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# *GSA v. Spearman* and the Fight against Anti-Gay Curriculum Laws

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## Abstract

*In the wake of the AIDS epidemic in the 1980s, numerous states passed anti-gay curriculum laws that circumscribed and/or prohibited discussions of homosexuality in k-12 public schools. These laws became a target of lesbian, gay, bisexual, transgender, and queer activism in subsequent decades. The following analysis examines one of the last such laws to be invalidated, the so-called "no promo homo" legislation in South Carolina. This investigation concludes that the ultimately successful arguments against the South Carolina legislation relied on the equal protection guarantees found in the Fifth and Fourteenth Amendments to the U.S. Constitution and on a social movement tactic known as frame bridging.*

**Keywords:** curriculum laws, Equal Protection Clause, frame bridging, LGBTQ

## *1. Introduction*

In a quirk of historical coincidence, on the same day—March 11, 2020—that the World Health Organization issued a statement declaring that Covid-19 infection levels had reached the point of a global pandemic, the U.S. District Court for South Carolinaissued a Consent Decree in *Gender and Sexuality Alliance v. Spearman*[hereafter *GSA v. Spearman*] (United States District Court for South Carolina, 2020b). Understandably, the American public, including South Carolinians, paid more attention to the pandemic than to the Consent Decree. Nevertheless, the District Court's decision was a significant one that would affect Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) students in South Carolina and potentially throughout the United States.

The following analysis examines the historical context and events leading up to *GSA v. Spearman*, as well as factors that influenced the Consent Decree. The case's outcome illustrates how social movements have continued to combat discrimination by invoking the right to equal protection providedby the Fifthand especially the FourteenthAmendmentto the U.S. Constitution. This article also contends that the plaintiffs' request for injunctive reliefin *GSA v. Spearman*, referred to as their "Complaint" (United States District Court for South Carolina, 2020a), relied on an approach known as "frame bridging" (Snow, Rochford, Worden, & Benford, 1986). In short, the plaintiffs linked the cause of LGBTQ equality in South Carolina with more recent national concerns over the causes and consequences of school bullying. This approach can be especially effective when the group seeking an expansion of civil rights does not possess broad-based political power and/or social capital.

## *2. The AIDS Epidemic and Anti-Gay Curriculum Laws*

The nation's more than 13,000 school districts are responsible for the daily operations of public schools. However, local control over schools is not plenary. Curricular matters are regulated in varying degrees by state statutes that often determine what teachers can and cannot teach—or, to put it differently, what students are or are not permitted to learn (Imber & van Greel, 2010).

Local, regional, and/or national concerns, including those over education, influence the actions of state legislators. Historically, these concerns have encompassed a range of administrative, fiscal, and pedagogical issues. In the mid-nineteenth century, state legislatures debated the extent and cost of k-12 schooling (Spring, 2018). In the post-Civil War period, Southern legislatures established and regulated racially segregated school systems, while legislatures in both the North and South during the early decades of the twentieth century grappled with whether their state's children should be taught the theory of evolution (Anderson, 1988; Larson, 2020). Still laterstate legislatures and the U.S. Congresspassed laws to remedyapparent deficiencies in math and science education that the Soviet Union's launch of Sputnik in 1957allegedly brought to light (Urban, 2010).

Aconcernthat prompted state lawmakers to make changes to k-12 curricula during the 1980swas theacquired immunodeficiency syndrome(AIDS) epidemic.The first AIDS cases in the United States were reported in 1981, but little was definitively known about what caused AIDS—eventually identified as the human immunodeficiency virus (HIV)—or how AIDS was transmitted (Faderman, 2015; Schulman, 2121; Shilts, 1987).Health officials initially believed that AIDS was limited primarily to gay men, which is why one of the first names for AIDS was gay-related immune deficiency, though many people, including Larry Speakes, who was President Ronald Reagan's press secretary, simply referred to it as the "gay plague" (Cohen, 2001).Researchers soon discovered that HIV could infect anyone through the transmission of certain body fluids, particularly during unprotected sexual activity. In the absence of a vaccine or viable treatments, contracting HIV was tantamount to a death sentence during the first several years of the AIDS epidemic.

The onslaught of AIDS occurred during a period of conservative political and religious ascendancy in the United States. The election of Ronald Reagan in 1980 was the most visible sign of this ideological sea change, which was also heralded by the rise of the Moral Majority, Christian Voice, and other like-minded groups (Alter, 2020; Martin, 1996; Perlstein, 2020; Spitz, 2018). Supporters of these groups had been longstanding opponentsof sex education in public schools (Slominski, 2021). This opposition diminished in the early 1980s when political and religious conservatives—increasingly referred to as the Religious Right—began to favor "abstinence-only" sex education that countenanced sexual activity only within the confines of monogamous heterosexual marriages (Dowland, 2015; Irvine, 2002; Moran, 2000). WithAIDS cases and deaths dramatically escalating, President Reagan finally authorized the U.S. Surgeon General, C. Everett Kopp, to issue public health recommendations in 1986 to contain the spread of HIV (Petro, 2015). The Religious Right assumed that Koop, an evangelical Christian, would issue a statement that was consistent with the tenets of abstinence-only sex education (Rosky, 2017). They were mistaken. Instead, as Koop noted in a statement released after the report, comprehensive HIV and sex education would need to include "open discussions about sexual practices—homosexual and heterosexual" (Koop, 1987, p. 1). Failure to frankly address these topics, Koop maintained, would endanger the "future health and well-being" of the country's youth. (Koop, 1987, p. 1).

Political and religious conservatives excoriated Koop's advice, asserting that it amounted to nothing less than teaching "safe sodomy" (Stanley, 1987, p. 24).As state legislatures began to formulate and revisetheir HIV and sex education policies, Koop's opponentssought to minimize the impact of hisrecommendations. They were generally successful. According to Rosky (2017), between 1987 and 1996, twenty states enacted sixteen anti-gay HIV and/or sex education laws. Among the first to do so was South Carolina (Hoshall, 2013).

## *3. South Carolina's Comprehensive Health Education Act*

In the 1980s, South Carolina politics had changed little since the Civil War, even if party affiliations had. Jim Crow lawmakers denounced school integration and consistently opposed virtually all civil rights legislation. The state's voters initially rejected the Nineteenth Amendment, and South Carolina remains one of only twelve states that has not ratified the Equal Rights Amendment. The state's long-serving United States Senator, Strom

Thurmond, was the first Southern politician of any stature to switch his party affiliation from Democrat to Republican, a key development in the Republicans'eventual transformation of the South's political landscape (Edgar, 1992).Furthermore, the state's location in the heart of the Bible Belt helped fuel its embrace of conservativepolitics. Home to a large number of Baptist congregations, the state was—and continues to be—a redoubt for evangelical and fundamentalist Christians who support traditional gender and sexual norms (Dochuk, 2010). The mutually reinforcing ties between conservative social, cultural, and political views were epitomized by the refusal of Bob Jones University, a private religious university located in Greenville, to drop the interracial dating ban among its students in order for the school to qualify for federal tax exemptions (Dalhouse, 1996). Although the U.S. Supreme Court eventually ruled against the university in 1983, the school did not drop its interracial dating ban until 2000(Niebuhr, 2000).

This was the milieu in which Republican Governor Carroll Campbell Jr. formed a task force in 1987 to investigate statewide sex education requirements. At the time, the vast majority of South Carolina's school districts did not have such policies; among those districts that did was one whose sex education curriculum consisted of a single film on menstruation. Contemporary data revealed the consequences of this negligence: South Carolina had the ninth highest teen-pregnancy rate and the highest infant mortality rate in the nation (Perry, 1987; Simmons, 1987). Thus, the state was facing not onlythe AIDS epidemic, but also a sex education crisis.

In March 1987, the South Carolina Comprehensive Health Education Act (CHEA) (1988)was introduced in the South Carolina Senate, but it was not until February of the following year that it was introduced in theSouth Carolina House of Representatives (SouthCarolina General Assembly, 1988a, p. 992).Although the legislative records for the South Carolina Senate and House do not provide details of the debates over the CHEA, the House passed two amendments, among others, proposed by Representative Mike Fair on February 18, 1988. Fair, an insurance agent who hailed from Greenville, South Carolina,was a conservative Christian first elected to the South Carolina House of Representatives in 1984, where he served until being elected to the South Carolina Senate in 1995, remaining a member of that body until 2017 ("Mike Fair," n.d.). The first of his two amendments to the CHEA prohibited any discussion of homosexuality prior to eighth grade. The second amendment, which passed by a vote of 71 to 29, added the following restriction: "If the subject of homosexuality is included as part of the instructional unit, the information on homosexuality must present homosexual behavior as unnatural, unhealthy, and illegal and may not include information that promotes the behavior" (South Carolina General Assembly, 1988a, p. 1328). These amendments reflected Fair's obsessive concern throughout his time in elected office over the putative menace that LGBTQ individuals and their allies, liberal Democrats, posed to American society.

The South Carolina House sent its amended version of the CHEA to the Senate for its consideration on February 23. However, the Senate notified the House on the following day that it did not support the amended version of the bill, necessitating the creation of a conference committeecomposed of three senators and three representatives, including Mike Fair (South Carolina General Assembly, 1988a, p. 1496). The conference committee sent its revised version of the CHEA to the House on March 30.For reasons that remain unclear, the House voted to return the report to the conference committee, which re-submitted it to the House on April 6. The conference committee had removed both of the amendments sponsored by Fair regarding homosexuality. Lawmakers, however, did not remain silent on this issue. The proposed legislation included the following admonition: "The program of instruction provided for in this section may not include a discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases" (South Carolina General Assembly, 1988a, p. 2409).Thus, no teacher providing instruction under the topics authorized by the CHEA could mention LGBTQ individuals or their concerns unless discussion pertained to disease transmission, with presumably an emphasis on HIV. This injunction—Section 59-32-30(A)(5)—remained in the text that both the House and the Senate approved, which Governor Campbell signed into law on April 18. Under the provisions of the CHEA, teachers who violated this prohibition could be fired.

Despite this categorical proscription against any mention of homosexuality except within an extremely narrow context, Mike Fair apparently believed that the CHEA was equivocal in its condemnation of certain "lifestyles." For that reason, Fair attempted to persuade the South Carolina Assembly, on the last day of its session, to pass a companion resolution that—incorporating the text from one of his excised amendments—would have required

teachers to instruct students that same-sex sexual activities were "unhealthy, abnormal, and illegal" (Carr, 1988, p. C1). Although the resolution failed, it would have likely passed had it not been for the last-minute objections by one of the original sponsors of the CHEA. The fate of the resolution notwithstanding, South Carolina legislators would remain steadfast in their belief that a gag rule should remain in effect when it came to educating children and youth about their LGBTQ peers, friends, and family members.

## *4. LGBTQ Jurisprudence 1996-2015*

During the three decades following passage of the CHEA, national legal developments reflected and helped sustain shifting attitudes toward LGBTQ individuals. Most important were four U.S. Supreme Court cases whose majority decisions, all authored by Justice Anthony Kennedy, advanced LGBTQ rights.The first case, *Romer v. Evans* (1996), involved a constitutional amendment that voters had approved to the Colorado constitution in 1992. The amendment prohibited any political jurisdiction or entity, including school districts, from enacting policies that would protect lesbians, gays, or bisexuals from discrimination. After noting that animus for homosexuals was an obvious motivating factor in passing the amendment, the U.S. Supreme Court struck down the amendment as a violation of the Equal Protection Clause of the Fourteenth Amendment."A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government," the majority wrote, "is itself a denial of equal protection of the laws in the most literal sense" (p. 633). Such laws, the majority observed, were "not within our constitutional tradition" (p. 633).

Seven years later, in *Lawrence v. Texas*(2003), the U.S. Supreme Court overturned one of its own recent precedents. In a 1986 case,*Bowers v. Hardwick*, the majority had sustained the constitutionality of state laws that criminalized "sodomy" between consenting adults. Though sodomy statutes sometimes included married heterosexual couples, such statutes were typically enforced only when two men engaged in the prohibited sexual acts (Eskridge, 2008). In *Lawrence*, the majority asserted that "*Bowers* was not correct when it was decided" and "is not correct today" (p. 560). The Court's overruling of *Bowers* was based on the contention that the "petitioners' right to liberty under the Due Process Clause [of the Fourteenth Amendment]" gave them the legal right "to engage in private conduct without government intervention" (p. 560).The Court emphasized another point that would bear on subsequent cases seeking to expand the rights of LGBTQ individuals: "When homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres" (p. 575).

In *United States v. Windsor* (2013), the issue before the U.S. Supreme Court was the constitutionality of the Defense of Marriage Act (DOMA)enacted by the U.S. Congress in 1996. The specific provision in question was DOMA's directive that—for purposes of construing federal laws/regulations—the definition of "marriage" was limited to a union between one man and one woman.In practical terms, this meant that DOMA denied federal recognition of marriages that wereacknowledged by some states. The Court ruled that this differential treatment by the federal government was a violation of equal protection guarantees that inherein the Due Process Clause of the Fifth Amendment. DOMA denied this guarantee of equal protection, according to the majority, by instructing"all federal officials, and indeed all persons with whom same-sex couples interact, including their own children," that their marriages were "less worthy than the marriages of others" (p. 775).The result had been the inability of same-sex couples to claimthe samelegal and financial benefits available to heterosexual spouses.

The last of the four major LGBTQ cases for which Justice Kennedy wrote the majority opinion was *Obergefell v. Hodges* (2015). Unlike *Windsor*, the issue in *Obergefell*was not whether same-sex marriages should be recognized by the federal government, but whether LGBTQindividuals had a right to marry at all. In language that was both unequivocal and sometimes soaring, the Court concluded that "the right to marry is a fundamental *right* inherent in the *liberty* of the person [emphasis added], and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the samesex may not be deprived of that right and that liberty" (p. 675).The majority affirmed that "same-sex couples may exercise the fundamental right to marry" (p. 675).

In the span of just nineteen years, the Supreme Court had formulated significant legal principles that secured many of the goals articulated by LGBTQ activists. Despite arguments made by the dissenting justices in the four cases discussed above, the majority was not fashioning new constitutional rights from whole cloth. The Court, as it had made clear in *Obergefell*, was basing its decisions on two key propositions grounded in the Fourteenth and, to a lesser degree, the Fifth Amendment.First, LGBTQ individuals had a right to the same amount of "liberty"as

everyone else. Second, LGBTQpeople had a right to equal treatment, which was the positive way of saying they had a right to be free from discrimination. Such distinctions are frequently dichotomized as a *freedom to*versus a *freedom from*, though these two concepts are often inextricably connected; being able *to do* something usually depends on being *free from* something else. Also important in each of the four cases was the majority's insistence that therewere tangibleburdens—physical, psychological, emotional, and/or financial—that unequal treatmentconferred on LGBTQ individuals. This would be an important part of the legal argument advanced by those who brought suit against enforcement of Section 59-32-30(A)(5).

## *5. The Legal Fight in South Carolina*

Beginning in the early 1990s, LGBTQ advocacy groups such as Lambda Legal, the Gay and Lesbian Alliance Against Defamation, the National Center for Lesbian Rights, and the Gay, Lesbian, and Straight Education Network, as well as regional and state organizations, became increasingly vocal in their demands to repeal discriminatory laws and policies. Many of them offered free resources, including legal counsel, for individuals willing to become plaintiffs in court cases (Carpenter, 2012; Dawson, 2019; Hamed-Troyansky, 2016; Issenberg, 2021). Section 59-32-30(A)(5)was a glaring example of the statute-based discrimination that the LGBTQ rights movement targeted.

Although "no promo homo" laws remained untested in the courts, in 2019 three groupsjoined forces in filing suitto remove/nullify Section 59-32-30(A)(5). The three groups were the Gender and SexualityAlliance(GSA) at the Charleston County [South Carolina] School of the Arts (CCSA), a public magnet school for grades six through twelve; the Campaign for Southern Equality (CSE), a non-profit organization founded in 2011 that initially campaigned for same-sex marriage equality; and the South Carolina Equality Coalition (SCEC), a group partnered with South Carolina Equality, which was founded in 2002 to advance LGBTQ rights.

With reason to believe that a lawsuit was pending, South Carolina Superintendent of Education, Molly Spearman, asked the state's attorney general in early 2020 for an opinion regarding the likelihood that the courts would strike down Section 59-32-30(A)(5). Writing on behalf of Attorney General Alan Wilson, the state's solicitor general, Robert Cook, issued a detailed opinion on February 18, 2020 (South Carolina Attorney General, 2020).At the heart of Cook's opinion was the contention that a raft of related court decisions, from *Romer* to *Obergefell*, placed Section 59-32-30(A)(5) at risk of being declared unconstitutional. While acknowledging that states exercised broad authority to regulate education within their jurisdictions, Cook noted that such power was not absolute; it was constrained by constitutional safeguards. Conversely, the opt-out provision in Section 59-32-30(A)(5)protected the religious freedom of parents who might wish to remove their children from health education classes that permitted discussions of homosexuality outside the ambit of sexually transmitted diseases.Putting a fine point on the matter, Cook concluded that the courts were likely to rule that the overt anti-gay discrimination of Section 59-32-30(A)(5) served no legitimate state interest, that it did not pass a rational basis test—that is, the provision served no logical purpose other than a public expression of opprobrium—and that for these reasons, as well as recent legal precedents, it violated the Equal Protection Clause of the Fourteenth Amendment.

Eight days after Cook issued his opinion, the CCSA's GSA, the CSE, and SCEC filed suit against Molly Spearman in the U.S. District Court for South Carolina. The suit—in legal parlance, a Complaint for Injunctive and Declaratory Relief [hereafter "Complaint"]—requestedthe District Court to enjoin Spearman, in her capacity as South Carolina Superintendent of Education, from enforcing Section 59-32-30(A)(5)(United States District Court for South Carolina, 2020a). Spearman, a former public school music teacher had served four terms in the South Carolina House of Representatives prior to being elected Superintendent of Education in 2014. In 1995 she switched her party affiliation from Democrat to Republican, but her views—particularly on education—were moderate, even liberal, by South Carolina standards ("Molly Spearman," n.d.). On the same day the Complaint was filed, Spearman released a statement to the press affirming that her "primary obligation" was "always to uphold the rights and safety of our students and their families" (Emerson, 2020).Spearman agreed with Cook's recent opinion about the likely unconstitutionality of Section 59-32-30(A)(5), further noting that "the lawsuit filed today highlights an issue that the General Assembly has failed to address" (Emerson, 2020). Although Spearman assured South Carolinians that "parents should continue to have the final say in whether or not their child participates in health education curriculum," she ended her remarks by expressing her hope that the Court would

reach a decision that upheld "the dignity of all students" (Emerson, 2020). It did not require any reading between the lines to ascertain where Spearman's sympathies lay.

The Complaint itself was based on a solid jurisprudential foundation that had been laid over the past two decades—so solid that the Complaint did not cite a single court case. Instead, it stated as a matter of accepted fact that Section 59-32-30(A)(5) violated the Equal Protection Clause of the Fourteenth Amendment because it singled out LGBTQ students for "negative treatment based on their sexual orientation" (United States District Court for South Carolina, 2020a, p. 1).By placing them in an "expressly disfavored class,"it communicated to teachers and students that there was "something so shameful, immoral, or dangerous about homosexual relationships"that they could not be discussed except during instruction on sexually transmitted diseases (p. 2).

The Complaint focused primarily onthe "hostile and stigmatizing climate" that Section 59-32-30(A)(5) caused for South Carolina's LGBTQ students (United States District Court for South Carolina, 2020a, p. 2). In this respect, the plaintiffs' arguments resembled what is known as a Brandeis Brief. Named after the influential U.S. Supreme Court Justice Louis Brandeis, such briefs are characterized less by legal argumentation than by the presentation of scientific and social-scientific data that describe the harms caused by certain laws, regulations, and/or policies (Urofsky, 2009). A classic example of this approach is contained within the briefs and decision in the 1954 U.S. Supreme Court case*Brown v. Board of Education*, which detailed the negative impact that segregated schools had on African American children.

In addition to being similar to a Brandeis Brief, the Complaint can also be viewed as an example of frame bridging. Leaders of social movements utilize a variety of tactics to attain their aims. Civil disobedience, economic boycotts, educational campaigns, and referenda are among the most common (Porta & Diani, 2018). No less important are the narratives that social movement strategists construct to persuade others, including courts, to support their objectives (Benford & Snow, 2000). "Framealignment" is one way to construct these narratives (Snow, Rochford, Worden, & Benford, 1986). In the most general sense, frame alignment refers to how a particular set of collective action goals are contextualized within larger cultural meanings and understandings. Social movement theorists have described at least four types of frame alignment. The type that is most relevant to the Complaint is frame bridging. This refers to how social movement organizersconnect their own concernswithdifferent, but potentially related concernsarticulated by other constituencies. Such framing generates understanding and sympathyfor the aims of those seeking social, political, and/or economic change (Tarrow, 1992).

The primary way that the plaintiffs' lawyers in *GSA v. Spearman* engaged in frame bridging was by connecting the issue of LGBTQ inequality with the issue of bullying. Starting in the late 1990s, the general public, policymakers, and elected officials began expressing increased concern over bullying, which was precipitated in part by the growing reach of social media and a rise in school shootings. Bullying victims who committed or attempted suicide received wide news coverage, as did the lack of effective anti-bullying programs. In turn, this led to the creation of anti-bullying advocacy groups, online resources, and local/state legislation (Allanson, Lester, & Notar, 2015). In 2006 South Carolina lawmakers passed the Safe Schools Climate Act, which required every school district to formulate anti-bullying policies. By 2015 all fifty states had passed school anti-bullying legislation, and an anti-bullying billincorporating sexual orientation and gender identity had been introduced in the U.S. Congress (Loveless, 2021).

The Complaint explicitly connected Section 59-32-30(A)(5) with the harms associated with anti-gay bullying. The Complaint did not aver that the law's restrictions harmed LGBTQ students because it deprived them of information that might prove helpful in their psycho-social development. Instead, the Complaint asserted that Section 59-32-30(A)(5)fostered "a school climate that stigmatizes and isolates LGBTQ youth, putting them at heightened risk *of bullying and harassment*" [emphasis added] (United States District Court for South Carolina, 2020a, p. 7). This was because "states with laws like South Carolina's Anti-LGBTQ Curriculum Law" were "more likely to report a hostile school climate" (p. 7). The Complaint argued that this kind of hostilityincreased the rates of suicide, suicidal ideation, and depression among LGBTQ youth. More than just generalizations, the harms that LGBTQ students faced could be quantified. To this end, the Complaint adduced data published by the Gay, Lesbian, and Straight Education Network (GLSEN), an organization founded by teachers in 1990 that conducts research on, and advocates for,LGBTQ students.Survey data from South Carolina (Gay, Lesbian, and Straight Education Network, 2019), which were noted in the Complaint, revealed that 90% of the middle and high

school students responding to the survey had regularly heard homophobic epithets such as "faggot" and "dyke."Moreover, during the year leading up to the survey, 76% of these students had experienced verbal harassment; 34% experienced physical harassment; and 14% had been assaulted because of their sexual orientation. These were precisely the kinds of alarming statistics that had been highlighted during the previous two decades of nationwide anti-bullying activism.

The Complaint went still further in bridging the issue of LGBTQ inequality with mainstream worries about school bullying. It did so by describing the treatment that atwelve-year-old boy, pseudonymously referred to as John Doe, had endured in the years leading up to the Complaint. Doe, a member of CSE and SCEC who identifies as gay, had been called a "redneck faggot" in fourth grade. In sixth grade, Doe was often called "faggot" and hit by other students (United States District Court for South Carolina, 2020a, p. 10). On another occasion, a classmate—after having thrown a Clorox disinfecting wipe at Doe—said that he[Doe] was "diseased" and that "the stairway to hell was 'rainbow-colored'," after which he kicked Doe in the chest (p. 11). During that same year, Doe received sexeducation instruction as part of his gym class. He was called a "faggot" by another student in front of the teacher [who did not reprimand the student], while another student shouted that he [Doe] did not have a penis and that he should "sit with the girls" (p. 11). The Complaint stated that Doe believed that Section 59-32-30(A)(5) "contributed to the bullying and harassment he experienced during his sex education class and the teacher's failure to address it" (p. 11). Thus, the Complaint constructed a narrative that connected the CHEA's prohibition against discussions of homosexuality to specific harms that an actual South Carolina student had experienced, harms that were themselves connected to longstanding social concerns over the broader issue of school bullying.

Less than three weeks after the Complaint was filed, U.S. District Court Judge David C. Norton issued a Consent Decree. Norton, appointed to the federal bench in 1990, appropriately focused on the legal issues that *GSA v. Spearman* raised. Noting that Section 59-32-30(A)(5) contained a prohibition that applied only to the discussion of homosexual, not heterosexual, relationships, Norton ruled that the "Challenged Provision … is a classification based on sexual orientation that is not rationally related to any legitimate state interest, and thus cannot satisfy any level of judicial review under the Equal Protection Clause"(United States District Court for South Carolina, 2020b, p. 3). Though no previous cases were cited in the Consent Decree, Norton's reasoning illustrated the logical and legally ineluctable use of the Equal Protection Clause to advance LGBTQ equality. That all parties agreed to that interpretation—and that Norton was able to cite South Carolina's own attorney general in support of his assertions—were important elements in the conclusion that he [Norton] reached.

Norton's instructions to Spearman and other education officials did not mince words. Spearman was immediately enjoined from enforcing Section 59-32-30(A)(5). All future statepolicies had to be consistent with the provisions of the Consent Decree. All members of the State Board of Education and the superintendents of every public school district in South Carolina had to receive a copy of the Consent Decree within sixty days. The state also had to provide notice (within sixty days) to the public on relevant websites that Section 59-32-30(A)(5) could "no longer be enforced, applied, or relied on by any person or entity" (p. 5) and that such notifications would remain on those websites as long as the current version of Section 59-32-30(A)(5)was part of the South Carolina Code of Laws. Finally, all parties waived any right to appeal or to seek review by a higher court. It was a sweeping victory for the plaintiffs.

Although he did not specifically mention anti-gay bullying, Judge Norton would have never issued the Consent Decree had he not accepted the plaintiffs' contention that Section 59-32-30(A)(5) harmed LGBTQ students. The narrative constructed in the Complaint was thereforeconsequential, as was press coverage featuring discussions of bullying, including the Clorox wipe incident, that appeared prior to the Consent Decree (Martin, 2020). And despite the sympathy that Spearman had already signaled regarding the plaintiffs' concerns, the narrative advanced in the Complaint could also, if necessary, provide her with a certain amount of political cover.To wit, rather than rely on abstract legal arguments to defend her concurrence with a consent decree favoring the plaintiffs, Spearman could point to the treatment of John Doe to mitigate potential backlash from overwhelmingly conservative constituents who might feel that she had betrayed them.

A final point is worth noting. Central to frame bridging is the ability to craft narratives that connect seemingly disparate concerns. These stories help listeners—whether they be voters, legislators, or judges—to form opinions about various issues. Relevant to frame bridging are studies that have investigated how jury membersreach their individual determinations about a defendant's guilt or innocence. Some scholars have posited that the most

important influences on these determinations are the stories that jury members mentally fashion to explain the evidence that has been presented to them. A fascinating but largely overlooked aspect of this research is an observation made by Pennington and Hastie (1992) that "a narrative *story sequence*[emphasis in original] is the most effective 'order of proof' at trial" (p. 203). Admittedly, a jury trial is not the same thing as a lawsuit, but they are both adversarial undertakings in which opposing viewpoints are being assessed. And while it might not be entirely tenable to suggest that Section 59-32-30(A)(5) was the defendant in Judge Norton's courtroom, it was certainly being adjudicated in the larger court of public opinion. To be sure, the plaintiffs in *GSA v. Spearman*believed that—in addition to legal arguments based on the Fourteenth Amendment's Equal Protection Clause—a narrative story sequence tied to Joe Doe's experiences would assist them in obtaining a favorableconsent decree. Future research might be able to produce empirical evidence to determine just how effective this approach is as a social movement tactic.

## *6. Conclusion*

The Complaint and Consent Decree in *GSA v. Spearman* illustrate two important aspects of the contemporary struggle for LGBTQequality.The equal protection guarantees establishedby the Fifth and Fourteenth Amendments to the U.S. Constitution played a critical role in the formal legal arguments used to critique and invalidate Section 59-32-30(A)(5) of the CHEA, placing *GSA v. Spearman* squarely within the mainstream of equal rights jurisprudence. Also significant was how plaintiffs constructed a compelling and relevant narrative through frame bridging. By doing so, plaintiffs hoped that their concerns over the bullying of LGBTQ students would resonate with broader efforts to combat the bullying of all students.

A fitting, if entirely coincidental, coda to *GSA v. Spearman* occurred on the same day the Consent Decree was issued. On March 11, 2020, the Greenville County Council voted to repeal a resolution that had been passed more than two decades earlier (Connor, 2020). When it had initially passed the resolution, the County Council had alleged that "increasing assaults" on "community standards" were endangering the "public's safety, health, and welfare" (Greenville County Council, 1996, p. 1).Because it could "not sit silently" while those community standards were "undermined," theCounty Council, as a matter of public record, condemned the "lifestyles" promoted by the "gay community" (p. 1).Employing a quintessential example of circular logic, the County Council argued that these so-called lifestyles should be condemned because they were contrary to state laws—laws that themselves were based on condemnations similar to those being pronounced by the County Council. By the spring of 2020, at least part of that legal infrastructure—Section 59-32-30(A)(5) of the CHEA—had been dismantled by those who had different notions about what constituted threats to the public's safety, health, and welfare.

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