

WHEN SAYING *GAY* IS NO LONGER SUFFICIENT:
RESPONSE TO MARIE-AMÉLIE GEORGE'S EXPANDING LGBT

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In October of 2022, *The New York Times* published a provocative opinion piece that advocated for reclaiming the use of the word *gay*, which has fallen in favor of the term *queer* in media, academia, activism, and other circles.¹ The article skillfully pointed out how *queer* and *gay* should not be conflated as they are not synonymous.² However, the author, Pamela Paul, went beyond wordsmithing.

Paul opened her piece by stating how the new president of the *Human Rights Campaign* (HRC), an LGBT organization, introduced herself and framed the mission of the organization without once mentioning the words *gay*, *lesbian*, or *bisexual*. The HRC President, Kelley Robinson, focused her message on what can be read as a larger agenda beyond LGBT rights by talking about abortion access, voting rights, and workers' rights. Robinson summarized her goals by stating that she wished for "a world where we are free and liberated without exception . . . without anyone left behind."³ More than making an argument for why not to interchange *gay* and *queer*, Paul in her *New York Times* piece *Let's Say Gay* argued how it was not politically advisable for LGBT organizations to embrace the term *queer*, as word choices reflect and drive culture and the term *queer* makes some members of the LGBT community feel excluded, which runs afoul of the "gay rights movement's successes [which] have historically hinged on efforts at inclusion."⁴ She even honed in on this point by citing James Kirchick, who argues that *queer* is purposefully marginal and contrary to the achievement of formal equality.⁵

The immediate response to the article, including one letter from the HRC President herself, focused mainly on how important it is to expand the scope of the LGBT movement by including the queer community and

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I would like to thank the *Florida Law Review Forum* for the invitation to respond to Professor George's article. I am grateful as well to my research assistant Sydney Monroe and to Joseph Burkart, Serina Combs, Owen Beylus, Alice Bronson, and Kendall Jensen for their insightful edition, dedication, and loving work on this essay.

1. Pamela Paul, Opinion, *Let's Say Gay*, N.Y. TIMES (Oct. 23, 2022), <https://www.nytimes.com/2022/10/23/opinion/queer-gay-identity.html> [<https://perma.cc/NQ8D-NLVZ>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

how *queer* is an inclusive term that aligns perfectly with the political aims of the LGBT movement.⁶ Respondents pointed out how “[b]reaking the boundaries surrounding gender and sexuality are essential to queer existence,” which has been one goal of the innately political LGBT movement,⁷ how the approach suggested in *Let’s Say Gay* is exclusionary,⁸ and how the LGBTQ community is currently under attack and should come together instead of being fractured into the different identity camps under the movement.⁹ This dialogue made me think immediately of Professor Marie-Amélie George’s recent article *Expanding LGBT*.¹⁰

In her article, Professor George attempts to provide a framework beyond incrementalism and radicalism to think about how U.S. LGBT organizations can reformulate their missions and advocacy efforts to benefit queer individuals.¹¹ She argues that doing so will not only better the lives of queer non-binary, intersex, and asexual people, but also the more marginalized individuals within the LGBT community (i.e., trans and bisexual folks).¹² As a departing point for her proposal, she uses the incorporation, about two decades ago, of the trans community into the U.S. national LGB movement.¹³

Professor George first recognizes the inherent tensions and paradoxes in identity politics that require the creation of insular identities to expand political movements.¹⁴ She also points out the tradeoffs and sacrifices that take place as movements expand.¹⁵ One of those tradeoffs and sacrifices is the assimilationist approach, which is often used in incrementalist strategies.¹⁶ This has resulted in only a white, affluent, and gender-conforming minority benefiting from the political and legal strides of the LGBT movement.¹⁷ Another important loss came from the radical strategy to make sure that all identities within the movement were raised simultaneously when, in 2007, the Employment Non-Discrimination Act (ENDA)¹⁸ was not passed into law (and has not been

6. Letter to the Editor, *Using the Word ‘Queer’ Instead of ‘Gay’*, N.Y. TIMES (Nov. 13, 2022), <https://www.nytimes.com/2022/11/13/opinion/letters/lgbt-gay-queer.html> [<https://perma.cc/5QCL-S4SR>].

7. *Id.* (Charles Yale’s letter to the editor).

8. *Id.* (Robert Marshall’s letter to the editor).

9. *Id.* (Kelley Robinson’s letter to the editor).

10. Marie-Amélie George, *Expanding LGBT*, 73 FLA. L. REV. 243 (2021).

11. *Id.* at 243, 247.

12. *Id.* at 243.

13. *Id.* at 246.

14. *Id.* at 248.

15. *Id.*

16. *Id.*

17. *Id.*

18. Employment Non-Discrimination Act, H.R. 2015, 110th Cong. (2007).

voted on again since) as LGBT rights organizations refused to support a sexual orientation-only version of the bill, which representatives were willing to enact.¹⁹

Building on these experiences, Professor George shows where queer non-binary identities currently left out of the U.S. LGBT national movement converge with the LGBT movement's interests and which current equality issues could be affected by assimilationist/incrementalist approaches or radical strategies if these identities were to be included under the LGBTQIA umbrella.²⁰ For example, Professor George argues that including non-binary individuals in the LGBT movement will strengthen the place of bisexuals and LGBT non-conforming individuals within the movement.²¹ Nevertheless, as she correctly points out, anti-discrimination laws and sex-segregated facilities could be a point of contention if non-binary individuals join the LGBT movement.²² Similarly, Professor George discusses how the intersex movement's interests align with the LGBT movement's goals in that they challenge "the naturalness of sex designations"²³ while identity documents and medical interventions could generate conflict in advocacy efforts.²⁴

Finally, Professor George deals with, perhaps, the most difficult queer category in terms of convergence with the LGBT movement's goals: asexuality.²⁵ She argues that the key linking component between asexuality and the LGBT movement is non-normative sexual relations.²⁶ She further argues that even if asexuality is categorically different from the LGBT movement's emphasis on sexual expression because it is based on the lack of sexual desire, it can reinforce sexuality's multidimensionality, expansiveness, and complexity while drawing attention to bisexuality, which is an identity that has often been ignored within the LGBT movement.²⁷ Moreover, she sustains that even if asexuality presents a challenge to the current work done by the LGBT movement regarding marriage and functional parenthood, the inclusion of asexual individuals into the movement could benefit the members of the LGBT community who have been marginalized in these two areas of the law.²⁸

After this discussion, Professor George contemplates the benefits of expanding the LGBT movement to LGBTQIA, not only so that queer

19. George, *supra* note 10, at 263–64.

20. *Id.* at 248.

21. *Id.* at 272.

22. *Id.* at 273–80.

23. *Id.* at 284.

24. *Id.* at 286–95.

25. *Id.* at 295–301.

26. *Id.* at 295.

27. *Id.* at 300–01.

28. *Id.* at 301–10.

non-binary, intersex, and asexual groups could gain access to larger resources and increase visibility as these identities are a small minority in society, but also to propel the marginalized identities within the LGBT movement (i.e., non-conforming individuals, trans, and bisexuals).²⁹ However, Professor George asks us to imagine different possibilities apart from expansion because she reckons that the history of the trans community within the LGBT movement and the histories of other social movements show us that even if expansion “could produce reformulated arguments and new priorities . . . the outcome could also be fracture, dissolution, and disaggregation”³⁰ With this in mind, she considers other organization models such as coalition building, circumscribed cooperation, and collaboration that do not require expanding the movement but could expand the voices of queer members within the large LGBTQIA community.³¹

Another possibility that Professor George envisions could be a reorganization of the community into two groups (i.e., LGBA and TQI) based on sexual orientation and gender identity.³² However, she recognizes that is an unlikely scenario because this reorganization would ignore the intersectionality of identities, and it would also undo all the struggles of the trans community to be incorporated into the LGBT movement.³³ She ends by recognizing that “[t]he alternatives to movement expansion that . . . [she] has presented would promote many of the goals of nonbinary, intersex, and asexual individuals, although doing so would not address the more fundamental issue of the LGBT movement’s limited representation of its more marginal members.”³⁴

This insight is perhaps the most significant in the paper. I would like to use this as a springboard to reflect on three interrelated aspects that the article does not explore. First, whether it is possible or advisable that, in lieu of the expansion of the LGBT movement to LGBTQIA, we transition to a movement focused on inequality in general with an emphasis in sexual orientation and gender identity and expression (SOGIE) equality. Second, the effects historical context has on conditioning the different alternatives discussed for movement expansion. Third, whether the current social landscape could mean a setback in SOGIE equality if movements continue their advocacy with limited representation of the more marginal members of the LGBT community.

29. *Id.* at 310–15.

30. *Id.* at 315.

31. *Id.* at 316, 318.

32. *Id.* at 255–60.

33. *Id.* at 318.

34. *Id.* at 318.

In recent years, we have witnessed a social reckoning with discrimination, intersectionality, and diverse representation.³⁵ As part of this reckoning, we have seen movements engage in expanded identity-conscious politics by making statements about racial inclusion³⁶ or redrafting descriptions of their work to be more inclusive along the lines of the introductory message made by the new HCR president, Kelley Robinson, of equality for all.³⁷ I, like Robinson, believe that we should strive for “a world where we are free and liberated without exception . . . without anyone left behind.”³⁸ However, as I argued elsewhere, identity politics inexorably results in problems of essentialism, a race to the bottom, utilitarian compromise, and interest convergence that keep the cycle of subordination alive like an ouroboros devouring its tail.³⁹

This has proven to be true regarding efforts to expand identity-conscious politics in movement organization. For example, the *Black Lives Matter* (BLM) movement was forced to redraft its mission statement after controversy erupted in 2020 about including remarks about disrupting “the Western-prescribed nuclear family structure,”⁴⁰

35. Ailsa Chang et al., *Summer of Racial Reckoning*, NPR (Aug. 16, 2020), <https://www.npr.org/2020/08/16/902179773/summer-of-racial-reckoning-the-match-lit> [<https://perma.cc/ELD5-Y83D>]; Ron Elving, *Will This Be the Moment of Reckoning on Race That Lasts?*, NPR (June 13, 2020), <https://www.npr.org/2020/06/13/876442698/will-this-be-the-moment-of-reckoning-on-race-that-lasts> [<https://perma.cc/LU82-C9PD>]; John Eligon & Audra D.S. Burch, *After a Summer of Racial Reckoning, Race Is on the Ballot*, N.Y. TIMES (Oct. 30, 2020), <https://www.nytimes.com/2020/10/30/us/racial-justice-elections.html> [<https://perma.cc/67UH-CHDA>]; Kiara Alfonseca, *As Broadway Reopens, Theater Industry Confronts Racial Inequality Criticism*, GMA (Sept. 14, 2021), <https://www.goodmorningamerica.com/culture/story/broadway-reopens-theater-industry-confronts-racial-inequality-criticism-79386742> [<https://perma.cc/W8UM-VL8B>].

36. *GLMA Statement on Racism and Racial Violence*, GLMA, <https://www.glma.org/index.cfm?fuseaction=page.viewPage&pageID=1200&nodeID=1> [<https://perma.cc/7692-2QRV>] (last visited Mar. 11, 2023); *Our Racial Equity and Inclusion Statement*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/about/values/racial-equity-and-inclusion-statement> [<https://perma.cc/9SE6-7S27>] (last visited Mar. 11, 2023).

37. *Our Work: Continuing the Fight for Equality*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/our-work> [<https://perma.cc/P6FM-MKWY>] (last visited Mar. 11, 2023); Paul, *supra* note 1.

38. Paul, *supra* note 1.

39. Anibal Rosario Lebrón, *The Ouroboros of Identity Politics*, 30 TUL. J.L. & SEXUALITY 131, 132, 136 (2021).

40. Brittany Bernstein, *Black Lives Matter Removes Language About Disrupting the Nuclear Family from Website*, YAHOO! NEWS (Sept. 21, 2020), <https://news.yahoo.com/black-lives-matter-removes-language-185621063.html> [<https://perma.cc/AZ2L-AWSG>]; Joshua Rhett Miller, *BLM Site Removes Page on ‘Nuclear Family Structure’ amid NFL Vet’s Criticism*, N.Y. POST (Sept. 24, 2020), <https://nypost.com/2020/09/24/blm-removes-website-language-blasting-nuclear-family-structure/> [<https://perma.cc/V6M7-V5SH>]. For the original BLM mission statement, see *Black Lives Matter.....What We Believe*, BLACK LIVES MATTER,

which reflected a commitment to marginalized queer and LGBTQ+ identities as well as to more radical perspectives of economic equity. After the controversy, the BLM movement has narrowed the language of its mission from “work[ing] vigorously for freedom and justice for Black people and, by extension, all people” with a commitment to “dismantl[ing] cisgender privilege” and “freeing ourselves from the tight grip of heteronormative thinking” to “affirm[ing] the lives of Black queer and trans folks, disabled folks, undocumented folks, folks with records, women, and all Black lives along the gender spectrum” by centering its fight on “those who have been marginalized within Black liberation movements.”⁴¹ Although the movement’s statement had to prioritize Black justice and soften the language regarding marginalized queer and LGBT identities, it continues with a broad focus against subordination or expanded identity-conscious politics. Thus, BLM’s approach can be characterized as a movement focused on inequality in general with an emphasis on Black justice.

I believe that the birth of BLM signals a shift in the ways that movements in the future might organize in terms of identity politics. From its roots, BLM had an intersectional approach that sought to include the more marginalized voices in the Black and LGBT+ communities and society in general.⁴² Many national organizations have worked for decades on racial equity, civil rights, and social justice that revolved around police violence; however, the creation of BLM might point out to the existence of a void with respect to more visible, inclusive approaches within those organizations or a reformulation of how we currently organize around equity issues.

The birth of BLM has already impacted the national LGBT movement. For example, the HRC drafted a racial equity and inclusion statement in which it recognizes that it “must treat racial equity and inclusion as a cornerstone of [its] work” and that LGBTQ+ equality cannot be achieved “while LGBTQ+ people of color continue to be oppressed on the basis of race.”⁴³ Its mission also calls for justice for all by stating that the HRC “strives to end discrimination against LGBTQ+

<https://uca.edu/training/files/2020/09/black-Lives-Matter-Handout.pdf> [<https://perma.cc/6B3Q-VUPV>] (last visited Mar. 11, 2023).

41. *About, BLACK LIVES MATTER*, <https://blacklivesmatter.com/about/> [<https://perma.cc/D3NU-YADN>] (last visited Mar. 23, 2023); *Black Lives Matter.....What We Believe, BLACK LIVES MATTER*, <https://uca.edu/training/files/2020/09/black-Lives-Matter-Handout.pdf> [<https://perma.cc/6B3Q-VUPV>] (last visited Mar. 11, 2023).

42. Sony Salzman, *From the Start, Black Lives Matter Has Been About LGBTQ Lives*, ABC NEWS (June 21, 2020), <https://abcnews.go.com/US/start-black-lives-matter-lgbtq-lives/story?id=71320450> [<https://perma.cc/K945-8EJC>].

43. HUM. RTS. CAMPAIGN, *supra* note 36.

people and realize a world that achieves fundamental fairness and equality for all.”⁴⁴

These shifts in identity politics can herald an era in which it will be superfluous for U.S. national LGBT organizations to expand the scope of their agendas by formally recognizing QIA and rebranding themselves as LGBTQIA. Instead, they can work for queer folks under their larger agendas of equity for all while avoiding some of the controversies associated with the inclusion of the more marginalized identities. In addition, this shift towards expanded identity-conscious politics in the LGBTQ movement might facilitate the coalition building, circumscribed cooperation, and collaboration described in Professor George’s article. The shift would appease critiques of these joint efforts and ease the building of bridges with other movement organizations.

These might not be the best ways to advance the SOGIE equality agenda of queer folks not currently represented in the LGBT movement. It might even be that they are some of the worst alternatives. Yet, these possibilities cannot be disregarded under the current social landscape.

However, the article does not explore these possibilities as it does not address how these alternatives to movement expansion are influenced by the social climate. Even though Professor George recognizes that even if “identity is a necessary factor for movement expansion, it is not sufficient,” using as an example how the AIDS crisis was pivotal in banding the gay and lesbian movement together,⁴⁵ she fails to address how our current social climate can influence the expansion of the LGBT movement to include queer nonbinary, intersex, and asexual people.

I look forward to hearing more about such interaction in Professor George’s future work, including the effects of the racial reckoning underway in the United States due to the murdering of people of color at the hands of the police and of the COVID pandemic. Studies show that the COVID pandemic worsened the living conditions of the LGBTQ+ community.⁴⁶ Moreover, researchers have recognized the need for further investigation to understand how subgroups within the LGBTQ+ community have been impacted by COVID and will be impacted by future health crises.⁴⁷ The COVID pandemic has also negatively

44. *About*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/about> [<https://perma.cc/BP7B-3FPE>] (last visited Mar. 11, 2023).

45. George, *supra* note 10, at 259.

46. Dustin Z. Nowaskie & Anna C Roesler, *The Impact of COVID-19 on the LGBTQ+ Community: Comparisons Between Cisgender, Heterosexual People, Cisgender Sexual Minority People, and Gender Minority People*, 309 PSYCHIATRY RSCH. 1, 4 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8743502/> [<https://perma.cc/T54C-6ELM>]; Rebecca Farmer, *New Report Finds LGBTQ People Are Disproportionately Impacted by COVID-19*, MOVEMENT ADVANCEMENT PROJECT (Dec. 16, 2020), <https://www.lgbtmap.org/release-2020-covid-impact-lgbtq-households> [<https://perma.cc/2MG2-NYEW>].

47. Farmer, *supra* note 46.

impacted LGBTQI movement organizations in terms of their budgets, resources, staff, offerings, and capacity to operate.⁴⁸ These new realities could lead to unanticipated movement expansion.

In addition, part of the analysis of social climate should include the state of SOGIE equality. Social change is characterized by waves of progress and backlash. For example, the Civil War was followed by the Jim Crow Era.⁴⁹ Similarly, marriage equality has been followed by backlash with an explosion in anti-gay and anti-trans legislation.⁵⁰

These waves of progress and backlash have been described by Antonio Gramsci as an *interregnum* or crisis period that “consists precisely in the fact that the old is dying and the new cannot be born.”⁵¹ During this period “a great variety of morbid symptoms appear.”⁵² “The oscillation between the old and the new that Gramsci refers to is therefore not relegated to transitional status, but is a constant factor that opens up possibilities for the political action of an organized body.”⁵³ When the interregnum reaches the point of an organic explicit crisis, which means that the ruling class suffers a crisis in authority that threatens its hegemony and resorts to blatant tactics to restore its power, Gramsci reckons that the class challenging the hegemonic power is in a dangerous period as their lack of organization could lead to a setback in the fight for equality.⁵⁴

48. *Understanding the Impact of COVID-19 on the LGBTQI Movement*, MOVEMENT ADVANCEMENT PROJECT, <https://www.lgbtmap.org/file/2020-report-covid-impact.pdf> [<https://perma.cc/58XZ-ULSS>] (last visited Mar. 22, 2023).

49. The Honorable Leo E. Strine, Jr., *Delaware's Constitutional Mirror Test: Our Moral Obligation to Make the Promise of Equality Real a Reflection on the Resegregation of Our Schools*, 17 DEL. L. REV. 97, 99 (2018); Jonathan P. Feingold, *Reclaiming Equality: How Regressive Laws Can Advance Progressive Ends*, 73 S.C. L. REV. 723, 737 (2022).

50. The American Civil Liberties Union is tracking 427 anti-LGBTQ bills in the current legislative session. *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures*, AM. C.L. UNION, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights> [<https://perma.cc/SSY3-NNAK>] (last updated Mar. 17, 2023).

51. ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 276 (Quintin Hoare & Geoffrey Nowell Smith eds., 1971).

52. *Id.*

53. MICHELE FILIPPINI, USING GRAMSCI: A NEW APPROACH 89 (Patrick J. Barr trans., 2017).

54. *See id.* at 99–102.

The current packing of federal courts with conservative judges,⁵⁵ the panoply of anti-LGBTQ+ bills,⁵⁶ and the use of the free exercise and free speech clauses to curtail the civil liberties of LGBTQ+ folks⁵⁷ are signs that society is in the midst of an organic explicit crisis. Similarly, some of the legal victories of LGBTQ+ rights can be characterized as part of the morbid symptoms that appear during such a crisis. For instance, the Majority Opinion in *Bostock v. Clayton County*,⁵⁸ protecting gender non-conforming individuals against discrimination in the workplace, conflates gender expression, gender identity, sexual orientation, and sex into the latter. This conflation not only risks the erasure of decades of work by queer activists and scholars differentiating between all identities, but it also risks opening the door for precedent to allow private discrimination based on religious freedom against all those marginalized identities by deciding the issue based on one type of discrimination.

The present moment in SOGIE equality shows how decisions about whether to expand the LGBT movement by including queer nonbinary, intersex, and asexual folks can have lasting effects on the legal rights of all members of the LGBTQ+ community. Aligning interests is only but a part of the equation of expansion. Strategic considerations are also part of the elements that must be analyzed to understand movement expansion. Such elements may possibly include whether it is advisable for the movement to follow the treatment given by the Supreme Court in *Bostock* to LGBTQIA+ identities, whether it will be better to keep the

55. Sam Berger, *Conservatives Are Already Packing the Courts. Democrats Must Respond to This Power Grab*, USA TODAY (May 7, 2019, 7:00 AM), <https://www.usatoday.com/story/opinion/2019/05/07/conservatives-packing-courts-democrats-must-respond-column/3564022002/> [<https://perma.cc/C6YP-W3AW>]. President Trump stands out for appointing a large number of federal appeals court judges. John Gramlich, *How Trump Compares with Other Recent Presidents in Appointing Federal Judges*, PEW RSCH. CTR. (Jan. 13, 2021), <https://www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/> [<https://perma.cc/WR6B-8XNR>].

56. AM. C.L. UNION, *supra* note 50.

57. See *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (challenging on First Amendment grounds to the refusal of Philadelphia to contract with Catholic Social Services to provide foster care services unless agreeing to certify same-sex couples as foster parents); *Meriwether v. Hartop*, 992 F.3d 492, 501–02 (6th Cir. 2021) (arguing that a public college professor suffered violations of free speech and free exercise rights after receiving a written reprimand for violating a college's policy requiring faculty to refer to students by pronouns that reflected their self-asserted gender identity); *Telescope Media Grp. v. Lucero*, No. 16-4094, 2021 WL 2525412, at *1 (D. Minn. Apr. 21, 2021) (presenting pre-enforcement challenge under the free speech and free exercise clauses to the *Minnesota Human Rights Act's* requirement to serve same-sex couples seeking wedding video services); Complaint at 8, 9, 14, *Schwartz v. City of New York*, No. 1:19-CV-463, (E.D.N.Y. Jan. 23, 2019) (relating to an Orthodox Jewish psychotherapist who sued the City of New York for violating his free speech and free exercise rights because of an ordinance prohibiting conversion therapies).

58. 140 S. Ct. 1731, 1754 (2020).

movement as is, or whether to atomize it to multiply efforts and resist the erasure of multiple identities.

The answer to expansion could be very different when a movement does not face an explicit organic crisis. Currently, however, the LGBT movement is confronted with such a crisis that requires balancing the many legislative specific attacks on the most marginalized identities within the community. This raises the same question about organizing that the Supreme Court's approach in *Bostock* does: whether it will be better to fight the attacks together or separately in the different subgroups within the community. No matter the answer, it is clear that saying *gay* is no longer sufficient.

Even if Professor George does not explore the effects of expanded identity-conscious politics, the current social climate, and the current state of SOGIE equality on movement expansion, her article gives a solid foundation for LGBT organizations to stop saying *gay* and consider how they can best incorporate not only queer nonbinary, intersex, and asexual individuals, but all marginalized identities within the LGBTQ+ community. Professor George's article also provides important tools to these marginalized subgroups to strategize how to insert themselves into the LGBT movement and expand it so that we can attain a world where we all are free and liberated without anyone left behind.