

THE POTENTIAL FOR DEFAMATION LAW TO STOP HATEFUL AND FALSE ONLINE RHETORIC TOWARDS LGBTQ INDIVIDUALS

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I realized I am the biggest threat to your hollow, hateful, scheme . . . because you can't claim you're targeting marginalized kids in the name of "parental rights" if another parent is standing up to say "no." . . . Call me whatever you want . . . I know who I am I know what faith and service means, and what it calls for in this moment. We will not let hate win.

–Michigan State Senator Mallory McMorrow.¹

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¹ Samantha Riedel, *This Senator Gave a Masterclass in Fighting the GOP's "Grooming" Slander*, THEM (Apr. 22, 2022), <https://www.them.us/story/senator-mallory-mcmorrow-michigan-lgbtq-rights-speech> [<https://perma.cc/VNK6-MNS4>].

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I. INTRODUCTION

On September 20, 2022, a Twitter account (now called an X account) known as Libs of TikTok reposted a TikTok video from @therapistsrunamok; Libs of TikTok remarked in their tweet: “[t]his is a licensed therapist who parents entrust their kids with.”² The video shows what appears to be a therapist displaying the following text: “POV: Your homophobic, transphobic parents drop you off for therapy thinking I’m a hetero . . . [I am] here to validate your feelings, support you, talk about oppression, and challenge your parents.”³ Libs of TikTok then notes that the video was subsequently deleted.⁴ The comments below the account’s tweet run the gambit, accusing the therapist of being a pedophile, evil, a creepy predator, and a “[g]roomer.”⁵ Some commenters wished for the therapist to lose his business, for his license to be revoked, and, seemingly, for him to contract monkeypox.⁶

Libs of TikTok is primarily a Twitter account and social media platform that reposts content from so-called liberal TikTok accounts, makes inflammatory comments about the person in the video, and

² Libs of TikTok (@libsoftiktok), TWITTER (Sept. 20, 2022, 11:56 AM), <https://twitter.com/libsoftiktok/status/1572253301940563971> [<https://perma.cc/N4TA-DRLA>] [<https://web.archive.org/web/20220920212430/https://twitter.com/libsoftiktok/status/1572253301940563971>]; *25 Times Libs of TikTok Was Absolutely Its Anti-LGBTQ+ Worst*, ADVOCATE (Oct. 10, 2022), <https://www.advocate.com/politics/2022/10/10/25-times-libs-tiktok-was-absolutely-its-anti-lgbtq-worst#rebelltitem1> [<https://perma.cc/2N7T-QN4Z>].

³ See Libs of TikTok (@libsoftiktok), *supra* note 2; *25 Times Libs of TikTok Was Absolutely Its Anti-LGBTQ+ Worst*, *supra* note 2.

⁴ See Libs of TikTok (@libsoftiktok), *supra* note 2.

⁵ See *id.*

⁶ See *id.*

generates anti-LGBTQ content for millions of followers.⁷ It is easy to dismiss Libs of TikTok as just another troll. However, it is only a symptom of a larger problem. There has been a marked resurgence in anti-LGBTQ rhetoric on social media, the internet, and the media.⁸ The new buzzword coined by these anti-LGBTQ activists is *groomer*.⁹ Labelling LGBTQ people as *groomers* reinforces and expands pre-existing and false stigmas of queer sexual orientations and gender identities as dangerous perversions;¹⁰ it also negatively impacts the health and well-being of LGBTQ people.¹¹

The primary question this Note addresses is whether those targeted by bad-faith accusations of grooming may seek recourse under defamation law. The grooming narrative is largely an attempt to vilify LGBTQ people and allies by falsely asserting that they are “sexualiz[ing] children” or “recruit[ing] them into the LGBTQ+ community.”¹² With historical roots in anti-LGBTQ movements,¹³ this rhetoric is yet another bad-faith political tactic to justify anti-queer policies.¹⁴ The harmful consequences of these statements render tort law a possible solution to provide relief and remedy.¹⁵ While a defendant could argue that their grooming statement was meant only as an opinion or an insult,¹⁶ a plaintiff can show provable falsity since the reasonable reader—in the context of internet audiences who primarily consume this media—has imperfect information.¹⁷ Without knowledge of all the circumstances regarding LGBTQ individuals, these audiences can reasonably interpret a defendant’s grooming rhetoric as stating actual facts that LGBTQ people are sexualizing children.¹⁸ Because these statements are provably false, courts should find that grooming rhetoric can be actionable.

⁷ See *Libs of TikTok (Chaya Raichik)*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/glossary/libsoftiktok-chaya-raichik> [<https://perma.cc/S37M-NE2D>]; see, e.g., *Libs of TikTok (@libsoftiktok)*, *supra* note 2.

⁸ See *infra* notes 19, 21 and accompanying text.

⁹ See *infra* notes 19, 21, 25 and accompanying text.

¹⁰ See *infra* Section II.B.

¹¹ See *LGBTQ+ Community*, ANXIETY & DEPRESSION ASS’N OF AM., <https://adaa.org/find-help/by-demographics/lgbtq> [<https://perma.cc/J8ML-QJQ6>].

¹² See *infra* Section II.A; *What Is “Grooming?” The Truth Behind the Dangerous, Bigoted Lie Targeting the LGBTQ+ Community*, ANTI-DEFAMATION LEAGUE (Sept. 16, 2022), <https://www.adl.org/resources/blog/what-grooming-truth-behind-dangerous-bigoted-lie-targeting-lgbtq-community> [<https://perma.cc/AZR7-LVSK>] [hereinafter *What Is “Grooming?”*].

¹³ See *infra* Section II.B.

¹⁴ See *infra* Section II.C.

¹⁵ See *infra* Sections II.D, III.

¹⁶ See *infra* notes 89, 97 and accompanying text.

¹⁷ See *infra* Section III.

¹⁸ See *infra* Sections III.C, IV.

II. BACKGROUND

Recently, in an effort to reframe equality narratives, demonize the queer community, and advance anti-LGBTQ legislation, far-right politicians and influencers have accused LGBTQ persons and allies of “grooming” children.¹⁹ “In the month following the passage of [Florida’s] ‘Don’t Say Gay or Trans’ law,”²⁰ there was a 406% increase in tweets associating LGBTQ people with “groomer[s],” “predator[s],” and “pedophile[s].”²¹ Ten Twitter users alone, including Representative Marjorie Taylor Greene, Representative Lauren Boebert, and Chaya Raichik, the owner of the infamous Libs of TikTok account, were “estimated to have reached Twitter users . . . 48 million times.”²² The narrative is not only incorrect and misleading, but it traces historical anti-LGBTQ sentiment.²³ This deceptive rhetoric is dangerous to the queer community because the impact of the grooming narrative mobilizes the conspiratorial side of the right wing and legitimizes the so-called debate over LGBTQ identity.²⁴

A. *The Current Grooming Narrative*

The current extremist claim levied against LGBTQ persons and allies is that their open discussion and expression of gender and sexuality around children is somehow grooming behavior; this is incorrect and misleading.²⁵ The accusation can be broken down into two components: that such individuals are “sexualiz[ing] children” and/or “recruit[ing]” them into the . . . community.²⁶ However, teaching about gender identity and sexuality or outwardly existing as a queer person is no more sexualizing than cisgender and straight

¹⁹ See, e.g., Kaleigh Rogers, *Why So Many Conservatives Are Talking About ‘Grooming’ All of a Sudden*, FIVETHIRTYEIGHT (Apr. 13, 2022, 6:00 AM), <https://fivethirtyeight.com/features/why-so-many-conservatives-are-talking-about-grooming-all-of-a-sudden/> [https://perma.cc/3YUT-8Q3U]; Melissa Block, *Accusations of ‘Grooming’ Are the Latest Political Attack—With Homophobic Origins*, NPR (May 11, 2022, 5:27 AM), <https://www.npr.org/2022/05/11/1096623939/accusations-grooming-political-attack-homophobic-origins> [https://perma.cc/UD54-AETE].

²⁰ Parental Rights in Education, FLA. STAT. ANN. § 1001.42(8)(c)(3) (West 2023); CTR. FOR COUNTERING DIGIT. HATE & HUM. RTS. CAMPAIGN, DIGITAL HATE: SOCIAL MEDIA’S ROLE IN AMPLIFYING DANGEROUS LIES ABOUT LGBTQ+ PEOPLE 8 (2022), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/CCDH-HRC-Digital-Hate-Report-2022-single-pages.pdf> [https://perma.cc/B28H-SMFH].

²¹ CTR. FOR COUNTERING DIGIT. HATE & HUM. RTS. CAMPAIGN, *supra* note 20, at 8.

²² *Id.* at 6, 19.

²³ See *infra* Sections II.A, II.B.

²⁴ See *infra* Section II.C.

²⁵ See, e.g., *What Is ‘Grooming?’*, *supra* note 12.

²⁶ See *id.*; *infra* Sections II.A.2, II.A.3.

persons performing the same conduct.²⁷ There is also no credible evidence proffered that the conduct leading to grooming accusations is actually sexualizing children or recruiting them into the LGBTQ community.²⁸ Being one’s authentic self in the presence of children or educating children on gender and sexuality—a fundamental and unavoidable aspect of human life—is not *grooming*.

1. Definition and Common Usage

Dictionary definitions of *grooming* vary, but these definitions generally refer to some predatory behavior of an adult or older figure engaging a child to perform illegal or sexual activity.²⁹ Originating in the 1980s, investigations into childhood sexual crimes in the United States resulted in investigators using the word to denote patterns of non-violent behavior used by perpetrators to develop relationships with children, learn their vulnerabilities, “use this knowledge to gain and maintain control and trust, and then slowly introduce sexual content and physical contact.”³⁰ As academic literature on sexual violence has grown more robust, experts have described *grooming* as a *process* for perpetrators to access future victims and “prepare [them] to be compliant with abuse.”³¹

The nation’s largest anti-sexual violence organization—the Rape, Abuse, and Incest National Network (RAINN)—notes that *grooming* refers to a series of “manipulative behaviors that [an] abuser uses to gain access to a potential victim, coerce them to agree to the abuse, and reduce the risk of being caught.”³² Among other behaviors, perpetrators that groom victim children will often tell the child to keep the sexual abuse a secret, that the abuse was “a game,” and they

²⁷ See *infra* Section II.A.2.

²⁸ See *infra* Sections II.A.2, II.A.3.

²⁹ See, e.g., *Grooming*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/grooming> [<https://perma.cc/59VH-XHDN>] (An adult “becom[es] friends with a child in order to try to persuade the child to have a sexual relationship [with them].”); *Grooming*, MACMILLAN DICTIONARY, <https://www.macmillandictionary.com/us/dictionary/american/grooming> [<https://perma.cc/HNB9-HT7X>] (“[T]he crime of preparing a child for illegal activity, especially sexual activity or selling drugs.”).

³⁰ Michelle McManus, *Grooming: An Expert Explains What It Is and How to Identify It*, CONVERSATION (May 16, 2022, 9:55 AM), <https://theconversation.com/grooming-an-expert-explains-what-it-is-and-how-to-identify-it-181573> [<https://perma.cc/8TKC-WQUW>].

³¹ See Ann Wolbert Burgess & Carol R. Hartman, *On the Origin of Grooming*, 33 J. INTERPERSONAL VIOLENCE 17, 21 (2018).

³² *What Is “Grooming?”*, *supra* note 12; *Grooming: Know the Warning Signs*, RAINN (July 10, 2020), <https://www.rainn.org/news/grooming-know-warning-signs> [<https://perma.cc/K7G2-YLUZ>].

will “use[] their authority to convince [the child] to obey.”³³ While there is no singular definition of *grooming*, there is some consistent overlap in each of the conceptions: the result of the grooming process is children being sexually abused by an adult.³⁴

2. The Sexualizing Children Component

Teaching, discussing, performing, or even existing as a queer person around children does not sexualize them.³⁵ Inasmuch as far-right commentators like Matt Walsh accuse queer persons of exploiting children,³⁶ the sexualizing children component of groomer rhetoric against LGBTQ individuals implies a double standard. How is a drag queen reading storybooks to children in public libraries more sexual than a child watching Robin Williams entertain audiences of millions by dressing up as a woman in *Mrs. Doubtfire*?³⁷ More broadly, why are LGBTQ statements and expressions more sexualizing to children than heterosexual, cisgender content? This double standard is a symptom of heteronormativity and cisnormativity. As described by Lauren Berlant and Michael Warner, society defaults to heterosexual and cisgender norms, “where the givenness of male-female sexual relations is part of the ordinary rightness of the world, its fragility masked in shows of solemn rectitude.”³⁸ If one diverges from the presumption of heterosexuality, then their sexual identity is “devalued, shamed, and forcefully resisted.”³⁹

This component of the groomer accusation—that LGBTQ individuals sexualize children—is merely a symptom of hetero- and cisnormativity. Alt-right accusers of queer people “groom[ing]” and “sexualizing” children do not provide any evidence to address why

³³ See Molly R. Wolf, Braden K. Linn & Doyle K. Pruitt, *Grooming Child Victims into Sexual Abuse: A Psychometric Analysis of Survivors' Experiences*, 24 J. SEXUAL AGGRESSION 214, 218 (2018).

³⁴ See, e.g., *id.* at 215; McManus, *supra* note 30.

³⁵ See *What Is “Grooming?”*, *supra* note 12; CTR. FOR COUNTERING DIGIT. HATE & HUM. RTS. CAMPAIGN, *supra* note 20, at 4.

³⁶ See, e.g., *Matt Walsh: Police Need to “Break Down the Doors” of Drag Shows*, L.A. BLADE (Oct. 20, 2022), <https://www.losangelesblade.com/2022/10/20/matt-walsh-police-need-to-break-down-the-doors-of-drag-shows/> [<https://perma.cc/7DDP-U92G>].

³⁷ See Monica Hesse, *Drag Queens Are Not the Ones Sexualizing Drag Story Hour*, WASH. POST (June 23, 2022, 9:44 AM), <https://www.washingtonpost.com/lifestyle/2022/06/23/drag-queen-story-hour/> [<https://perma.cc/63ME-84S3>].

³⁸ Lauren Berlant & Michael Warner, *Sex in Public*, 24 CRITICAL INQUIRY 547, 552 (1998).

³⁹ David S. Cohen, *No Boy Left Behind? Single-Sex Education and the Essentialist Myth of Masculinity*, in *EXPLORING MASCULINITIES: FEMINIST LEGAL THEORY REFLECTIONS* 177, 183 (Martha Albertson Fineman & Michael Thomson eds., 2013).

their behavior is more sexual than heterosexual or cisgender adult interactions with children.⁴⁰ Out LGBTQ people often have no choice but to wear their sexualities and gender identities on display for straight and cisgendered people to see.⁴¹ For the accusers and society at large, underlying heterosexual and cisgender hegemony operates to render the view of these LGBTQ people as diverging from the norm.⁴² Moreover, transgender and/or nonbinary identity is distinct from one's sexuality; affirming one's gender identity or expression through everyday interactions does not implicate sex.⁴³ Because grooming rhetoric makes conclusory allegations without reconciling how LGBTQ people are more sexualized compared to their straight and cisgender counterparts, these parts of the accusations have no evidentiary basis.

Research corroborates that educating a child on topics relating to sexual orientation, gender expression and identity, or sexual concepts is not abusive and exploitative. Health experts and academics alike widely endorse comprehensive sexual education ("CSE") that teaches human sexuality, including gender identity and sexual orientation.⁴⁴

⁴⁰ See, e.g., *Matt Walsh: Police Need to "Break Down the Doors" of Drag Shows*, *supra* note 36.

⁴¹ See 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 43 (Robert Hurley trans., Random House, Inc. 1978) (1976) ("The nineteenth-century homosexual became a personage Nothing that went into his total composition was unaffected by his sexuality. It was everywhere present in him: at the root of all his actions because it was their insidious and indefinitely active principle; written immodestly on his face and body because it was a secret that always gave itself away.").

⁴² For examples of cisgender heterosexual hegemony in American society, see Karin A. Martin, *Normalizing Heterosexuality: Mothers' Assumptions, Talk, and Strategies with Young Children*, 74 AM. SOCIO. REV. 190–201 (2009) (describing how parents teach their children heterosexuality as a default in childhood and assume the child is heterosexual); Kristen Schilt & Laurel Westbrook, *Doing Gender, Doing Heteronormativity: "Gender Normals," Transgender People, and the Social Maintenance of Heterosexuality*, 23 GENDER & SOC'Y 440, 459 (2009) (describing, among other things, how public workplace gender transitions can cause colleagues to "police" their gender or become hostile).

⁴³ See *Sexual Orientation and Gender Diversity*, AM. PSYCH. ASS'N, <https://www.apa.org/topics/lgbtq> [<https://perma.cc/HW3P-2SC5>].

⁴⁴ See, e.g., *The Importance of Access to Comprehensive Sex Education*, AM. ACAD. OF PEDIATRICS, <https://www.aap.org/en/patient-care/adolescent-sexual-health/equitable-access-to-sexual-and-reproductive-health-care-for-all-youth/the-importance-of-access-to-comprehensive-sex-education/> [<https://perma.cc/W8K5-PTVT>]; AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, COMMITTEE OPINION NO. 678, *COMPREHENSIVE SEXUALITY EDUCATION 1–2* (2016), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2016/11/comprehensive-sexuality-education.pdf> [<https://perma.cc/5CG8-93SQ>] ("Comprehensive sexuality education should begin in early childhood and continue through a person's lifespan."); Eva S. Goldfarb & Lisa D. Lieberman, *Three Decades of Research: The Case for Comprehensive Sex Education*, 68 J. ADOLESCENT HEALTH 13, 13 (2021), ("Review of the literature of the past three decades provides strong support for comprehensive sex education across a range of topics and grade levels. Results provide evidence for the effectiveness of approaches that address a broad definition of sexual health and take positive, affirming, inclusive approaches to human sexuality.").

Some international bodies have even recognized CSE as a human right for children and young people.⁴⁵ Studies of CSE have shown that programs for children—starting as young as the kindergarten grade level—are, *inter alia*, effective at preventing childhood sexual abuse and decreasing rates of domestic violence and intimate partner violence.⁴⁶ If anything, teaching children about concepts relating to sexuality through CSE—which is inclusive of diverse gender identities and sexual orientations—leads to less childhood sexual abuse.

Additionally, research has also long debunked the idea that LGBTQ persons are more likely than their cisgender, heterosexual counterparts to molest children.⁴⁷ Furthermore, groomer rhetoric does not identify any actual intent of the accused LGBTQ persons and allies to sexually abuse or any direct evidence of sexual abuse towards children.⁴⁸ Because mere exposure to LGBTQ discourse or individuals does not cause sexualization of children, and alt-right accusers fail to show how these behaviors are sexually abusive, these groomer accusations are false.

3. The Recruiting Component

When accusing LGBTQ persons of imposing their sexuality and gender identities on children, groomer rhetoric fails to reconcile their assertions with how individuals develop their gender identity and sexuality.⁴⁹ Neither parenting, education, nor genetics are determinative of one's gender identity or sexual orientation; it is

⁴⁵ See Dunja Mijatović, *Comprehensive Sexuality Education Protects Children and Helps Build a Safer, Inclusive Society*, COUNCIL EUR. (July 21, 2020), <https://www.coe.int/en/web/commissioner/-/comprehensive-sexuality-education-protects-children-and-helps-build-a-safer-inclusive-society> [<https://perma.cc/43NN-F2CV>] (describing that international bodies recognizing access to CSE as a right “include the UN Convention on the Rights of the Child, the UN Convention on the Elimination of all Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights and, at European level, the European Social Charter and the above-mentioned Lanzarote and Istanbul Conventions”).

⁴⁶ See Goldfarb & Lieberman, *supra* note 44, at 20–21.

⁴⁷ See, e.g., Madison Czopek, *Why It's Not 'Grooming': What Research Says About Gender and Sexuality in Schools*, POLITIFACT (May 11, 2022), <https://www.politifact.com/article/2022/may/11/why-its-not-grooming-what-research-says-about-gend/> [<https://perma.cc/L9BV-YPX4>];

Gregory M. Herek, *Facts About Homosexuality and Child Molestation*, SEXUAL ORIENTATION: SCI., EDUC., & POL'Y, https://lgbpsychology.org/html/facts_molestation.html [<https://perma.cc/YR4T-CV44>] (“The empirical research does not show that gay or bisexual men are any more likely than heterosexual men to molest children.”).

⁴⁸ See Czopek, *supra* note 47.

⁴⁹ Kimberlee Kruesi & Karena Phan, *'Grooming': The Ubiquitous Buzzword in LGBTQ School Debate*, AP NEWS (Mar. 29, 2022, 2:31 PM), <https://apnews.com/article/education-gender-identity-adf10ff5f169fae9c9af4d08a7b0c2bc> [<https://perma.cc/P2W7-A8NA>].

simply a natural development based on a multiplicity of factors.⁵⁰ Conversion therapy has long been debunked as having the ability to alter someone's sexual orientation or gender identity.⁵¹ In other words, if therapy cannot convert a gay or trans child into a straight or cisgender child, how, then, can a straight and cisgender child be recruited into the LGBTQ community? Because it is impossible for these accusers to prove that LGBTQ persons force or can force children to adopt a different sexual orientation or gender identity by general exposure to non-heteronormative identities and ideas, these accusations of grooming are, at the least, misleading.

B. History of Anti-LGBTQ Rhetoric in the United States

This current flood of groomer rhetoric has roots in earlier anti-LGBTQ movements. In the 1970s, conservative political figures, like Anita Bryant, accused queer persons of predatory behavior

⁵⁰ See, e.g., Andrea Ganna, Karin J. H. Verweij, Michel G. Nivard, Robert Maier, Robbee Wedow, Alexander S. Busch, Abdel Abdellaoui, Shengru Guo, J. Fah Sathirapongsasuti, Paul Lichtenstein, Sebastian Lundström, Niklas Långström, Adam Auton, Kathleen Mullan Harris, Gary W. Beecham, Eden R. Martin, Alan R. Sanders, John R. B. Perry, Benjamin M. Neale & Brendan P. Zietsch, *Large-Scale GWAS Reveals Insights into the Genetic Architecture of Same-Sex Sexual Behavior*, SCIENCE, Aug. 30, 2019, at 1, 6 (“[O]n the genetic level, there is no single dimension from opposite-sex to same-sex preference.”); Nsikan Akpan, *There Is No ‘Gay Gene.’ There Is No ‘Straight Gene.’ Sexuality Is Just Complex, Study Confirms*, PBS NEWSHOUR (Aug. 29, 2019, 6:53 PM), <https://www.pbs.org/newshour/science/there-is-no-gay-gene-there-is-no-straight-gene-sexuality-is-just-complex-study-confirms> [<https://perma.cc/7XWG-PXRB>] (“Sexuality cannot be pinned down by biology, psychology or life experiences, this study and others show, because human sexual attraction is decided by all these factors.”); Dawn Ennis, *The ‘Gay Gene’ Is a Myth but Being Gay Is ‘Natural,’ Say Scientists*, FORBES (Aug. 30, 2019, 6:54 PM), <https://www.forbes.com/sites/dawnstaceyennis/2019/08/30/the-gay-gene-is-a-myth-but-being-gay-is-natural-say-scientists/?sh=1aed9e507fa7> [<https://perma.cc/NM2G-7WMX>] (“Just because something is not completely genetic or something has an environmental, or what we call nongenetic, component, . . . doesn’t mean it’s a choice.”); AM. PSYCH. ASS’N & NAT’L ASS’N OF SCH. PSYCHS., RESOLUTION ON GENDER AND SEXUAL ORIENTATION DIVERSITY IN CHILDREN AND ADOLESCENTS IN SCHOOLS (2015), <https://www.apa.org/about/policy/orientation-diversity> [<https://perma.cc/HJH2-338U>] (recognizing that gender identity formulates in early childhood and that some are aware of their sexual orientation by early adolescence); Vanessa LoBue, *When Do Children Develop Their Gender Identity?*, CONVERSATION (Mar. 29, 2016, 6:09 AM), <https://theconversation.com/when-do-children-develop-their-gender-identity-56480> [<https://perma.cc/Y4JM-F8KZ>] (“Recent media attention on transgender people has once again drawn our attention back to the fact that while our chromosomes determine our sex, they are not the only factors that affect our gender identity.”).

⁵¹ See SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., MOVING BEYOND CHANGE EFFORTS: EVIDENCE AND ACTION TO SUPPORT AND AFFIRM LGBTQI+ YOUTH 8–9 (2023); *What Does the Scholarly Research Say About Whether Conversion Therapy Can Alter Sexual Orientation Without Causing Harm?*, CORNELL UNIV. (2016), <https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-whether-conversion-therapy-can-alter-sexual-orientation-without-causing-harm/> [<https://perma.cc/3BNG-NDYV>].

towards children.⁵² In an effort to pass anti-LGBTQ legislation, conservative legislators of the time attempted to portray homosexuals as wanting to seduce young children.⁵³ Anti-LGBTQ rights activists even advanced bogus theories that “homosexuals are made by training rather than born,” so homosexual teachers “recruit” their students.⁵⁴ By the 1980s, this rhetoric continued to stoke fears of “indoctrination, role modeling, and public approval” to justify anti-queer policies.⁵⁵ Back then, fears of indoctrination played on images of queer “parents and teachers playing the lead role by actively recruiting children into queerness,” whereas others feared that children were role modeling, “‘learning’ from, ‘identifying’ with, and ‘imitating’ LGBT[Q] parents and teachers.”⁵⁶ These old fears are similar to that of current groomer rhetoric because both criticize the behavior at issue as an attempt to recruit or indoctrinate or imply that queer persons are somehow sexualizing these children by mere exposure.

C. Political Saliency of Groomer Rhetoric

Groomer rhetoric is a powerful political weapon for far-right politicians and advocates. The co-opting of the term *grooming* is a narrative nod to QAnon and other conspiracy theories, the beliefs of which profess that the Democratic Party and liberal elites are a cabal of “Satanic pedophiles.”⁵⁷ Furthermore, the framing of the grooming issue by anti-LGBTQ advocates as a “legitimate debate” causes the public to view both sides with similar merit, leading to the discriminatory rhetoric becoming “acceptable political discourse.”⁵⁸

⁵² See, e.g., Naomi Ishisaka, *Why You Keep Hearing the Word ‘Grooming’ in the News*, SEATTLE TIMES (Apr. 19, 2022, 2:42 PM), <https://www.seattletimes.com/seattle-news/why-you-keep-hearing-the-word-grooming-in-the-news/> [<https://perma.cc/6TG3-8XGR>].

⁵³ See, e.g., *History of the Anti-Gay Movement Since 1977*, SPLC: INTEL. REP. (Apr. 28, 2005), <https://www.splcenter.org/fighting-hate/intelligence-report/2005/history-anti-gay-movement-1977> [<https://perma.cc/YH7Y-E7QW>].

⁵⁴ See Gillian Frank, “*The Civil Rights of Parents*”: *Race and Conservative Politics in Anita Bryant’s Campaign Against Gay Rights in 1970s Florida*, 22 J. HIST. SEXUALITY 126, 143–44 (2013).

⁵⁵ See Clifford J. Rosky, *Fear of the Queer Child*, 61 BUFF. L. REV. 607, 640 (2013).

⁵⁶ See *id.*

⁵⁷ See Rogers, *supra* note 19.

⁵⁸ See Jaelyn Friedman, *Who’s Grooming Who? Co-Opting the Language of Sexual Abuse for Reckless, Political Rhetoric Harms Those Living in the Aftermath of the Real Thing*, BOS. GLOBE: THE EMANCIPATOR, <https://www.bostonglobe.com/2022/06/30/opinion/whos-grooming-who/> [<https://perma.cc/KXT5-8TU5>] (June 30, 2022, 10:57 AM); Victoria Fielding, *Debate over Trans People’s Right to Exist Fuelling Hatred*, INDEP. AUSTL. (May 22, 2023, 4:00 PM), <https://independentaustralia.net/life/life-display/debate-over-trans-peoples-right-to-exist-fuelling-hatred,17536> [<https://perma.cc/U9PJ-YF9H>]; see also Jeff Stein, *Strategic Speech Tactics and Alt-Right Metapolitics*, COLUM. CTR. FOR CONTEMP. CRITICAL THOUGHT (Nov. 29,

For example, Florida’s infamous “Don’t Say Gay” bill, *inter alia*, prohibits school district officials from preventing “parental notification of . . . critical decisions affecting a student’s mental, emotional, or physical . . . well-being” and classroom discussion of sexual orientation and gender identity at certain grade levels or in a manner that is not “age appropriate . . . in accordance with state standards.”⁵⁹ Christina Pushaw—the Florida Governor’s Press Secretary⁶⁰—tweeted that the bill was an “[a]nti-[g]rooming [b]ill” and that “[i]f you’re against the . . . [b]ill, you are probably a groomer or at least you don’t denounce the grooming of [four to eight] year old children. Silence is complicity.”⁶¹ This tweet is an echo from other high-profile conservative commentators and organizations on social media labeling the bill an “anti-grooming bill,” effectively transforming the debate from “[p]arental [r]ights in [e]ducation” to “*actually* . . . preventing grooming.”⁶² By both activating the conspiracy-minded base to villainize queer persons and artificially legitimizing the debate, anti-LGBTQ advocates’ use of the term

2018), https://blogs.law.columbia.edu/praxis1313/jeff-stein-strategic-speech-and-alt-right-metapolitics/#_ftnref22 [<https://perma.cc/67V5-HYAU>]; Derek Robertson, *How an Obscure Conservative Theory Became the Trump Era’s Go-To Nerd Phrase*, POLITICO MAG. (Feb. 25, 2018), <https://www.politico.com/magazine/story/2018/02/25/overtone-window-explained-definition-meaning-217010/> [<https://perma.cc/7SXX-HTHW>] (“Today’s fringe theory can become tomorrow’s conventional wisdom by the shifting of the finely tuned gears that move popular opinion . . .”).

⁵⁹ See Parental Rights in Education, FLA. STAT. ANN. § 1001.42(8)(c)(2), (3) (West 2023); Christian Paz, *Old-School Homophobia Is Back: Why Anti-LGBTQ Laws and Accusations of “Grooming” Children Seem to Be Everywhere Now*, VOX (Apr. 13, 2022, 6:00 AM), <https://www.vox.com/23021971/florida-gay-trans-lgbtq-laws> [<https://perma.cc/RP3Z-9GCU>].

⁶⁰ Ben Mathis-Lilley, *How One Florida Woman with Twitter Problems Plunged Us into a Nightmarish National Conversation About “Grooming”*, SLATE (Apr. 21, 2022, 11:34 AM), <https://slate.com/news-and-politics/2022/04/christina-pushaw-ron-desantis-libsoftiktok-groomer.html> [<https://perma.cc/5DJS-G22E>].

⁶¹ Christina Pushaw (@ChristinaPushaw), TWITTER (Mar. 4, 2022, 6:33 PM), <https://twitter.com/ChristinaPushaw/status/1499890719691051008?s=20&t=ZrhROPLp-nkT4KiZyZKwjw> [<https://perma.cc/DC92-B4L4>].

⁶² See Mathis-Lilley, *supra* note 60; see also Joel Berry (@JoelWBerry), TWITTER (Feb. 9, 2022, 11:48 AM), <https://x.com/JoelWBerry/status/1491453909902454784?s=20> [<https://perma.cc/Q8YH-E8NS>] (“DeSantis supporting a bill to prevent the sexual grooming of kids in schools and the Left is really, really mad about it for some reason.”); Joel Berry (@JoelWBerry), TWITTER (Feb. 9, 2022, 12:08 PM), <https://x.com/JoelWBerry/status/1491459098092916736?s=20> [<https://perma.cc/2ACR-3MMB>] (“DeSantis should come out swinging and call this an ‘anti-grooming bill’ and demand that Leftists explain why they support the pedophilic grooming of children.”); Heritage Action (@Heritage_Action), TWITTER (Feb. 24, 2022, 12:12 PM), https://x.com/Heritage_Action/status/1496895703972524033?s=20 [<https://perma.cc/4WGW-ZLF5>] (“Liberal activists are claiming that Florida’s parental rights bill would harm kids. But, actually, it protects young children from sexual grooming.”).

grooming may be used as a political bludgeon to bolster public support for anti-queer policies.⁶³

D. Grooming Rhetoric's Harmful Consequences for Individual LGBTQ Persons

Unfortunately, increased online groomer rhetoric and hate speech have harmful consequences for individual queer persons, allies, and institutions. One drag queen performing at a California charter school assembly had a video clip of their show reshared by Libs of TikTok.⁶⁴ Afterwards, the Californian drag performer received hate messages to the point where they deleted their social media profiles.⁶⁵ One teacher faced the ire of Libs of TikTok when their post was taken out of context, resulting in an online mob sending the teacher direct threats and even a letter in the mail depicting “the progress pride flag . . . arranged into a swastika.”⁶⁶ Even hospitals and healthcare providers have been targeted for providing medical care to transgender individuals, resulting in voluminous hateful messages and phone calls, as well as threats against staff.⁶⁷ Groomer rhetoric has led to various pride events, drag performances, and other public or social gatherings being shuttered due to in-person intimidation and threats.⁶⁸ This online hysteria, propagated by misleading so-called reports, has even caused individuals’ private information to be leaked, such as their home addresses.⁶⁹ False online grooming accusations are causing the rhetoric’s believers to take harmful

⁶³ See Paz, *supra* note 59 (“The way to win back lost ground in the culture war over LGBTQ people is to cast them as morally corrupt villains—and use schools as a starting point for a bigger cultural shift.”).

⁶⁴ Connor Perrett, *Drag Shows Are the Latest Battleground in the Right Wing Anti-Gay Disinformation Campaign About ‘Grooming’*, INSIDER (June 14, 2022, 4:11 PM), <https://www.businessinsider.com/drag-queens-children-lgbtq-right-wing-libsoftiktok-idaho-patriot-front2022-6> [<https://perma.cc/SEC8-FLLU>].

⁶⁵ *Id.*

⁶⁶ See Oliver Haug, *The Conservative Campaign to Attack, Silence, and Harass Queer Teachers*, THEM (Sept. 15, 2022), <https://www.them.us/story/queer-teachers-are-under-attack-libsoftiktok-conservatives-school-board-protests> [<https://perma.cc/7AXH-EYP8>].

⁶⁷ See Shannon Bond, *Children’s Hospitals Are the Latest Target of Anti-LGBTQ Harassment*, NPR (Aug. 26, 2022, 3:30 PM), <https://www.npr.org/2022/08/26/1119634878/childrens-hospitals-are-the-latest-target-of-anti-lgbtq-harassment> [<https://perma.cc/Q2TZ-2R5T>].

⁶⁸ See, e.g., Ben Collins & Doha Madani, *Anti-LGBTQ Threats, Fueled by Internet’s Far Right ‘Machine,’ Shut Down Trans Rights and Drag Events*, NBC NEWS (June 17, 2022, 9:29 PM), <https://www.nbcnews.com/tech/tech-news/anti-lgbtq-threats-orchestrated-on-internet-shut-down-events-rcna33955> [<https://perma.cc/A3QN-ECCU>].

⁶⁹ See, e.g., David Gilbert, *‘She Needs to Be Executed’: The Far-Right Is Doxxing School Officials They Think Are ‘Groomers’*, VICE: NEWS (Apr. 13, 2022, 11:40 AM), <https://www.vice.com/en/article/jgm3xx/far-right-groomers-doxxing-school-officials> [<https://perma.cc/7EBK-2DSE>].

action against those they are convinced are groomers, posing dangerous threats to queer persons, allies, and institutions.

III. ANALYZING THE ACTIONABILITY OF THE ACCUSATION

Online groomer rhetoric is harmful to queer people and poses a threat to the overall advancement of the LGBTQ community.⁷⁰ This prompts an important question: can tort law provide any recourse? A *prima facie* case for the tort of defamation typically requires the following elements: “[1] a false and defamatory statement concerning [the plaintiff]; [2] an unprivileged publication to a third party; [3] fault amounting at least to negligence . . . [by] the publisher; and [4] either actionability of the statement irrespective of special harm or the existence of special harm.”⁷¹ For the remainder of this Note’s analysis, it is assumed that hypothetical plaintiffs would not have consented to the defamatory accusations of grooming on social media, and that harm can sufficiently be proven.⁷² Furthermore, this analysis will not engage in the robust First Amendment discussion of the public-figure doctrine; it is beyond the scope of this Note. This Note does not further analyze whether the statement is defamatory or harmful because an imputation that someone is sexualizing or grooming children “tends so to harm the[ir] reputation . . . as to lower [them] in the estimation of the community or to deter third persons from associating or dealing with [them].”⁷³ Accusing someone of criminal activity is also defamatory *per se*.⁷⁴ Since actionability for defamation begins with whether there was a false statement in the first place, the purpose of this Note is to examine the ability to prove the factual falsity of grooming rhetoric.

The primary hurdle a plaintiff must surmount is proving that the accusation of grooming is more than just abusive epithet and hyperbole, or—in other words—opinion.⁷⁵ Nevertheless, courts should find that online grooming rhetoric aimed at individual LGBTQ persons is defamatory since it is provably false.⁷⁶ The falsity of a statement that insinuates a defamatory meaning about the plaintiff depends upon whether the audience can reasonably

⁷⁰ See *supra* Sections II.C, II.D.

⁷¹ RESTATEMENT (SECOND) OF TORTS § 558 (AM. L. INST. 1977).

⁷² See *supra* Section II.D.

⁷³ See *supra* note 12 and accompanying text; RESTATEMENT (SECOND) OF TORTS § 559.

⁷⁴ See RESTATEMENT (SECOND) OF TORTS § 571; 18 U.S.C. § 2422.

⁷⁵ See RESTATEMENT (SECOND) OF TORTS § 566 cmt. e; DAVID ELDER, DEFAMATION: A LAWYER’S GUIDE § 8:47 (2022).

⁷⁶ See *infra* Sections III.A, IV.

interpret that meaning as factual.⁷⁷ Since harm in defamation results from the audience's perception of the plaintiff after the defendant publishes the statement, the audience's ability to derive defamatory facts from the communication is the key ingredient to the cause of action.⁷⁸ When performing a contextual analysis, courts should keep in mind that reasonable consumers of internet media are not omniscient and will typically infer that the statement is meant to be factual.⁷⁹

A. *Provable Falsity*

A plaintiff must prove to the court that being called a *groomer* is a factually false assertion.⁸⁰ This may also be proven by implication, where “a defendant either ‘juxtaposes a series of facts to imply a defamatory connection between them’ or ‘creates a defamatory implication by omitting facts.’”⁸¹ A statement can be false if it tries to express a fact,⁸² but a statement of opinion—without any implication of fact—is not actionable for a defamation claim.⁸³ Statements on matters of public concern cannot be actionable unless they are “provable as false” and can “reasonably [be] interpreted as stating actual facts’ about an individual.”⁸⁴ However, because of the complex nature of ascertaining *provable falsity*, courts employ a variety of factors-based tests to discern the facticity of a communication, frequently reviewing the “[m]eaning, verifiability, [and] context” of the statement.⁸⁵

⁷⁷ See *infra* Section III.A.

⁷⁸ See *infra* Section III.B.

⁷⁹ See *infra* Section III.C.

⁸⁰ See RESTATEMENT (SECOND) OF TORTS § 651(1)(c); *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986) (holding that the First Amendment requires plaintiff to bear the initial burden of proving falsity).

⁸¹ *E.g.*, *MacDonald v. Brodtkorb*, 939 N.W.2d 468, 475–76 (Minn. Ct. App. 2020) (quoting *Metge v. Cent. Neighborhood Improvement Ass’n*, 649 N.W.2d 488, 498 (Minn. Ct. App. 2002)); *Corey v. Pierce Cnty.*, 225 P.3d 367, 373 (Wash. Ct. App. 2010) (quoting *Mohr v. Grant*, 108 P.3d 768, 774 (Wash. 2005)), *appeal denied*, 245 P.3d 775 (Wash. 2010); *see, e.g.*, *Armstrong v. Simon & Schuster, Inc.*, 649 N.E.2d 825, 829 (N.Y. 1995) (“‘Defamation by implication’ is premised not on direct statements but on false suggestions, impressions and implications arising from otherwise truthful statements.” (citing *Memphis Publ’g Co. v. Nichols*, 569 S.W.2d 412, 420 (Tenn. 1978))).

⁸² See *False Statement*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁸³ See *What Is a Defamatory Statement*, DIGIT. MEDIA L. PROJECT (Sept. 10, 2023), <https://www.dmlp.org/legal-guide/what-defamatory-statement> [https://perma.cc/GT4U-UGM8]; RESTATEMENT (SECOND) OF TORTS § 566.

⁸⁴ *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 19–20 (1990) (quoting *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988)).

⁸⁵ See Nat Stern, *The Intrinsic Character of Defamatory Content as Grounds for a Uniform Regime of Proving Libel*, 80 MISS. L.J. 1, 43, 48 (2010) (observing that, across state courts,

The etymology and common usage of the word *grooming* or *groomer* renders blanket labelling of LGBTQ individuals false.⁸⁶ Determining the meaning and common usage of allegedly defamatory terms is a critical step for a court in defamation cases.⁸⁷ As described by the D.C. Circuit in *Ollman v. Evans*:

A classic example of a statement with a well-defined meaning is an accusation of a crime. To be sure, such accusations are not records of sense perceptions. Quite to the contrary, they depend for their meaning upon social normative systems. But those norms are so commonly understood that the statements are seen by the reasonable reader or hearer as implying highly damaging facts. Post-Gertz courts have therefore not hesitated to hold that accusations of criminal conduct are statements “laden with factual content” that may support an action for defamation.⁸⁸

As already discussed, the hypothetical LGBTQ plaintiff can easily verify that these accusations of grooming behavior on social media are false and misleading.⁸⁹ However, when these accusations are not put in context, it may not be so clear as to whether these posts are *actually* accusing the plaintiff of grooming children or just heinously maligning the plaintiff.⁹⁰ The hypothetical defendant could retort that their depiction of plaintiff as a *groomer* is meant only as an insult or manifests their opinion of the LGBTQ community. Moreover, some state courts default to considering social media postings as *per se* hyperbole because, in part, social media posts tend to contain “exaggerated language and expressions of opinion [that] cannot be

“[m]eaning, verifiability, [and] context . . . are frequently intertwined and mutually reinforcing”); 50 AM. JUR. 2D *Libel and Slander* § 112 (2023).

⁸⁶ See *supra* Section II.A.1.

⁸⁷ See *Ollman v. Evans*, 750 F.2d 970, 979–80 (D.C. Cir. 1984), *cert. denied*, 471 U.S. 1127 (1985).

⁸⁸ *Id.* at 980 (quoting *Cianci v. New Times Publ'g Co.*, 639 F.2d 54, 63 (2d Cir. 1980); citing *Rinaldi v. Holt, Rinehart & Winston, Inc.*, 366 N.E.2d 1299 (N.Y. 1977), *cert. denied*, 434 U.S. 969 (1977)).

⁸⁹ See *supra* Sections II.A.2, II.A.3.

⁹⁰ See, e.g., *Finkel v. Dauber*, 906 N.Y.S.2d 697, 701 (Sup. Ct. 2010); ELDER, *supra* note 75, § 8:47 (“[A] certain amount of vulgar name-calling is frequently resorted to by angry people without any real intent to make a defamatory assertion, and it is properly understood by reasonable listeners to amount to nothing more. This is true, particularly when it is obvious that the speaker has lost his temper and is merely giving vent to insult.” (quoting RESTATEMENT (SECOND) OF TORTS § 566 cmt. e (AM. L. INST. 1977)).

pinned down as statements of fact.”⁹¹ Therefore, our hypothetical plaintiff must undergo a contextual analysis to show that the defamatory media was more than just an exaggerated comment; it expresses some defamatory facts about them.

B. The Reasonable Reader in Proper Context

Our hypothetical plaintiff must be wary that the court will consider groomer commentary as only reasonably being read as a hyperbolic insult. Courts will often use a reasonable person standard to delineate between abusive hyperbolic epithets and factual statements.⁹² However, “the factors we consider relevant to the [reasonable person] test . . . depend[] not just on the field of law but also on the underlying theory that animates that field of law.”⁹³ The defamation cause of action’s purpose is three-fold: “(1) to compensate the plaintiff . . . , (2) to vindicate . . . and . . . restor[e] [their] reputation[,] and (3) to punish the defendant” and deter others from acting similarly.⁹⁴ The tort also aims to balance free speech interests with preventing speech that unnecessarily harms one’s reputation and disturbs peace in the community.⁹⁵ The theories underpinning defamation law reflect this balance; reputational harm flows from the audience’s use of false facts—as supplied by the defendant—to conjure an assessment of plaintiff.⁹⁶ The *specific audience’s*

⁹¹ See Hadley M. Dreibelbis, *Social Media Defamation: A New Legal Frontier Amid the Internet Wild West*, 16 DUKE J. CONST. L. & PUB. POL’Y 245, 257–58 (2021).

⁹² See, e.g., 50 AM. JUR. 2D *Libel and Slander* § 163 (2023); *Nunes v. Rushton*, 299 F. Supp. 3d 1216, 1232 (D. Utah 2018) (holding that, in context of certain online defamatory statements accusing the plaintiff of criminal activity, reasonable readers would have contemplated that the plaintiff’s actions were “overly aggressive,” not criminal).

⁹³ See Christopher Jackson, *Reasonable Persons, Reasonable Circumstances*, 50 SAN DIEGO L. REV. 651, 705 (2013) (emphasis added).

⁹⁴ See RESTATEMENT (SECOND) OF TORTS § 623, *Special Note on Remedies for Defamation Other Than Damages*.

⁹⁵ See, e.g., *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339–40 (1974) (“Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.”); Van Vechten Veeder, *The History and Theory of the Law of Defamation*, 3 COLUM. L. REV. 546, 566–67 (1903) (discussing that the cause of action of defamation and libel emerged out of English Common Law because, among other things, courts recognized that libelous statements tended to breach the peace and, thus, deserved regulation); R. C. Donnelly, *History of Defamation*, 1949 WIS. L. REV. 99, 122 (1949) (Common Law has also recognized an interest in protecting the individual’s own private honor or reputation.).

⁹⁶ See *Defamation*, 69 HARV. L. REV. 875, 882 (1956) (“Whether an idea injures a person’s reputation depends upon the opinions of those to whom it is published.”); RESTATEMENT (SECOND) OF TORTS § 558.

perception of what is factual is relevant.⁹⁷ Therefore, in keeping with the purpose and underlying theory of defamation law, the question is not whether the audience itself is reasonable, but whether the defendant's targeted audience may reasonably believe that the statement is true.

In the case of grooming rhetoric, and given some courts' general distrust of social media to convey factual assertions,⁹⁸ our plaintiff must address two key questions to survive a motion to dismiss: *who* is the reasonable reader, and *what* factual inferences can that reader make based on the post's language?⁹⁹ Answering these two questions requires an inquiry into the factual nature of the defendant's statement, which "is highly dependent on the *circumstances extant at the time of expression*."¹⁰⁰

1. Who Is the Reasonable Reader?

The reasonable person should be conceived by courts as a prudent reader of potentially defamatory content who only knows what the defendant's audience knew to be true at the time of publication. Courts recognize that many readers will sometimes be misled into believing a statement is true when it is not intended as such, yet some courts harp on such readers being different than "the hypothetical reasonable reader."¹⁰¹ "Th[at] careful reader always considers the entire article, in context, 'with detachment and dispassion.' He or she 'is a prototype of a person who exercises care and prudence, *but not omniscience*.'"¹⁰² If the reasonable reader cannot be aware of all circumstances, how can they objectively say that the statement is communicating truth?

⁹⁷ See, e.g., *Couch v. San Juan Unified Sch. Dist.*, 39 Cal. Rptr. 2d 848, 854 (Ct. App. 1995) (In resolving whether published material makes a factual assertion, "[t]he 'average reader' is a reasonable member of the audience *to which the material was originally addressed*." (emphasis added) (quoting *Baker v. L.A. Herald Exam'r*, 721 P.2d 87, 91 (Cal. 1986))).

⁹⁸ See Dreibelbis, *supra* note 91, at 257–58; *Kindred v. Colby*, No. 2014/06421, slip op. at 5 (N.Y. Sup. Ct. May 15, 2015) ("This conclusion is especially apt in the digital age, where it has been commented that readers give less credence to allegedly defamatory Internet communications than they would to statements made in other milieus." (quoting *LeBlanc v. Skinner*, 955 N.Y.S.2d 391, 400 (App. Div. 2012))), *aff'd*, 42 N.Y.S.3d 906 (App. Div. 2016).

⁹⁹ See *infra* Sections III.B.1, III.B.2.

¹⁰⁰ See David S. Ardia, *Freedom of Speech, Defamation, and Injunctions*, 55 WM. & MARY L. REV. 1, 30–31 (2013) (emphasis added) ("Words can have multiple meanings, depending on their context.").

¹⁰¹ See Catherine J. Ross, *Incredible Lies*, 89 U. COLO. L. REV. 377, 414. (2018).

¹⁰² *Id.* (emphasis added) (quoting *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 157, 158 (Tex. 2004)).

This conundrum is like Plato's famous allegory of the cave.¹⁰³ Prisoners chained to a wall for their whole lives, only able to see shadows on the wall before them, can only conceive of those shadows as their entire reality.¹⁰⁴ Unable to be released from their shackles to turn towards the sun and the objects casting the shadows, the prisoners' truths are limited to only what they can perceive before them and rationalize from those perceptions.¹⁰⁵ For defamation, to say that a reasonable reader is omniscient *and* objective is impossible, especially when the test's purpose is to analyze the statement in its *entire* context.¹⁰⁶ Otherwise, truth cannot always be discerned from falsity.¹⁰⁷ Courts should, therefore, contextualize the reasonable reader as a member of the defendant's audience.

Sometimes the inference regarding who the publication's audience is in defamation cases goes unspoken. In *Finkel v. Dauber*,¹⁰⁸ a New York court considered the defamatory nature of a thread of "prurient" comments in "a 'secret' Facebook group" and "whether a reasonable [reader] could have concluded that [the articles were] conveying facts about the plaintiff."¹⁰⁹ The court held that no reasonable reader could believe the seemingly absurd allegations made by the defendants, keeping in mind that "the statements can only be read as puerile attempts by adolescents to outdo each other."¹¹⁰ This seems common sense to most readers given the ludicrous nature of the lewd comments. However, the court's ruling is only logical if it is assumed that the defendant's audience knows enough not to take those comments literally.¹¹¹ Thus, *who* the defendant's reader is must be a person in the specific defendant's audience, carefully and prudently rationalizing the assertion based on what they knew at the time.

¹⁰³ PLATO, *The Allegory of the Cave*, in THE REPUBLIC bk. VII (Shawn Eyer trans., Plumbstone Books 2016) (c. 380 B.C.E.), https://scholar.harvard.edu/sites/scholar.harvard.edu/files/seyer/files/plato_republic_514b-518d_allegory-of-the-cave.pdf [<https://perma.cc/7WDQ-W8F3>].

¹⁰⁴ *See id.*

¹⁰⁵ *See id.*

¹⁰⁶ *See Ardia*, *supra* note 100, at 30–31; Jackson, *supra* note 93, at 661–63. Merely analyzing a case "by asking what a reasonable person with X would do under the circumstances" does not preserve the objectivity of the assessment. *See* Jackson, *supra* note 93, at 661. One could replace the X variable with an element easily classified as a subjective element, such as a "bad temper." *See id.*

¹⁰⁷ *See Ardia*, *supra* note 100, at 30.

¹⁰⁸ *Finkel v. Dauber*, 906 N.Y.S.2d 697 (Sup. Ct. 2010).

¹⁰⁹ *See id.* at 699, 702 (Sup. Ct. 2010) (quoting *Gross v. N.Y. Times Co.*, 623 N.E.2d 1163, 1167 (N.Y. 1993)) (Specifically considering, *inter alia*, whether "[a] reasonable reader, given the overall context of the posts, . . . would . . . believe that the plaintiff" truly contracted sexually transmitted diseases from animals or "morphed into the devil.").

¹¹⁰ *See Finkel*, 906 N.Y.S.2d at 702.

¹¹¹ *See id.*

2. What Can the Reasonable Reader Infer?

The court's interpretation of what rational inferences can be made by a reader should consider all relevant circumstances of the audience.¹¹² Observably, courts vary in determining whether a statement reasonably permits a reader to infer a provably false assertion or merely an abusive epithet, as each situation's context varies greatly.¹¹³ Courts have found that even if there is some way to interpret a verbally abusive statement to imply certain facts regarding the plaintiff, reasonable readers may still, nevertheless, regard them as expressions of opinion.¹¹⁴ While a term such as *slum lord* might imply that the plaintiff owns substandard housing,¹¹⁵ its factual definiteness can be rendered vague to a reasonable reader when read alongside the entire statement or the statement's context at the time.¹¹⁶

One case is particularly illustrative of this concept: *MacElree v. Philadelphia Newspapers, Inc.*¹¹⁷ In *MacElree*, a local district attorney running for reelection was described by the local newspaper as "electioneering" as "the David Duke of Chester County."¹¹⁸ The courts below dismissed the complaint primarily because they interpreted that, in context, no reasonable reader would interpret the statement as a defamatory fact;¹¹⁹ rather, "[t]he [superior] court classified the reference to David Duke as a bare metaphor which could only be defamatory if it had been supplemented with factual allegations."¹²⁰ The Pennsylvania Supreme Court ruled for the candidate because "a reasonable person could conclude that this was

¹¹² See *Ardia*, *supra* note 100, at 30–31.

¹¹³ See *supra* Section III.A.

¹¹⁴ See, e.g., *Bauer v. Brinkman*, No. 20-0563, 2020 Iowa App. LEXIS 1108, at *5 (Ct. App. Nov. 30, 2020) ("While *slum lord* is capable of a definite meaning, its appearance in *Brinkman's* comment is vague enough that a reader of the post would be left to use his or her own definition, which would result in the term meaning different things to different people." (citing *Yates v. Iowa W. Racing Ass'n*, 721 N.W.2d 762, 771 (Iowa 2006))), *aff'd*, 958 N.W.2d 194 (Iowa 2021).

¹¹⁵ See *Ramunno v. Cawley*, 705 A.2d 1029, 1038 (Del. 1998); *Rasky v. Colum. Broad. Sys., Inc.*, 431 N.E.2d 1055, 1058 (Ill. App. Ct. 1981).

¹¹⁶ See *Bauer*, 2020 Iowa App. LEXIS 1108, at *5 (citing *Yates*, 721 N.W.2d at 771). In this case, given that the word *slum lord* was used to attack the plaintiff and was accompanied by the words *piece of shit*, it would have appeared to a reasonable person that the defendant was only venting his opinion of the plaintiff. See *Bauer*, 2020 Iowa App. LEXIS 1108, at *6.

¹¹⁷ *MacElree v. Phila. Newspapers, Inc.*, 674 A.2d 1050 (Pa. 1996); see *ELDER*, *supra* note 75, § 8:47.

¹¹⁸ See *MacElree*, 674 A.2d at 1052. For context, David Duke is widely known as, among other things, a neo-Nazi and former leader of the Ku Klux Klan. See *David Duke*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/individual/david-duke> [<https://perma.cc/F663-ZNB5>].

¹¹⁹ See *MacElree*, 674 A.2d at 1052.

¹²⁰ *Id.* at 1052 (quoting *MacElree*, 650 A.2d at 1070–71).

an accusation that [the candidate] was abusing his power as the district attorney, an elected office, to further racism and his own political aspirations.”¹²¹ It is also libelous *per se* in Pennsylvania to accuse a public officer of misconduct while in office.¹²² Therefore, the surrounding circumstances of communication determine the actionability of a defendant’s statement.

C. Reasonable Readers in the Internet Age

Courts should be reminded that internet audiences often have limited knowledge when making inferences about potentially defamatory statements. People will determine whether a statement is factual based on what they reasonably understand to be true at the time of publication.¹²³ It is no secret that audiences are never entirely rational; even the most reasonable and intellectual among us come to incorrect conclusions using imperfect information.¹²⁴ The information age has clearly exposed these pervasive cognitive heuristics and social biases in the general public, impacting our ability to discern fiction from reality.¹²⁵ Social media, blogs, and online forums have caused an echo chamber effect, cloistering different groups of internet users from outsiders, polarizing its members from those opposite to the group’s position, and radicalizing its members.¹²⁶ This is illustrative of the well-documented tendency of people to credit a truth that is more familiar to them than a proffered truth that is not.¹²⁷ Additionally, the phenomenon of confirmation bias shows that people will seek information that upholds their preexisting understanding of the world than evidence to the contrary.¹²⁸ This results in audiences having imperfect information, meaning they can only ascertain the truthfulness of a

¹²¹ See *MacElree*, 674 A.2d at 1054, 1055.

¹²² See *id.* at 1054 (citing *Sweeney v. Phila. Rec. Co.*, 126 F.2d 53, 54 (3d Cir. 1942)).

¹²³ See *supra* Section III.B; PLATO, *supra* note 103.

¹²⁴ See Jeffrey Kluger, *Why Smart People Still Believe Conspiracy Theories*, TIME (Nov. 14, 2017, 5:18 PM), <https://time.com/5023383/conspiracy-theories-reasons-believe/> [<https://perma.cc/VC58-MNT9>] (“If you want to believe vaccines are dangerous or that the political party to which you don’t belong is plotting the ruination of America, you’ll build yourself a credible case.”).

¹²⁵ See Derek Weber & Frank Neumann, *Amplifying Influence Through Coordinated Behaviour in Social Networks*, SOC. NETWORK ANALYSIS & MINING, Oct. 13, 2021, at 1, 3–4.

¹²⁶ See Matteo Cinelli, Gianmarco De Francisci Morales, Alessandro Galeazzi, Walter Quattrociocchi & Michele Starnini, *The Echo Chamber Effect on Social Media*, PNAS, Feb. 23, 2021, at 1.

¹²⁷ See Gordon Pennycook & David G. Rand, *The Psychology of Fake News*, 25 TRENDS COGNITIVE SCIS. 388, 393 (2021).

¹²⁸ See Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCH. 175, 175–76 (1998).

statement using the facts that they already have and believe to be true.

IV. ACCUSATIONS OF GROOMING ARE PROVABLY FALSE, NOT MERE ABUSIVE EPITHETS AND HYPERBOLE

The surrounding circumstances of groomer rhetoric should be sufficient for our hypothetical plaintiff to overcome the statements being held as merely hyperbolic and abusive epithets. The targeted audience of grooming rhetoric has imperfect information regarding LGBTQ people and is likely to perceive the comments as true.¹²⁹ Audience members' extreme reactions to grooming rhetoric are evidence that the audience perceived these communications as true.¹³⁰ Alex Jones, Senator Lana Theis, and Libs of TikTok exemplify how such defamatory statements of grooming can be found actionable.¹³¹

A. Alex Jones

Take Alex Jones—a notorious conspiracy theorist¹³²—who featured pictures of drag queens reading books to children on his internet show *InfoWars* and accused them of “sexualiz[ing]” the children.¹³³ During one particular segment, Jones displays a screenshot of a *New York Times* article featuring a picture of a Drag Queen, as well as screenshots from the website displaying the nonprofit Drag Story Hour.¹³⁴ Jones then goes on to state that, *inter alia*, “they show up and they have their way with [your] children, in demon outfits.”¹³⁵

¹²⁹ See *supra* Section II.C; *infra* Section IV.

¹³⁰ See *infra* notes 148–49 and accompanying text.

¹³¹ See *infra* Section IV.

¹³² See Shannon Bond, *How Alex Jones Helped Mainstream Conspiracy Theories Become Part of American Life*, NPR (Aug. 6, 2022, 5:00 AM), <https://www.npr.org/2022/08/06/1115936712/how-alex-jones-helped-mainstream-conspiracy-theories-into-american-life> [<https://perma.cc/FK8E-3U77>].

¹³³ Jared Holt, *Alex Jones Loses It over Drag Queens Reading Books to Children*, RIGHT WING WATCH (Oct. 18, 2017, 10:51 AM), <https://www.rightwingwatch.org/post/alex-jones-loses-it-over-drag-queens-reading-books-to-children/> [<https://perma.cc/U3NK-646H>].

¹³⁴ See *id.*; Right Wing Watch, *Alex Jones Loses It Over Drag Queens Reading Books to Children*, YOUTUBE (Oct. 18, 2017), <https://www.youtube.com/watch?v=fyjO47d23no> (last visited Oct. 28, 2023); see also Una Lamarche, *Drag Queen Story Hour Puts the Rainbow in Reading*, N.Y. TIMES (May 19, 2017), <https://www.nytimes.com/2017/05/19/style/drag-queen-story-hour-puts-the-rainbow-in-reading.html> [<https://perma.cc/PDU4-QMEN>] (this is the article shown in the Alex Jones segment).

¹³⁵ Holt, *supra* note 133.

Jones is no stranger to liability for defamation,¹³⁶ and he is notorious for mainstreaming conspiracy theories throughout American society.¹³⁷ In *Lafferty v. Jones*,¹³⁸ Jones attempted to dismiss a defamation action by the family members of victims of the Sandy Hook school shooting.¹³⁹ Among a myriad of other claims, Jones alleged that the massacre was “a government-sponsored hoax designed to lead to gun control” and that the “motive for the locals to go along with the fraud is money.”¹⁴⁰ While Jones claimed his expressions were opinion, the court observed that, *inter alia*, a reasonable listener to Jones’s segment “could conclude that Jones was accusing the plaintiffs of fraud;” accusing one of fraud is more than an expression of mere opinion.¹⁴¹ Because of this conclusion, and since accusations of criminal fraud are defamatory *per se*, the court denied Jones’s motion to strike plaintiff’s defamation claim.¹⁴²

Like the Sandy Hook case, courts should view Jones’s accusation of the drag queen sexualizing children as more than opinionated hyperbole. From Jones’s statement that “they show up and they have their way with [your] children, in demon outfits,”¹⁴³ one must regard the audience’s circumstances at the time Jones’s statement was expressed.¹⁴⁴ Even if Jones does make ridiculous and hypothetical analogies to “giraffes” and “aliens,”¹⁴⁵ Jones’s listeners are unlike the readers of the adolescent and prurient comments in *Finkel*: many of them actually believe the conspiracy theories he spouts as true.¹⁴⁶ When Jones made accusations against Sandy Hook families, some in his audience “subjected [the families] to ‘physical confrontation and

¹³⁶ See Dave Collins, *Alex Jones Ordered to Pay \$965 Million for Sandy Hook Lies*, AP NEWS (Oct. 12, 2022, 8:36 PM), <https://apnews.com/article/shootings-school-connecticut-conspiracy-alex-jones-3f579380515fdd6eb59f5bf0e3e1c08f> [<https://perma.cc/QK43-ZHTF>].

¹³⁷ See Bond, *supra* note 132.

¹³⁸ *Lafferty v. Jones*, No. X06UWYCV186046436S, X06UWYCV186046437S, X06UWYCV186046438S, 2021 Conn. Super. LEXIS 1930 (Super. Ct. Nov. 18, 2021).

¹³⁹ See *id.* at *1, *6.

¹⁴⁰ See *id.* at *2, *23.

¹⁴¹ See *id.* at *15, *23–24.

¹⁴² See *id.* at *24, *41 (citing *Lodovico v. Mihalcik*, No. CV075013091S, 2010 Conn. Super. LEXIS 2150, at *19 (Super. Ct. Aug. 17, 2010)).

¹⁴³ Holt, *supra* note 133.

¹⁴⁴ See Ardia, *supra* note 100, at 30–31.

¹⁴⁵ Holt, *supra* note 133.

¹⁴⁶ Compare Kathy Frankovic & Taylor Orth, *Most Americans Don’t Trust Alex Jones, but Some Still Believe that Mass Shootings Have Been Faked*, YOUgov (Aug. 12, 2022, 7:11 PM), <https://today.yougov.com/topics/politics/articles-reports/2022/08/12/most-americans-dont-trust-alex-jones-poll> [<https://perma.cc/3TL5-335T>] (explaining that one in five Americans who listen to Jones’s theories believe they are true), with *Finkel v. Dauber*, 906 N.Y.S.2d 697, 702 (Sup. Ct. 2010) (explaining that a reasonable reader of the prurient comments would not believe they were true).

harassment, death threats, and a sustained barrage of harassment and verbal assault on social media.”¹⁴⁷ After listening to Jones’s propagation of the “Pizzagate conspiracy,” an audience member entered the restaurant Jones accused of operating a child sex trafficking ring and fired a rifle.¹⁴⁸ Jones’s audience members believe him; otherwise, they would have been unlikely to take such drastic actions against these victims. In the case of Jones’s groomer accusations, the rational inference made in the minds of Jones’s audience is that “hav[ing] their way with children” means the commission of sexual crimes against these children.¹⁴⁹ Therefore, the Jones statement is defamatory and potentially actionable, since a reasonable audience member could conclude that Jones was making a factual statement about the drag queen.

B. Senator Lana Theis

The accusation of *grooming*, as a term, can also lead to actionability of the statement based on the audience’s context. Senator Lana Theis has been an elected member of the Michigan State Legislature since 2015.¹⁵⁰ As Chair of the Michigan State Senate Education and Career Readiness Committee, Senator Theis has supported legislation to increase “parental rights in education,” which “are threatened by activist school boards, teachers’ unions and radical leftist partisans that are doing everything they can to separate parents from their children academically.”¹⁵¹ In April 2022, Senator Theis, or her campaign, sent a fundraising email which reportedly stated the following regarding her fellow Michigan State Senator Mallory McMorrow:

¹⁴⁷ See *Lafferty*, 2021 Conn. Super. LEXIS 1930, at *5; Dave Collins & Pat Eaton-Robb, *Sandy Hook Families Testify About Threats, Fear of Deniers*, AP NEWS (Sept. 21, 2022, 7:21 PM), <https://apnews.com/article/shootings-school-connecticut-alex-jones-waterbury-782e495a3ece4753d857a9b47d444385> [<https://perma.cc/UDH7-ZLLE>] (describing Sandy Hook families testifying in Jones’s trial that they experienced people accusing them of faking the school shooting and even received threats in the mail).

¹⁴⁸ Bond, *supra* note 132.

¹⁴⁹ See Holt, *supra* note 133; *Have One’s Way with*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/have%20one%27s%20way%20with> [<https://perma.cc/4PEV-2GDC>] (“[H]av[ing] one’s way with” someone is a colloquial expression generally understood as having a connotation with sex.); see also, e.g., 18 U.S.C. § 2251 (sexual exploitation of children is a criminal act).

¹⁵⁰ *Meet Senator Lana Theis*, MICH. STATE REPUBLICANS, <https://www.senatorlanatheis.com/meet-your-senator/> [<https://perma.cc/XM8J-8J2M>].

¹⁵¹ See *Senate Adopts Theis Resolution Affirming Parental Rights in Education*, MICH. STATE REPUBLICANS (Feb. 22, 2022), <https://www.senatorlanatheis.com/senate-adopts-theis-resolution-affirming-parental-rights-in-education/> [<https://perma.cc/MXN9-3FER>].

Last Thursday, I opened the Senate session with an invocation praying for our children’s safety. Several of my Democratic colleagues were so offended, they walked out! Our children are under assault in our schools—the last place we should be worried about them. Gender-bending indoctrination, confusing them about their identities[;] [e]xposure to inappropriate sexual content, stealing their innocence[; and r]ace-based education—Critical Race Theory—pitting children against each other. These are the people we are up against. *Progressive social media trolls like Senator Mallory McMorrow (D-Snowflake) who are outraged they can’t teach[,] can’t groom and sexualize kindergarteners or that 8-year olds are responsible for slavery.*¹⁵²

This email gained national media attention following a speech by Senator McMorrow denouncing Senator Theis’s statements.¹⁵³

When one reviews the context of the statements, Senator Theis’s email imputes to Senator McMorrow wishes to “groom” kindergarteners.¹⁵⁴ First, there is no evidence that Senator McMorrow has wanted children to be “groom[ed]” or “sexualize[d].”¹⁵⁵ As noted before, the meaning of the term *grooming* is increasingly used against LGBTQ people and allies as a false accusation.¹⁵⁶ While Senator Theis could argue that this was merely her opinion on a matter of public concern, her audience might not interpret it that way. Like in *MacElree* and *Lafferty*, Theis’s specific audience, given the circumstances, could reasonably derive that Theis is

¹⁵² Andrew Roth (@RothTheReporter), TWITTER (Apr. 18, 2022, 12:40 PM), <https://twitter.com/RothTheReporter/status/1516094331194650629> [<https://perma.cc/BX7D-YGBV>] (emphasis added) (The image attached to the tweet is a screenshot of the words contained in the fundraising email.); see Dave Boucher, *Michigan Sen. Mallory McMorrow Blasts Colleague Lana Theis on Senate Floor in Viral Speech*, DETROIT FREE PRESS (Apr. 19, 2022, 8:46 PM), <https://www.freep.com/story/news/politics/2022/04/19/mallory-mcmorrow-speech-lana-theis/7371767001/> [<https://perma.cc/AL4F-5ZCU>].

¹⁵³ See Boucher, *supra* note 153; see also John Yang & Dorothy Hastings, *Michigan Sen. Mallory McMorrow Explains Why She Stood Up to a Culture War Attack*, PBS NEWSHOUR (Apr. 22, 2022, 6:35 PM), <https://www.pbs.org/newshour/show/michigan-sen-mallory-mcmorrow-explains-why-stood-up-to-a-culture-war-attack> [<https://perma.cc/9864-KDD3>] (“[T]his all began late last week when Michigan state Senator Lana Theis, a Republican, delivered an opening invocation that said children are under attack. Three Democrats walked out of the chamber, including Senator Mallory McMorrow.”).

¹⁵⁴ See Roth, *supra* note 152.

¹⁵⁵ See Boucher, *supra* note 152 (Senator McMorrow had “to defend herself against a completely unfounded allegation . . . [T]he political attack by Sen. Lana Theis . . . made the accusation in a recent campaign fundraising email without providing any evidence to support it.”).

¹⁵⁶ See *supra* Section II.A.

communicating a fact about Senator McMorrow.¹⁵⁷ Those donating to Senator Theis are likely to be conservative and, of those donors, many in the alt-right already think that Democrats are involved in child sex-trafficking or other debunked Q-Anon theories.¹⁵⁸ This could mean that Theis's audience does not have access to the information necessary to know that LGBTQ individuals are the same as anyone else.¹⁵⁹ Thus, the recipients receiving Senator Theis's email could reasonably impute that Senator McMorrow is also part of this so-called conspiracy and factually desires kindergarteners to be "groom[ed]" and "sexualize[d]."¹⁶⁰ Therefore, Senator Theis's statement could be actionable. Again, the audience is limited in this conspiratorial, echo-chamber context, rendering it reasonable for the audience to credit grooming rhetoric as true.

C. *Libs of TikTok*

Hateful statements from accounts like Libs of TikTok may also be provably false even if the account does not expressly accuse a potential plaintiff of engaging in grooming. Because these accounts purport to expose grooming behavior by reposting mostly out-of-context content,¹⁶¹ reasonable followers of pages like Libs of TikTok might reasonably interpret that any person featured in the feed must have engaged in some sort of predatory behavior.

For example, on August 6, 2023, Libs of TikTok posted a screenshot of a tweet from an account called @Sleepless_in_SA, which featured a picture of a teacher hanging up a pride flag in their classroom and received more than two million views.¹⁶² The screenshotted tweet from @Sleepless_in_SA stated "somebody tell [Libs of TikTok] I put up a progress pride flag in my classroom. What're they going to do about it? Cry?"¹⁶³ Displaying the screenshot, Libs of TikTok tweeted,

¹⁵⁷ See *Lafferty v. Jones*, No. X06UWYCV186046436S, X06UWYCV186046437S, X06UWYCV186046438S, 2021 Conn. Super. LEXIS 1930, at *17 (Super Ct. Nov. 18, 2021); *MacElree v. Phila. Newspapers, Inc.*, 674 A.2d 1050, 1054–55 (Pa. 1996).

¹⁵⁸ See Taylor Orth, *Which Groups of Americans Are Most Likely to Believe Conspiracy Theories?*, YOUgov (Mar. 30, 2022, 4:55 PM), <https://today.yougov.com/topics/politics/articles-reports/2022/03/30/which-groups-americans-believe-conspiracies> [<https://perma.cc/7S9Q-3GXF>].

¹⁵⁹ See *supra* Section III.C.

¹⁶⁰ See Roth, *supra* note 152.

¹⁶¹ See *What Is "Grooming?"*, *supra* note 12.

¹⁶² Libs of TikTok (@libsoftiktok), TWITTER (Aug. 6, 2023, 3:12 PM), <https://twitter.com/libsoftiktok/status/1688266816936685568> [<https://perma.cc/W2L7-KFZC>].

¹⁶³ *Id.*; Gabriel Arana, *A Queer Teacher in Edgewood Picked a Fight He Couldn't Win*, TEX. OBSERVER (Aug. 23, 2023, 12:00 PM), <https://www.texasobserver.org/a-queer-teacher-in-edgewood-picked-a-fight-he-couldnt-win/> [<https://perma.cc/6XSU-UA23>].

“[t]his is Michael Gonzales, a teacher in [Edgewood Independent School District]. Here he is showing off his massive progress pride flag hanging in his classroom to indoctrinate kids with gender ideology. Parents, beware!”¹⁶⁴ Subsequently, Michael Gonzales deleted his Twitter account and was placed on leave with pay.¹⁶⁵

While this Libs of TikTok tweet does not expressly accuse Gonzales of grooming or sexualizing children,¹⁶⁶ a similar meaning can be reasonably implied. Remember, a statement can still be provably false if it can reasonably be interpreted as conveying facts about the plaintiff.¹⁶⁷ The operative phrases in this post include “indoctrinate kids with gender ideology” and “[p]arents, beware!”¹⁶⁸ As with the previous examples, placing the post in its overall context reveals whether the audience can reasonably interpret the post as attempting to communicate facts.

Libs of TikTok rapidly fires accusatory tweets against various institutions and people, directing the audience’s ire towards LGBTQ people and allies for “grooming” or “predator[y]” behavior.¹⁶⁹ As Chaya Raichik—the owner of the account—described in a message to her detractors, “what is hateful and dangerous is gender ideology. It’s giving kids pornography in schools. It’s sterilizing and mutilating children. It’s exposing children to inappropriate adult entertainment. Those are the things that are actually hateful and harmful.”¹⁷⁰ The seemingly self-espoused purpose of the Libs of TikTok feed is to expose what Raichik wrongly deems grooming and indoctrination in schools and universities.¹⁷¹

Raichik’s mission of exposing so-called grooming and predatory behavior is apparent to followers of the Libs of TikTok Twitter page.

¹⁶⁴ Libs of TikTok, *supra* note 162.

¹⁶⁵ See Melissa Manno, *Edgewood ISD Teacher Invites Social Media Jabs from Critics of His Classroom Pride Flag*, SAN ANTONIO EXPRESS-NEWS (Aug. 9, 2023, 7:25 PM), <https://www.expressnews.com/news/education/article/edgewood-isd-pride-flag-twitter-18287609.php> [<https://perma.cc/W8ZF-WAGS>].

¹⁶⁶ See Libs of TikTok, *supra* note 162.

¹⁶⁷ See *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 20 (1990) (quoting *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988)).

¹⁶⁸ Libs of TikTok, *supra* note 162.

¹⁶⁹ See *What Is “Grooming?”*, *supra* note 12.

¹⁷⁰ *‘Libs of TikTok’ Founder Reflects on Her Explosive Social Media Success the Past 2 Years*, NAT’L DESK (Jan. 19, 2023, 9:11 AM), <https://thenationaldesk.com/news/americas-news-now/lib-of-tiktok-founder-reflects-on-her-explosive-social-media-success-the-past-2-years-chaya-raichik-twitter-account-gender-ideology-critical-race-theory-reposting-aggregating-content/> [<https://perma.cc/ST8U-PQNS>].

¹⁷¹ See Doree Lewak, *From Mask-Shaming to Bad Teachers, Mystery Woman Exposes ‘Left Lunacy’ on ‘Libs of TikTok’*, N.Y. POST, <https://nypost.com/2022/02/02/the-mystery-woman-behind-the-viral-lib-of-tik-tok-account/> [<https://perma.cc/4U9X-HC5W>] (Feb. 3, 2022, 8:47 AM).

A brief scroll through the account reveals a consistent pattern of accusing LGBTQ individuals and allies of severe misconduct towards children.¹⁷² On August 11, 2023, Libs of TikTok tweeted a screenshot of a flyer from a Texas School District instructing faculty and staff not to contact parents if a child comes out to them, as it could be “potentially dangerous” for that child.¹⁷³ Subsequently, Libs of TikTok posted more screenshots of these training materials and remarked, “[m]ore . . . groomer training here.”¹⁷⁴ On August 6, 2023, Libs of TikTok posted a picture of what appears to be a bookshelf of LGBTQ books in a Barnes and Noble, tweeting, “[t]his is what you see in almost every Barnes & Noble store. When they say ‘[w]e’re coming for your kids,’ they’re not kidding.”¹⁷⁵ Libs of TikTok has also levied explicit accusations of grooming against individuals, not just institutions like school districts and businesses.¹⁷⁶

Arguably, this pattern of hateful accusations leads to a reasonable expectation by the Libs of TikTok audience that those featured on the account have engaged in some sort of grooming or sexualizing behaviors toward children. While Libs of TikTok did not expressly accuse Gonzales of grooming children in the specific post,¹⁷⁷ the expectation of a reasonable Libs of TikTok follower is that any person featured in the page has supposedly engaged in abhorrent and wrongful conduct. The comments underneath the Gonzales post show that the audience is primed to reach this conclusion. Commenters accused him of pedophilia and grooming as well as demanded he be fired.¹⁷⁸ In other words, these followers reasonably interpreted the warning to “beware” Gonzales and his “indoctrinat[ion]” to mean that he is engaging in grooming and predatory behavior.¹⁷⁹ Because Libs of TikTok’s intended audience can reasonably expect those featured on the page to have engaged in

¹⁷² See Libs of TikTok (@libsoftiktok), TWITTER, <https://twitter.com/libsoftiktok> [<https://perma.cc/2DN2-S2BP>].

¹⁷³ Libs of TikTok (@libsoftiktok), TWITTER (Aug. 11, 2023, 12:29 PM), <https://twitter.com/libsoftiktok/status/1690037717864787971> [<https://perma.cc/HQM3-JSVZ>].

¹⁷⁴ Libs of TikTok (@libsoftiktok), TWITTER (Aug. 11, 2023, 12:52 PM), <https://twitter.com/libsoftiktok/status/1690043523788345344> [<https://perma.cc/K2ZS-W2MN>].

¹⁷⁵ Libs of TikTok (@libsoftiktok), TWITTER (Aug. 6, 2023, 8:57 PM), <https://twitter.com/libsoftiktok/status/1688353561476771840> [<https://perma.cc/ZX3B-FEMA>].

¹⁷⁶ See *Teacher Under Investigation After Allegedly Including Question on Pronouns in Mandatory Assignment*, LIBS OF TIKTOK (Sept. 8, 2022), <https://www.libsoftiktok.com/p/teacher-under-investigation-after> [<https://perma.cc/5E7S-YNSW>] (declaring it to be “grooming behavior” for a teacher in Florida to ask students their pronouns and give students the option to hide such pronouns from their parents).

¹⁷⁷ Libs of TikTok, *supra* note 162.

¹⁷⁸ See Arana, *supra* note 163.

¹⁷⁹ Libs of TikTok, *supra* note 162.

some type of grooming behavior, provable falsity can be shown even if the post in question does not explicitly accuse them of the specific wrongdoing.

V. CONCLUSION

The meteoric rise of grooming rhetoric on social media and internet forums is cause for concern for the protection of the LGBTQ community. Although the clearly malicious accusation of grooming towards queer persons has no basis in reality, it advances an age-old narrative designed to fearmonger and advocate anti-LGBTQ policies.¹⁸⁰ This politically salient rhetoric is not only harmful to the advancement of the community generally, but it causes individualized reputational and emotional damage to queer persons and allies.¹⁸¹ Because of this undue harm, the question is thus posed: can tort law provide a remedy?

This Note argued that groomer rhetoric accusations aimed at individual LGBTQ persons on online media are mostly actionable statements. In this context, the meaning of *grooming* is a false statement that is easily verifiable. Courts should keep in mind that the audience receiving these messages will reasonably perceive them as factual, even if the audiences themselves are not rational at the start.¹⁸² Because these false statements of fact tend to disparage one's reputation, these communications are defamatory and may be actionable.

¹⁸⁰ See Sections II.A, II.B.

¹⁸¹ See Sections II.C, II.D.

¹⁸² See Section III.C.