“Currently, transgender people, and especially transgender youth, have become the favorite objects of political attack across many state legislatures in the United States.”); and see, e.g., *id.* at 1409 (addressing, briefly, in a study preceding *Dobbs* (2017–2021), the potential implications of constitutional battles on transgender rights). Eyer asserts that her study of the substantive due process context may only “temper the perspective” that “there is likely to be a retrenchment of substantive due process rights in the federal courts” *Id.* at 1465. Eyer notes “that judges are likely to vote in politically self-interested ways, at least in politically polarized subject areas, as measured by the party of their appointing president.” *Id.* (citing Jack M. Balkin & Sanford Levinson, *Understanding the Constitutional Revolution*, 87 VA. L. REV. 1045, 1062–79 (2001)); cf. BALKIN, CYCLES, *supra* note 11, at 44, 135–42 (warning that the United States republic is losing “its connection to the joint pursuit of the public good” and the courts may actually just be “part of the problem” because “they will either do little to help or actively make things worse”).

campaigns to limit taxes, public entitlements, and public regulation, they are the frontline victims of a decaying republican government.¹²⁰

While scholars have critiqued the jurisprudence for Trans/Gender Expansive Youth under Equal Protection and Due Process,¹²¹ they have not yet done so in solidarity with youth-led social movements. This article invites scholars to employ *youth movement law* to recognize, reach, and write with youth-led social movements resisting harmful laws, demanding radically new legal infrastructures, and prefiguring their communities to model what is possible. Trans/Gender Expansive Youth social movement leaders are a “canary in the coalmine” of democracy.¹²² Without their collaboration, legal scholars will miss key opportunities to recognize harm and reimagine radical possibilities of constitutional law for all marginalized people. Even if “transgender litigants have been stunningly successful [in lower courts] over the last five years in their constitutional law claims,”¹²³ the current wave of anti-transgender legislation attacking Trans/Gender Expansive Youth across the nation calls on legal scholars to bring “far greater creativity” when imagining a constitutional revolution.¹²⁴ The following section lays out how existing

¹²⁰ See BALKIN, *CYCLES*, *supra* note 11, at 52 (likening the present threats to the republican political economy of tax reform, entitlement reform, and public deregulation to the threats of “Slave Power”) (quoting HEATHER COX RICHARDSON, *TO MAKE MEN FREE: A HISTORY OF THE REPUBLICAN PARTY*).

¹²¹ Eyer argues that a Supreme Court-centric framework fails to recognize how “transgender plaintiffs have been stunningly successful in raising equal protection and due process claims, achieving success on the merits in the vast majority of cases . . . [a]cross almost all contexts (student restroom and locker room access, medical services discrimination, identity documentation litigation, employment discrimination, etc.), in cases decided by judges appointed by presidents of all parties, and in circuits and districts across the country.” Eyer, *supra* note 13, at 1408. *Cf.* SPADE, *supra* note 12, at 31, 81 (arguing that promoting rights through anti-discrimination laws alone “mark[s] an investment in formal legal equality while ignoring the plight of the most economically marginalized queers” and reifies the same gender binaries that misgender trans youth and “expose them to violence”).

¹²² See GUINIER & TORRES, *supra* note 35 (“Race, for us, is like the miner’s canary. Miners often carried a canary into the mine alongside them. The canary’s more fragile respiratory system would cause it to collapse from noxious gases long before humans were affected, thus alerting the miners to danger. The canary’s distress signaled that it was time to get out of the mine because the air was becoming too poisonous to breathe.”).

¹²³ Eyer, *supra* note 13, at 1494.

¹²⁴ Rana, *supra* note 30, at 333; see Trans Legislative Tracker: 2024 Anti-Trans Bills Tracker, TRANS LEGIS. TRACKER, <https://translegislation.com/> [<https://perma.cc/3NRD-CKBW>] (last visited July 28, 2024) (tracking anti-transgender legislation and organizational strategy); see also Matt

jurisprudence on constitutional change has overlooked the material experiences of marginalized Trans/Gender Expansive Youth.

A. LIMITATIONS OF EQUAL PROTECTION

Scholarship on the jurisprudence of transgender rights between 2017–2021 describes meaningful change for the Equal Protection rights of transgender people due to three developments in lower federal courts: 1) courts elevated scrutiny for transgender people as constituting a suspect or quasi-suspect class; 2) courts elevated scrutiny for gender identity discrimination by recognizing it as sex discrimination; and 3) courts ruled in favor of transgender litigants even under rational basis review.¹²⁵

Courts in the study period were unanimous in holding that transgender people as a class are deserving of protection as a suspect or quasi-suspect class (when they reached the issue) . . . [m]any more courts also held that discrimination against the transgender community must be afforded intermediate scrutiny as a form of sex discrimination and could not satisfy this standard of review. And even in those cases where rational basis review was applied, almost all courts concluded that the discriminatory policies at issue were not even rational . . . Thus, Equal Protection cases during the study period strongly support the conclusion that the transgender community is widely perceived today as warranting constitutional protections under the Equal Protection clause.¹²⁶

While this study elevates key court-centric wins for transgender adult-litigants selected by public interest organizations,¹²⁷ it neither engages deeply with Trans/Gender Expansive minors' experiences today nor does it fulfill the

Lavietes & Elliott Ramos, *Nearly 240 Anti-LGBTQ Bills Filed in 2022 So Far, Most of Them Targeting Trans People*, NBC NEWS (Mar. 20, 2022), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/nearly-240-anti-lgbtq-billsfiled-2022-far-targeting-trans-people-rna20418> [<https://perma.cc/5PPH-GUF4>].

¹²⁵ Eyer, *supra* note 13, at 1408.

¹²⁶ *Id.* at 1444–1445.

¹²⁷ *Id.* at 1469, 1477 (explaining how the “extraordinarily high level of case success” required that “highly skilled, committed and expert representation” selected plaintiffs that they believed could be successful instead of “risky” plaintiffs that represented multiply oppressed identities).

original abolitionist purpose of equal protection: to pursue radical change and inclusion of multiply marginalized Black people during Reconstruction.¹²⁸

For example, *Grimm v. Gloucester County School Board*²⁹ represents an example of a case on behalf of a youth plaintiff that provides precarious protection under Equal Protection. While the lower federal court ruled in favor of the trans youth plaintiff via the application of intermediate scrutiny, what sustained the win was that the Supreme Court did not grant certiorari.¹³⁰ While the study rightly acknowledges the historic nature of the win in the lower court, it does not address the precarity that the Supreme Court “allow[ed] Grimm to stand” by denying certiorari on a procedural technicality. Furthermore, the study does not consider how the *Grimm* case—one emerging from a predominantly white public school district—might need to be revisited, applied, or supplemented to support students in marginalized school districts.¹³¹ From this perspective, *Grimm* represents only a precarious hope that transgender white youth who are successful in the lower courts never have to face the Supreme Court. Furthermore, the Supreme Court that denied certiorari review to the *Grimm* case represented a different Supreme Court than the present Court—one that has been willing to grant certiorari to cases to assess rights to bodily autonomy against an originalist interpretation of our

¹²⁸ Roberts, *supra* note 51, at 9 (exploring how legal scholars might “help to revive the abolitionist values in the Reconstruction Constitution to support contemporary abolitionist claims”).

¹²⁹ *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 609–10 (4th Cir. 2020). Gavin Grimm sued his school board for discriminating against him in violation of the Equal Protection Clause and Title IX of the U.S. Education Amendments of 1972, a federal law prohibiting sex discrimination by schools. After four years of litigation, represented by the ACLU and the ACLU of Virginia, the U.S. District Court for the Eastern District of Virginia ruled in favor of Gavin on all his claims. The U.S. Court of Appeals for the Fourth Circuit affirmed the ruling in favor of Gavin on August 26, 2020. On June 28, 2021, the Supreme Court denied the school board’s petition for a writ of certiorari.

¹³⁰ See *Supreme Court Allows Grimm Decision to Stand*, ACLU VA. (June 28, 2021), <https://www.acluva.org/en/press-releases/supreme-court-allows-gavin-grimms-victory-stand#:~:text=The%20courts%20have%20rightfully%20ruled,rights%2C%20dignity%20and%20respect.%E2%80%9D> [<https://perma.cc/K86G-HP9T>] (citing the win as “[t]he Supreme Court today declin[ing] to hear *Grimm v. Gloucester County School Board* . . . [because] the case was sent back to the lower courts after the Trump administration withdrew the government’s support for Grimm’s claims.”).

¹³¹ See Eyer, *supra* note 13, at 1478 (“So too, there were very few cases in the study sample that addressed issues like discrimination in public housing, or in foster care systems, or trans bias in urban public schools—all contexts where multiply marginalized individuals might experience meaningful benefits from legal change.”).

laws’ “history and tradition” that overlooks Reconstruction as part of that history.¹³²

Additionally, the recent framing of transgender constitutionalism does not fully engage with the unique dangers that low-income Trans/Gender Expansive Youth face, despite litigation wins. For example, *Hennessy-Waller v. Snyder*¹³³—the single case cited in the most recent study on transgender constitutionalism where a court upheld limitations with facially sex-based and transgender-specific classifications—involved low-income teenage transgender youth seeking coverage for their gender-affirming care through Medicaid. Given that low-income teenagers seeking gender-affirming medical care represent the “exception to the rule” for lower court jurisprudence, *Hennessy-Waller v. Snyder* might just represent the *expectation* of the rule for low-income transgender teenagers.¹³⁴ Legal scholarship focusing on court-centric interventions should elevate these distinctions to emphasize and abate the

¹³² 597 U.S. at 216 (relying on the authority of the “history and tradition” of the laws *prior* to Reconstruction to justifying abolishing the right to an abortion under a Reconstruction Amendment); cf. Evan Turiano, *Justice Jackson Offered Democrats a Road Map for Securing Equal Rights*, WASH. POST (Oct. 10, 2022), <https://www.washingtonpost.com/made-by-history/2022/10/10/originalism-ketanji-brown-jackson-supreme-court/> [https://perma.cc/A2QX-ZTU2] (discussing Justice Ketanji Brown Jackson’s alternative “originalist interpretation of the 13th, 14th and 15th amendments during oral arguments in *Allen v. Milligan*, 599 U.S. 1 (2022)” which discusses the history and tradition of the Reconstruction Era.). See also Johanna Alonso, *A ‘Day of Action’ for Abortion Protections*, INSIDE HIGHER ED. NEWS (Oct. 4, 2022), <https://www.insidehighered.com/news/2022/10/05/students-nationwide-fight-reproductive-rights-campus> [https://perma.cc/A3R8-A3MT] (highlighting that youth-led social movements around the country have been organizing on college campuses demanding for school administrators to “protect bodily autonomy on campus” for *both* reproductive rights and transgender rights in response to *Dobbs*. They claim that *Dobbs* signals that “elected representatives are not doing enough to protect our rights.”).

¹³³ *Hennessy-Waller v. Snyder*, 529 F. Supp. 3d 1031, 1044 (D. Ariz. 2021), *rev’d in part*, 28 F.4th 103 (9th Cir. 2022). The Arizona federal district court denied a motion for a preliminary injunction sought by the National Center for Lesbian Rights and its co-counsel challenging Arizona’s denial of Medicaid coverage of gender confirmation surgery on behalf of two male teenagers with gender dysphoria. The Trump-appointed judge asserted that this would be a change in the status quo and that these two minors, who were dependent on Medicaid for their health care, could somehow find other sources to pay for the surgeries themselves and therefore were not suffering irreparable injury. The judge suggested that, notwithstanding *Bostock*, the prohibition on sex discrimination in Section 1557 of the Affordable Care Act may not apply to discrimination based on gender identity and that such surgeries might not be appropriate for either minors in general or these particular minors.

¹³⁴ See *infra* Part I.C (demonstrating the unique and grave risks for multiply marginalized youth).

harm that marginalized Trans/Gender Expansive Youth experience under law.¹³⁵

Beyond the scope of transgender constitutional law, children's law scholars have highlighted the precarity of Equal Protection for marginalized children under the present Constitution. Anne Alstott has criticized how the Court's strong ideal of negative liberty has insulated state and federal courts from the responsibility to protect children.¹³⁶ Scholars of children and the law, such as Martin Guggenheim, have gone further to criticize when legal scholars maintain a constitutional framework of negative liberties but advocate for protecting a sphere of autonomous decision-making.¹³⁷

B. LIMITATIONS OF DUE PROCESS

As discussed previously, the Due Process Clause requires courts to defer to parents concerning child-rearing because parents have a liberty interest in being able to raise their children as they see fit.¹³⁸ This rebuttable presumption that they are acting in their child's best interests¹³⁹ denies transgender minors

¹³⁵ Zachary Jarrell, *Florida Rule Now Effectively Bans Gender-Affirming Care for Minors*, L.A. BLADE (Oct. 28, 2022), <https://www.losangelesblade.com/2022/10/28/florida-rule-now-effectively-bans-gender-affirming-care-for-minors/> [<https://perma.cc/YP6C-MGYF>] (featuring a 10-year-old transgender youth resisting lawmakers' decision to ban all gender-affirming treatment for minors in Florida. She holds a sign reading, "I Matter! Trans Rights are Human Rights!").

¹³⁶ Alstott, *supra* note 115, at 25.

¹³⁷ See Guggenheim, *supra* note 42, at 952–53 (“But perhaps most of all, I would say a country that refuses to recognize a child's right to the basic necessities of life—food, clothing, shelter and health care—unlike every other country, should be considerably more unacceptable than the extent to which parents' views on child-rearing will be honored by state officials.”).

¹³⁸ Shield, *supra* note 94, at 395.

¹³⁹ Bellotti I, 428 U.S. at 146; see Shield, *supra* note 94, at 396 (explaining the “best interests” of a child). The “best interests” of the child is a standard defined by statutory law, precedent, court interpretation, and personal and societal beliefs. The most widely accepted definition of “best interests” focuses on making decisions that reflect the child's concept of time and protecting the most critical adult relationship in a child's life. In general, parents have wide discretion to determine “best interests” unless the treatment sought is mandatory or prohibited, but minors in most states have the autonomy to discern their own “best interests” if they meet certain emancipating legal statuses or seek treatment for certain conditions. The underlying assumption in these exceptions is that these legal statuses and conditions require a heightened level of maturity and capacity. See also JOSEPH GOLDSTEIN, ANNA FREUD, ALBERT SOLNIT & SONJA GOLDSTEIN, *IN THE BEST INTEREST OF THE CHILD* (1986) (asserting the two key elements of a child's best interests are: 1) maintaining central relationships in the child's life; 2) respecting the child's concept of time).

legal autonomy.¹⁴⁰ Arguably, Trans/Gender Expansive minors only have the potential to exercise bodily autonomy in specific contexts in local jurisdictions, where adolescents enjoy exceptions to the rebuttable presumption¹⁴¹ or where courts use the “mature minor” doctrine. Even within these specific contexts, courts tend to lack sensible procedures and standards to ensure that judges use evidence-based standards to determine the proper healthcare, education, and family support for Trans/Gender Expansive children under the law.¹⁴²

Children’s law scholars have noted how the status quo of Due Process at the Supreme Court, federal court, and state court levels disparately harms Trans/Gender Expansive Youth. For example, scholars of children and the law have outlined how the current framework that undergirds parental decision-making emerges from early common-law property law,¹⁴³ where parents—generally fathers—exclusively owned children and maintained absolute control over them through a God-given right.¹⁴⁴ Although the doctrine of absolute parental power no longer exists, current jurisprudence at the federal and state levels uses the rights of “fit”¹⁴⁵ parents as a proxy for evidence-based medical care for Trans/Gender Expansive Youth.¹⁴⁶ This relationship between parents’ rights and minors’ Due Process rights poses unique threats

¹⁴⁰ See Dailey & Rosenbury, *The New Law of the Child*, *supra* note 42, at 1476 (2018) (“... autonomy acts as an on-off switch, obscuring the fact that certain capacities for independent thought and action—what we might call “agency”—often exist alongside dependency”); see also Dailey & Rosenbury, *The New Parental Rights*, *supra* note 42, at 136 (2021) (“[R]esearch shows that “[u]ntreated [gender] dysphoria in trans youth is associated with . . . depression, social anxiety, and suicidal thoughts and behavior” Moreover, transgender children without access to identity-affirming care may suffer serious psychological distress.”).

¹⁴¹ 462 U.S. at 440.

¹⁴² *Bellotti I*, 428 U.S. at 132.

¹⁴³ See Dailey & Rosenbury, *The New Law of the Child*, *supra* note 42, at 1458 (explaining how in the “nineteenth century, a father could force his children to work and collect the wages for himself; he could marry off his female children to persons of his choosing; and he determined where and with whom his children would reside, whether with himself, the mother, or some third party. In addition, fathers had the right to physically control and punish their children, in some states up to the point of death.”).

¹⁴⁴ *Id.*

¹⁴⁵ *Troxel v. Granville*, 530 U.S. 57 (2000) (citing *Parham v. J. R.*, 442 U.S. 584, 602 (1979) to uphold the “traditional presumption that a fit parent will act in the best interest of his or her child”).

¹⁴⁶ See Barbara Bennett Woodhouse, “*Who Owns the Child?*”: *Meyer and Pierce and the Child as Property*, 33 WM. & MARY L. REV. 995, 997 (1992) (arguing “[a]long with protecting religious liberty and intellectual freedom, Meyer and Pierce constitutionalized a narrow, tradition-bound vision of the child as essentially private property.”); see also *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925) (“The child is not the mere creature of the State; those who nurture him and direct his destiny have the right... to recognize and prepare him for additional obligations.”).

to Trans/Gender Expansive Youth.¹⁴⁷ Due Process jurisprudence fails to pay attention to Trans/Gender Expansive minors' unique interests and needs regarding gender identity, bodily autonomy, and emotional wellbeing. Trans/Gender Expansive Youth "often, for varying reasons, cannot obtain parental consent to transition-related medical care or insurance coverage for their treatments."¹⁴⁸ Notably, whether or not a young person can access gender-affirming care can have dire, life-long consequences, such as depression, anxiety, and suicide.¹⁴⁹

In court-centric conceptualizations of Due Process rights for transgender people, scholars have not yet acknowledged the unique barriers and risks that Trans/Gender Expansive minors face that would inhibit them from enjoying a "fundamental right to gender autonomy," "claims related to a right to informational privacy," claims related to "bodily integrity," and "the right to refuse unwanted medical treatment."¹⁵⁰ Furthermore, scholars have not yet acknowledged how youth leading social movements have critiqued judicial review as a site of dysfunction and injustice in light of *Dobbs v. Jackson Women's Health*.¹⁵¹

By relying heavily on cases that reflect adults who would be categorized as "the least marginalized of the marginalized," scholars miss Trans/Gender Expansive Youth's experiences, specifically those facing "intersecting vectors of harm [and who] would be unlikely to benefit from the wins in litigation."¹⁵² To claim a revolution in this moment, legal scholars must truly "grapple with the material reality of people's lives"¹⁵³ to determine whether substantial change

¹⁴⁷ Dailey & Rosenbury, *The New Parental Rights*, *supra* note 42, at 135.

¹⁴⁸ *Id.* (citing Emily Ikuta, *Overcoming the Parental Veto: How Transgender Adolescents Can Access Puberty-Suppressing Hormone Treatment in the Absence of Parental Consent Under the Mature Minor Doctrine*, 25 S. CAL. INTERDISC. L. J. 179, 187–88 (2016); and Daliah Silver, *Transforming America's Perspective: How Recognizing the Rights of Transgender Youth Will Empower the Next Generation*, 39 CHILD'S LEGAL RTS. J. 233, 245–49 (2019)).

¹⁴⁹ Dailey & Rosenbury, *The New Parental Rights*, *supra* note 42, at 135–136.

¹⁵⁰ Eyer, *supra* note 13, at 1445.

¹⁵¹ *Id.* at 1410 (arguing that due process litigation regarding fundamental rights "brought by transgender litigants under the Due Process Clause also suggests a greater continued vitality for such rights-based arguments than might be assumed today—though it remains to be seen whether *Dobbs v. Jackson Women's Health* will reverse this trend."). *See also* 597 U.S. at 560 (holding that the federal constitution does not provide a right to abortion).

¹⁵² SPADE, *supra* note 12. *Cf.* Eyer, *supra* note 13, at 7 ("For example, those who face intersecting forms of bias, or who are poor, or homeless, may find that the 'rights revolution' wrought by such case selection measures has little impact on their lived experience.").

¹⁵³ Akbar et al., *supra* note 9, at 843.

has in fact occurred.¹⁵⁴ Furthermore, they must acknowledge that Trans/Gender Expansive minors “are here now”¹⁵⁵ with pressing material needs and are making demands for safer, more expansive, and more radical laws.¹⁵⁶

Instead, recent scholarship argues that lower court jurisprudence indicates the potential for new fundamental rights, despite relying heavily on cases that reflect adults who might be categorized as “the least marginalized.”¹⁵⁷ Again, this oversight marginalizes the experiences of Trans/Gender Expansive minors, who are unlikely to even become aware of a win in litigation at all.¹⁵⁸ Furthermore, recent scholarship “omi[ts] from close study . . . the affirmative constitutional claims of *opponents* of transgender rights . . . [that] could certainly affect the ‘big picture’ take of transgender rights’ success in the courts.”¹⁵⁹ Notably, these “opponents” focus their efforts heavily on restricting Trans/Gender Expansive Minors’ constitutional rights.

Importantly, the risk of a “halt, or even reversal” of some transgender rights in “the short term”¹⁶⁰ puts Trans/Gender Expansive Youth at disproportionate risk. Youth cannot wait for “a short term” to protect their rights because their childhood could be over before that “short term” ends. Asking Trans/Gender Expansive youth to wait for a “short term” while they wonder if courts will allow the state to separate them from their nurturing parents, criminalize the doctors who provide affirming healthcare, or fire teachers who help them make sense of their world, is asking those youth to

¹⁵⁴ See JACOBSON & ROZNAI, *supra* note 33, at 43 (2020) (explaining the requirement of novelty in a constitutional revolution).

¹⁵⁵ GLAD Law, *Ashton Mota at 22nd Annual Spirit of Justice Award Dinner*, YOUTUBE, at 03:49 (Jan. 20, 2022), <https://youtu.be/-TynJ1Mu7ps> [<https://perma.cc/U9G9-FZAD>]. See generally ASHTON MOTA & REBECCA BRUESEHOFF, *A KID’S GUIDE ABOUT BEING INCLUSIVE* (2021) (encouraging children to welcome all people).

¹⁵⁶ GLAD Law, *supra* note 155, at 3:48 (explaining that “People say youth are the future, but we are here now and we have powerful stories to share. [GenZ] is joining and expanding the community created by those who paved the way for us.”).

¹⁵⁷ SPADE, *supra* note 12, at 44. See also Eyer, *supra* note 5, at 1477 (acknowledging how “focusing only on the plaintiffs or claims most likely to appeal to judges can leave behind those parts of the community that are most in need of protections.”) (citations omitted).

¹⁵⁸ SPADE, *supra* note 12, at 44. Cf. Eyer, *supra* note 13, at 1477 (“For example, those who face intersecting forms of bias, or who are poor, or homeless, may find that the ‘rights revolution’ wrought by such case selection measures has little impact on their lived experience.”).

¹⁵⁹ Eyer, *supra* note 13, at 1464.

¹⁶⁰ *Id.*

endure “a slow death.”¹⁶¹ From a child’s perspective, the possibility of a future with more substantive rights does not relieve the harm of having a gender-affirming classroom teacher fired, a gender-affirming doctor inhibited from practicing or, even worse, being separated from a supportive parent who provided a gender-affirming home.¹⁶² Even if a lower court might find such a separation unconstitutional, child development studies show a single separation from a parent or caregiver results in harmful health consequences.¹⁶³ These risks only compound in children with other health issues.¹⁶⁴ Multiply marginalized Trans/Gender Expansive Youth, for instance, experience toxic stress due to the lack of access to necessary resources, and the pervasiveness of transphobia, wealth inequality, and racism.¹⁶⁵ Furthermore, asking Trans/Gender Expansive Youth to wait for a “short term” (arguably, the full extent of their adolescence) risks backsliding on the increased visibility and identification with transgenderism in youth populations across the country

161 Stephen Lee, *Family Separation as Slow Death*, 119 COLUM. L. REV. 2319, 2322 (2022) (explaining how scholars use the terms “‘slow death’ or ‘slow violence’ to capture [health-related] harms that ‘vulnerable communities experience but cannot always identify or explain’ A); see, e.g., Lauren Berlant, *Slow Death (Sovereignty, Obesity, Lateral Agency)*, 33 CRITICAL INQUIRY 754, 754 (2007) (asking marginalized people in crisis to “wait,” particularly in precarious situations that in the aggregate, cause violence and increase the chances of death); see also Eyer, *supra* note 13, at 1464, 1492 (describing the potential in the short term for “a halt, or even reversal, of the emerging trend of recognition of ‘gender autonomy’ as a fundamental right” and predicting “there are reasons to think that the federal courts may in the short to medium term be become at least somewhat less favorable to civil rights claims of all kinds, and especially substantive due process claims”).

162 See Eyer, *supra* note 13, at 1505 (arguing that the most violent of policies that criminalize supportive parents will be ruled unconstitutional).

163 Bouza et al., *The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities*, SOC’Y FOR RSCH. IN CHILD DEV. 3 (2018) (“Parental separation is considered a toxic stressor, an experience that engages strong and prolonged activation of the body’s stress-management system ... [that] put children at greater risk for a multitude of health and psychological impairments, including anxiety, depression, post-traumatic stress disorder, lower IQ, obesity, immune system functioning, physical growth, cancer, heart and lung disease, stroke, and morbidity.”).

164 *Id.* at 2 (explaining how separating a child from their family has “far reaching effects ... separations into adulthood, including increased risk for mental health problems, poor social functioning, insecure attachment, disrupted stress reactivity, and mortality” and that these outcomes are similarly across “a variety of other child populations including ... children in foster and children of incarcerated parents) (citations omitted).

165 SPADE, *supra* note 12, at 44 (discussing the “complexity and breadth of the systemic, life threatening harm” that trans people experience in administrative agencies).

over the last decade.¹⁶⁶ Risking another “short term” of political repression would exacerbate the existing political regression and threats to the lives of the Trans/Gender Expansive Youth, who are boldly leading social movements.¹⁶⁷

C. RISKS OF RELYING ON AFFIRMATIVE RIGHTS FOR TRANS/GENDER EXPANSIVE YOUTH

In progressive jurisdictions where youth and gender minorities have won fundamental rights to bodily autonomy, the *most* “marginalized of the marginalized” often fail to realize those protections.¹⁶⁸ Even when Trans/Gender Expansive litigants win “new fundamental rights” in lower courts or receive generous interpretations of “rational basis,” multiply marginalized Trans/Gender Expansive Youth face extraordinary injustice.¹⁶⁹ Legal reform alone does not and cannot bring forth the forms of radical care and support that multiply marginalized Trans/Gender Expansive Youth demand.¹⁷⁰ And as scholars, it is our role to produce legal knowledge that

¹⁶⁶ Jody L. Herman, Andrew J. Flores & Kathryn K. O’Neill, *How Many Adults and Youth Identify as Transgender in the United States?* UCLA SCH. OF L. WILLIAMS INST. 2–3 (2020), <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/> [https://perma.cc/QJQ3-ZQSF].

¹⁶⁷ See generally Ester Di Giacomo, Michael Krausz, Fabrizia Colmegna, Flora Aspesi & Massimo Clerici, *Estimating the Risk of Attempted Suicide Among Sexual Minority Youths: A Systematic Review and Meta-Analysis*, 172 [J]AMA PEDIATRICS 1145 (2018) (finding an alarmingly elevated risk of suicide attempts in sexual minority youths).

¹⁶⁸ SPADE, *supra* note 12, at 44 (distinguishing the “least marginalized of the marginalized” people experiencing “intersecting vectors of harm”).

¹⁶⁹ Article I, section 11 (Equal Protection Clause) of the New York Constitution provides: “No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed, or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.” N.Y. Const., art. I, § 11. See N.Y. Exec. L. § 290(3) (codifying rights of every individual in New York State). New York State Human Rights Law (NYSHRL) also imposes “the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life and that the failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education . . . not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.” *Id.*

¹⁷⁰ Akbar, *supra* note 65 at 411 (describing how a “central dilemma of liberal law reform projects” occurs when that reform is “caught between a commitment to the rule of law and status quo arrangements on the one hand, and the desire for substantive justice and social, economic, and political transformation on the other.”).

acknowledges the “ordinary” ways that the law produces “pathways to violence,” even when it is intended to do good.¹⁷¹

For example, New York City identifies as a sanctuary city as it provides exceptional protections in comparison to other jurisdictions for multiply marginalized young people’s right to bodily autonomy through several state-specific exceptions to certain legal statuses and medical conditions.¹⁷² These exceptions fall into three general categories relevant to the discussion of the right to bodily autonomy for Trans/Gender Expansive adolescents¹⁷³ seeking reversible¹⁷⁴ gender-affirming treatment: 1) legal status of minors deemed to inhabit a heightened maturity level, 2) conditions of minors related to sexual

¹⁷¹ University of Pennsylvania Carey Law School, *Advocacy for Racial Justice Clinic Symposium: The Unfinished Work of Abolition*, YOUTUBE, at 43:45 (Feb. 4, 2023), <https://www.youtube.com/watch?v=7AdReBGrWWw> [<https://perma.cc/TM3X-JH3M>] (“The police are about maintaining certain dominant standards, social norms, that we can think of an aesthetic . . . [these] ordinary forms of policing . . . are pathways into violence and in many ways there is a historical origin to that because the police have always been used to manage and control the aesthetics of a public place and who can access a public place.”).

¹⁷² *See Finding a Healthcare Haven when Home is Dangerous: Minor Consent to Care*, LGBT BAR ASS’N, at 08:30 (Mar. 12, 2024), <https://www.lgbtbarny.org/podcast/episode/21f1efa8/finding-a-healthcare-haven-when-home-is-dangerous-minor-consent-to-care> [<https://perma.cc/G5Q8-ZKKC>] (discussing how many young people come to New York City as a legal sanctuary but cannot access the resources that they need in the time span that they need them, exacerbating their trauma). *See also* N.Y. Legis. Assemb. S2475–B, Reg. Sess. 2023–2024 (2023) (protecting gender-affirming care in New York, refusing to cooperate in hostile states’ retaliation against gender-affirming care patients, providers, family, and other allies).

¹⁷³ *See supra* Part I (discussing the limited autonomy for Trans/Gender Expansive Youth under the existing legal regime).

¹⁷⁴ *See* World Professional Association for Transgender Health, *STANDARDS OF CARE FOR THE HEALTH OF TRANSEXUAL, TRANSGENDER, AND GENDER-NONCONFORMING PEOPLE* (7th ed. 2012) [hereinafter *WPATH*, 2012] (explaining how medical interventions can fall into three categories: “1. Fully reversible interventions. These involve the use of [hormone] blockers to suppress estrogen or testosterone production and consequently delay the physical changes of puberty. Alternative treatment options include progestins (most commonly medroxyprogesterone) or other medications (such as spironolactone) that decrease the effects of androgens secreted by the testicles of adolescents who are not receiving [hormone] blockers. Continuous oral contraceptives (or depot medroxyprogesterone) may be used to suppress menses; 2. Partially reversible interventions. These include hormone therapy to masculinize or feminize the body. Some hormone-induced changes may need reconstructive surgery to reverse the effect (e.g., gynecomastia caused by estrogens), while other changes are not reversible (e.g., deepening of the voice caused by testosterone); and 3. Irreversible interventions. These are surgical procedures.”).

health and mental health, and¹⁷⁵ 3) exceptions for unhoused youth.¹⁷⁶ Additionally, the following categories of procedures hold exceptional legal statuses that allow certain minors to legally consent to their own treatment in New York City: contraception,¹⁷⁷ treatment for sexually transmitted diseases,¹⁷⁸ sexual assault care,¹⁷⁹ certain mental health services,¹⁸⁰ and emergency care.¹⁸¹ On paper, Trans/Gender Expansive adolescents in New York City can access their constitutional right to bodily autonomy under this penumbra of state constitutional and statutory rights that protect minors' rights to sexual health and mental health. For this reason, New York City serves as an informative case study to examine how relying only on judicial review will fail Trans/Gender Expansive minors.¹⁸²

Despite New York State's relatively progressive laws regarding adolescents' right to bodily autonomy, marginalized Trans/Gender Expansive minors still

¹⁷⁵ Catherine Weiss et al., *Teenagers, Health Care, and the Law: A Guide To Minors' Rights in New York State*, REPROD. RTS. PROGRAM (NYCLU/Reprod. Rts. Program & Lowenstein Ctr., New York, N.Y.), 2018, at 17, 67 [hereinafter "NYCLU"] (discussing the unique carve outs that state laws provide for minors regarding mental and sexual healthcare). See N.Y. Legis. Assemb. S8937, Reg. Sess. 2021–2022 (2022) (making all unhoused youth 17 and under capable of consenting to their own healthcare, including gender affirming care); see also *Finding a Healthcare Haven when Home is Dangerous: Minor Consent to Care*, LGBT BAR ASS'N, at 15:00 (Mar. 12, 2024) [hereinafter LGBT BAR ASS'N], <https://www.podbean.com/ep/pb-qkq2m-15aa546> [<https://perma.cc/G5Q8-ZKKC>].

¹⁷⁶ See N.Y. Legis. Assemb. S8937, *supra* note 175.

¹⁷⁷ Weiss et al., *supra* note 175, at 47–51.

¹⁷⁸ *Id.* at 52.

¹⁷⁹ *Id.* at 63–65.

¹⁸⁰ *Id.* at 67.

¹⁸¹ *Id.* at 75.

¹⁸² Telephone Interview with Jose Abrigo, Dir., LGBTQ/HIV Advoc. Dep't of Manhattan Legal Services (Oct. 9, 2019) (discussing how young people's gender transition can be stifled by parents who refuse consent or parents who cannot or do not communicate with the minor in need of treatment despite affirmative rights in state legislation); see Telephone Interview with Belkys Garcia, Staff Att'y, Civ. Prac. L. Reform Unit of The Legal Aid Soc'y (Oct. 25, 2019) (discussing how even with affirmative legislation, young people may not have access or receive court approach for the more cutting-edge medical interventions that lack sufficient studies in compendia). See also LGBT BAR ASS'N, *supra* note 175, at 04:00 (discussing how the expansion of New York Health Law Section 2504 provided opportunities for some runaway and homeless youth to consent to their own medical care but the "trickle-down effect" of rights-based advocacy fails many multiply marginalized youth, who many advocates cannot locate because they do not have accurate data of their housing status or needs); and *id.* at 08:50 (recounting the story of Majé Zenith Louvertur, light worker and directly impacted young person facing health and housing crises unaware that the expansion of the health law even existed and critiquing lack of access). See generally N.Y. Pub. Health Law § 2504 (McKinney 2023) ("Enabling certain persons to consent for certain medical, dental, health and hospital services.").

experience insurmountable barriers to realizing those rights.¹⁸³ Specifically, youth living in congregate care¹⁸⁴ under state supervision overwhelmingly represent LGBTQAI youth,¹⁸⁵ racial minorities, and low-income communities.¹⁸⁶ In this way, multiply marginalized Trans/Gender Expansive Youth represent a particularly vulnerable intersection of youth who are more likely to continue to suffer marginalization, even with expanded protections won through legal reform.¹⁸⁷ Specifically, multiply marginalized Trans/Gender

¹⁸³ *Are You Listening Report: Youth Accounts of Congregate Placements in New York State*, 1 CHILD.'S RTS. 11 (2024) [hereinafter *Are You Listening Report*], https://www.childrensrights.org/wp-content/uploads/2023/01/CR-2023-AreYouListening_report_web.pdf

[<https://perma.cc/RS3F-APN9>] (providing accounts of 80 foster youth in congregate placements in New York who claim to still face “disproportionate, impacts on Black and LGBTQ+ youth” through subpar healthcare, living environment, access to basic necessities, connections, and other needs). See also LGBT BAR ASS'N, *supra* note 175, at 32:15–33:45 (discussing the complex barriers that exist for multiply marginalized Trans/Gender Expansive Youth to realize their existing affirmative rights to gender-affirming procedures).

¹⁸⁴ See *Are You Listening Report*, *supra* note 183, at 11 (recounting experiences of marginalized youth in congregate care facilities who “described a carceral environment that was traumatizing, lack basic necessities, felt unsafe, and created barriers in achieving health and stable futures).

¹⁸⁵ Press Release, N.Y.C. Admin. for Child.'s Services, Key Findings from Groundbreaking Survey of LGBTQAI+ Youth in New York City Foster Care (Nov. 10, 2020), <https://www.nyc.gov/assets/acs/pdf/PressReleases/2020/LGBTQAISurvey.pdf> [<https://perma.cc/9PVA-EPSS>]. See also *id.* at 3 (“LGBTQAI+ youth are overrepresented in foster care. More than one out of three youths (34.1%), ages 13-20, in New York City foster care is LGBTQAI+.”)

¹⁸⁶ This case study considers three forms of state supervision: foster care, juvenile detention, and school-based health clinics in New York City public schools. Gender expansive youth seeking medical treatment in foster care, juvenile detention facilities, and public education are overwhelmingly Youth of Color and low-income. In 2016, 89% of youth in the New York City foster care system were Youth of Color. *ACS Report on Youth in Foster Care*, N.Y.C. ADMIN. FOR CHILD.'S SERVS., Dec. 31, 2018, at 1 tbl.1.2, <https://home.nyc.gov/assets/acs/pdf/data-analysis/2018/ReportOnYouthInFC2018.pdf> [<https://perma.cc/XGX2-KP5R>]. In 2017, 73% of New York City youth incarcerated in juvenile detention facilities were Youth of Color. See *New York City Juvenile Justice Report*, N.Y. DIV. OF CRIM. SERVICES, 2019, at 1 tbl.1. In 2019, 82.3% of all students in New York City Public Schools were Youth of Color and 72.8% were economically disadvantaged. See also *DOE Data at a Glance*, N.Y.C. DEP'T OF EDUC., Nov. 5, 2019, 7:55 PM, <https://web.archive.org/web/20191210123835/https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance> [<https://perma.cc/8U3B-KJVN>].

¹⁸⁷ Intersectionality highlights the unique marginalization of people of color by exploring intersecting dimensions of violence against race, gender, class, national origin, and sexual orientation. An

Expansive Youth under state care face barriers to realizing their rights in three key aspects of identity development: social transition, medical transition, and legal transition.¹⁸⁸ These barriers demonstrate the importance of a more radical approach to transforming youth’s constitutional rights and legal autonomy so that they realize the basic resources and protections required to protect their lives.

1. *Social Transition*

Social transition requires both support for Trans/Gender Expansive minors to come out as transgender and specific interventions to protect them

intersectional analysis furthers a critique of the right to bodily integrity for transgender youth by exploring the various ways in which age, class, and other minority identities intersect in shaping multiple structural and political aspects of healthcare access. *See* Crenshaw, *supra* note 46. *See also* SPADE, *supra* note 12, at 44 (Spade explaining how marginalized transgender people who experience “intersecting vectors of harm would be unlikely to benefit” from rights-based advocacy under the current constitution).

¹⁸⁸ The most recent study of transgender constitutional law admitted that Trans/Gender Expansive Youth in foster care have precarious protections under court-centric wins alone. Eyer, *supra* note 13, at 1453.

Finally, there were a “number of study cases” that offered “little in the way of systematic guidance for future litigants or for the field” because the wins were “one-off” or context-based—“raised unique due process issues or were unclear in the basis for the due process claim alleged. These included, for example, a foster care class action” and “a claim regarding the right of parents of transgender children to obtain medically-appropriate care for their children, and an unspecified employment-related due process challenge. Most of these one-off cases succeeded, but on grounds specific to the context at hand. Thus, while such cases illustrate the importance of thinking creatively about the possible applicability of due process arguments (which may vary depending on factual context), they offer little in the way of systematic guidance for future litigants or for the field.

See id. citing Wyatt B. v. Brown, 2021 WL 4434011, *6–9 (D. Or. 2021) (holding that although the allegations of a sub-class of trans/gender expansive foster children could be cognizable under Due Process in the foster care context, demands for “optimal treatment” were not cognizable) (emphasis added). Trans/gender expansive youth in foster care receive some protections under federal due process law but the quality of these services—generally the determining factor of whether they indeed support a young person’s gender development—are not protected. *See also* Nita Bhatt, Jesse Cannella & Julie P. Gentile, *Gender-Affirming Care for Transgender Patients*, 19 INNOV. CLINICAL NEUROSCI. 23, 27–30 (2022) (finding small interventions not always recognized by law, “such as listing one’s own pronouns, using gender-neutral language, validating and affirming patients, and utilizing appropriate mental and physical health screenings,” can have large impacts on the patient experience, health outcomes, and quality of life).

from harassment and abuse.¹⁸⁹ During the social process of transition, a Trans/Gender Expansive person discloses to themselves and to a community that they are Trans/Gender Expansive and experiencing a range of new experiences that are unique to each individual.¹⁹⁰ While each young person will experience the social transition in unique, various, and fluid ways, this aspect of the transition often includes three elements: 1) asking a community to use a chosen name distinct from a given name at birth; 2) asserting pronouns that reflect a gender identity that differs from the assigned sex and gender at birth; and 3) a change in one's gender expression.¹⁹¹ While this aspect of the transition does not require legal and medical interventions, social transition can be the most dangerous aspect of the process, as it may put the adolescent at risk for psychological and physical harm from resulting microaggressions and physical violence.¹⁹² Failing to recognize the intersecting vectors of marginalization under the Constitution leaves multiply marginalized Trans/Gender Expansive minors vulnerable to disruptions to their social transition. State institutions such as schools, foster care facilities, and juvenile detention centers often lack the resources to enforce constitutional protections for the right to bodily autonomy and against discrimination, particularly for multiply marginalized youth.¹⁹³ These substantive protections require training

¹⁸⁹ Jack L. Turban, Dana King, Jason J. Li & Alex S. Keuroghlian, *Timing of Social Transition for Transgender and Gender Diverse Youth, K-12 Harassment, and Adult Mental Health Outcomes*, 69 J. OF ADOLESC. HEALTH 991, 991–98 (2021) (finding that while a social transition during childhood or adolescence is not harmful to trans/gender expansive youth, harassment based on gender identity during that time increases suicidality); and *see Are You Listening Report*, *supra* note 183, at 43 (“Nearly all LGBTQ+ youth participants shared stories demonstrating they were treated differently by staff and youth in congregated care settings due to sexuality.”).

¹⁹⁰ Perry & Green, *supra* note 5, at 12 (“When working with transgender and non-binary (TNB) youth who express their gender in a manner that does not match their birth sex, puberty and the emergence of secondary sex characteristics are extremely traumatic. This process can be delayed or reversed through trans-related health treatment and services that TNB youth in care are eligible to receive. [Best practice is to]connect [Youth] with TNB knowledgeable & affirming professionals that can offer support that will respect, affirm, and meet their *individual* needs.”)(emphasis added)..

¹⁹¹ *Id.* at 36.

¹⁹² *Id.* at 40.

¹⁹³ The Imprint Staff, *Child Welfare Ideas From the Experts: Empowering youth to navigate health care*, IMPRINT (Aug. 23, 2022), <https://imprintnews.org/top-stories/child-welfare-from-the-experts-health-care/128251> [<https://perma.cc/5QT9-MXTS>] (Ash Barcus, former foster youth advocate, explains how even with legal protections, youth with intersecting identities who experience multiple

and education for staff and family, as well as funding and political will to build gender-neutral spaces such as bathrooms, locker rooms, LGBTQ+ affirming foster care placements, and other state facilities.¹⁹⁴ Without this baseline support network, Trans/Gender Expansive Youth may not even tell support staff in schools and state facilities to seek evidence-based care or enforce their rights.

2. *Medical Transition*

Medical transition requires protections to access competent health care providers and full coverage. However, marginalized Trans/Gender Expansive Youth, especially those under New York state supervision, require additional interventions to ensure access to responsive treatment *and* coverage for that treatment. The medical transition process may include treatments to align sex characteristics with one's gender identity, such as pubertal suppression, hormone therapy, voice therapy, hair removal or growth, psychiatric therapy, psychological therapy, and surgical procedures.¹⁹⁵ While not all Trans/Gender Expansive Youth wish to pursue medical transition, those that do require consistent, accessible medical treatment, competent providers, and financial coverage.¹⁹⁶ While New York state Medicaid covers certain gender-affirming procedures, youth in foster care are in distinct Medicaid programs, with coverage that can vary based on their life circumstances and create unique barriers to realizing their health rights.¹⁹⁷ In New York, Trans/Gender

placements in foster care experience inconsistency “in practice, care, coordination, and maintenance of medical records” and healthcare). *See also*, Ash Barcus, *Drowning and Forgotten: Former Foster Youth with Disabilities*, IMPRINT (Jan. 3, 2023), <https://imprintnews.org/youth-voice/drowning-and-forgotten-former-foster-youth-with-disabilities/236841>

[<https://perma.cc/TR8W-YY9F>] (discussing how the failures of administrative agencies to provide for foster youth in care with intersectional identities continue after those youth transition out).

¹⁹⁴ Perry & Green, *supra* note 5, at 40 (discussing the importance of staff cultural competency training).

¹⁹⁵ *Id.* at 32–38 (discussing various gender affirming treatments that can support a young person's medical transition).

¹⁹⁶ *Id.* (discussing the unique challenges that Trans/Gender Expansive Youth in state facilities face when seeking gender affirming treatment).

¹⁹⁷ Telephone Interview with Belkys Garcia, *supra* note 182 (discussing how marginalized young people face barriers to access cutting edge gender-affirming medical interventions that lack sufficient studies in compendia). *See, e.g.*, Memorandum from Benita Miller, Deputy Comm'r, Fam.

Expansive Youth in congregate care facilities enroll in a unique managed care system from other youth.¹⁹⁸ While this program provides unique benefits, if the young people do not have a medical diagnosis of gender dysphoria, prescription for care, or legal counsel, they may still have their treatment excluded from coverage as “cosmetic” or “exceptional.”¹⁹⁹ Thus, despite the existing legal protections for bodily autonomy and against discrimination, Trans/Gender Expansive Youth face enormous bureaucratic challenges that can impede treatment access and often lack advocates who can properly navigate those challenges.²⁰⁰

Permanency Servs., N.Y.C. Admin. of Child.'s Rts. on NMR Guidance for Trans Related Care to ACS and Provider Agency Staff (Jan. 29, 2013) https://www.nyc.gov/assets/acs/pdf/lgbtq/NMR_Guidance_for_Trans_Related_Healthcare.pdf [https://perma.cc/R7BV-6MFS]. See Taylor M. Cruz, *Assessing Access to Care for Transgender and Gender Nonconforming People: A Consideration of Diversity in Combating Discrimination*, 110 SOC. SCI. & MED. 65, 71 (2014) (highlighting how trans and gender nonconforming people face rampant stigma in health care); see also Veronica Thompson, *How State Medicaid Programs Serve Youth in Foster Care*, NAT'L ACAD. FOR STATE HEALTH POL'Y 14 (May 23, 2022), <https://nashp.org/how-state-medicaid-programs-serve-children-and-youth-in-foster-care/> [https://perma.cc/KJ5E-39CS] (“In doing so, state Medicaid programs may be better equipped to oversee the care provided to CYFC, thereby improving timely access to high-quality services and strengthening integration across child welfare-serving systems.”). See generally *Medicaid to 26 FAQs: General Eligibility*, JUV. L. CTR., <https://jlc.org/foster-care/medicaid-26-former-foster-youth/medicaid-26-faqs-youth/medicaid-26-general-eligibility> [https://perma.cc/NV5G-N7KL] (last visited Apr. 15, 2024) [hereinafter *Medicaid to 26 FAQs*] (explaining unique distinctions for Medicaid eligibility for youth in foster care in different contexts).

¹⁹⁸ See Thompson, *supra* note 197, at 1 (noting how “many states are implementing specialized health care delivery models and enhanced services [children and youth in foster care] within their Medicaid programs, primarily through managed care.”).

¹⁹⁹ See WPATH, 2012, *supra* note 174, at 58 (“While most professionals agree that genital surgery and mastectomy cannot be considered purely cosmetic, opinions diverge as to what degree other surgical procedures (e.g., breast augmentation, facial feminization surgery) can be considered purely reconstructive.”).

²⁰⁰ See Cruz v. Zucker, 195 F. Supp. 3d. 55'4 (S.D.N.Y.), *on reconsideration*, 218 F. Supp. 3d. 246 (S.D.N.Y. 2016) (removing restrictions on “medically necessary healthcare” for transgender Medicaid recipients under the age of 18 in a landmark decision spearheaded by the Sylvia Rivera Project and the Legal Aid Society). As a result of the lawsuit, New York became one of the few states where Trans/Gender Expansive youth under the age of 18 diagnosed with gender dysphoria have a right to Medicaid coverage for hormone therapy and transition-related surgeries without blanket bans on procedures coded as cosmetic. Cf. *Are You Listening Report*, *supra* note 183, at 11 (providing accounts of 80 foster youth in congregate placements in New York who endured subpar healthcare, living environments, access to basic necessities, and connections, with “disproportionate, impacts on Black and LGBTQ+ youth.”).

3. *Legal Transition*

Despite the unique fundamental rights that exist under the New York State Constitution, the most vulnerable Trans/Gender Expansive Youth face enormous hurdles in realizing their rights through court-issued documentation. The legal transition process often includes two administrative aspects: 1) changing one's name on legal documents and 2) changing one's gender on legal documents.²⁰¹ The legal transition is an important aspect of a young person's transition for two reasons: 1) accurate identity documents limit challenges to a Trans/Gender Expansive person's gender identity without revealing their gender histories and 2) accurate identity documents are often required to secure employment, housing, and credit.²⁰² New York City requires a number of administrative steps and documents before the courts will recognize a legal name and gender change for a Trans/Gender Expansive minor.²⁰³ To be able to navigate these prerequisites, Gender Expansive youth under state supervision, especially those separated from legal guardians from whom they must get consent, require legal resources and competent on-site advocates to support them through the process.²⁰⁴ Again, the extraordinary navigational capital, community support, and legal resources needed to realize these rights and resources indicate the need for a very different kind of constitutional revolution, beyond a series of wins in the lower courts.

D. LIMITS OF LITIGATION

Although many legal scholars have criticized the limitations of rights-based advocacy for marginalized peoples, less have explored how the law uniquely marginalizes young people through the following vulnerabilities: 1) the

²⁰¹ Perry & Green, *supra* note 5, at 37.

²⁰² *Id.* (noting that the process of legally transitioning can be particularly complex for non-binary people).

²⁰³ *Id.* at 50–51 (“Securing a legal and gender change on identity documents is an important step towards aligning a transgender or non-binary (TNB) person's legal identity with their lived experience. However, the cost of changing identity documents creates significant barriers for TNB people from accessing accurate identity documents. Financial barriers are even more pronounced for TNB young people in foster care and juvenile justice settings.”)

²⁰⁴ *Id.* (“For TNB young people pursuing legal transition . . . contract agencies are encouraged . . . to identify community organizations who can provide free legal assistance.”).

precarity of a constitution based on negative rights,²⁰⁵ 2) the precarity of rights to bodily integrity that treats youth legal autonomy as an “on, off switch,”²⁰⁶ and 3) courts’ power to control and determine rights through binary, anti-democratic processes.²⁰⁷ Within the context of children’s rights, scholars have criticized the ideal of “negative liberty” that justifies the state shirking any robust responsibility to protect and support children.²⁰⁸ Critical constitutional scholars such as Jamal Greene²⁰⁹ have criticized the anti-democratic nature of rights-based advocacy through the courts and called for a fundamental transformation of Article III of the Constitution. Specifically, Greene criticizes an overreliance on rights that requires drawing conflicting bright lines around the Constitution depending on the partisan politics of the moment.²¹⁰ Greene imagines a constitution that minimizes judges’ power as rights mediators and expands court officials’ representation to engage more people in the process of rights mediation.²¹¹ Additionally, Dean Spade has criticized the myopic and harmful long-term results of rights-based advocacy for transgender people and advocated for treating litigation as one blunt tool within a much larger movement of critical trans resistance to existing legal systems.²¹²

Relatedly, movement law scholars agree that, by and large, contemporary legal thought has “fail[ed] to grapple with the material reality of people’s

²⁰⁵ See Alstott, *supra* note 115, at 29 (“Together, the neoliberal ideals of negative liberty and market distribution create an asymmetric pattern of federal constitutional protections for family life.”).

²⁰⁶ Dailey & Rosenbury, *The New Law of the Child*, *supra* note 42, at 1476 (“[A]utonomy acts as an on-off switch, obscuring the fact that certain capacities for independent thought and action—what we might call ‘agency’—often exist alongside dependency.”).

²⁰⁷ See GREENE, *supra* note 47, at 13, 251 (arguing that “the [Framers] were not primarily concerned with ‘rights’ as we understand them today” so if we can only look to constitutional law to help after a radical shift in our legal system so that constitutional rights “stops being about judges peering at law books and dictionaries, and starts being about the rest of us.”); see also SPADE, *supra* note 12, at 40 (explaining how rights-based approaches to transgender rights within our current legal system and under our current constitution cause more harm than good by empowering existing oppressive infrastructure that harms gender minorities, people of color, and low-income people).

²⁰⁸ See Alstott, *supra* note 115, at 32 (noting that “negative liberty” shapes subconstitutional family law).

²⁰⁹ See GREENE, *supra* note 47, at 13, 251 (arguing that “the [Framers] were not primarily concerned with ‘rights’ as we understand them today,” so we must look beyond constitutional rights if we want the law to “stop[] being about judges peering at law books and dictionaries, and start[] being about the rest of us.”); see also SPADE, *supra* note 12, at xvi (explaining how rights-based approaches to transgender rights within our current legal system and under our current constitution empower existing oppressive infrastructure that harms gender minorities, people of color, and low-income people).

²¹⁰ GREENE, *supra* note 47, at xix.

²¹¹ *Id.* at xxxv–xxxvi.

²¹² SPADE, *supra* note 12, at xvi.

lives.”²¹³ Furthermore, these scholars argue that the present “institutional dysfunction and popular discontent”²¹⁴ in legal institutions should motivate the academy to contest “the dominant ideologies and institutions that undergird our legal and political configurations”²¹⁵ and to face the collusion²¹⁶ between our laws and systemic oppression. By accepting rights-based advocacy in the lower courts as a revolution, scholars overlook the “nature of the moment—one of contingency and uncertainty” for marginalized people.²¹⁷ The “plight of transgender youth,” who cannot secure gender-affirming treatment without parental consent, and who the courts regard only as “dependent beings with lesser rights than adults,”²¹⁸ need scholars to imagine a more robust revolution.

Greene named a key barrier to using the existing Constitution as a means to a constitutional revolution—our Constitution was not made for courts to protect affirmative rights for a multiracial democracy.²¹⁹ In its origins, the framers designed the Constitution to serve the interests of a governing class of white, cisgender, heterosexual men who participated in settler colonialism and

²¹³ Akbar et al., *supra* note 9, at 843. See, e.g., Michael J. Klarman, *The Supreme Court, 2019 Term—Foreword: The Degradation of American Democracy—and the Court*, 134 HARV. L. REV. 1 (2020) (exploring America’s democratic deficit from the Founding until today). See Rana, *supra* note 30, at 315 (arguing that American constitutional study has failed to reckon with the country’s history as a project of empire); see also Kimberlé W. Crenshaw, *This Is Not a Drill: The War Against Antiracist Teaching in America*, 68 UCLA L. REV. 1702 (2022) (arguing that the legal academy must confront growing restrictions on antiracist teaching).

²¹⁴ Rana, *supra* note 30, at 333.

²¹⁵ Akbar et al., *supra* note 9, at 843 (2021).

²¹⁶ Kimberlé W. Crenshaw, *This Is Not a Drill: The War Against Antiracist Teaching in America*, 68 UCLA L. REV. 1702, 1717–18 (2022) (“That legislators can appropriate law to banish critiques of law should rattle every last one of us. Changing the rules about what racial histories can be taught, and what experiences can be acknowledged is not a healthy feature of a robust democracy.”) (internal citations omitted).

²¹⁷ Akbar et al., *supra* note 9, at 845 (2021).

²¹⁸ See Dailey & Rosenbury, *The New Parental Rights*, *supra* note 42, at 135 (first quote); *id.* at 1464 (second quote). Dailey & Rosenbury further explore how:

[t]he field of children and law currently rests on the foundational question of who has authority over children’s lives—parents, the state, or (less frequently) children themselves. In addressing this question, courts and legislatures focus on identifying when children are dependent on adults and when they are capable of making independent decisions about their own lives. Analysis may be best conceptualized as an inverted triangle, with parents and the state occupying the top points and children the bottom.

Id. at 1456 (internal citations omitted). *Id.* at 1477 (“So long as children are treated as dependents, they are presumptively excluded from the class of rights-holders.”) (internal citations omitted).

²¹⁹ GREENE, *supra* note 47, at 8.

enslavement.²²⁰ Since the 1960s’ “rights revolution,” Greene argues that courts have developed “anxiety” about the Constitution’s expansion.²²¹ In response to this anxiety, Greene argues, Courts have largely separated rights from justice, “shatter[ing] the Court’s moral compass.”²²² This reliance, Greene explains, means:

we arrive at that place on the view that rights are supposed to be absolute, or close to absolute . . . [s]o someone has to win, and someone has to lose. And that requires an assignment of rights to one side or the other. And that’s destructive in any number of ways . . .²²³

As an alternative, Greene suggests less of an absolute approach to rights discourse and more of a balancing approach that anticipates and mediates the inevitable conflicts that emerge to uphold a large constituency of diverse people’s rights.²²⁴

Eyer’s recent study of the wins for transgender constitutional law in the lower courts demonstrates a traditional rights-based approach to advocacy.²²⁵ Calling wins in rights-based advocacy a “revolution” is an overstatement—“courts [still] don’t even recognize [structural inequity] as a valid reason [to realize a right].”²²⁶ Furthermore, as Greene notes, the Courts’ “anxiety” about transforming the existing social, political, and legal systems under the present Constitution demonstrates how litigation alone cannot achieve institutional transformation.²²⁷ While litigation can play a key role in defending and supporting social movements’ demands, litigation without connection to social

²²⁰ See *id.* (“The white statesmen of the Founding era drew the boundaries of community membership too narrowly, excluding African slaves and their descendants, women, and the indigenous population.”). See also Rana, *supra* note 30, at 315, 317 (“Most constitutional analysis ignores one of the defining features of American legal-political reality—the fact that the United States has from the founding been a project of empire” one that used “continuous territorial conquest [for] internal economic and political development.”).

²²¹ GREENE, *supra* note 47, at 175, 234.

²²² *Id.* at xxvi–xxvii.

²²³ In Jamal Greene’s ‘How Rights Went Wrong,’ *Reimagining America’s Legal Approach to Rights*, NPR (Dec. 28, 2021) [hereinafter *Greene’s ‘How Rights Went Wrong’*], www.wvno.org/2021-12-28/in-jamal-greene-how-rights-went-wrong-reimagining-americas-legal-approach-to-rights [<https://perma.cc/Z9N2-NR2M>].

²²⁴ GREENE, *supra* note 47, at xvii–xviii.

²²⁵ See Eyer, *supra* note 13.

²²⁶ *Greene’s ‘How Rights Went Wrong’*, *supra* note 223.

²²⁷ *Id.*

movements may lack key elements to pursue a revolution that truly transforms us and our legal systems.

In the seminal book, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*, legal scholar Dean Spade asserts how rights-based advocacy within our current legal system is particularly harmful to multiply marginalized transgender people.²²⁸ Instead, he calls for critical trans resistance—a more radical approach to heralding societal changes through democratic resistance that relies less on state intervention.²²⁹ Spade specifically criticizes the “consensus” in legal academia and practice that “law reforms should be sought to better the lives of trans people” through anti-discrimination laws.²³⁰ Further, Spade points out that “[a]nti-discrimination laws are not adequately enforced because “[m]ost people who experience discrimination cannot afford to access legal help.”²³¹

Together, these scholars demonstrate the limits of litigation for Trans/Gender Expansive Youth. At best, courts “flatten[] complex conflicts” Trans/Gender Expansive Youth face in their families and communities to vindicate their rights; at worst, courts uphold the “systemic, life-threatening harm” that youth-led “trans resistance seeks to end.”²³²

Importantly, the current wave of political attacks on Transgender/Gender Expansive Youth has shown the precarity of this “cluster” of constitutional choices and legal exceptions for minors.²³³ States have proposed legislation to criminalize parents and healthcare providers who provide gender-affirming

²²⁸ SPADE, *supra* note 12, at 31 (“[A]ddressing the economic marginalization of queer people solely through the lens of antidiscrimination laws ...has been criticized as marking an investment in formal legal equality while ignoring the plight of the most economically marginalized queers.”). *See also* Boveda & Annamma, *supra* note 10, at 306 (highlighting the tribulations of multiply marginalized youth).

²²⁹ *See* SPADE, *supra* note 12, at 40 (“Most people who experience discrimination cannot afford to access legal help, so their experiences never make it to court.”).

²³⁰ *Id.* at 38.

²³¹ *Id.* at 40.

²³² *Id.* at 44 (“Defining the problem of oppression so narrowly that an anti-discrimination law could solve it erases the complexity and breadth of the systemic, life-threatening harm that trans resistance seeks to end.”); *Cf.* Eyer, *supra* note 13, at 1498 (arguing that “meaningful constitutional protections for the transgender community have arrived, at least in the lower federal courts”).

²³³ *See* Eyer, *supra* note 13, at 80 (describing how transgender and nonbinary youth have become “the favorite objects of political attack across many state legislatures in the United States”); *see also* *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024*, AM. CIV. LIBERTIES UNION: LGBTQ RIGHTS (June 28, 2024) [hereinafter ACLU], <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024> [https://perma.cc/8GC8-XGHZ].

care to children,²³⁴ ban books and school policies that acknowledge and respect the existence of transness in society,²³⁵ and prohibit Transgender/Gender Expansive Youth from participating in extracurricular activities.²³⁶ Recent Supreme Court jurisprudence forecasts that these laws might one day pass constitutional muster since the life and liberty of Trans/Gender Expansive Youth does not fit into the Court's obscure definition of our "Nation's history and tradition" as a standard for substantive due process protections.²³⁷ Furthermore, even in the most progressive states, where gender minorities enjoy affirmative state constitutional protections, marginalized Transgender/Gender Expansive Youth fail to realize their small cluster of constitutionally protected choices.²³⁸

The instability of both the constitutional protections and legal autonomy for Trans/Gender Expansive minors under our current constitution and within the current climate indicates that a constitutional revolution for Transgender/Gender Expansive Youth requires radical inclusivity. The existing wins in lower courts do not and will not fundamentally transform our

²³⁴ Park et al., *supra* note 22 (discussing anti-trans health care bills in the United States).

²³⁵ *Id.*

²³⁶ See ACLU, *supra* note 232 (mapping legislative attacks to exclude Trans/Gender Expansive students from playing sports on the team that aligns most with their gender).

²³⁷ See, e.g., 597 U.S. at 250 (declaring a right to abortion outside of the "Nation's history and tradition[]"). See also *id.* at 332 (Thomas, J., concurring) ("For that reason, in future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell* . . . any substantive due process decision is 'demonstrably erroneous.'") (citation omitted). But see Lawrence Hurley, *Alito's Abortion History Lesson in Dispute*, REUTERS (May 6, 2022, 5:47 PM), <https://www.reuters.com/legal/government/us-supreme-court-justice-alitos-abortion-history-lesson-dispute-2022-05-06/> [<https://perma.cc/YU6H-ZZ4U>] (noting that many academics have contested *Dobbs's* reading of our nation's history with respect to abortion rights). But cf. Eyer admitting that:

[the Court's] application[] of . . . [the] 'history and tradition' standard in cases such as *Bowers v. Hardwick* in 1986 and in *Washington v. Glucksberg* in 1997 . . . did in fact lead to increased reluctance in the lower courts to recognize new fundamental rights claims. It thus seems probable that the potential for new fundamental rights claims in the lower federal courts is likely to be low for the immediate future, and that indeed, such reluctance may in the short term lead to a halt, or even reversal, of the emerging trend of recognition of 'gender autonomy' as a fundamental right in the lower federal courts.

Eyer, *supra* note 13, at 1464 (internal citations omitted).

²³⁸ See *supra* Section II.C (discussing the unique barriers that Trans/Gender Expansive Youth experience even when they live in states that provide affirmative rights).

“country’s political and social institutions and power relationships in a democratic, participatory, and egalitarian direction.”²³⁹

The following section presents opportunities to think and write alongside youth-led and intergenerational social movements—those led largely by people without formal legal training or legal autonomy—dreaming about what it might take to abolish harmful systems and reconstruct new ways of constituting society.²⁴⁰ The intention in elevating youth freedom dreamers is to invite legal scholars to “deeply recognize” how our critique and interpretation of law present “questions of life and death, of neglect and organized abandonment, . . . of power and freedom.”²⁴¹ By writing in solidarity with mobilized youth leaders, scholars can *both* discern when to “transform these into questions of rights . . . consciously and carefully” and assume the responsibility of elevating the work of mobilized leaders who have suggested more creative ways to pursue revolutionary change.²⁴²

III. INTEGRATING THE DREAMS OF U.S. YOUTH MOVEMENT LEADERS TO REIMAGINE LAW

Movement Scholar Amanda Alexander provides a powerful framework for the practice of movement lawyering that can inform how legal scholars might “match the power and vision” of marginalized Trans/Gender Expansive Youth: *defense, offense, and dreaming*.²⁴³ Working in solidarity with social movement leaders in Detroit, Alexander articulates this framework as a way to “meet[] immediate needs, support[] solidarity economy efforts, hold[] space

²³⁹ Eric Kibet & Charles Fombad, *Transformative Constitutionalism and the Adjudication of Constitutional Rights in Africa*, 17 AFR. HUM. RTS. L.J. 340, 352 (2017) (internal citation omitted).

²⁴⁰ Alexander, *supra* note 25, at 123 (explaining the “defense, offense, and dreaming” model as a “way of meeting immediate needs, supporting solidarity economy efforts, holding space for imagination, and practicing ways of being in community and addressing harm” that do not rely on the limits of the existing legal system.). See also Stanford Law School, *Tuesday Race Talks: Movement Lawyering and Racial Justice*, YOUTUBE (Apr. 6, 2021), <https://www.youtube.com/watch?v=ozqEnGLOb0> [<https://perma.cc/BVT4-AH9X>] (explaining movement lawyering, youth movement leader Aneth Naranjo notes how it allows youth to use the law for power).

²⁴¹ Alexander, *supra* note 25, at 120 n.118 (citing Intercepted, *Ruth Wilson Gilmore Makes the Case for Abolition (Part I)*, INTERCEPT, at 45.02 (June 10, 2020), <https://theintercept.com/2020/06/10/ruth-wilson-gilmore-makes-the-case-for-abolition/> [<https://perma.cc/R73Z-XNJT>]).

²⁴² Alexander, *supra* note 25, at 120.

²⁴³ *Id.* at 123.

for imagination, and practic[e] ways of being in community and addressing harm that do not rely on the existing [legal system].”²⁴⁴

Drawing on Alexander, this article suggests that scholars interested in developing youth movement law should acknowledge when they are “playing defense”—describing how the law can and cannot meet the immediate needs of people within the existing legal infrastructure—versus when they are pushing the bounds of existing legal frameworks or writing in solidarity with social movements to radically reimagine the status quo.²⁴⁵ Legal scholars committed to revolution and social movements must acknowledge and make space for the freedom dreams²⁴⁶ of those social movements, especially those led by and for youth envisioning solutions for the “interlocking crises” in their lives.²⁴⁷ Together, progressive scholars can work “under one roof” to ensure that legal literature both responds to the material realities of marginalized young people and the unique ways in which youth interpret and resist injustice under law.²⁴⁸

For example, scholars writing *only* about litigation on behalf of marginalized youth should assume the role of *defense*. These scholars should acknowledge that this court-centered approach provides only “partial answers” for youth justice,²⁴⁹ while court-centric jurisprudence “offers some useful half-truths,” scholars must leave space for young people “to keep building power for real change.”²⁵⁰ Alternatively, scholars writing to generate “new” conceptions of law that incorporate youth-led reform efforts may best assume the role of *offense*; their work pushes the discipline to a new frontier, but maintains the existing structures.

Finally, scholars writing and thinking alongside youth social movements might best assume the role of elevating their *dreams* and radical visions for

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 123–26.

²⁴⁶ See KELLEY, *supra* note 31, at 8 (“What are today’s young activists dreaming about? . . . [W]hat are they fighting for? These are crucial questions, [because] visionary dreams of a new society don’t come from little think tanks of smart people or out of the atomized, individualistic world of consumer capitalism where raging against the status quo is simply the hip thing to do. Revolutionary dreams erupt out of political engagement; collective social movements are incubators of new knowledge.”).

²⁴⁷ Alexander, *supra* note 25, at 102.

²⁴⁸ Alexander Conference, *supra* note 59 (“At the Detroit Justice Center we use a three-pronged strategy we call “Defense, Offense, and Dreaming.” Because we need all three under one roof.”).

²⁴⁹ *Id.*

²⁵⁰ *Id.*

constitutional law. This tripartite effort of playing defense, offense, and dreaming can support youth social movements by creating new boundaries so that scholars do not use a “proxy”²⁵¹ of public interest organizations to replace the work of youth movements.

Within this framework, scholars can acknowledge the limits of jurisprudence and scholarship that exclude the bold vision of mobilized youth.²⁵² Scholars writing to elevate public interest organizations’ work within social movements might best describe their work as playing *defense*,²⁵³ and scholars suggesting reforms to existing laws might describe their work as playing *offense*.²⁵⁴ By acknowledging the different roles that distinct doctrinal interventions can play within the epistemology of movements, scholars can create space for the “freedom dreams” of social movement leaders while also grappling with the material realities of intersecting violence and inequity.²⁵⁵ In terms of movement law, this article expands on the discipline by bringing in a unique constituency not yet included in the scholarship of demosprudence and the epistemology of constitutional revolution—youth. Importantly, scholars of *youth movement law* must include thinking that “offends” and “dreams” beyond the status quo by youth leaders to act with accountability to those younger people who cannot participate in legal institutions through any formal means. This tiered approach provides a model for legal scholars seeking to develop an epistemology of constitutional revolutions that matches the vision of marginalized and mobilized youth.²⁵⁶

Trans/Gender Expansive Youth and trusted adult allies around the United States have been actively organizing and producing campaigns in social media,

²⁵¹ Eyer, *supra* note 13, at 1476. *See generally* Purvi Shah, *Movement Lawyering Reading Guide*, 47 HOFSTRA L. REV. 99 (2018) (providing examples of movement lawyering as distinct from traditional direct services or impact litigation).

²⁵² For example, when scholars suggest a legal reform such as a “fractional vote” for minors, they should acknowledge that bolder, more radical youth vision for law exist. *See* Dailey & Rosenbury, *The New Law of the Child*, *supra* note 42, at 1505 (suggesting a “new law of the child” could include a “fractional” vote for minors to encourage civic participation). *Cf.* *Youth Voting Rights*, *supra* note 81 (“We, young people at the Youth Power Coalition, fight for participation on Community Boards and for lowering the voting age. Nothing about us without us, we deserve the right to vote!”).

²⁵³ Alexander, *supra* note 25, at 123–26 (discussing how a defensive strategy yields existing legal institutions to advocate for basic needs and help marginalized people remove barriers to access existing rights).

²⁵⁴ *Id.* (discussing how an offensive strategy advocates for reforms in solidarity with impacted leaders).

²⁵⁵ *Id.* at 123 (offering the model of defense, offense, and dreaming to support lawyers to “match the power and vision of organizers” while also meeting immediate needs).

²⁵⁶ *Id.*

local and national news, and media outlets that freedom dream of positive rights mediated through radically democratic processes. These campaigns and posts serve as “popular primary and secondary source materials” and provide an entry point to assessing the “strategies, tactics, experiments, and narratives of left movements, organizations, and organizers committed to political, economic, and social transformation.”²⁵⁷ The following discussion is not meant to be a comprehensive study but to demonstrate the abundance of youth movements creating strategies and campaigns that should serve as an interpretive authority for imagined constitutional revolutions.²⁵⁸ While some of these efforts make direct critiques or demands regarding constitutional law, others do not. Here, youth movement law does not assume constitutional reform is the aim, but instead considers how it may become the vessel to achieve this aim of freedom and victory against dysfunction and oppressive legal infrastructure.

1. *Abolish Family Separation and Congregate Settings*

As state actors around the country have called for the criminalization and separation of nurturing Trans/Gender Expansive families, youth movement

²⁵⁷ Akbar et al., *supra* note 9, at 850.

²⁵⁸ *Id.*

leaders have fiercely resisted,²⁵⁹ demanding an end to policing families and congregate care settings for all people.²⁶⁰

Scholars interested in the opportunities and tensions with abolitionist demands might consider how youth interpretations expand on the sociolegal framework of abolition constitutionalism.²⁶¹ While the framework of abolition constitutionalism does not assert a prescription for scholars or lawyers “to improve the U.S. state,”²⁶² it “guide[s] and govern[s] a future society where prisons are unimaginable . . . abolishing particular systems to establishing

²⁵⁹ *About JASMYN*, JASMYN (last visited Mar. 19, 2024), <https://www.jasmyn.org/the-organization> [<https://perma.cc/KMS6-M9KZ>] (“JASMYN supports the empowerment of LGBTQIA+ teens and young adults through leadership, advocacy, resources, and a safe and affirming community.”); *see, e.g., Jacksonville Coalition for Equality*, JASMYN: JACKSONVILLE COAL. FOR EQUAL. (last visited Mar. 19, 2024), <https://www.jasmyn.org/jacksonville-coalition-for-equality> [<https://perma.cc/74T2-ZW8P>] (“We oppose FL HB 211 (Youth Gender and Sexual Identity). This bill, if enacted, would criminalize any health care practitioner who provided gender affirming hormones, puberty blocking medications and/or gender affirming surgeries to a minor even if parental consent for those treatments was given.”); *see* *Overturn the Order, Being a Young Trans Person in Texas is Tough Enough!*, YOUTUBE (Jan. 6, 2023), <https://youtu.be/IIJ2dUTux8s> [<https://perma.cc/DG4M-GEC9>] (recounting how difficult it is to be a transgender youth in Texas and asking Governor Abbott to rescind his order, initiating child abuse investigations of families with transgender children); *see also* Teresa Bachiller et al., *Foreword: Centering Parent Leadership in the Movement to Abolish Family Policing*, 12 COLUM. J. RACE & L. 436, 437 (2022) (“The expertise and leadership of parents and youth with lived experience of family policing belong at the center of the movement to abolish the system, just as Black folk are centered in Black Lives Matter.”); *see generally* Kaylah McMillan, USA TODAY (Sept. 24, 2023), <https://www.usatoday.com/story/opinion/voices/2023/09/24/foster-care-group-home-lasting-harm-kids-academics-mental-health/70863779007/> [<https://perma.cc/3MX7-86SW>] (“I survived the foster care system. Dismantling it altogether is the only path forward.”).

²⁶⁰ Keyna Franklin, *Why We’re Using the Term ‘Family Policing System’*, RISE MAG. (May 7, 2021), <https://www.risemagazine.org/2021/05/why-were-using-the-term-family-policing-system/> [<https://perma.cc/EW99-5FGW>] (“Rise is using the term ‘family policing system’ instead of ‘child welfare system’ because our team believes that it most accurately and directly describes the system’s purpose and impact.”); and *see generally* *Are You Listening Report*, *supra* note 183 at 25, (explaining how youth in congregate care facilities often described the placements as “prison like”).

²⁶¹ Roberts explained how:

[a] new abolition constitutionalism could seek to abolish historical forms of oppression beyond slavery, including settler colonialism, patriarchy, heteronormativity, ableism, and capitalism, and strive to dismantle systems beyond police and prisons, including foster care, regulation of pregnancy, and poverty. It could extend beyond the United States’ borders to challenge U.S. deportation policies and U.S. imperialism and to connect to freedom struggles around the world.

Roberts, *supra* note 51, at 120.

²⁶² *Id.* at 121.

freedom for all—a new freedom constitutionalism.”²⁶³ By integrating youth freedom dreams into this framework, scholars might resolve tensions between how movements conceptualize an abolitionist constitutional revolution and how formally trained legal scholars conceive of it:

On the one hand, there is good reason to *renounce the Constitution* because constitutional law has been critical to upholding the interests of the racial capitalist regime while advancing legal theories that justify its inhumanity. On the other hand, there is utility in *demanding that the Reconstruction Constitution* live up to the liberation ideals fought for by abolitionists, revolutionaries, and generations of ordinary black people. As they must with respect to so many aspects of abolition consciousness, those who are building a society without prisons must engage dynamically with this tension.²⁶⁴

Using youth movement law, scholars can work to “craft abolition constitutionalism that both condemns the dominant jurisprudence that legitimizes the carceral state” and also centers the experiences of Trans/Gender Expansive Youth in congregate settings,²⁶⁵ who have advocated for alternative systems of care that create a strong foundation for a “radically different. . . humane, free, and democratic world.”²⁶⁶

Relatedly, Mobilized Trans/Gender Expansive Youth have organized as part of intergenerational, multiracial, and gender diverse coalitions to demand “transformative justice, healing, and community restoration” in public schools and communities.²⁶⁷ For example, intergenerational organizations and

²⁶³ *Id.*

²⁶⁴ *Id.* at 122 (emphasis added).

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ Alexander, *supra* note 25, at 118; *see, e.g.*, AYO NYC!, COSM. POSSIBILITIES: AN INTERGALACTIC YOUTH GUIDE TO ABOLITION (2020) [hereinafter AYO NYC!], <https://static1.squarespace.com/static/6596ed9e8f2db01cec27dd70/t/66bfb35a7ea52578187b01a9/1723839326711/Section2022+Abolish+Youth+Punishment+Systems.pdf> [<https://perma.cc/KB7N-PVRH>] (“Abolish New York’s Youth Punishment & Carceral Systems is a special project of the 2022 Peer Defense Project . . . [that] describe[s] how New York policies criminalize, punish, and surveil young people . . . look[s] at the history of the system, its mechanics, its impacts, and recent reforms . . . [and] lay[s] out an approach to give [youth] the tools to build an understanding of abolition . . . [and] to organize, fight, dream, and fly.”); *see* Peer Defense Project

initiatives such as Movement Family Power,²⁶⁸ Abolitionist Youth Organizing Institute (AYO, NYC!)²⁶⁹ at Project Nia,²⁷⁰ and the Peer Defense Project²⁷¹ have expanded conversations about family policing and gender violence under law that center young people. In partnership with movement lawyers and organizers, youth in these organizations have co-created accessible tools, guides, and activities that constitutional law scholars may employ to challenge the limits of scholarship on constitutional change and build an ethos of solidarity with youth leaders.²⁷² With intentional relationship building and opportunities that compensate and credit young organic jurists,²⁷³ legal scholars can begin to work with Trans/Gender Expansive mobilized youth leaders to

(@peerdefense), INSTAGRAM, https://www.instagram.com/p/CIHYE9fp-gf/?utm_source=ig_web_copy_link [https://perma.cc/5EWS-XX3M] (last visited Aug. 17, 2024); see also UNAPOLOGETIC (Kartemquin Films 2020) (highlighting two fierce abolitionists working to transform what safety looks like for their communities).

²⁶⁸ Barnard Center for Research on Women, *Abolish Mandatory Reporting and Family Policing*, YOUTUBE, at 3:5:19 (Nov. 10, 2022), <https://www.youtube.com/watch?v=23Ny7pys01U> [https://perma.cc/9LBD-WYQQ] (discussing how “the family regulation system has captured our imagination,” Erin Miles Cloud addresses how recreating gender relations exacerbates child sexual abuse and harms queer youth.)

²⁶⁹ AYO NYC!, *supra* note 266 (providing facilitation materials for youth to understand, use, and shape abolitionist practices)

²⁷⁰ PROJECT NIA, <https://project-nia.org/> [https://perma.cc/MJ6A-DRG6] (last visited Mar. 19, 2024) (“Project Nia works to end the incarceration of children and young adults by promoting restorative and transformative justice practices.”)

²⁷¹ The author, Sarah Medina Camiscoli is a co-executive director at the Peer Defense Project. See *Abolish NYC Youth Punishment Systems*, PEER DEF. PROJECT (2022), <https://static1.squarespace.com/static/6596ed9e8f2db01cec27dd70/t/66bfb35a7ea52578187b01a9/1723839326711/Section2022+Abolish+Youth+Punishment+Systems.pdf> [https://perma.cc/T6HU-VPFZ].

²⁷² AYO NYC!, *supra* note 266 (centering the interpretations of youth who are critical of existing legal systems).

²⁷³ John et al., *supra* note 68, at 2095–96 (defining the article’s coauthors as “organic jurists...[b]ased on Antonio Gramsci’s concept of ‘organic intellectuals,’[who] “stud[y], analyze[], and comment[] on the law.”); see Rachel E. López (@Rachel_E_Lopez), TWITTER, https://twitter.com/Rachel_E_Lopez/status/1616089237677395969 [https://perma.cc/2SB3-72GM] (encouraging and educating scholars on “the practice and ethical considerations of co-authoring” with directly impacted partners “as well as how this scholarship can contribute to social justice initiatives on the ground”); see also *Youth Collaboration Toolkit*, TRUE COLORS UNITED (2019), <https://truecolorsunited.org/wp-content/uploads/Youth-Collaboration-Toolkit.pdf> [https://perma.cc/A2V9-9FMW] (discussing how adults working in partnership with young leaders should work to find creative ways to credit and compensate youth).

“restructure the possible”²⁷⁴ of abolition constitutionalism, working through the anticipated tensions with the very people who will live them. These powerful educational tools²⁷⁵ that youth leaders designed in partnership with movement lawyers, legal workers, and organizers provide materials to support the kind of “collaborative work” necessary to plant the seeds for a true constitutional revolution that responds to the resistance and reimagination of law by Trans/Gender Expansive Youth and their families.²⁷⁶

2. *Guarantee Housing, Healthcare, and Education for Multiply Marginalized Youth*

While some movements have demanded laws that protect multiply marginalized youth from gender policing and family separation, others have modeled new kinds of institutions to meet their survival needs.²⁷⁷ For example,

²⁷⁴ Guinier & Torres, *supra* note 40, at 2797 (arguing that the activists in the Montgomery Bus Boycott, the Mississippi Freedom Democratic Party (MFDP) “moved from marginal characters to members of authoritative interpretative communities...reinterpreting was the meaning of American constitutional justice . . . [and] ultimately restructure[ing] the politics of the possible.”).

²⁷⁵ See, e.g., Lisa Sangoi, *How the Foster System Has Become Ground Zero for the U.S. Drug War*, MOVEMENT FOR FAM. POWER (June 2020), <https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf> [<https://perma.cc/J2XK-6GP3>]; see also Kailyn Gaines & Anna Milliken, *Abolish New York’s Youth Punishment & Carceral System*, PEER DEF. PROJECT 18 (2022), https://drive.google.com/file/d/1KYbzwyOFh3_2ts4WyFkyKx1bCaHHUh1w/view?ts=625a033c [<https://perma.cc/HNR3-66CE>] (listing the various actors included in youth punishment and carceral systems).

²⁷⁶ For further discussion of this issue, see, for example, *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1137–38 (9th Cir. 2003), which describes provocation; *State v. Stonehouse*, 555 P. 772, 779 (Wash. 1907), which lists excuses; and *WENDY BROWN & JOHN BLACK, STATES OF INJURY: POWER AND FREEDOM* 34 (1995), which examines harm. For more on the history and politicization of family policing within the existing legal infrastructure, see Barnard Center for Research on Women, *supra* note 267, conversation with Erin Miles Cloud, Jasmine Wali & Shannon Perez-Darby moderated by Dean Spade; and *End the War on Black People*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/end-the-war-on-black-people/> [<https://perma.cc/PPA4-VY43>] (demanding “an end to all jails, detention centers, youth facilities and prisons as we know them”); see also AYO NYC!, *supra* note 266 (asking youth to reimagine community safety); see generally Peer Defense Project, *supra* note 268; and UNAPOLOGETIC, *supra* note 266 (highlighting two fierce abolitionists working to transform what safety looks like for their communities).

²⁷⁷ Guggenheim, *supra* note 42, at 952 (emphasizing the need for a Constitution that “. . . recognize[s] a child’s right to the basic necessities of life—food, clothing, shelter and health care). Similarly, AYO NYC!, notes that:

intergenerational movement groups such as Black Trans Advocacy Coalition (BTAC),²⁷⁸ JASMYN,²⁷⁹ and Fiesta Youth²⁸⁰ have worked to prefigure institutions that ensures “a child’s right to the basic necessities of life” without discrimination.²⁸¹ Through projects such as resource clearinghouses²⁸² and mutual aid webs,²⁸³ intergenerational organizations such as BTAC and JASMYN are both challenging the limits of law and prefiguring how the state might manage the resources that would be available to Trans/Gender Expansive Youth under a Constitution of positive rights.

Further writing and thinking alongside intergenerational groups and building mutual aid networks with multiply marginalized youth can support legal scholars in exploring the tensions in how mobilized youth envision the provision of basic needs. Do these young leaders envision a constitutional revolution that might expand state welfare or one that relies more heavily on

[a]bolition calls for not only meeting people’s basic needs, but also creating conditions for people to collaborate, thrive, and live full, enriched lives.” Then asking youth to share, “[i]f you didn’t have to worry about meeting basic needs (such as rent, food, etc.), what dreams would you actively pursue? If you don’t have to worry about meeting basic needs, why?”

AYO NYC!, *supra* note 266.

²⁷⁸ See *infra* Appendix, at 62.

²⁷⁹ *Id.* at 65.

²⁸⁰ *Id.* at 62.

²⁸¹ Guggenheim, *supra* note 42, at 952.

²⁸² BLACK TRANS ADVOCACY COALITION, <https://blacktrans.org/> [<https://perma.cc/H8LT-KFRB>] (“We help Black Trans People Get Basic Needs . . . providing assistance with emergency food, applying for public benefits [] and legal identity documents . . . helping individuals fight health care inequality, find[ing] trans inclusive health resources and financial assistance for health care cost . . . helping individuals fight employment inequality, [providing] 21st century career readiness skills preparation, and find[ing] trans inclusive employment opportunities . . . helping individuals fight housing inequality, find safe and secure emergency shelter, permanent housing, and assist[ing] first time home buyers achieve the American dream.”); see also Kim Ambrose, Angélica Cházaro & Dean Spade, *Politicians Should Abandon Youth Jail Project as a Year-End Gift to King County’s Children*, S. SEATTLE EMERALD (Dec. 20, 2016), <https://southseattleemerald.com/2016/12/20/politicians-should-abandon-youth-jail-project-as-a-year-end-gift-to-king-countys-children/> [<https://perma.cc/XF44-8EUD>] (writing in collaboration with law professors, Dean Spade explores the recent developments around the construction of a youth jail in Seattle in December 2016 and explains his participation in the movement to stop King County from building a \$210 million new youth jail. This abolitionist organizing movement demanded housing, health care, and childcare in place of youth jails and courts).

²⁸³ JASMYN, <https://www.jasmyn.org/the-organization> [<https://perma.cc/88HR-25C6>] (“JASMYN partners with organizations across Northeast Florida to accommodate the needs of LGBTQIA+ youth. [They] refer or introduce young people to other providers for services [they] don’t provide, such as primary care, behavioral health counseling and shelter” which creates a “community safety net.”).

local, anarchist institutions that resist undue state intrusion?²⁸⁴ By writing and thinking alongside these young movement leaders, scholars can better understand how emerging leaders are negotiating “skepticism about state power” while also demanding accountability from the state “to protect children.”²⁸⁴ By exploring the tensions between intergenerational mutual aid projects that reject state interventions²⁸⁵ versus those that seek more robust state welfare institutions, scholars can better understand how younger generations are working to realize equality in society under (or outside of) law.²⁸⁶

3. *Mobilized Youth as Co-Authors of Law and Civic Life*

In addition to working to dismantle carceral state interventions and prefigure life-affirming institutions, Trans/Gender Expansive Youth in organizations such as Girls for Gender Equity have coauthored constitutional-like participatory policy platforms to build a society where all youth can “experience communities and schools built on consent, autonomy, and freedom from violence so that they can live self-determined lives.”²⁸⁷ Girls for Gender Equity represents one of the hundreds of organizations of youth social movement leaders across the country who signed the National “Black Girl Bill of Rights” demanding “the right to agency and control over our own bodies in every space,” and “the right to be safe and have our physical, emotional, and mental health honored, protected, and nurtured.”²⁸⁸ By elevating the epistemology of these youth-centered participatory policy platforms, scholars will expand the landscape of children and the law to capture the material implications of law from the perspective of children.²⁸⁹

²⁸⁴ Alstott, *supra* note 115, at 25.

²⁸⁵ SPADE, *supra* note 12 (discussing tensions and dangers that emerge in mutual aid spaces and providing suggestions for how to mitigate challenges).

²⁸⁶ Roberts, *supra* note 51, at 109 (arguing “that black people have historically expressed fidelity to the Constitution because it offers ‘practical advantages’ to their struggle for equal citizenship. Under this instrumental approach, equal citizenship does not arise from the Constitution; it precedes it. The Constitution is not the standard of justice we should faithfully uphold; equal citizenship is”).

²⁸⁷ *Black Girl Bill of Rights*, NAT’L AGENDA FOR BLACK GIRLS, <https://natagenda4blackgirls.org/black-girls-bill-of-rights/> [https://perma.cc/3TND-U2EL] (last visited Mar. 19, 2024).

²⁸⁸ *Id.*

²⁸⁹ Dailey & Rosenbury, *The New Parental Rights*, *supra* note 42, at 140-143 (discussing the importance creating avenues for transgender youth decisionmaking in medical contexts).

CONCLUSION

This article shares the limits of the law and introduces mobilized youth's freedom dreams to promote collaborative partnerships where legal scholars and mobilized young leaders imagine a constitutional revolution together beyond what has seemed possible before.²⁹⁰ To integrate youth freedom dreams, this article proposes a new methodology—*youth movement law*—an approach to constitutional law that “can and must transform us.”²⁹¹

However, this article only *begins* the deep work of developing an ethos of solidarity with youth-led social movements necessary to radically reimagine law. To encourage an emergent process of building new strategies and approaches to writing alongside mobilized youth, this article ends with lingering questions, a survey of youth social movement organizations elevated in this work, and an invitation to scholars to begin new, collaborative, and intergenerational projects to map a “better way for all of us.”²⁹²

- What kind of ethics should guide legal scholars who seek to write in solidarity with marginalized and mobilized youth?
- How should legal scholars determine which youth movements and interpretations to prioritize, include, and disregard?
- How can scholars determine the success of a constitutional revolution seeded by young people who reject its fruition?

290 Alexander, *supra* note 25, at 137 (“Emergence is beyond what the sum of its parts could even imagine.”).

291 KELLEY, *supra* note 31, at xii.

292 Alexander, *supra* note 25, at 117 (explaining how the “visionary demands” of mobilized youth help find “a better way for all of us.”).

APPENDIX

Name of Organization or Initiative	Highlighted Work
Ali Forney Center	Supports LGBTQ+ youth experiencing homelessness by offering intake & ongoing support, emergency housing, LEAP program (learning, employment, advancement, and placement), vocational training, and transitional housing. The Center is open 24/7, with youth counselors as well as adult leadership staff.
Are You Listening?	Youth-led initiative to expose and abolish the harmful and hazardous carceral systems of congregate care in New York State—the state with one of the highest rates of family separation and congregate placements in the country. Initiative highlights compounded harm for LGBTQ+ youth.
Assata's Daughters (AD)	Assata's Daughters is a Queer Black woman-led, youth-focused group organizing young Black people in Chicago through political education, leadership development, and other programming. The group works towards abolition (of police, prisons, anti-Blackness) and hosts a summer program.
BAGLY	BAGLY builds youth workshops, gathering spaces, and youth-led spaces to empower youth. The program supports youth leaders to meet their basic needs through free health programs and a health clinic.
Black Trans Advocacy Coalition (BTAC)	National Black Trans Advocacy Coalition is a national non-profit organization led by black trans people that advocates to end poverty, discrimination and inequities in health, employment, housing and education to improve the lived experience of transgender people. Their work is based in peacebuilding, community

	education, public policy initiatives, empowerment programs and direct services.
Black Youth Project 100 (“BYP100”)	BYP100 is a national organization of Black youth and young adults (ages 18–35) who organize for justice and freedom for all Black people through “leadership development, direct action organizing, advocacy, and political education using a Black queer feminist lens.” The current national campaign, “She Safe, We Safe,” harnesses transformative justice to end the everyday gender violence that Black women and gender non-conforming people face.
Brave Space Alliance	Black-led, trans-led LGBTQ+ center that provides culturally informed resources, programs, and services for LGBTQ+ people across generations in the South and West Side of Chicago. The organization uses a mutual aid framework and prioritizes BIPOC trans and gender-nonconforming people.
Brotherhood Sister Sol	Brotherhood Sister Sol empowers diverse Black and Latinx youth to learn about their history, identity, and community in a space that facilitates youth-led activism, organizing, and training. Members often engage in spoken word performances to challenge inequity in arts, environmental, career, and wellbeing education. Brotherhood Sister sol runs the Rites of Passage Program, a multi-year support program, to support youth members in learning critical thinking and global awareness skills, developing leadership and conflict resolution skills, political education, and their own chapter. This leadership and community development program incorporates topics such as Pan-African and Latino History, Sexism and Misogyny, LGBTQ Rights & History, and Political Education and Social Justice.

Fearless Leading by the Youth (FLY)	Fearless Leading by the Youth (FLY) empowers Black youth to be community organizers with grassroots advocacy in Chicago with novel collaborative, organizing, and educational techniques. Campaigns include organizing against gentrification, promoting civic engagement and voter rights, and facilitating youth leadership opportunities.
Fiesta Youth	Provides a safe, non-judgmental, affirming place for LGBTQ+ youth to express and explore who they are through education, peer-support, and friendship.
Free to Be Youth	Provides grassroots legal education, empowerment, and direct services to trans/gender expansive youth.
Gender Sexuality Alliance (GSA)Network	The GSA Network trains youth leaders, supports youth organizing, and builds the GSA movement—including increasing trans and queer youth of color—through leadership development and engagement. In March 2022, the Network launched a national strategy that centers youth leaders, “Devising Freedom,” to combat the harmful legislation targeting trans and gender expansive youth.
Generation Q	Queens Youth Centers facilitate safe spaces, advocacy, and leadership development, as well as free counseling, employment opportunities, and other resources to support youth to grow and thrive.
Girls for Gender Equity (GGE)	Intergenerational nonprofit organization that centers Black girls and gender-expansive youth to transform laws, policies, and culture through advocacy, youth leadership development, and campaigns to achieve gender and racial justice. GGE’s advocacy work has included pushing for police-free schools, comprehensive sexual education in schools, and increased mental health support.

GLADLY	A group for high-school aged LGBTQ+ people to share experiences, resources, and self-care activities.
GLBTQA+ Adolescent Social Services (GLASS)	GLASS provides drop-in community centers, free mental health services, and free resources in prevention and testing for LGBTQ+ youth of color and allies. GLASS employs youth leaders to work as community health workers or serve on an advisory board.
Greater Boston PFLAG	Greater Boston PFLAG provides support meetings, a youth-centered Safe Schools Program, and a scholarship program to support education access.
Green Light Black Futures	Organizes to end the hyper-surveillance of the people of Detroit living under Project Green Light as well as promoting abolitionist campaigns for community safety.
IYG	IYG empowers LGBTQ+ youth (ages 12–20) and young adults (ages 18–24) by building community, developing leadership, and increasing self-efficacy with programs including support groups, art, sexual health education & testing, rehousing (Project Prism), case management, and a pen pal program.
JASMYN	JASMYN “supports the empowerment of LGBTQIA+ teens and young adults through leadership, advocacy, resources, and a safe and affirming community.” JASMYN offers drop-in programs including one-to-one support, health services, group peer support, social events, and leadership development support.
LYRIC	LYRIC Center for LGBTQ youth is a California-based organization committed to social change through the inclusion, support, and development of youth LGBTQ leaders. Their mission is to build community and support community formation through services that

	include education enhancement, career training, leadership development, and advising. LYRIC offers essential resources through internships and work opportunities, housing, and health services. They also offer access to “Youth Advocates,” who offer mentorship and advice for youth to achieve personal, professional, and educational goals.
MA Transgender Political Coalition	<p>The Massachusetts Transgender Political Coalition (MTPC) works to advance lived equity for transgender and nonbinary people in Massachusetts, not just equality under the law. MTPC currently runs 4 major programs:</p> <ol style="list-style-type: none"> 1. Trans Leadership Academy supports low-income, BIPOC, and/or formerly incarcerated trans and nonbinary adults with workforce and leadership development. 2. IDA Network (Identity Document Assistance Network) provides guidance, support, and financial assistance to update one’s legal name and/or gender on federal and state documents. 3. G.E.A.R. (Gender Euphoria and Affirmation Resources) provides access to gender-affirming products, garments, supplies, and other resources at no cost. 4. REACH (Relief and Emergency Assistance for Community Hope) provides trans and nonbinary people in Massachusetts with emergency funds for a variety of expenses. <p>MTPC coordinates the MA Trans Health Coalition to address disparities in healthcare and insurance coverage. MTPC also provides education and training services to work toward widespread cultural competency, belonging, and lived equity for the transgender community.</p>
Massachusetts Asian + Pacific Islanders for Health (MAP)	MAP creates a safe space for the LGBTQ+ AAPI community through youth-led peer leader teams and drop-in hours for peer-to-peer support and conflict resolution.

Movement for Black Lives	A space for Black organizations across the nation to collaborate, discuss political moves, and co-create a movement-wide strategy. M4BL is abolitionist (prisons, police, etc.), anti-capitalist, connection-centered, and outlines a long list of demands and campaigns designed in collaboration with intergenerational movements for Black liberation across the country.
NYCLU Teen Activist Project (TAP)	The Teen Activist Project emboldens NYC high school students to organize and lead as activists for civil rights and civil liberties, pushing the right of young people to have a process to determine equal protection of laws and from discrimination. TAP advocates for issues like racial justice, students' rights, LGBTQ youth rights, integrating schools, and ending the school-to-prison pipeline.
@OliviaJulianna	Olivia Juliana is a young queer Latina activist who has organized nationally recognized campaigns and mutual aid efforts around abortion rights and bodily autonomy and worked in leadership at Gen-Z for Change.
Orlando Youth Empowerment Series (OYES) "Unconference"	The OYES Unconference is a youth-driven event that engages and amplifies the voices of LGBTQ+ youth in Central Florida. LGBTQ+ youth determine the unconference agenda with support from trained adult ally educators and facilitators. The OYES Unconference intentionally shifts power structures and knowledge sharing.
Our Spot KC	Our Spot KC works to empower the LGBTQ+ community with resources and programming. The Lion House—LGBTQ+ specific transitional housing program—works to address root causes of LGBTQ+ homelessness and promote housing stability & sustainability by centering community and providing LGBTQ-specific transitional and rapid re-housing.

OUT Maine	OUT Maine works toward a welcoming and affirming Maine for all rural young people of diverse sexual orientations, gender expressions, and gender identities.
Out MetroWest Umbrella	Umbrella is a program designed for middle and high school students who identify as transgender, non-binary, or who are gender questioning. Umbrella offers a social and supportive space, facilitated by trans adults and peer leaders, with a trans therapist present.
Out Now	A youth-led LGBTQ+ organization that works on health, wellbeing, self-determination, and community building through anti-oppression organizing.
Pride Link Youth Summit	Pride Link offers a drop-in community center and wellness space for LGBTQ+ people to access medical services, STI testing, legal services, support groups, and other affirming resources. They host a biannual summit to gather LGBTQ+ youth, parents, educators, and providers to co-design a summit on LGBTQ+ youth.
PRISM	PRISM is a youth-led organization that strives to increase youth access to educational resources around LGBTQ+ inclusion and sexual health and resist organizations and structures that fail LGBTQ+ youth. Resources include anti-bullying know-your-rights information, readings on topics like sexual health and queer people of color, and STI testing locators.
Project Nia	Works to end the incarceration of children and young adults by promoting restorative and transformative justice practices. Project Nia designs projects to educate young people about defunding the police, building community accountability, and working with movement artists.

Providence Youth Student Movement (PrYSM)	PrYSM mobilizes community to build grassroots power and organize collectively for abolition and liberation for Black, Indigenous, and People of Color. PrYSM has historically organized at the intersection of race, class, gender, and sexual orientation by centering youth, femme, queer, and Southeast Asian leadership in their campaigns, organization, and communities.
Queer Nature	Queer Nature provides free nature-based education in the Northwestern U.S. and Intermountain West, dreaming alternatives to post-industrial/globalized/eco-cidal contexts and climate chaos.
Queer Youth Assemble	Queer Youth Assemble is a youth-led nonprofit using events, projects, community collaboration, resources, professional development, artistic endeavors, and more to create a better world for queer youth (under 25). Projects range from organizing “Let Trans Athletes Play” protests to national walkouts to zines.
Queer Youth Task Force of Santa Cruz (QYTF)	The Queer Youth Task Force of Santa Cruz County is a group of community leaders and organizations that work with LGBTQ youth to support them and enhance their livelihoods. They work in pursuit of a vision where youth are able to thrive and realize their sexual orientation and gender identity. Some mission goals include supporting LGBTIQ-related education, strategizing and implementing resources while improving existing ones, and fostering intergenerational collaboration and understanding in working with youth.
Seacoast Outright	Seacoast Outright serves, supports, and advocates for youth in the Greater Seacoast Area of New Hampshire and beyond through LGBTQ+ youth groups (grades K–12), educational outreach trainings, caregiver support groups, community

	partnerships (including the PRISM Program with Big Brothers Big Sisters), and annual pride events.
Sistas & Brothers United	SBU, the youth organizing arm of the Northwest Bronx Community and Clergy Coalition, works with Bronx youth to develop leadership through political education and organizing campaigns that address the root causes of inequalities young people face in their schools and neighborhoods. Current youth-led organizing includes dismantling the school-to-prison pipeline, especially for immigrant, queer and trans young people, and students with disabilities to promote restorative justice. Young people are also leading organizing efforts around equitable economic development and health justice campaigns. They are currently developing youth leadership around a divest/invest campaign and would love to learn about other models that have successfully implemented these efforts.
Students Engaging in Advancing Texas (SEAT)	SEAT supports youth movement leaders to develop transferable skills and bring youth visibility to policymaking with projects in gender policy, racial justice, and intellectual freedom.
Support Equality Schools AZ (SEAS)	SEAS is a student-led group, founded by youth activist Dawn Shim, that organizes walkouts to include impacted youth in pushing back against legislation targeting LGBTQ+ rights and demanding full legal equality in schools.
Sylvia Rivera Law Project (SRLP)	Pursues equal protection of laws and from discrimination for people of all genders. An intergenerational, nonhierarchical space that offers legal programs for immigrants, incarcerated people, and transgender and gender non-conforming people of color (the “Survival & Self-Determination Project”).
The Outboard	Builds multi-generational queer communities and supports local queer-owned businesses.

The Trevor Project	The Trevor Project aims to end death by suicide among LGBTQ+ young people. It provides information and support for LGBTQ+ young people, including crisis services, the social group TrevorSpace, advocacy groups, and public education.
Trans Teen Project	Founded by the Queer Youth Task Force of Santa Cruz County, the Trans Teen Project cultivates and centralizes support for trans youth through “personal self-expression, social networking, and community-wide education.” Key values include the empowerment of trans youth and creating a visible space for trans youth voices to be heard and validated.
Trans Week of Visibility + Action	Trans Week of Visibility and Action launches digital mobilization campaigns to build power and support for trans young people and those fighting alongside them by sharing resources, knowledge, and collective intergenerational action.
Transformations	Transformations support trans communities of color and trans youth survival and build capacity in Arkansas, Kansas, and Missouri. Trans youth build leadership through leadership programming like “Liberation Camp” microgrants, “The Dolls are Thriving” summit, and the “Hey Sis” virtual mentorship series.
Trans formative Schools	Transformative Schools provide free after-school education that centers on trans joy and social justice. Open to all, it is designed to address the unmet needs of trans, queer, nonbinary, and gender expansive middle school students while uplifting trans lives and leadership.
Transgender Education Network of Texas	Transgender Education Network of Texas works to educate and empower trans youth and allies across Texas to promote gender equality in the state of Texas.

TransLatin@ Coalition	Founded in 2009 by a group of gender expansive and intersex immigrant women in LA, the TransLatin@ Coalition provides a grassroots response to address the specific needs of TGI Latin@s across generations who live in the United States. The organization advocates for policy changes to uphold legal protection for the intersectional community it serves and currently has representation in AZ, CA, FL, GA, IL, MN, NY, TX, and WA.
True Colors United – National Forum on Youth Homelessness (NYFH)	True Colors United supports and elevates young people to contribute to the growing national dialogue on how to make youth homelessness rare, brief, and non-recurring.
True Colors: Out Youth Theater	True Colors: Out Youth Theater facilitates community theater to educate and empower LGBTQ+ youth leaders. Out Theater is part of a larger initiative to create the largest theater in the world, owned and operated by QTPOC people.
Trans Prom	A national protest and celebration of trans joy led by and for trans teenagers in front of the U.S. Capitol in response to the crisis of anti-trans legislation.
Undocuqueer	Undocuqueer is a movement of undocumented queer and trans folks seeded by a Tumblr post in 2012 by artist Julio Salgado. Salgado made art to elevate other undocumented and queer people, or “undocuqueers.” His movement art queers notions of borders, bodies, and citizenship to support the liberation and empowerment of queer undocumented folks and liberatory social justice movements.
Urban Youth Collaborative (UYC)	UYC is a diverse student-led coalition of NYC youth organizing groups working to end the school-to-prison and deportation pipeline and instead foster inclusive and supportive learning environments. UYC organizing centers around

	removing police from schools, ending punitive disciplinary practices, and providing more mental health support in schools.
We Are Family (WAF)	We Are Family provides affirming spaces and resources for LGBTQ+ youth (up to age 23), including social support groups, GSA coalition support, and a name change assistance program (age 18 to 24). WAF's signature events include Queer Youth Fest, Spirit Day, and Queer Prom (for middle and high schoolers).
We Thrive! LGBTQ+ and Ally Center for Cape Cod and the Islands	We Thrive owns a community land trust that provides programming and housing for LGBTQ+ people of all ages.
YA-YA Network	YA-YA Network prepares young people across race, class, and gender to be leaders and activists, advancing youth organizing for youth development and social transformation. Programs include the Summer Social Justice Institute, the Empower Fellowship, Facilitation Bootcamp, Facilitation Squad, Action Committee, and Media Lab. Current organizing includes pushing for police-free schools and NYC budget justice to invest in restorative justice & social-emotional wellbeing.
Youth on Fire	Youth on Fire serves young people ages 14–24 by providing basic necessities such as hot meals, clothing, showers, laundry facilities, and free drop-in hours for mental and physical health services.
Youth Pride, Inc.	Youth Pride Inc. provides free drop-in hours for mental and physical needs, youth community support groups, education, and advocacy.
Zebra Youth	A collective of organizations that empowers LGBTQ+ youth (ages 13–24), with a full continuum of services encompassing housing, case management, social spaces, and health, with a

	focus on supporting young people to understand and recover from bullying, family isolation, abuse, and the housing crisis.
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