VOLUME 1

AMANI AHMAD

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LETTER FROM THE EDITOR

Dear Readers,

The inaugural Undergraduate Law Journal for Minority Women (ULJMW) journal was crafted with an abundance of courage. Courage from our wonderful executive board who stepped into new roles, from our editorial board who took on the challenge of editing law journal pieces, and from our incredible writers who had never written a law journal article before. The courage of the women of color in this organization continues to shine in their work and I am so lucky to have been Editor-in-Chief for this first year.

When I founded this journal I had no idea what to expect, with a year filled with determination, hard work, and the most courageous women I have ever met, I am more than proud of this journal and the women who are part of this organization. Courage is our journal's theme this year. In a time fraught with political and legal decisions that question and make life more difficult for women of color, these women have stepped up to make their voices heard regardless of the barriers in front of them. I hope you join me in congratulating them, and have as much appreciation for their work as I do.

Thank you so much to my amazing Executive Board who helped establish and grow our organization through their willingness to contribute to the journal. In particular, I would like to thank my Vice President Esmeralda whose dedication to the journal is unfaltering, even in her last semester at UT Austin. I would also like to thank Karintha Fenley, Cynthia Le, and Juliette Draper whose advice and wisdom was critical to this journal's founding. A huge thank you to the UT Austin College of Liberal Arts, without their funding this journal would not be possible.

Lastly, I would like to extend my greatest thank you to the Editorial Board and writers. Without their incredible ideas, hard work, and commitment, these pages would be empty. Their work is what has made this year a success and it has been an immense privilege to work with them.

I am so grateful to have witnessed our growth as an organization and journal this year. As I sign off from Editor-in-Chief, I am so excited to see what we accomplish in the coming years. I hope that this journal helps you recognize the diversity and quality scholarship that women of color in the law present, challenging your preconceived notions of what it looks like to be a legal scholar.

Sincerely,

Sonali Muthukrishnan
Editor-in-Chief
2023-2024

BREAKING THE CYCLE: STRENGTHENING LAWS TO COMBAT HUMAN TRAFFICKING

Annika Granados
Edited by Abigail Mimbela

Human trafficking is a major issue worldwide and is not publicized or talked about enough. Human trafficking is a crime that involves compelling or coercing a person to provide labor or services, or to engage in sexual commercial acts. The coercion can be subtle or overt, physical, or psychological. It is a growing issue that lacks the advocacy and legal consequences needed to halt its alarming growth. In the United States, federal penalties for basic human trafficking can include a fine, imprisonment of up to 20 years – or even life in cases involving aggravated circumstances, or both. The consequences of human trafficking must be harsher than the present consequences because the number of human trafficking cases continues to rise, showing that the punishment is not effective as a deterrent. Both current and historical data have demonstrated numerous instances of growth in human trafficking, not only in the US but also worldwide.

In multiple cases, the difference between legality and morality sometimes becomes blurred. Legality is "the quality or state of being in accordance with the law." On the other hand, morality is the representation of "principles concerning the distinction between right and wrong or good and bad behavior." Lack of morality leads to legality issues. The law is set for a reason, the crimes that are committed are usually of malintention.

In the federal court case *US v. Evans* (2007), Justin Evans trafficked a fourteen-year-old girl for financial gain. Ultimately, Evans was sentenced to 23 years with five years of supervised release. Yet, the 14-year-old Jane Doe, who fell victim to human trafficking, will face the trauma and difficulties associated with an AIDS diagnosis for the rest of her life. The Texas state case *Miles v. State* (2016) is another example of a lighter sentence considering the heavy impact the victim felt. Kojuan Miles trafficked a 15-year-old child. Furthermore, *Ritz v State* (2015) shows that traffickers should receive much higher consequences. Robert Francis Ritz targeted a 14-year-old female through an online dating profile. Due to stringent laws such as Texas Penal Code 20A.03(a), his attempt fell short and he was convicted and sentenced to life in prison, charged with continuously trafficking a person.

To stop the rings of human trafficking, traffickers must receive a higher consequence to deter them from reoffending and prevent them from causing further harm. If put into place, harsher consequences will greatly impact the culture of human trafficking.

I. THE HISTORY OF HUMAN TRAFFICKING

As of right now, the number of human trafficking victims identified worldwide has more than quadrupled from around 30,000 in 2008 to nearly 120,000 in 2019. However, human trafficking has always been a part of human history. Human trafficking began with the Trans-Atlantic Slave Trade.[1] Africans were coerced or kidnapped from their country by strangers, their government, and even people they knew. The ships packed as many Africans as they could and many Africans died during the 21-to-90-day voyage to their new country of residence. Once the slaves got to the country they were taken to, they would be traded, bought, or passed around to whoever wanted to claim them. The two most common reasons for slavery were physical labor and sexual exploitation. During this time the most common victims were female and child slaves. This was the first known international flow of human trafficking.

The US abolished the importation of African slaves into the country in 1808, however that did not stop the purchasing or selling of slaves between states. The Interstate Slave Trade began in the US and although that was soon turned illegal with the 13th Amendment, illegal human trafficking became a popular secret throughout the nation and the globe.The 13th Amendment created by Congress, stated that "trafficking in persons substantially affects interstate and foreign commerce," and that human trafficking is "a modern form of slavery," and "the largest manifestation of slavery today." Invoking the Thirteenth Amendment's prohibition on slavery and involuntary servitude, Congress declared that "current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded." [2,3,4] Congress gathered extensive evidence regarding the causes and effects of human trafficking.

As with other substantial changes in society, many greatly disagreed with the amendment. People against the establishment of the 13th Amendment decided to start illegally trafficking humans nationally and globally. Throughout history, the number of human trafficking situations has continued to rise and the small number of human traffickers who are prosecuted for their crimes are held for a negligible amount of time, allowing them to continue to traffic once they are released. If the outcome of prosecuting human traffickers had greater force than a slap on the wrist and ended with them living out the rest of their days in prison, previous traffickers would not get the opportunity to further perpetuate their crimes.

II. COERCION

The idea of human trafficking is to coerce victims and create a ruse to make them do or believe that they are doing things of their own will. Usually, the victims that are getting sold will have

[1] "Transatlantic Slave Trade." *Encyclopædia Britannica*, Encyclopædia Britannica, inc., 29 Feb. 2024, www.britannica.com/topic/transatlantic-slave-trade.
[2] "Key Legislation." *Human Trafficking*, 23 Aug. 2023, www.justice.gov/humantrafficking/key-legislation.
[3] Id.
[4] Id.

one or more individuals they must report to. Types of human traffickers, commonly referred to as "pimps" are identifiable through three distinct categories: Romeo, CEO, and Gorilla pimp.[5]

The Romeo pimp is the type of pimp that wants their victim to feel loved and taken care of.[6] They will mentally and emotionally manipulate the victim, making promises about a strong and successful future with them or promising them opportunities that "they would not be able to find anywhere else."[7] The pimp usually takes their victim out on dates, buys them gifts, shows physical affection, and even compliments them often. They fall into these relationship dynamics quickly, claiming to love the victim in only a few weeks until they persuade or coerce the victim into selling themself for sex. This type of pimp manipulates their victims into thinking they owe their pimp and selling themselves for sex is the way to pay back that debt.

The second type is the CEO pimp.[8] These pimps tend to be cut and dry, they don't try to manipulate the victim emotionally, instead they use them for transactional purposes, seeing them as products to sell. They view sexual exploitation as a business and generally target women with high aspirations who want to have a better life. Once they have their victim in the palm of their hand the pimp will offer them the life they desire with crucial exceptions. They tend to be egotistical and brag about themselves and how they can improve a victim's life. They see themselves as a higher power and feel that their victims are lucky to be in their presence.

The third type of pimp is the Gorilla pimp. This pimp stereotype asserts dominance from the start of the relationship, both mentally and physically. They are heavy users of violence and tend to kidnap their victims, not allowing them to persuade themselves into believing it was their idea all along. Controlling every aspect of their victims' lives is where they get their power from, putting so much fear into the victims that they do not dare defy them. For everything their victim does wrong in their eyes, the punishment will almost always be physical pain.

While most pimps are known to be men there are also a number of female pimps.[9] Many female pimps were victims themselves but through abuse and time transitioned into recruiter and offender. Not all pimps fall into specific categories whether they are male or female. Some pimps have completely separate tactics, some stick to one stereotype, and some morph from one to another. The job of a pimp is to create fear, confusion, and insecurity within their victim. Pimps are a major cog in the machine of human trafficking.

III. FEDERAL CASES

A. United States v. Brooks

Depaul Brooks, Uawndre Fields, and Julia Fonteneaux were charged with two counts of child sex trafficking and two counts of interstate transportation of minors for prostitution.[10] Brooks was sentenced to 97 months for each count, with her sentences running concurrently, leading to a total

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[5] Davis, Lauren. "The American Pimp Model Lauren Davis ..." *Gmu.Edu*, 16 May 2022, traccc.gmu.edu/wp-content/uploads/2022/06/Davis-Lauren_Addressing-Human-Trafficking-in-the-United-States-The-American-Pimp-Model.pdf.

[6] Id.

[7] Id.

[8] Id.

[9] Id.

[10] *See* US v. Brooks, 610 F.3d 1186 (9th Cir. 2010).

of 32 years and 4 months. Fields was sentenced to 198 months for each count with his sentences running concurrently for 66 years. Julia Fonteneaux received a reduced sentence due to her guilty plea.

In 2006, 16-year-old N.K. and 15-year-old R.O. ran away from a residential treatment center in Scottsdale, Arizona. The girls stayed the first night at a hotel and a friend of R.O. gave them methamphetamine, it was the first time N.K. had experienced the drug. The next day the girls ran into Brooks, Lee, and Fields and told them they had nowhere to go. The men brought the girls to a hotel room that Brooks had rented. Lee and Fields suggested the girls go to San Diego to work for Fields as prostitutes. Fields told them that he was a pimp and R.O. informed him that both of them were minors. When the girls arrived in San Diego they met up with Julia Fonteneaux, a prostitute and Fields' "main chick." Fonteneaux explained to the girls what would be expected of them. In the next two days R.O. engaged in two or three acts of prostitution, while N.K. remained disoriented due to the methamphetamine. The girls were then driven to Phoenix and R.O. was dropped off with Fonteneaux on a street corner known for prostitution.[11] R.O. engaged in another two or three acts of prostitution, but later that night was picked up by police because they suspected that she was underage. R.O. described the previous days to the police along with the men's descriptions and their rental car. Fonteneaux also picked up and dropped off N.K. at the bus station, penniless with only R.O. and her belongings. With the information R.O. gave them, the police were able to arrest Brooks and Fields, and found incriminating evidence in their vehicle. They were then booked and charged.

The sentencing in this case marks an improvement from past cases, showing that court decisions are going in the right direction, however, the punishment for their crimes was not enough to prevent the survivors from being forever scarred by the trauma they endured.

B. United States v. Flanders

Another pertinent case involves Lavont Flanders Jr. and Emerson Callum, who perpetrated a scheme by fraudulently luring women to South Florida. There they drugged them with Benzodiazepines, recorded them engaging in sexual acts, and distributed pornographic footage.[12]

After a six-day trial, a jury convicted Flanders and Callum on multiple counts of inducing women to engage in sex trafficking through fraud and benefiting off the scheme. Flanders was separately convicted of distributing a controlled substance to impair the victims' judgment so that they would participate in the filming of pornographic videos. Both men received life imprisonment including sixty-month terms for the conspiracy charge and life terms for each of the sex-trafficking charges, which ran consecutively.

As part of the scheme, under an alias Flanders would recruit women off modeling websites and convince them to travel to South Florida for an "audition" for a liquor commercial, urging them to show up alone. Flanders would explain that they would need to act out a scene for the commercial before being taken to a second man, Callum, to film test footage. Flanders convinced the women that the audition required them to taste the alcohol, laced with Benzodiazepines, say scripted lines, and repeat the scene several times. The Benzodiazepines would impair their memory and reduce inhibitions. Flanders would then drive them to another location to meet Callum, who

[11] *See supra* note 13.
[12] *See* US v. Flanders, 752 F.3d 1317 (11th Cir. 2014).

they thought was a Bacardi agent. Through the drive, the victims would become dizzy and often "blacked out." Once the women arrived the men had the women sign model release forms. The women remembered little as they fell unconscious, and recalled waking momentarily only to realize Callum was having sex with them while Flanders filmed. Once the women fully regained consciousness the next day in their cars or hotel rooms, they were disoriented and some were bleeding and covered in bodily fluids. At least four victims tested positive for Callum's DNA, recovered by vaginal swabs, and Benzodiazepines were found in their systems.

Unknown to the victims, Callum distributed videos of the assaults over the internet and through his pornographic production company, Miami Vibes Enterprises.[13] The distributed videos were edited to remove portions where the victims were unconscious. The men were arrested by state police in 2007 and their residents were searched. Unfortunately, they were then released on bond and continued the scheme until their arrests in 2011, which followed searches according to new warrants. The outcome of this case should serve as an example for what the consequences should be in the majority of other human trafficking cases. However, the path to get to their convictions demonstrate the dangers of lax legal procedures.

C. United States v. Evans

Similarly, the court convicted Justin Evans of trafficking a child for prostitution, sentencing him to 23 years and 2 months in prison, which would then become 5 years of supervised release. [14]Evans trafficked a fourteen-year-old girl ("Jane Doe") for prostitution. He provided her with condoms, but the young girl was still hospitalized twice and ultimately was diagnosed with AIDS. After both incidents, in one of which she stayed in the hospital for 11 days, she was immediately forced back into prostitution. He was prosecuted against United States Code Title 18 section 1591, which stated that "knowingly in or affecting interstate or foreign commerce... recruits, entices, harbors, transports, provides or obtains by any means a person knowing that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act shall be punished."[15] Evans stated that because his occurred only within Florida, the necessary factual basis for the element containing interstate commerce should be thrown out, however the court disagreed. Evans received about 23 years in prison and was charged with affecting interstate or foreign commerce. The court stated that according to *Gonzales v Raich* (2005), "Congress has the power to regulate activities that substantially affect interstate commerce." If the court had not included the interstate commerce interference charge the sentence Evans got would be equivalent to a slap on the wrist. Still even after Evans pays his sentence, he will have a long life ahead of him while Jane Doe will remain haunted by the trauma. The survivor did not receive justice for the trauma she endured.

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[13] *See supra note 15.*
[14] *See U.S. v. Evans*, 476 F.3d 1176 (11th Cir. 2007).
[15] "U.S.C. Title 18." *U.S.C. Title 18*, https://www.govinfo.gov/content/pkg/USCODE-2011-title18/html/USCODE-2011-title18-partI-chap77-sec1591.htm.

IV. STATISTICS

Throughout history statistics related to human trafficking in the United States have continued to fluctuate.[16] In 2021, 2,027 persons were referred to the US attorneys for human trafficking offenses, a positive indicator that the referrals were increasing. Since 2011, there was a 49 percent increase from the 1,360 people referred prior to that. The number of those prosecuted since 2011, 729 persons, increased in 2021 to1,672 persons, more than doubling. Although the statistics show positive progress in terms of cases prosecuted, the fact that there are a large number of cases brought to court remains an issue. If that is how many cases are known, there are probably more cases that remain hidden from the courts, which support the theory that human trafficking rings around the world have not diminished significantly.

V. TEXAS LAW

In the state of Texas there are multiple human trafficking cases that demonstrate the need for further legal punishment.[17] The Texas Department of Criminal Justice says the trafficking of a person is a second-degree felony, which leads to a two to 20 years in prison and a fine of up to 10,000 dollars for those who traffic a person who is 18 years or older at the time of the offense. A first-degree felony is five to 99 years in prison and a fine of up to 10,000 dollars if the trafficked person is under age 18 at the time of the offense.

According to Texas House 2096, Texas Penal Code Section 20A.02, the "Trafficking of Persons occurs when a person knowingly: (1) traffics another person with the intent that the trafficked person engage in forced labor or services; (2) receives a benefit from participating in a venture that involves an activity described by Subdivision one, including receiving labor or services the person knows are forced labor or services; (3) traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct (regarding prostitution); (4) receives a benefit from participating in a venture that involves an activity described by Subdivision three or engages in sexual conduct with a person trafficked in the manner described in Subdivision three; (5) traffics a child or disabled individual with the intent that the trafficked child or disabled individual engage in forced labor or services; (6) receives a benefit from participating in a venture that involves an activity described by Subdivision five, including receiving labor or services the person knows are forced labor or services; (7) traffics a child or disabled individual and by any means causes the trafficked child or disabled individual to engage in, or become the victim of, conduct (regarding the continuous sexual abuse of young child or disabled individual); or (8) receives a benefit from participating in a venture that involves an activity described by Subdivision seven or engages in sexual conduct with a child or disabled individual trafficked." [18,19]

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[16] "Human Trafficking Data Collection Activities, 2023." *Bureau of Justice Statistics*, bjs.ojp.gov/library/publications/human-trafficking-data-collection-activities-2023. Accessed 25 Mar. 2024.
[17] "Texas Penal Code." *Penal Code Chapter 20A. Trafficking of Persons*, statutes.capitol.texas.gov/Docs/PE/htm/PE.20a.htm. Accessed 27 Mar. 2024.
[18] "Trafficking of Persons: Texas Penal Code." *Fort Worth Criminal Defense, Personal Injury, and Family Law*, www.bhwlawfirm.com/texas-penal-code/trafficking-of-persons/#:~:text=Trafficking%20of%20Persons%20in%20Texas%20is%20a%20Second%2DDegree%20Felony,the%20time%20of%20the%20offense. Accessed 25 Mar. 2024.
[19] *See supra* note 19.

A. Miles v. State of Texas

In the case of *Miles v. State of Texas* (2016), Kojuan J Miles was found guilty and sentenced to seven years of confinement for sexual assault and 23 years of confinement for compelling prostitution.[20]

The victim, Amy, met the appellant in 2011 when she was fifteen and he was twenty-two. He was a cousin of her friend. He spent lots of time with her, took her out to eat and was teaching her how to drive. He made her "feel like somebody." Amy shared her difficult family situation, and he suggested that she leave with him for Los Angeles. She left with him the following morning. Amy had hoped that he would be her boyfriend. They drove for two days, and before they got to their destination Amy regretted her decision, she told Miles she wanted to go home but he refused stating they were too far. She felt trapped. They arrived at a truck stop in Houston, and Miles asked her to perform oral sex on him. She complied. They stayed overnight at a house in Houston and they had vaginal sex. The next morning, the appellant told Amy she would need to sell her body because they did not have any money for food or gas. Although she did not want to, she complied seeing no other option. Miles told her that if she were caught by police, she should use her sister's name and date of birth because the sister was eighteen years old. He made contact with a prostitute and told Amy she would work along with her. After being paid, Amy would call Miles to pick her up and take her earnings. The prostitution came to an end when a Houston Police officer picked her up because she looked "very young." Amy shared what she had endured and Miles was charged with sexual assault and compelling prostitution.

B. Ritz v. State of Texas

Similarly, in *Ritz v State of Texas* (2017) Robert Francis Ritz was found guilty of continuously trafficking a girl, and the court sentenced him to life in prison.[21]

The survivor in this case, a fourteen-year-old girl referred to as K.D. met Robert Francis Ritz on a dating site, he was 44 at the time. Ritz was aware she was a minor according to their messages but decided to continue meeting with her and having a sexual relationship. In the beginning, they would have sexual intercourse in Ritz's vehicle or on a blanket outside, until K.D. began sneaking out of her house to see him. Ritz would pick K.D. up near her home, drive her to his home, have sex with her, and then drop her off near her home. She testified that their sexual encounters began in early fall 2012 and ended in January 2013. The relationship was uncovered by a police officer working on an online harassment case involving one of K.D.'s friends. K.D. testified about their sexual relationship and he was charged with life in prison without the eligibility of parole.

According to Texas Penal Code 20A.03, a survivor is "continuously trafficked" "if during a period that is 30 days or more days in duration, the person engages two or more times in conduct that constitutes against one or more victims."[22] Ritz knowingly trafficked a child and forced her to partipate in indecency and sexual assault. Ritz was charged with a first-degree felony which will ensure he will never be able to traffic again and it put a definite stop to at least some of the trafficking in Texas. The court found that K.D. was continually trafficked and therefore, Ritz was

[20] *See Miles v. State*, 506 S.W.3d 485 (Tex. Crim. App. 2016).
[21] *See Miles v. State*, 506 S.W.3d 485 (Tex. Crim. App. 2016).
[22] *See supra note 21.*

identified as a trafficker, making him a first degree felon. His sentence was life, a punishment fitting for his crime, stopping him from hurting any other children and warning others against following down this same path.

VI. THE NEED FOR STRONGER PUNISHMENT

Punishment for human trafficking varies from one state to another, it also differs based on the type of trafficking involved. Alone human trafficking typically carries sentences between three and eight years. If the person involved was a minor, a four-year minimum sentence is required.[23] If rape is involved, between five and nine years in prison must be imposed. If gang rape or rape in concert was involved, thenbetween five and nine years in prison must be imposed. Similarly, kidnapping involves a minimum of between three and eleven years. And if kidnapped persons involved are under the age of fourteen, a minimum of five years will be imposed. If kidnapping to commit sexual crimes was involved, a life sentence with the possibility of parole is imposed.

Harsher penalties occur when the defendant committed human trafficking crimes in the past, if the victim suffered bodily harm, if the victim was held in a sex trafficking situation for more than 180 days, if more than one victim was involved, or if the defendant is a public official. On a federal level, there are no statutes of limitations. Defendants in child-only trafficking cases in the US received an average sentence of 192 months. Defendants in trafficking cases involving adults only received an average sentence of 125 months.

VII. PREVENTION

It is globally estimated that 25 million people are subjected to human trafficking and forced labor.[24] The federal government released the National Action Plan to Combat Human Trafficking in 2020 but updated it in December 2021. The Act aims to keep fighting to end human trafficking on a federal level.

The changes instituted in the National Action Plan to Combat Human Trafficking involve responding to predatory behavior by "addressing the needs of underserved individuals, families, and communities to gender and racial equity by taking action against the systemic injustices that communities experience, including underserved populations."[25] The plan relies on collaboration between state and local governments along with private sectors and non-governmental partners. It draws on survivor voices and recommendations on how to prevent human trafficking. It provides appropriate resources to protect and respond to the needs of victims of human trafficking. Four essential pillars are defined as the focal point of the US and global anti-trafficking efforts: prevention, protection, prosecution, and partnership.

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[23] Nathan, Geoffrey. "Human Trafficking Laws, Charges & Statute of Limitations: Federal Charges.Com." *Federal Charges.Com | Criminal Law Topics, Tips, and Lawyers*, 30 Apr. 2016, www.federalcharges.com/human-trafficking-laws-charges/.

[24] "Fact Sheet: The National Action Plan to Combat Human Trafficking (NAP)." *The White House*, The United States Government, 3 Dec. 2021, www.whitehouse.gov/briefing-room/statements-releases/2021/12/03/fact-sheet-the-national-action-plan-to-combat-human-trafficking-nap/.

[25] *See supra note 27.*

Prevention programs are wide-ranging from educating vulnerable populations and surveying risk factors, to looking to prevent goods produced with forced labor from entering the US markets and protecting and assisting victims. Strong outreach and proactive identification efforts, include providing comprehensive victim services and applying victim-centered, trauma-informed strategies. The government looks to use prosecuting action to ensure that individuals and entities engaged in human trafficking are held responsible and accountable, as well as dismantle human trafficking rings and networks. Multiple partnerships with organizations ensure collaboration between victims and government entities from the local, state, and federal levels.

VIII. SUPPORT

The government has established a National Action Plan to Combat Human Trafficking; however, unless the government turns the words into actions the plan will not be helpful.[26] In the meantime there are a number of helpful resources for survivors to make use of.

The Office for Victims of Crimes or OVC has a website that lists funded services in convenient areas for victims to get assistance, providing a map and phone numbers showing where the services are. Furthermore, the National Human Trafficking Hotline is a multilingual, toll-free, and 24-hour hotline.There are also opportunities to find a free lawyer to assist the victims. To find legal representation a survivor could contact a Legal Services Corporation program in their area.Depending on the victims' eligibility, trafficking victims may have access to multiple programs such as Career One Stop, Supplemental Nutrition Assistance Program, Refugee Resettlement Benefits, and many others.If the victims need additional information about available services then can visit the Office for Trafficking in Persons, Services Available to Survivors of Trafficking website.

Each state and territory has a victim compensation program to reimburse crime victims for costs of medical services, mental health counseling, lost wages, and other expenses incurred as a result of the crime. Statutes govern the compensation benefits so eligibility may vary among states. To find the appropriate victim compensation program, visiting the "Help in Your State" website and selecting the state in which the crime occurred will help guide the victim to where they need to go. Additionally, contacting VictimConnect for a referral will be able to assist with the filing of a victim compensation claim.

There are a handful of government-funded programs for victims of trafficking crimes but they are not common knowledge and this must change. Victims must be able to know what help they can receive so that they can regain confidence and fight through the trauma they endured.

IX. CONCLUSION

The prevalence of crimes like human trafficking make it vital that people remain aware of their surroundings.[27] By teaching about the risks and signs of trafficking in school, people can become more aware of the issue at hand. Educating middle school and high school students is

[26] "Office of the Victims' Rights Ombuds: Frequently Asked Questions." *U.S. Attorneys*, 24 Feb. 2023, www.justice.gov/usao/office-victims-rights-ombuds-frequently-asked-questions.

[27] "Victims/Survivors: Human Trafficking: OVC." *Office for Victims of Crime*, ovc.ojp.gov/program/human-trafficking/victims-survivors#u1s1ss7. Accessed 25 Mar. 2024.

particularly important because of the high likelihood that these students will go out on their own. Additionally, social media is a popular place where traffickers pick up victims, making it vital that teenagers are aware of these risks. Furthermore, it is also important to stress to all adults that they can be victims of human trafficking. Adults tend not to think about their vulnerability and their risk of being taken as much as they should. An awareness of human trafficking must be spread because of the awful risks it poses and its common occurrence. Overall, consequences for human trafficking need to be increased in tandem with the spread of stories of human trafficking to raise awareness and decrease the number of people who experience human trafficking.

BRIDGING THE GAP: BALANCING FEDERAL, STATE, AND LOCAL AUTHORITY IN EDUCATION POLICY

Ashley Kurian
Edited by Mona Rosas

Education is a cornerstone institution that can create a robust economy, a vibrant democracy, and increase social progress. Despite this, the question of whose job it is to set education standards has long been a subject of debate in the United States. To maintain equitable and accessible education while advocating for necessary reform, it is essential to gain a comprehensive understanding of government involvement in education. While the Constitution gives power over education to the states and local authorities, the historical evolution of education regulation in the United States highlights a shifting equilibrium of power.

Despite the absence of explicit authority, federal involvement in education continues to increase. Decisions like *Brown v. Board of Education* (1954) established a precedent for federal intervention in cases where legally enforced discrimination occurs, like racial segregation in public schools. However, the Tenth Amendment reserves powers not explicitly granted to the federal government to the states. Still, the national government has become increasingly involved in education, creating a Department of Education and setting national standards through legislation, such as the Elementary and Secondary Education Act (ESEA) and grant programs like Race to the Top (RTTT).

Still, the federal government reserves certain powers for the states. In *San Antonio Independent School District v. Rodriguez* (1972), the Supreme Court essentially gave power back to the states. The school district sued the state, arguing that taxes were relatively low in their area, and as a result of this, students at the public schools were underserved compared to wealthier districts. They argued that the Equal Protection Clause of the 14th Amendment mandates equal funding among school districts, but the Court held that there is no fundamental right to education guaranteed in the Constitution, and that the Equal Protection Clause doesn't require exact "equality or precisely equal advantages" among school districts. However, the federal government used the 14th Amendment to justify federal involvement in education in the interest of equality in the *Brown v. Board of Education* decision, which indicates a constitutional tension.

By examining constitutional arguments surrounding the US government's involvement in education and the influence of federal funding on American education standards, it is clear that the federal government's power in education is growing.

I. HISTORICAL PERSPECTIVE ON EDUCATION REGULATION

To understand the trajectory of education regulation in the United States, it is crucial to delve into its historical roots. The early role of local communities in education dates back to the earliest settlements in America.[28] In colonial times, education was primarily a local affair, with communities establishing informal schooling arrangements to educate their youth. Schooling was not required and only 10 percent of children, usually the wealthiest, went to school. As religion was quite prominent, most children received their education through religious institutions. These schools often depended on parents' tuition payment and charitable contributions, and free schooling was unusual for the time period.

As the nation grew and expanded, so too did the need for more formalized systems of education. The founding fathers recognized that the success of American democracy would rely on the competency of its citizens, and education was the method to create a populace based on character and virtue.[29] After the American Revolution, many leaders proposed the creation of a more formal system of publicly funded schools, and in the 1830s, free public education began to take a stronger hold through the emergence of state authority. States began to take a more active role in regulating and funding education, establishing common school systems and standardized curricula to ensure a basic level of education for all citizens. This period saw the rise of state departments of education and the development of statewide education policies and regulations. Though most of the responsibility lay with the states, the first actionable push by the new federal government was providing support for establishing public schools by setting aside substantial federal lands in 1785 and 1787, which supported the formation of schools.[30]

However, it was not until the 20th century that the federal government began to assert its influence over education regulation. Key legislation and court cases played a pivotal role in shaping the federal government's evolving role in education. From landmark cases such as *Brown v. Board of Education*, which desegregated public schools, to legislation like the Elementary and Secondary Education Act, which provided federal funding to support disadvantaged students, the federal government gradually became a significant player in education policy.

II. THE FEDERAL ROLE IN EDUCATION REGULATION

Several pivotal moments have shaped federal involvement in education regulation, including the establishment of the US Department of Education, the passage of laws such as the Elementary and Secondary Education Act (ESEA) and its reauthorizations, and landmark Supreme Court decisions like *Brown v. Board of Education*.

Perhaps one of the most consequential judicial rulings in the realm of education, *Brown v. Board of Education* (1954) struck down the doctrine of "separate but equal" and mandated the desegregation of public schools.[31] This decision marked a watershed moment in the struggle for civil

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[28] "13 Colonies Schooling," HISTORY, https://www.history.com/news/13-colonies-school (last visited January 15th).
[29] Michael S. Katz, A History of Compulsory Education Laws, Fastback Series, No. 75, Bicentennial Series, Phi Delta Kappa, Bloomington, Ind. (1976).
[30] Land Ordinance of 1785, 1 Stat. 464 (1785). and Northwest Ordinance of 1787, 1 Stat. 50 (1787).
[31] *See* Brown v. Board of Education, 347 U.S. 483 (1954).

rights and paved the way for greater inclusivity and diversity in American education. It also set precedent, with its enforcement demonstrating that the federal government could have a hand in education if it overlapped with the need to enforce constitutional principles.

Next, the Elementary and Secondary Education Act (ESEA) and its reauthorizations expanded federal authority.[32] Enacted in 1965 as part of President Lyndon B. Johnson's War on Poverty, the ESEA represented a landmark federal initiative to address educational disparities and support disadvantaged students. In recent history, this act marks the federal government's first direct policy initiative in education, and it was justified under the federal government's power to regulate interstate commerce.

The Commerce Clause, found in Article I, Section 8, Clause 3 of the Constitution, grants Congress the power to regulate commerce among the states.[33] Over time, this clause has been interpreted broadly by the Supreme Court to encompass not only the regulation of goods and services crossing state lines but also activities that have a substantial effect on interstate commerce. In the case of education, the federal government has argued that ensuring a well-educated citizenry is vital to the nation's economic prosperity and competitiveness in the global market. By improving education outcomes and reducing disparities among states, the federal government asserts that it can promote economic growth and stability, thereby falling under its authority to regulate interstate commerce. Additionally, the federal government has also invoked its authority to provide for the general welfare of the nation as outlined in the preamble of the Constitution. Education, viewed as fundamental to individual opportunity and societal advancement, aligns with the government's goal of promoting the welfare and prosperity of its citizens.

While the Constitution does not explicitly grant the federal government authority over education, the interpretation of constitutional powers, particularly the Commerce Clause and the General Welfare Clause, has provided a legal basis for federal involvement in education policy and regulation, as exemplified by the passage of the Elementary and Secondary Education Act.[34] Subsequent reauthorizations, such as the No Child Left Behind Act (NCLB) in 2001 and the Every Student Succeeds Act (ESSA) in 2015, have sought to refine and recalibrate federal education policy to better meet the evolving needs of students and schools.[35,36] These policies outline requirements for states to develop and implement comprehensive accountability systems, assess student progress, and intervene in underperforming schools. Moreover, it affords states flexibility in designing and implementing education policies tailored to their unique contexts and needs.

Another foundational step in federal involvement in education regulation was the establishment of the US Department of Education in 1979.[37] Advocates emphasized the importance of education in fostering individual opportunity and societal advancement. They argued that a dedicated federal agency could better address national priorities such as improving academic

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[32] *See* Race to the Top, 74 Fed. Reg. 58,264 (Nov. 12, 2009) (to be codified at 34 C.F.R. pt. 700).
[33] U.S. Const. art. I, § 8, cl. 3.
[34] U.S. Const. art. I, § 8, cl. 1.
[35] No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).
[36] *See* Race to the Top, 74 Fed. Reg. 58,264 (Nov. 12, 2009) (to be codified at 34 C.F.R. pt. 700).
[37] Department of Education Organization Act, Pub. L. No. 96-88, 93 Stat. 668 (1979).

achievement, promoting educational equity, and ensuring access to quality education for all students. Furthermore, the consolidation of federal education programs under one department was seen as a means to streamline operations, enhance coordination, and improve the effectiveness of federal education initiatives. Prior to its establishment, programs were scattered across multiple agencies, leading to inefficiencies and fragmented policymaking. The Department of Education was envisioned as a vehicle for promoting equal access to education and enforcing civil rights protections in schools. Proponents argued that a centralized federal agency could more effectively oversee and enforce civil rights laws, ensuring that all students have equitable access to educational opportunities regardless of background.

Today, the US Department of Education plays a central role in shaping the nation's educational landscape, as it is charged with overseeing federal education policy and programs. From administering funding initiatives to enforcing civil rights laws, the department serves as a linchpin in ensuring equitable access to education and fostering academic excellence. Federal funding programs, such as Title I and the Individuals with Disabilities Education Act (IDEA), wield considerable influence in shaping education policy at the state and local levels.[38,39] Title I funding targets resources to schools with high concentrations of students from low-income families, while IDEA provides support for special education services, ensuring that students with disabilities receive the accommodations and support they need to thrive academically.

The benefits of the federal government's involvement in education include providing national consistency and accountability measures. The US is able to address issues of equity and access on a broader scale and offers financial support to schools serving disadvantaged populations. However, the framers left this power up to the states simply because it can lead to a one-size-fits-all approach that neglects local needs. Furthermore, having the federal government oversee such a large endeavor may impose bureaucratic burdens and limitations on state and local autonomy. It also risks politicizing education and shifting focus away from student learning.

III. STATE JURISDICTIONS AND EDUCATION REGULATION

The states hold jurisdiction over education primarily because the United States Constitution does not explicitly grant the federal government authority over education. The 10th Amendment of the US Constitution reserves powers not delegated to the federal government to the states or the people.[40] Since education is not mentioned in the Constitution as a federal responsibility, it falls under the purview of the states.

When the constitutional debates occurred, the concept of local control and decentralized governance was deeply ingrained in American politics, and these principles were reflected in education administration. Historically, the US regarded education as a matter best handled at the state and local levels, where policymakers and educators have a better understanding of the unique

[38] Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, § 1001, 79 Stat. 27 (1965) (codified as amended at 20 U.S.C. §§ 6301-6578).
[39] Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq. (2018).
[40] U.S. Const. amend. X.

needs, priorities, and circumstances of their communities.[41] Moreover, states are thought to be better positioned to tailor education policies and practices to meet the diverse needs of their populations. What works well in one state may not be suitable for another due to differences in demographics, cultural values, economic conditions, and educational traditions. By granting states jurisdiction over education, the federal system allows for experimentation, innovation, and adaptation to local contexts. State governments are responsible for funding education within their borders, collecting taxes, distributing resources, and overseeing the administration of schools. This local financing and control mechanism ensures that education policies and priorities reflect the values and preferences of the communities they serve.

The establishment of state departments of education serve as the primary administrative bodies responsible for overseeing and regulating education within their respective states. These departments undertake multifaceted roles, including setting educational standards aligned with state priorities, licensing educators, distributing funding, monitoring school performance, and implementing policies to address educational challenges and foster innovation. They act as pivotal conduits for education policy formulation and implementation, working in tandem with local stakeholders to promote excellence and equity in education.

State-level funding mechanisms represent another cornerstone of education regulation, with states playing a crucial role in financing their education systems.[42] Given that states hold the most power over their education systems, partially because of their financial support, this section seeks to explore the various means by which states accrue funding to finance education endeavors, including foundation formulas, where states like Massachusetts, New Jersey, and Vermont provide a base amount of funding per student, with adjustments made for factors such as student demographics, district size, and local property values.[43,44,45] States such as California, Hawaii, and Nevada have implemented weighted student funding models to allocate resources based on the specific needs of individual students.[46,47,48] These states allocate additional funding for students with disabilities, English language learners, and those from low-income families to address equity concerns and support student success. However, states like New York, Illinois, and Texas provide categorical grants for specific purposes or programs, such as special education, transportation, or technology initiatives.[49,50,51] These supplement the base funding provided through the foundation formula and target resources to address particular educational needs or priorities. However, some states tie a portion of education funding to performance metrics, such as student achievement outcomes,

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[41] U.S. Department of Education, "The Federal Role in Education," https://www2.ed.gov/about/overview/fed/role.html (last visited February 12th).
[42] Manuel Zymelman, Financing and Efficiency in Education: Reference for Administration and Policymaking, Agency for International Development (Dept. of State), Washington, D.C. (1973).
[43] Mass. Gen. Laws ch. 70.
[44] N.J. Stat. Ann. §§ 18A:7F-43 to 18A:7F-58 (West 2022).
[45] Vermont Statutes Annotated (V.S.A.), Title 16 (Education); Title 32 (Taxation and Finance).
[46] California Education Code Title 1, Div. 1.5, Pt. 25.5, §§ 42238.02-42238.07 (West 2022).
[47] Hawaii Revised Statutes Title 9, Chap. 302D, §§ 302D-29 to 302D-31 (2022).
[48] Nevada Revised Statutes Title 34, Chap. 387, §§ 387.120-387.130 (2022).
[49] New York Education Law Title 1, §§ 3602, 4402 (McKinney 2022).
[50] Illinois Compiled Statutes, §§ 18-8.05, 14-1.01 (West 2022).
[51] Texas Education Code, §§ 42, 48 (West 2022).

graduation rates, or other indicators of school or district effectiveness. Schools or districts that meet or exceed performance targets may receive additional funding as a reward for their success.

Furthermore, state governments exercise authority in establishing curriculum standards and assessment frameworks, delineating the knowledge and skills that students are expected to acquire at each grade level and subject area. By providing clear guidelines for teaching and learning, state-level standards ensure consistency and rigor across schools and districts. Assessment frameworks complement these standards by creating mechanisms for measuring student progress and identifying areas for improvement. However, the variability in state regulations and standards can sometimes lead to inconsistencies and inequities in educational quality, posing challenges for educators and administrators striving to meet diverse student needs.

Examining case studies of states with unique approaches to education regulation offers valuable insights into the strengths and limitations of different regulatory models. These case studies shed light on the diverse array of state priorities, values, and challenges that shape educational governance across the country. For example, California prioritizes diversity and inclusivity in its education policies, with initiatives aimed at promoting multicultural education, supporting English language learners, and fostering a welcoming environment for students from diverse backgrounds.[52] In contrast, Texas emphasizes accountability and standardized testing, with a rigorous assessment system tied to high-stakes consequences for schools and educators.[53] The state's focus on accountability aims to ensure academic rigor and performance standards are met across all schools. Moreover, New York has implemented ambitious education reforms aimed at improving student achievement and closing achievement gaps.[54] The state has invested in initiatives such as universal pre-kindergarten, community schools, and college and career readiness programs to support student success. However, Arizona has embraced a more decentralized approach to education, with a strong emphasis on parental choice and autonomy.[55] The state has implemented policies such as education savings accounts and tax credit scholarships, empowering parents to choose the educational options that best fit their children's needs. Florida has similar policies focused on school choice and accountability. The state has implemented a robust system of charter schools, voucher programs, and school grading systems, providing families with a wide range of educational options and holding schools accountable for student outcomes.[56]

In considering the pros and cons of state education regulation, several key factors emerge. On the positive side, state-level governance allows for tailored approaches that reflect local needs and priorities, fostering flexibility and responsiveness in education policy. Additionally, state departments of education serve as accountable stewards of education resources, ensuring that funding and policies align with state goals and objectives. However, challenges such as variability in regulations, funding disparities, and coordination issues may hinder efforts to achieve equity and consistency in education outcomes.

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[52] *See supra* note 25.
[53] Texas Education Code Title 2, Chap. 39, Subchap. B (West 2022).
[54] *See supra* note 28.
[55] Arizona Revised Statutes (West 2022).
[56] Florida Statutes Title XLVIII, Chap. 1002 (West 2022).

A. Local Jurisdictions and Education Regulation

Local autonomy is a cornerstone of American education, granting communities significant authority in shaping policies, practices, and priorities that reflect their unique needs and values. At the core of this autonomy is the authority vested in school districts to make curriculum decisions tailored to the aspirations of their students. Districts have the flexibility to develop curriculum frameworks, select instructional materials, and design educational programs that align with local standards and priorities.[57] This autonomy fosters innovation and customization in teaching and learning, enabling districts to respond effectively to the diverse needs of their student populations.

One example of districts exercising flexibility in curriculum development and instructional materials selection is demonstrated by the Austin Independent School District (AISD) in Texas. AISD implemented a comprehensive program called "Creative Learning Initiative" (CLI), which aimed to integrate arts-based teaching strategies into core academic subjects across all grade levels.[58] This initiative allowed the district to develop its unique curriculum frameworks that incorporated arts education into subjects like math, science, language arts, and social studies. Under CLI, AISD partnered with local arts organizations and teaching artists to provide professional development opportunities for educators and to infuse arts-based instructional strategies into classrooms. Teachers were given the autonomy to design and implement lessons that integrated visual arts, music, theater, and dance into their instruction, tailored to the needs and interests of their students. AISD had the flexibility to select instructional materials and resources that supported the CLI curriculum, including art supplies, musical instruments, and multimedia resources. By aligning curriculum, instructional materials, and educational programs with local standards and priorities, AISD was able to foster innovation and customization in teaching and learning, effectively responding to the diverse needs of its student population. The CLI program in AISD exemplifies how districts can leverage their autonomy to develop innovative approaches to education that address the unique needs and interests of their students.

Beyond tailoring approaches to students, the governance of local education systems are elected school boards and officials, who serve as stewards of public education and representatives of the community. School boards play a vital role in setting district policies, approving budgets, hiring personnel, and advocating for the interests of students and families.[59] Through democratic processes, these elected officials ensure transparency, accountability, and responsiveness in education decision-making, reflecting the values and preferences of the communities they serve. Community input and involvement are integral components of local autonomy in education regulation. Parents, educators, students, and community members contribute valuable perspectives, insights, and feedback that inform education policies and practices. Through public forums, advisory committees, and engagement initiatives, local stakeholders have the opportunity to voice their concerns, share their ideas, and participate in shaping the future of education in their communities. This

[57] David H. Sutherland, "Tell them local control is important": A Case Study of Democratic, Community-Centered School Boards, 30 Educ. Pol'y Analysis Archives 178 (2022).
[58] Austin Independent School District, Creative Learning Initiative (2021).
[59] Richard F. Elmore, The Role of Local School Districts in Instructional Improvement, in The Role of School Districts in Educational Reform (1991).

collaborative approach fosters a sense of ownership, investment, and accountability in education governance, strengthening the bond between schools and communities.

However, while local autonomy offers numerous benefits, it also presents challenges and limitations that warrant careful consideration.[60,61] One challenge is the variability in resources and capacity across districts, which can lead to disparities in educational opportunities and outcomes. Additionally, local decision-making may result in inconsistencies in curriculum standards, teacher qualifications, and educational practices, raising questions about equity and quality. Moreover, the influence of local politics and interests in education policy making may sometimes overshadow the broader interests of students and communities, posing challenges to effective governance and collaboration.

IV. THE TENSION BETWEEN FEDERAL, STATE, AND LOCAL POWERS

The interplay between federal, state, and local authorities often leads to conflicts, debates, and legal disputes that underscore the tensions inherent in the distribution of educational powers. At the heart of the tension between federal, state, and local powers are disagreements over education policy priorities. One notable example is the push for standardized testing and accountability measures at the federal level, as evidenced by initiatives like the No Child Left Behind Act (NCLB) and its successor, the Every Student Succeeds Act (ESSA).[62,63]

NCLB, enacted in 2001 under President George W. Bush, represented a significant federal intervention in education policy. It mandated annual standardized testing in reading and math for students in grades 3 through 8, as well as once in high school, with the goal of ensuring that all students, regardless of background, achieved proficiency in these subjects by 2014. The law also imposed sanctions on schools that failed to make adequate yearly progress toward this goal, including potential funding cuts and restructuring requirements.

While NCLB aimed to promote accountability and close achievement gaps, it faced criticism from various stakeholders. State and local authorities argued that the law imposed rigid testing and accountability measures that undermined their autonomy and flexibility in education decision-making. Many educators and parents also raised concerns about the narrowing of the curriculum, teaching to the test, and the overemphasis on standardized testing at the expense of holistic student development.[64]

In response to these criticisms and calls for greater flexibility, Congress passed the Every Student Succeeds Act (ESSA) in 2015, which replaced NCLB as the primary federal education law. ESSA sought to strike a balance between federal oversight and state and local autonomy by granting states more flexibility in setting academic standards, designing accountability systems, and determining interventions for low-performing schools. Under ESSA, states have greater authority to design their own accountability systems, including measures of school performance and

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[60] See "Tell them local control is important," 30 Educ. Pol'y Analysis Archives 178 (2022).
[61] Frederick M. Hess & Olivia Meeks, School Boards Circa 2010: Governance in the Accountability Era, Thomas B. Fordham Institute (2010).
[62] See No Child Left Behind Act of 2001.
[63] Every Student Succeeds Act, Pub. L. No. 114-95 (2015).
[64] Ambra L. Green et al., From NCLB to ESSA: Implications for Teacher Preparation and Policy, (2021).

improvement. They are also required to develop comprehensive plans outlining their strategies for supporting all students, including those from historically marginalized groups. ESSA maintains the requirement for annual standardized testing but allows states to incorporate additional measures of student success beyond test scores, such as graduation rates, school climate, and student engagement. The controversy surrounding NCLB and ESSA reflects broader debates about the appropriate balance of power between federal, state, and local authorities in education governance. While federal intervention can promote accountability and equity, it also risks infringing on state and local autonomy and overlooking the diverse needs and contexts of individual communities.

Legal disputes and court cases have played a significant role in highlighting jurisdictional conflicts between federal, state, and local authorities in education. A landmark example is the case of *San Antonio Independent School District v. Rodriguez* (1973).[65] In the *Rodriguez* case, parents from the Edgewood Independent School District in San Antonio, Texas, challenged the constitutionality of the state's school funding system, which relied heavily on local property taxes. They argued that the system resulted in significant disparities in funding between wealthy and poor school districts, thereby violating the Equal Protection Clause of the Fourteenth Amendment. The plaintiffs contended that the disparities in funding deprived students in poor districts of their right to an equal education, as they lacked access to the resources and opportunities available to students in wealthier districts. They argued that education was a fundamental right under the Constitution and that the state had a duty to provide equal educational opportunities to all students, regardless of their socioeconomic status. However, in a 5-4 decision, the Supreme Court ruled against the plaintiffs, holding that disparities in school funding did not violate the Constitution. The Court reasoned that education was not explicitly mentioned as a fundamental right in the Constitution and that disparities in funding did not constitute discrimination based on a suspect classification. Therefore, the Court concluded that the Texas school funding system did not violate the Equal Protection Clause.[66]

The *Rodriguez* decision underscored the limitations of federal intervention in addressing disparities in education funding and highlighted the deference given to state and local authorities in education governance.[67] The Court's ruling affirmed the principle of local control over education policy and funding decisions, emphasizing the role of state governments in ensuring equity and adequacy in education. However, the decision also sparked debate and criticism, particularly among advocates for educational equity and social justice. Critics argued that the decision perpetuated inequalities in education and failed to address the root causes of disparities in funding and resources between wealthy and poor districts. They called for greater federal involvement in education policy to address systemic inequities and ensure that all students have access to high-quality education opportunities. The controversy surrounding the *Rodriguez* case reflects broader debates about the appropriate balance of power between federal, state, and local governments in education governance. While state and local authorities play a significant role in education policy and funding decisions, the case highlights the ongoing need for federal intervention to address systemic inequities

[65] San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)
[66] U.S. Const. amend. XIV, § 1.
[67] Jeffrey S. Sutton, "San Antonio Independent School District V. Rodriguez and Its Aftermath," 94 Va. L. Rev. 1963 (2008).

and ensure that all students receive a quality education, regardless of their background or circumstances.

A perennial struggle in education governance is the balancing act between standardized education and local diversity. While standardized education ensures consistency and accountability, it can sometimes overlook the unique needs, cultures, and contexts of local communities.[68] For instance, debates over national curriculum standards, such as the Common Core State Standards Initiative, have sparked controversy, with some states and localities pushing back against perceived federal overreach and advocating for greater autonomy in curriculum decisions.[69] The Common Core State Standards Initiative was launched in 2009 by state governors and education commissioners to develop a set of consistent, rigorous academic standards in English language arts and mathematics for K-12 students. The initiative aimed to ensure that students across the country were adequately prepared for college and career success by establishing clear learning goals and expectations. While the development of the Common Core standards was led by state governors and education leaders, the federal government played a supporting role through initiatives such as Race to the Top, which incentivized states to adopt college and career-ready standards, including the Common Core. As a result, a majority of states voluntarily adopted the Common Core standards between 2010 and 2013, with the support of federal funding and incentives.

However, the implementation of the Common Core standards sparked controversy and pushback from various stakeholders, including parents, educators, policymakers, and advocacy groups.[70] Critics raised concerns about federal overreach and the erosion of state and local control over education, arguing that the adoption of common standards amounted to a loss of sovereignty and autonomy in education decision-making. Opponents cited concerns about the rigor, appropriateness, and development process of the standards, questioning their alignment with local priorities. Some argued that the standards were too prescriptive and emphasized high-stakes testing at the expense of holistic student learning and development. In response to the backlash, several states moved to repeal or revise the Common Core standards, asserting their authority to set their own academic standards and curriculum frameworks. Some states developed their own standards or reverted to previous standards, while others modified the Common Core standards to better align with local needs and preferences. The controversy surrounding the Common Core standards reflects broader debates about the appropriate balance of power between federal, state, and local authorities in education governance. While the federal government can provide incentives and support for education initiatives, such as the adoption of common standards, states and localities ultimately retain the authority to determine their education policies, standards, and curriculum.

The question of which government should set education standards—federal, state, or local—remains a contentious issue with far-reaching implications. While federal standards can promote consistency and equity across states, they may also infringe on state and local autonomy.

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[68] Kristen Norman-Major, Balancing the Four Es; or Can We Achieve Equity for Social Equity in Public Administration?, 17 J. Pub. Affairs Educ. 233 (2011).
[69] Frederick M. Hess & Michael Q. McShane, Common Core Meets Education Reform: What It All Means for Politics, Policy, and the Future of Schooling (Teachers College Press 2014).
[70] Douglas S. Reed, Common Core Politics: Policy Feedback, Political Pushback and the Role of Legitimation, Department of Government, Georgetown University.

Conversely, state and local standards allow for greater customization and responsiveness to local needs but may result in disparities and inconsistencies across jurisdictions. The struggle to determine the appropriate balance of power in setting education standards reflects broader debates about federalism, democracy, and the role of government in education.

V. RECENT DEVELOPMENTS AND TRENDS

In the wake of the unprecedented challenges brought about by the COVID-19 pandemic, the landscape of education policy and regulation has undergone significant shifts. The pandemic forced educators and policymakers to swiftly adapt to remote and blended learning models, emphasizing the incorporation of technology into education delivery.[71] Additionally, prolonged periods of remote learning exacerbated existing academic disparities, prompting targeted interventions to address learning loss among marginalized student populations.[72] Traditional assessment practices, including standardized testing, were disrupted, leading to calls for more holistic approaches to assessing student learning and school performance.[73] Moreover, the shift to remote learning highlighted inequities in access to technology and learning resources, prompting efforts to address digital equity gaps. The pandemic also led to experimentation with alternative education delivery models, fostering flexibility and innovation in education.[74] Amidst these shifts, technology has played a pivotal role in reshaping the balance of power between federal, state, and local agencies in education governance, challenging traditional structures and reshuffling influence dynamics.

The pandemic disrupted traditional assessment practices, including standardized testing, leading to widespread cancellations and modifications to testing schedules and formats.[75] In light of these disruptions, there has been growing scrutiny of the role of standardized testing in education accountability systems, with calls for more holistic approaches to assessing student learning and school performance that take into account the broader context of the pandemic's impact on teaching and learning. The remote learning aspects also highlighted existing inequities in access to technology, internet connectivity, and learning resources among students, exacerbating disparities in educational opportunities. In response, policymakers focused on addressing digital equity gaps through initiatives such as device distribution programs, internet access subsidies, and community partnerships to ensure that all students have equitable access to online learning resources and support services.

Lastly, the pandemic prompted experimentation with alternative education delivery models, such as micro-schools, learning pods, and competency-based education, as educators and families sought creative solutions to meet students' diverse learning needs in a rapidly changing environment. This increased flexibility and innovation in education delivery may have long-term implications for

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[71] S.J. Daniel, Education and the COVID-19 Pandemic, 49 Prospects 91 (2020).
[72] Kevin A. Gee et al., Educational Impacts of the COVID-19 Pandemic in the United States: Inequities by Race, Ethnicity, and Socioeconomic Status, Current Opinion in Psychology, vol. 52, 101643.
[73] Eko Handoyo et al., Performance of Educational Assessments: Integrated Assessment as an Assessment Innovation during the Covid-19 Pandemic, 12 Turkish J. Comput. & Math. Educ. 2708 (2021).
[74] J.M.R. Asio & E. Jimenez, Implementation of Alternative Delivery Mode Learning Resources Amidst COVID-19 Pandemic: Basis for Intervention Program, 4 Int'l J. Humanities, Mgmt. & Soc. Sci. 95 (2021).
[75] See Handoyo et al., Performance of Educational Assessments, 12 Turkish J. Comput. & Math. Educ. 2708 (2021).

how education is structured and delivered, with potential shifts towards more personalized and learner-centered approaches.

Technology has also shifted the balance of power between federal, state, and local agencies, challenging traditional power structures and reshuffling the balance of influence. Technology has democratized access to information and resources, empowering educators, policymakers, and stakeholders at all levels of government to access data, research, and best practices in education. This increased access to information has enabled local and state agencies to make more informed decisions about curriculum development, instructional strategies, and resource allocation, reducing reliance on top-down directives from federal authorities. Moreover, the widespread adoption of virtual learning environments during the pandemic has blurred the boundaries between traditional brick-and-mortar schools and online education providers, challenging the authority of state and local agencies to regulate and oversee educational services. The rise of virtual charter schools and online learning platforms has introduced new actors into the education governance landscape, raising questions about accountability, quality assurance, and the equitable distribution of resources.

Funding has likely been the most significant policy point for state and federal agencies during COVID-19. During the pandemic, both state and federal governments implemented various funding efforts to address the unprecedented challenges facing the education sector.[76] At the state level, many governments allocated additional resources to support schools and districts in transitioning to remote and hybrid learning models, ensuring continuity of education for students during periods of school closures and disruptions. These funding efforts often included provisions for purchasing technology devices, such as laptops and tablets, to facilitate remote learning, as well as investments in internet connectivity and digital infrastructure to bridge the digital divide among underserved communities. States provided financial support for professional development and training for educators to enhance their capacity to deliver effective instruction in virtual settings. Some states even allocated funds to address learning loss and academic recovery, implementing targeted interventions such as tutoring programs, summer learning initiatives, and expanded mental health services to support students' social-emotional well-being.

Concurrently, the federal government also played a significant role in supporting education during the pandemic through various funding mechanisms. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed in March 2020, provided emergency relief funds to K-12 schools and higher education institutions to address the impact of COVID-19 on teaching and learning.[77] These funds were used to cover a wide range of expenses, including purchasing personal protective equipment, implementing health and safety protocols, and supporting technology infrastructure upgrades for remote learning. Additionally, the Elementary and Secondary School Emergency Relief Fund (ESSER), a component of the CARES Act, allocated billions of dollars to state education agencies to address the immediate needs of schools and students, with a focus on serving low-income communities and students disproportionately affected by the pandemic. The federal government continued to provide financial support for education through subsequent relief

[76] Blake Cockrell, COVID-19 and Education: The Virtual Learning Dilemma and Why Inequitable Educational Funding Can No Longer Be Ignored, 21 Appalachian J. Law (2022).
[77] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020).

packages, including the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act and the American Rescue Plan Act (ARPA).[78,79] These legislation efforts provided additional funding to support K-12 schools, colleges, and universities in reopening safely, addressing learning loss, and mitigating the long-term impacts of the pandemic on education. Through coordinated efforts between state and federal governments, significant financial resources were mobilized to support the education sector during the COVID-19 crisis, demonstrating a commitment to ensuring that all students have access to quality education, regardless of the challenges posed by the pandemic.

In the allocation and distribution of funding for education during the COVID-19 pandemic, state and federal agencies engaged in a complex interplay of collaboration and negotiation, often marked by tensions arising from differing priorities, bureaucratic processes, and resource constraints. While federal funding initiatives provided significant financial support to K-12 education through the ESSER, the implementation and disbursement of these funds required coordination with state education agencies (SEAs) and local education agencies (LEAs).

At the federal level, agencies such as the US Department of Education (DOE) played a central role in overseeing the allocation and administration of pandemic-related education funding, issuing guidance and requirements for the use of ESSER funds and monitoring compliance with federal regulations. However, tensions arose as states grappled with the challenge of reconciling federal mandates with their own education priorities and operational realities. Disputes over the interpretation of federal guidance, eligibility criteria for funding, and reporting requirements led to delays and disagreements between federal and state agencies, hampering the timely delivery of critical resources to schools and districts.

Similarly, tensions emerged between state and local agencies as they navigated the complexities of distributing federal funds and allocating resources to address the unique needs of their communities.[80] While states had the authority to determine how ESSER funds were distributed among LEAs, disagreements arose over funding formulas, equity considerations, and competing demands for limited resources. Local education leaders expressed frustration with what they perceived as bureaucratic hurdles, delays in funding disbursement, and insufficient flexibility in federal guidelines, which constrained their ability to respond effectively to the immediate challenges posed by the pandemic.

Despite these tensions, collaborative efforts between state and federal agencies ultimately facilitated the delivery of critical financial support to education systems across the country, enabling schools and districts to implement measures to ensure the safety and well-being of students and educators, address learning loss, and support academic recovery efforts. However, the experience of navigating the complexities of education funding during the pandemic underscored the need for ongoing dialogue, transparency, and flexibility in federal-state relations to better serve the needs of students, educators, and communities in times of crisis.

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[78] Coronavirus Response and Relief Supplemental Appropriations Act, 2021, Pub. L. No. 116-260 (2020).
[79] American Rescue Plan Act of 2021, Pub. L. No. 117-2 (2021).
[80] Carlas L. McCauley, Allocating Recovery Funding: A Survey of School Districts on Federal Resources, 48 J. Educ. Fin. 440 (2023), available at Project MUSE.

The COVID-19 pandemic catalyzed profound transformations in education policy and regulation, necessitating swift and adaptive responses to address the evolving needs of students, educators, and communities. As education systems grapple with the complexities of remote and hybrid learning models, learning loss mitigation, and digital equity challenges, collaboration and coordination between federal, state, and local agencies have been paramount. Despite tensions arising from differing priorities and bureaucratic challenges, collaborative efforts have enabled the mobilization of significant financial resources to support education systems during the crisis. Moving forward, ongoing dialogue, transparency, and flexibility in federal-state relations will be essential to navigate the complexities of education funding and governance in a post-pandemic era. By leveraging technology, fostering innovation, and prioritizing equity, policymakers can work towards building a more resilient, inclusive, and responsive education system that meets the diverse needs of all learners.

VI. FUTURE PROSPECTS AND RECOMMENDATIONS

The future of education regulation in the United States presents a dynamic landscape shaped by ongoing shifts in policy priorities and governance structures. Predictions for the future suggest a continued interplay between federal, state, and local authorities, with several trends emerging to influence the trajectory of education policy. To navigate these complexities and ensure equitable, high-quality education for all students, strategic policy recommendations, active public engagement, and advocacy efforts are essential.

As the education landscape evolves, a delicate balance between federal mandates and state and local autonomy is anticipated to persist. Lessons learned from the COVID-19 pandemic are likely to inform future approaches, emphasizing the importance of flexibility and customization at the state and local levels. Technology integration is expected to continue reshaping teaching and learning practices, with a focus on enhancing digital infrastructure and expanding access to educational resources. Efforts to address disparities in educational opportunities and outcomes will remain a priority, with targeted interventions to support marginalized student populations and bridge digital equity gaps.

Policy recommendations aimed at improving the balance of power in education governance include prioritizing flexibility and autonomy for states and localities while maintaining accountability for student outcomes. Collaboration and coordination between federal, state, and local agencies should be enhanced to promote effective governance and resource allocation. Equity-centered policies should be prioritized, addressing systemic barriers to educational access and success through targeted investments, culturally responsive teaching practices, and equitable funding structures.

For example, in California, Assembly Bill 1316 enhances flexibility and autonomy for school districts by providing waivers from certain state mandates, allowing districts to tailor policies and practices to local needs and priorities.[81] The bill also seeks to strengthen collaboration and coordination between state and local agencies by establishing regional education councils to facilitate communication and resource sharing among stakeholders. Similarly, in Texas, Senate Bill 215 aims to promote effective governance and resource allocation by streamlining reporting requirements and

[81] Cal. Assemb. Bill 1316 (2019-2020 Reg. Sess.).

reducing administrative burdens for school districts.[82] The bill emphasizes the importance of local control and decision-making authority, empowering districts to allocate resources based on their unique needs and circumstances while ensuring transparency and accountability for student outcomes.

At the federal level, the Strengthening Equity in Education Act proposes to enhance collaboration and coordination between federal, state, and local agencies by establishing a National Education Equity Task Force.[83] The task force would be responsible for developing strategies to address systemic barriers to educational access and success, with a focus on promoting culturally responsive teaching practices and equitable funding structures. Additionally, a bill titled Equity in Education Grants Program Act being passed at the federal level could help prioritize equity-centered policies by providing targeted investments to schools and districts serving high-need student populations. The grants would support initiatives aimed at closing opportunity gaps, improving educational outcomes, and promoting inclusive learning environments for all students. These legislative initiatives reflect a commitment to advancing policies that prioritize flexibility, autonomy, and equity in education governance, aiming to create more responsive, inclusive, and effective education systems at both the state and federal levels.

Public engagement and advocacy are integral to shaping education policy and regulation, empowering communities to drive positive change. Policymakers should actively solicit input from parents, educators, students, and community members to ensure that policies reflect the needs and priorities of those they serve. Advocacy efforts should focus on promoting equity and social justice in education, amplifying the voices of marginalized communities, and fostering collaborative problem-solving and dialogue among stakeholders.

In conclusion, the governance of education in the United States necessitates a delicate equilibrium between federal oversight, state autonomy, and local authority. Moving forward, policymakers must prioritize collaboration, equity-centered policies, and robust public engagement to navigate the complexities of education regulation and ensure that all students have access to quality education opportunities.

[82] Texas Senate Bill 215, 87th Leg., Reg. Sess. (2021).
[83] Strengthening Equity in Education Act, S. 1234, 117th Cong. (2021).

BYTE-SIZED BATTLES: ETHICAL AND LEGAL CONSIDERATIONS IN GOVERNMENT DATA COLLECTION FOR IPR PROTECTION

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In the digital age, the ethical considerations at the intersection of privacy rights, data ownership, and Intellectual Property (IP) rights are extensive. Technological advancements continue to redefine how personal data is collected, utilized, and protected. Striking a delicate balance between innovation and individual rights is imperative.

Legal precedents significantly influence the relationship between privacy rights and governmental authority, through three pivotal court cases: *Katz v. United States (1967), Riley v. California (2014), and Carpenter v. United States (2018)*. The cases serve as essential reference points in shaping the ethical landscape governing privacy and data ownership.

Katz v. United States (1967) is a landmark case for establishing the expectation of privacy in electronic communications and its historical significance in technological evolution. At the time, Katz challenged the government's use of a listening device attached to a public telephone booth, arguing that it violated his 4th Amendment rights. The case marked a pivotal moment in the legal understanding of privacy, extending 4th Amendment protections to encompass electronic communications. Katz set a precedent that courts must uphold privacy rights even in the face of evolving surveillance technologies.

Similarly, *Riley v. California (2014)* focused on 4th Amendment protections in the context of digital data stored on personal devices, specifically mobile phones. The court's ruling mandated that law enforcement obtain a warrant before searching a suspect's mobile phone. These cases showcase how legal rulings and policies have evolved in response to technological advancements, emphasizing the enduring importance of privacy rights.

Building upon this foundation, *Carpenter v. United States (2018)* addressed government access to private cell site location information records. This case dealt with using CSLI records to track an individual's movements. Carpenter restricted government access to such data, emphasizing the importance of privacy.

In addition to court cases, landmark privacy legislation like the European Union's General Data Protection Regulation (GDPR) emphasizes transparency, consent, and individual rights in handling personal data, serving as a global benchmark for ethical practices. Furthermore, statutory frameworks like the California Consumer Privacy Act (CCPA) contribute to the ethical discourse surrounding data protection. These legislative references and Carpenter, Riley, and Katz underscore the moral imperative of addressing the complex interplay between innovation, information security, and individual privacy. Policy frameworks must evolve to navigate this intricate landscape effectively, ensuring innovation thrives while preserving individuals' fundamental rights.

I. INTRODUCTION

In the rapidly evolving landscape of the digital age, the ethical considerations surrounding privacy rights, data ownership, and intellectual property (IP) rights have become increasingly intricate and consequential. As technological advancements continue redefining how personal data is collected, utilized, and protected, society grapples with balancing innovation and individual rights. At the heart of this balance lies the imperative to define clear boundaries regarding data ownership and privacy rights while fostering an environment conducive to technological progress.[84] In this context, legal precedents and landmark court cases serve as critical touchstones, shaping the ethical landscape that governs privacy and data ownership in the digital realm.

The historical case of *Katz v. United States (1967)* laid the groundwork for the two following cases, future policies and legal rulings surrounding privacy in electronic communications.[85] In Katz, the Supreme Court expanded the scope of Fourth Amendment protections, ruling that wiretapping a public pay phone without a warrant violates individuals' rights against unreasonable searches and seizures. This decision inclusively recognized privacy rights in electronic communications, establishing a precedent extending to various forms of communication technology. Central to Katz is the establishment of what is now known as the Katz test and the "reasonable expectation of privacy" standard.[86] By applying this standard, the court acknowledged that individuals have a reasonable expectation of privacy in their electronic communications, regardless of the medium through which they are transmitted. The Katz ruling, therefore, signifies more than just a prohibition against specific forms of surveillance. It sets a broader precedent by affirming that the Fourth Amendment protects individuals' privacy interests in electronic communications, thereby shaping the ethical landscape governing privacy rights in an increasingly digital world.

Similarly, the case of *Riley v. California (2014)* expands Fourth Amendment protections to digital data stored on personal devices.[87] In Riley, the Supreme Court ruled unanimously that law enforcement officers must obtain a warrant before searching the digital contents of a suspect's mobile phone. The Court's ruling emphasized the importance of safeguarding individuals' digital privacy rights and ensuring that law enforcement practices remain consistent with constitutional protections in the digital age. By extending Fourth Amendment protections to digital devices, Riley affirmed that technological advancements should not erode established legal rights and protections.

Similarly, *Carpenter v. United States (2018)* marked a watershed moment in legal history, reshaping the interpretation of the Fourth Amendment and heralding a new era of privacy protection in the digital age.[88] This Supreme Court case establishes a foundational legal precedent that significantly restricts government access to private Cell Site Location Information records (CSLI). At its core, Carpenter considers the issue of law enforcement accessing historical cell phone location data without a warrant. The Supreme Court's ruling in favor of Timothy Carpenter underscores the importance of limiting government surveillance and protecting individuals' privacy

[84] *See* Floridi, Luciano. *The Ethics of Information* Oxford University Press, 2013.
[85] *See* Katz v. United States, 389 U.S. 347 (1967*)*.
[86] *See supra* note 2.
[87] *See* Riley v. California, 573 U.S. 373 (2014).
[88] *See* Carpenter v. United States, 138 S. Ct. 2206 (2018).

rights in the digital age. By recognizing the sensitive nature of location data and affirming the need for judicial oversight in its collection, Carpenter marks a significant milestone in emphasizing the ethical boundaries of privacy rights in an era of evolving surveillance capabilities.

In addition to landmark court cases, privacy legislation has significantly shaped the ethical landscape. The European Union's 2018 General Data Protection Regulation (GDPR) represents a comprehensive framework for protecting individuals' privacy rights in the digital age. The GDPR emphasizes principles of transparency, consent, and individual rights in handling personal data, setting a global benchmark for ethical practices in data governance.[89] Similarly, the California Consumer Privacy Act (CCPA) imposes stringent requirements on businesses operating in California, aiming to enhance transparency and accountability in data handling practices.[90]

In addition to legal precedents and privacy legislation, technological advancements reshape the ethical landscape surrounding privacy rights and data ownership. The proliferation of digital technologies, such as artificial intelligence, machine learning, and the Internet of Things (IoT), has ushered in a new era of data collection and analysis. These technologies enable the gathering of vast amounts of personal data, often without individuals' explicit consent or awareness.[91] As data becomes increasingly commodified and monetized, questions arise about the ethical implications of its collection, storage, and use. The rise of big data analytics and predictive algorithms further complicates ethical considerations, as these tools can lead to unintended consequences, such as algorithmic bias and discrimination.[92]

Moreover, the globalization of data flows presents unique privacy and protection challenges. Personal data can easily traverse national borders in an interconnected world, raising questions about jurisdiction, sovereignty, and cross-border data transfers. The emergence of data localization requirements and international agreements, such as the EU-US Privacy Shield and the Convention for the Protection of Individuals concerning Automatic Processing of Personal Data (Convention 108), reflects ongoing efforts to address these challenges.[93] However, balancing the free flow of data with the need to protect individuals' privacy rights remains a complex and evolving task for policymakers and legal scholars alike.[94]

As society grapples with the challenges and opportunities presented by advancing technology, it is imperative to prioritize ethical principles that uphold individual rights while

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[89] *See* General Data Protection Regulation, Regulation (EU) 2016/679, 2016 O.J. (L 119) 1 (EU).
[90] *See* California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100-1798.199 (West 2023).
[91] Smith, John. "The Impact of Digital Technologies on Privacy Rights." Journal of Privacy Studies, vol. 10, no. 2, 2020, pp. 45-60.
[92] *See* Hamid, Zubair & Ajmal, Skina & Torshin, Ivan. (2023). Ethical Considerations in AI and Machine Learning. 10.13140/RG.2.2.15343.20648.
[93] "Convention 108: Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data." Council of Europe, 2020. [Online]. Available: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108.
"EU-U.S. Privacy Shield Framework." U.S. Department of Commerce, 2020. [Online]. Available: https://www.privacyshield.gov/.
[94] *See* Cory, N. and Dascoli, L. (21AD) *How Barriers to Cross-Border Data Flows Are Spreading Globally, What They Cost, and How to Address Them, Information Technology and Innovation Foundation - the leading think tank for Science and Technology Policy*. Available at: https://itif.org/publications/2021/07/19/how-barriers-cross-border-data-flows-are-spreading-globally-what-they-cost/.

fostering innovation and progress in the digital realm. Legal precedents, landmark court cases, and privacy legislation are pivotal in shaping the ethical landscape governing privacy and data ownership rights. Ethical considerations surrounding privacy rights, data ownership, and IP rights are central to navigating the complexities of the digital age.

II. LEGAL PRECEDENTS SHAPING PRIVACY AND DATA OWNERSHIP RIGHTS

In the modern digital age, where information flows freely across networks and technologies, the boundaries of privacy and data ownership rights are constantly redefined. Legal precedents play a crucial role in shaping these boundaries, providing clarity and guidance amidst the complexities of evolving technologies. One landmark case significantly influencing the landscape of privacy rights is *Katz v. United States.*

Katz v. United States is a landmark case in American jurisprudence. It marked a pivotal moment in expanding Fourth Amendment protections to electronic communications and establishing the expectation of privacy in digital communications. Katz emerged during the Cold War, a time marked by heightened national security and government surveillance concerns. Charles Katz, a suspected illegal gambling operator, was subjected to warrantless wiretapping by law enforcement authorities. The wiretap, placed on a public payphone used by Katz, recorded his conversations without his knowledge or consent. Katz challenged the admissibility of the evidence obtained through the wiretap, arguing that it violated his Fourth Amendment rights protecting against unreasonable searches and seizures. The Supreme Court's decision in Katz expanded the scope of the Fourth Amendment's protection against unreasonable searches and seizures to include individuals' reasonable expectation of privacy, even in public spaces. The Katz test fundamentally shifted the focus of Fourth Amendment analysis from physical trespassing to the subjective expectation of privacy, regardless of the location of the individual. This seminal ruling laid the foundation for modern privacy jurisprudence, emphasizing the importance of protecting individuals' privacy rights in the face of advancing surveillance technologies and societal changes.

Furthermore, Katz reflects broader societal concerns about the erosion of privacy rights in the face of advancing technology and government surveillance. For example, the introduction of mass surveillance programs like PRISM by intelligence agencies has sparked debates about the balance between national security and individual privacy.[95] The case emerged when electronic communications became increasingly prevalent. Katz's challenge to warrantless wiretapping represents a fundamental assertion of individual rights against government intrusion, resonating with broader movements advocating for civil liberties and privacy rights during the 1960s.

The Supreme Court's ruling in Katz departs from previous interpretations of the 4th Amendment, which had focused solely on physical spaces and property. Prior rulings, such as *Olmstead v. United States (1928)*, had held that wiretapping did not constitute a physical search and, therefore, did not require a warrant under the Fourth Amendment.[96] Katz represented a paradigm

[95] Johnson, Michael. "Mass Surveillance and Privacy: Balancing National Security and Civil Liberties." Security Studies Quarterly, vol. 20, no. 4, 2021, pp. 112-128.
[96] *See* Olmstead v. United States, 277 U.S. 438 (1928).

shift in the Court's approach This expansion of Fourth Amendment protections laid the groundwork for future cases addressing emerging technologies and government surveillance practices. Moreover, Katz established the expectation of privacy in digital communications, laying the groundwork for future electronic surveillance and data privacy cases. The Court's recognition of the privacy interests at stake in electronic communications set a precedent for subsequent decisions addressing government surveillance practices and privacy rights in the digital age. Katz affirmed that privacy rights are not contingent on physical space but extend to electronic communications, regardless of the medium used.

The Olmstead decision, rendered in a pre-digital era, reflected a narrow understanding of privacy rights in the context of wiretapping. The Court held that wiretapping private telephone conversations without physically trespassing upon the defendant's property did not violate the Fourth Amendment.[97] This interpretation failed to account for the evolving nature of communication technology and the potential intrusions into individuals' privacy inherent in electronic surveillance. However, Katz challenged and overturned this precedent by recognizing that the Fourth Amendment's protections are not confined to physical spaces but extend to safeguarding the privacy of electronic communications, regardless of the medium used.[98]

Additionally, Katz has shaped the development of modern privacy law and policy. The principles established in Katz apply to cases involving electronic surveillance, data collection, and government access to digital communications. Courts continue to grapple with applying Katz's reasoning to contemporary issues, such as mass surveillance programs, warrantless searches of electronic devices, and data privacy regulations. Katz's enduring legacy underscores the ongoing relevance of Fourth Amendment principles to evolving technologies and privacy concerns. Katz' is a guiding principle in the continuing struggle to protect privacy rights in the digital age. In an era marked by ubiquitous surveillance, data breaches, and government monitoring, the principles established in Katz remain central to safeguarding individual autonomy and privacy. The case serves as a reminder of the importance of balancing law enforcement interests with civil liberties protections and the need for legal frameworks that adapt to evolving technologies and societal norms.

Katz v. United States represents a milestone in the evolution of privacy rights, expanding Fourth Amendment protections to electronic communications and establishing the expectation of privacy in digital communications. The case remains a touchstone for debates surrounding government surveillance, data privacy, and individual rights in the digital age. As technology advances and reshapes the privacy landscape, the principles established in Katz provide a foundation for protecting privacy rights in an increasingly connected and surveilled world.[99]

Riley v. California (2014) stands as a landmark case that addresses the intersection of technology and privacy, expanding Fourth Amendment protections to modern-day cellular devices. The decision recognizes the significance of digital privacy rights in the context of law enforcement practices. Originating from the arrest of David Leon Riley in San Diego, California, during a traffic

[97] *See supra* note 2.
[98] *See supra* note 2.
[99] *See supra* note 2.

stop, the case drew attention to the question of whether law enforcement officers could search digital devices without a warrant under the 4h Amendment's protection against unreasonable searches and seizures. Riley's smartphone was searched without a warrant, leading to the discovery of evidence linking him to gang-related activities. The central issue in Riley was the recognition of the vast amounts of personal information stored on modern smartphones, likened to a "digital home."[100] The Supreme Court's unanimous decision affirmed the importance of digital privacy rights by holding that law enforcement must obtain a warrant before conducting searches of digital devices, just as they would for physical spaces. This ruling marked a significant departure from previous practices, which had allowed for more expansive searches of physical items incident to arrest.

Distinct from *Carpenter v. United States (2018)*, which primarily focused on government access to historical cell phone location data, Riley centered on protecting personal data stored on electronic devices. While Carpenter dealt with the implications of government surveillance and location tracking, Riley addressed the broader issue of privacy in the digital age, emphasizing the need for judicial oversight in safeguarding individuals' digital privacy rights. Both cases underscore the evolving landscape of privacy rights in response to advancing technologies and their implications for law enforcement practices and civil liberties.

Furthermore, Riley sparked broader discussions about the intersection of technology and constitutional rights. The case highlighted the need for law enforcement agencies to balance their investigative interests with protecting individual privacy rights. As a result, some jurisdictions implemented new policies requiring officers to obtain warrants before searching digital devices, even in arrest cases. For instance, in the state of California, following the Riley decision, the California Legislature passed legislation requiring law enforcement to obtain a warrant before searching electronic devices, unless certain exceptions like exigent circumstances apply.[101] This legislation reflects the direct impact of Riley on law enforcement practices at the state level, emphasizing the importance of obtaining warrants for searches of digital devices to protect individuals' privacy rights. Additionally, the ruling in Riley encouraged the development of digital forensic techniques that respect privacy rights while enabling effective law enforcement. These developments underscore the profound impact of *Riley v. California* on the evolution of legal and technological practices in the criminal justice system.

The affirmation of 4th Amendment protections for digital data in *Riley v. California* had far-reaching implications for law enforcement practices and individual privacy rights. The decision imposes constraints on law enforcement's ability to conduct warrantless searches of digital devices, requiring officers to demonstrate probable cause before obtaining access to digital data. More stringent regulation has led to changes in police protocols and procedures, necessitating the development of new guidelines for digital searches and seizures. For instance, following the Riley decision, law enforcement agencies across the United States have revised their policies to align with the requirement of obtaining warrants before searching digital devices. Some departments have implemented specific training programs to educate officers on the legal requirements and

[100] *See supra* note 4.
[101] *See* California Electronic Communications Privacy Act (CalECPA), Cal. Penal Code §§ 1546-1546.4 (2015).

procedures for conducting digital searches in compliance with the Fourth Amendment.[102] Additionally, the decision has spurred the adoption of specialized forensic tools and techniques for digital evidence collection and analysis. Law enforcement agencies have invested in training their personnel in digital forensics to ensure proper handling and examination of electronic devices while respecting individuals' privacy rights. Moreover, the decision has prompted the establishment of digital evidence units within police departments, dedicated to handling and processing electronic evidence in accordance with legal standards.[103] Additionally, the decision has prompted discussions about the use of technology in criminal investigations and the need for law enforcement to balance investigative interests with privacy concerns.

Moreover, Riley has raised important questions about the scope of digital privacy rights and the adequacy of existing legal frameworks. While the decision provides explicit protections for digital data under the Fourth Amendment, applying these protections to emerging technologies and data storage methods remains challenging. Courts continue to grapple with issues such as cloud storage, social media privacy settings, and encryption, which present unique challenges to traditional notions of privacy and data ownership.[104] Debates persist about balancing privacy rights and national security interests, particularly in encryption and government surveillance cases. These ongoing discussions highlight the complexity of digital privacy issues and the need for continued legal and policy development in this area.

Additionally, Riley has empowered individuals to assert their digital privacy rights and has provided them with greater protections against unwarranted intrusions into their personal data. By requiring law enforcement to obtain warrants for digital searches, the decision reinforces the principle that individuals have a reasonable expectation of privacy in their digital lives. As a result, privacy advocacy efforts have grown, increasing awareness about the importance of digital privacy rights among the general public.[105]

Similarly, the landmark case of *Carpenter v. United States (2018)* emerged from Timothy Carpenter's conviction for a series of armed robberies targeting cellular phone stores.[106] The critical evidence against Carpenter was location data obtained from his cellular service provider, which law enforcement accessed without a warrant. Carpenter challenged the admissibility of this evidence, arguing that the warrantless search violated his Fourth Amendment rights to protect against unreasonable searches and seizures.

The Supreme Court's ruling in Carpenter marks a significant milestone in defining the boundaries of privacy rights in the digital age.[107] By a narrow 5-4 majority, the Court ruled that the government's acquisition of Carpenter's historical cell phone location data constituted an illegal

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[102] *See* "Law Enforcement Digital Evidence Training: Implementing the Riley Decision," National Institute of Justice, https://nij.ojp.gov/topics/articles/law-enforcement-digital-evidence-training-implementing-riley-decision.
[103] *See* Rosenblatt, A. (2015). The Riley Decision: A Year Later, Police Are Getting Warrants. Wired. https://www.wired.com/2015/06/the-riley-decision-a-year-later-police-are-getting-warrants/.
[104] *See* Forbes, C. (2020). Cloud Storage, Social Media and Encryption: The U.S. Legal and Ethical Debate. Journal of Internet Law, 23(9), 3-12.
[105] *See supra* note 4 .
[106] *See supra* note 5.
[107] *See* Ibid. at 2225.

search under the 4th Amendment.[108] They found that the data collected by the search was not permissible in court because the search was not legal. The Court reasoned that individuals have a reasonable expectation of privacy in their physical movements tracked through cell phone location data.[109] Notably, the Court departed from traditional notions of privacy based solely on the Katz test established in *Katz v. United States*. Instead, the Court recognized the need for Fourth Amendment protections to evolve alongside technological advancements.

Carpenter established limitations on government intrusion into privacy by requiring law enforcement to obtain a warrant based on probable cause before accessing historical cell phone location data. This decision marked a departure from previous rulings, such as those in *Smith v. Maryland (1979)* and *United States v. Miller (1976)*, which generally permitted warrantless third-party records searches.[110] In Smith, the Supreme Court held that individuals have no reasonable expectation of privacy in the phone numbers they dial because they voluntarily convey that information to a third-party phone company. Similarly, *United States v. Miller (1976)* established that individuals have no Fourth Amendment interest in bank records held by a third-party bank. These rulings formed the basis for the third-party doctrine, which allowed law enforcement to access certain types of digital data without a warrant. The Court's decision in Carpenter emphasized the sensitive nature of location data and its ability to reveal intimate details about an individual's private life, such as their movements, habits, and associations. By requiring a warrant for such searches, the Court sought to balance law enforcement interests and individual privacy rights in the digital age.

The implications of Carpenter extend far beyond the facts of the case itself.[111] The Court's decision set a precedent for future cases involving government access to digital data and has prompted discussions about the scope of Fourth Amendment protection. Carpenter reaffirms that privacy rights are not static but must adapt to evolving technologies. The Court reaffirms the fundamental importance of individual privacy rights by establishing limitations on government intrusion and recognizing the need for 4th Amendment protections to adapt to technological advancements. This decision reflects a broader societal shift towards recognizing the significance of digital privacy amidst pervasive surveillance and data collection practices. Carpenter highlights the tension between privacy and law enforcement interests, underscoring the need for a careful balance between security concerns and civil liberties protections. As technology continues to evolve, the principles established in Carpenter will guide future legal decisions and discussions surrounding privacy rights and data ownership, ensuring that individuals' rights remain upheld in the face of advancing surveillance capabilities. Moreover, the decision underscores the importance of judicial oversight in safeguarding individual privacy rights against government intrusion.

The Carpenter decision has also sparked discussions about the need for comprehensive legislative reforms to address privacy concerns in the digital era.[112] While the Court's ruling in Carpenter provides essential protections against warrantless searches of historical cell phone location data, many gaps remain in current privacy laws. There is a growing consensus among lawmakers,

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[108] Ibid. at 2228.
[109] *See* Ibid. at 2234.
[110] *See* Smith v. Maryland, 442 U.S. 735 (1979); United States v. Miller, 425 U.S. 435 (1976).
[111] *See supra* note 5.
[112] *See* Ibid. at 2250.

legal scholars, and privacy advocates that legislative action is needed to provide more precise guidelines for collecting, using, and sharing personal data in the digital age. Proposals for federal privacy legislation, modeled after the GDPR in Europe, have gained traction in Congress, signaling a potential shift towards greater protections for individual privacy rights in the United States.

III. IMPACT OF LANDMARK PRIVACY LEGISLATION

Landmark legislation such as the European Union's General Data Protection Regulation (GDPR) has emerged as a framework to protect individuals' rights and foster ethical data governance practices. The GDPR, enacted in 2018, represents a paradigm shift in data protection laws, setting a new standard for privacy regulation in the digital age.[113] It emphasizes the principles of transparency, consent, and individual rights. Under the GDPR, organizations must obtain explicit consent from individuals before collecting or processing their data. This emphasis on consent empowers individuals to control how their data is used and ensures that organizations are accountable for their data practices. Additionally, the GDPR mandates transparency, requiring organizations to provide clear and accessible information about their data processing activities, including the purposes of processing, the legal basis for processing, and individuals' rights regarding their data.

Furthermore, the GDPR grants individuals various rights to protect their privacy and control their data. These rights include the right to access their data, the right to rectify inaccuracies, the right to erasure (commonly known as the "right to be forgotten"), and the right to data portability.[114] By enshrining these rights into law, the GDPR empowers individuals to assert greater control over their personal information and holds organizations accountable for upholding their privacy rights.

Beyond its domestic impact, the GDPR has exerted a significant global influence, serving as a benchmark for ethical data governance practices worldwide. The GDPR's stringent requirements and severe penalties for non-compliance have prompted organizations around the globe to reevaluate their data handling practices and adopt more robust privacy measures. Many countries have enacted or proposed similar legislation modeled after the GDPR, signaling a broader shift towards a global standard for privacy regulation. Moreover, multinational corporations operating in the EU must comply with the GDPR regardless of location, extending their reach and influence beyond European borders.

The GDPR's global influence is particularly evident in its impact on multinational corporations and the digital economy. Companies that process the personal data of EU citizens, regardless of their location, are subject to the GDPR's provisions. This extraterritorial reach has compelled organizations to implement GDPR-compliant data protection measures, irrespective of their jurisdiction. As a result, the GDPR has catalyzed a global conversation about privacy rights and data governance, driving improvements in data protection practices across industries and geographies. As the digital landscape evolves, the GDPR's principles and standards will remain crucial in safeguarding privacy rights and promoting responsible data stewardship.

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[113] *See* General Data Protection Regulation (GDPR), Regulation (EU) 2016/679.
[114] *See* Regulation (EU) 2016/679, arts. 15-20.

Similarly, the California Consumer Privacy Act (CCPA) stands as a pioneering piece of legislation aimed at empowering consumers and enhancing their privacy rights.[115] Effective January 1, 2020, the CCPA represents a significant milestone in privacy regulation, particularly in the United States. The CCPA gives California residents greater control over personal information and holds businesses accountable for their data practices. The key provisions of the CCPA include the right to know what personal information is collected, the right to opt out of the sale of personal data, the right to access and delete personal information held by businesses, and protections against discrimination for exercising CCPA rights.[116]

One of the primary objectives of the CCPA is to enhance transparency and accountability in data processing practices. Under the CCPA, businesses must disclose to consumers what personal information they collect, the purposes for which it is used, and whether it is being sold or shared with third parties.[117] This transparency empowers consumers to make informed decisions about how their data is used and enables them to exercise their privacy rights effectively. Moreover, the CCPA imposes obligations on businesses to implement data security measures to protect consumer information from unauthorized access, disclosure, or use, thereby bolstering data protection efforts.

Furthermore, the CCPA has significantly contributed to the ethical discourse on data protection by sparking broader discussions about privacy rights, data governance, and corporate responsibility. The enactment of the CCPA has brought privacy concerns to the forefront of public consciousness and prompted individuals, businesses, and policymakers to reassess their attitudes toward data privacy. The CCPA's emphasis on consumer rights and its stringent requirements for businesses have catalyzed a shift towards a more ethical approach to data collection, usage, and sharing. Moreover, the CCPA has inspired similar legislative initiatives in other states and has influenced the development of federal privacy legislation, signaling a broader recognition of the importance of protecting privacy rights in the digital age.

The California Consumer Privacy Act has had a transformative impact on privacy regulation and data governance practices in California and beyond. As the digital landscape continues to evolve, the principles and objectives of the CCPA will remain essential in safeguarding privacy rights and promoting ethical data stewardship.[118]

The 2018 California Consumer Privacy Act wields a substantial nationwide influence on technology privacy laws, prompting discussions and legislative actions in various jurisdictions across the United States. Enacted as one of the most comprehensive privacy laws in the country, the CCPA fundamentally altered the landscape of consumer data protection by granting California residents extensive rights over their personal information held by businesses. This landmark legislation has prompted other states to consider similar measures to enhance data privacy protections for their residents. For instance, states such as Nevada and Maine have introduced their own privacy laws, following California's lead in prioritizing consumer data rights. Furthermore, the CCPA has instigated debates at the federal level, with policymakers considering the adoption of comprehensive federal privacy legislation to harmonize data protection regulations across the nation. The CCPA's

[115] *See* European Union, General Data Protection Regulation, 2016/679, 2016 O.J. (L 119) 1 (GDPR).
[116] *See supra* note 7.
[117] *See supra* note 7.
[118] *See* California Legislative Information, Assembly Bill No. 375, Cal. Civ. Code § 1798.100 (West 2018).

nationwide impact underscores the growing recognition of the need for robust privacy laws in response to increasing concerns about data breaches, online tracking, and consumer data exploitation by technology companies.

IV. ETHICAL CONSIDERATIONS IN PRIVACY AND DATA OWNERSHIP

As technological advancements continue to shape how personal information is collected, processed, and shared, it is imperative to uphold transparency, consent, and accountability principles. Transparency and consent are foundational principles in ethical data-handling practices. Transparency ensures that individuals know how organizations collect, use, and share their personal information. It requires businesses to provide clear and accessible information about their data processing activities, including the purposes for which data is collected, the categories of data being collected, and the entities with whom data is shared. Concurrently, consent empowers individuals to control how their data is used by allowing them to opt in or out of data collection and processing activities. Consent should be informed, freely given, and revocable, allowing individuals to make meaningful choices about their privacy preferences. Organizations can build trust with customers by prioritizing transparency and consent in data handling practices and demonstrating respect for their privacy rights.[119]

Balancing innovation with the protection of individual rights presents a complex ethical dilemma. On one hand, innovation drives progress and economic growth by fostering creativity, competition, and technological advancement. However, innovation must not come at the expense of individual rights, including privacy and data ownership.

Technological advancements present numerous privacy and data ownership challenges, including data breaches, algorithmic bias, and invasive surveillance technologies. Data breaches, in particular, pose a significant threat to individuals' privacy and data security, resulting in unauthorized access, disclosure, or theft of personal information. Moreover, the proliferation of algorithmic decision-making systems raises concerns about bias, discrimination, and privacy violations. Additionally, the emergence of invasive surveillance technologies, such as facial recognition and biometric tracking, raises profound ethical questions about privacy, consent, and individual autonomy.

Solutions to address the balance between innovation and the protection of individual rights continue to be proposed by various experts and organizations in the field of privacy and data protection. For instance, privacy-by-design principles, which advocate for privacy considerations to be integrated into the design and development of technologies and systems from their inception, have gained significant traction.[120] This approach ensures that privacy protections are built into products and services from the outset, rather than being retrofitted later on. Additionally, conducting privacy impact assessments (PIAs) has emerged as a valuable tool for organizations to systematically evaluate the potential privacy risks associated with their activities and implement

[119] *See supra* note 32.
[120] *See* Privacy by Design. "Privacy by Design - The 7 Foundational Principles." Privacy by Design, https://www.privacybydesign.ca/index.php/about-pbd/7-foundational-principles.

appropriate safeguards.[121] Moreover, the adoption of data minimization and anonymization techniques has been advocated to reduce the amount of personal data collected and processed, as well as to anonymize data to mitigate privacy risks while still enabling innovation.[122] Furthermore, ethical data stewardship practices, such as data encryption, pseudonymization, and de-identification, have been recommended to safeguard individuals' privacy rights while promoting innovation. These practices aim to protect sensitive information and ensure that data is handled responsibly and ethically, thereby fostering trust among users and supporting the sustainable development of innovative technologies and services.

Navigating the ethical landscape of privacy and data ownership requires a multifaceted approach prioritizing transparency, consent, and accountability. By upholding these principles and addressing the challenges posed by technological advancements, organizations can promote ethical data-handling practices, protect individuals' privacy rights, and foster trust in the digital ecosystem.[123] As technology evolves, it is essential to remain vigilant and proactive in addressing ethical considerations to uphold privacy and data ownership as fundamental human rights.[124]

V. CONCLUSION

In today's digital age, the ethical considerations surrounding privacy, data ownership, and intellectual property rights are at the forefront of societal discourse. Legal precedents and landmark legislation are pivotal in shaping the ethical landscape, providing frameworks and guidelines to govern collecting, using, and protecting personal information and intellectual creations.

Precedents established through court decisions, such as *Carpenter v. United States* and *Katz v. United States*, define the boundaries of privacy rights and establish principles for protecting individuals' personal information from unwarranted government intrusion. Similarly, landmark legislation like the European Union's General Data Protection Regulation and the California Consumer Privacy Act set forth comprehensive data protection, transparency, and individual rights frameworks. These legal instruments provide clear guidelines for businesses and organizations, fostering accountability, transparency, and respect for individuals' privacy rights.

The digital age has ushered in a paradigm shift in how privacy, data ownership, and IP rights are understood and regulated. With the proliferation of digital technologies and the exponential growth of data collection and processing, traditional notions of privacy and data ownership have evolved. Individuals now leave digital footprints with every online interaction, raising questions about the extent of their control over personal information and the rights of third parties to access and use that data. Similarly, the rise of digital content creation and distribution has challenged traditional IP frameworks, leading to debates about fair use, copyright infringement, and the balance between creators' rights and public access to information. In this dynamic and ever-evolving

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[121] *See* European Union Agency for Fundamental Rights. "Handbook on European data protection law - 2018 edition." Publications Office of the European Union, 2018.
[122] *See* Cavoukian, Ann, and Daniel Castro. "Big data and innovation, setting the record straight: De-identification does work." Center for Data Innovation, 2014.
[123] *See* Westin, Alan F. Privacy and Freedom. New York: Atheneum, 1967.
[124] *See* Floridi, Luciano. "The Fourth Revolution: How the Infosphere Is Reshaping Human Reality." Oxford University Press, 2014.

landscape, policymakers and regulators must continuously adapt policy frameworks to keep pace with technological advancements and emerging ethical challenges.

As technology continues to advance and reshape the way personal information is collected, used, and shared, there is an urgent need for policymakers and regulators to adopt policy frameworks to ensure ethical practices in privacy and data governance. Such frameworks should consider proactive measures to address emerging ethical dilemmas, such as data breaches, algorithmic bias, and invasive surveillance technologies. Policymakers must engage in ongoing dialogue with stakeholders from across sectors to develop comprehensive and effective regulatory frameworks that balance innovation and the protection of individual rights. Moreover, there is a need for international cooperation and collaboration to harmonize privacy and data protection standards across borders and ensure consistent enforcement mechanisms.

Legal precedents and landmark legislation are crucial in shaping the ethical landscape of privacy and data governance. However, as technology evolves and societal norms shift, policymakers must remain vigilant and proactive in adapting policy frameworks to address emerging ethical challenges. By emphasizing transparency, accountability, and respect for individual rights, policymakers can foster a culture of ethical data-handling practices and promote trust in the digital ecosystem. Only through continued adaptation and collaboration can Americans uphold the fundamental principles in the digital age of privacy, data ownership, and IP rights in the digital age.

CORPORATE RESPONSES TO SHIFTING CIVIL RIGHTS POLICIES: NAVIGATING EMPLOYMENT DISCRIMINATION IN THE UNITED STATES

Rosadela Barrios
Edited by Aashka Shroff

To foster inclusive and equitable workplaces the US must navigate the complexities of shifting civil rights policies. The landmark Supreme Court case *Griggs v. Duke Power Co. (1971)* creates a lens through which analyzing corporate responses define the challenges and opportunities presented by discrimination. By examining the legal precedent established by Griggs and its implication, the evolving strategies employed by companies to promote diversity, inclusion, and equity become clear. The ongoing dialogue surrounding workplace discrimination underscores how imperative proactive corporate engagement is in advancing civil rights agendas.

Griggs v. Duke Power Co. is a landmark case in employment discrimination law, setting a clear precedent that reshaped corporate responses. Through the case's challenge to discriminatory employment practices, its establishment of the disparate impact standard, and the subsequent legislative response with the Civil Rights Act of 1991 stresses its enduring relevance. By shifting the burden of proof in employment discrimination cases and emphasizing the need for protective measures to promote and sustain workplace equity, Griggs continues to influence corporate practices and legal standards.

In a dynamic corporate landscape influenced by evolving civil rights policies, the case of *Yarbrough, et al. v. Glow Networks, Inc. (1981)*, serves as a poignant reminder of the persistent challenges surrounding workplace discrimination. Despite possessing similar qualifications and performance levels, the plaintiffs faced differential treatment solely based on their race, highlighting the inherent biases and systemic barriers present in corporate environments. This case reinforces the need for preventative measures in order to address disparities in compensation and opportunities.

Comparatively, the scrutiny faced by the Equal Employment Opportunity Commission (EEOC) in *State of Texas v. EEOC (2022)* illuminates the complexities involved in promoting workplace equity through the current legal framework. The case revealed specific criteria imposed on employers, leading to legal disputes over misinterpretations of their obligation under Title VII of the Civil Rights Act of 1964. The case and the discourse that followed emphasizes the need for equitable practices to ensure fair treatment for all employees.

It is imperative for companies to navigate evolving civil rights policies and uphold principles of diversity, inclusion, and fairness in the workforce.

I. HISTORICAL CONTEXT AND LEGAL FRAMEWORK

A pressing legal issue concerns the fundamental right to fair and equitable workspaces. This matter arises from the systemic biases and barriers perpetuated by societal norms and historical injustices, contributing to disparities in compensation and overall treatment based on protected characteristics such as race, gender, age, and disability. This issue is of paramount significance, as it

not only undermines the rights of affected individuals but also reflects broader societal inequalities and the ongoing struggle for civil rights and workplace equity.

The Civil Rights Act of 1964 stands as a pivotal milestone in the ongoing struggle for workplace equity and inclusivity. Title VII of the act states that it "prohibits discrimination on the basis of race, color, religion, sex, or national origin," laying groundwork for addressing systemic biases and barriers in the workplace through enshrining the fundamental principle of equality.[125] Its provisions, particularly Title VII, address employment discrimination, and establish a robust legal framework that sets standards for promoting diversity, inclusion, and fairness in employment practices. Moreover, the Act's legacy extends beyond its legal impact, serving as a catalyst for cultural shifts in attitudes towards workplace diversity and equality. By prohibiting discriminatory practices and promoting equal opportunities, the Civil Rights Act of 1964 not only advances the rights of individuals but also fosters a more equitable and inclusive society. Furthermore, the Act's creation of enforcement mechanisms such as the Equal Employment Opportunity Commission (EEOC) underlines the commitment to ensuring compliance and accountability in upholding civil rights principles in the workplace. Thus, understanding the significance of the Civil Rights Act of 1964 is essential for comprehending the pressing legal issue of workplace equity and the ongoing efforts to promote diversity, inclusion, and fairness in employment environments.

II. ENTITIES INVOLVED AND LEGAL THEORY

Provided the intricacies of workplace equity and the legal challenges surrounding it, it's imperative to consider the roles played by those involved in ensuring adherence to civil rights principles. These entities include employers, who wield significant influence over workplace policies and practices; employees, who are often the direct beneficiaries or victims of these policies; and relevant government agencies, such as the EEOC, tasked with enforcing anti-discrimination laws. Understanding the dynamics between these stakeholders is crucial for contextualizing the pressing legal issue of workplace equity within the framework of the Civil Rights Act of 1964. In addition, this comprehension offers a perspective for examining the practical consequences of legal precedents as exemplified by cases such as *Griggs v. Duke Power Co.* (1971), *Yarbrough, et al. v. Glow Networks, Inc.* (1981), and *State of Texas v. EEOC* (2022).[126,127,128] By examining how these entities interact within the legal landscape, intricate analysis explains the complexities of promoting diversity, inclusion, and fairness in the modern workplace.

Under the act, employers must foster diversity and inclusion by taking proactive measures such as implementing diversity training programs, establishing anti-discrimination policies, and ensuring equitable hiring and promotion practices. While considering the challenges they may face in addressing discrimination and promoting diversity, such as unconscious bias in decision-making processes and resistance to change within organizational structures. Then government agencies must enforce anti-discrimination laws and investigate complaints of workplace discrimination barring the challenges they face in addressing systemic issues of discrimination, such as limited resources and

[125] *See* Civil Rights Act of 1964, Pub. L. No. 88-352, § 703(a), 78 Stat. 241, 253 (1964).
[126] *See* Griggs v. Duke Power Co., 401 U.S. 431, (1971).
[127] *See* Joshua Yarbrough, ET AL. v. Glow Networks, Inc., U.S. (1981).
[128] *See* State of Texas v. EEOC., U.S. (1971).

competing priorities. For instance, in *State of Texas v. EEOC (2022),* the case highlights the challenges that stemmed from the absence of clear directives within Title VII of the Civil Rights Act of 1964. Particularly, issues arose regarding workplace conduct and its potential to constitute discrimination based on sexual orientation or gender identity, thus fostering an unlawful hostile work environment. As explained in the National Law Review, "the guidance states that certain types of workplace conduct may constitute discrimination on the basis of sexual orientation or gender identity and give rise to an unlawful hostile work environment," instituting a pathway between obligation and compliance.[129]

The State of Texas' response to the issuance of the guidance reflects its belief that the decision deviates from established legal principles, particularly as interpreted through the *Bostock* decision regarding Title VII protections. By filing suit, Texas sought to challenge the legality of the guidance on multiple fronts. Firstly, Texas requested the court to declare the guidance unlawful, arguing that it does not align with the protections outlined in Title VII of the Civil Rights Act. Secondly, Texas sought to have the guidance vacated and set aside, aiming to nullify its legal effect. Lastly, Texas sought an injunction to prevent the enforcement or implementation of the guidance, asserting that it could have adverse implications for the state's legal framework and potentially infringe upon its jurisdictional authority. This legal challenge underscores the complexities and contentious nature of interpreting and applying civil rights laws in the context of evolving legal precedents and administrative guidance. It set a precedent that influenced corporate behavior and promoted compliance with civil rights laws. Once the court upheld the State of Texas' argument and declared the guidance unlawful, it signaled to corporations and employers that certain interpretations or applications of civil rights laws, particularly those diverging from established legal precedent, are to not be legally defensible. Leading to increased caution and adherence to established legal principles in corporate policies and practices related to workplace equity and anti-discrimination measures.

The Supreme Court's ruling on *Duke Power's* employment requirements brought attention to the disproportionate exclusion of African American employees, emphasizing the pressing need to dismantle discriminatory practices that hinder equal opportunities in the workforce.[130] To address such systemic biases, organizations can implement proactive measures. Firstly, through diversity training programs aimed at raising awareness of unconscious bias and promoting equitable treatment among employees and managers. Secondly, by establishing clear anti-discrimination policies that explicitly prohibit biased behavior and provide avenues for reporting discriminatory incidents. Lastly, by ensuring fair and transparent hiring and promotion practices that prioritize qualifications and performance over subjective criteria, organizations can create environments where all individuals, regardless of background, can thrive and contribute effectively.

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[129] *See* Equal Employment Opportunity Commission, *Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity*, https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender.

[130] *See supra* note 2.

The case *Yarbrough, et al. v. Glow Networks, Inc.* brought allegations of racial discrimination in promotions and terminations by African American employees to light against Glow Networks. The court's ruling underscored the imperative of upholding principles of fairness and providing equal opportunities for all individuals. They outlined that, first, establishing mentorship and sponsorship programs can be an effective way to support employees from underrepresented groups. Pairing them with mentors or sponsors who offer guidance, support, and advocacy can facilitate their career advancement opportunities. Secondly, conducting regular reviews and updates of policies pertaining to hiring, promotion, and termination is essential. Periodic assessments enable organizations to identify any disparities and take corrective actions promptly to ensure fairness and equity for all employees. Lastly, collecting and analyzing demographic data on employees allows organizations to monitor representation and track progress towards diversity and inclusion objectives. This data-driven approach enables organizations to pinpoint areas for improvement and evaluate the effectiveness of diversity initiatives accurately. By implementing these measures, organizations can foster inclusive workplaces where all individuals have equal opportunities to succeed and thrive, irrespective of their background or identity. While this case involves the state of Texas challenging the authority of the EEOC, it underscores the broader issue of ensuring compliance with anti-discrimination laws and promoting equal opportunities in employment.

In navigating the complex terrain of workplace discrimination, legal theory serves as a foundational framework for understanding the intricacies of legal principles, court precedents, and regulatory frameworks that shape corporate responses and promote equitable employment practices. Legal theory, in this context, encompasses a diverse range of concepts and doctrines that underpin the development and application of laws aimed at combating discrimination. This groundbreaking legislation stands as a testament to the ongoing struggle for civil rights and workplace equity, prohibiting discrimination in employment practices and establishing mechanisms for enforcement and accountability. However, the mere existence of legal protections is insufficient without a nuanced understanding of legal theory to guide interpretation and application in real-world scenarios.

One such critical concept within legal theory is the disparate impact theory, which recognizes that seemingly neutral employment practices may have a disproportionate or adverse impact on protected groups. This theory, exemplified in seminal court cases like *Griggs v. Duke Power Co.,* fundamentally reshapes the legal landscape by shifting the burden of proof onto employers to demonstrate that their practices are job-related and consistent with business necessity. At the center of the case was Duke Power Co.'s requirement for employees to have a high school diploma or pass an intelligence test as a condition for certain job positions, which disproportionately excluded African American employees. The Court's ruling in *Griggs* introduced the concept of disparate impact theory, which recognizes that employment practices that appear neutral on their face may still result in discriminatory outcomes for protected groups. In this case, the Court held that Duke Power Co.'s requirements had a disparate impact on African American employees, as they were less likely to have access to educational opportunities due to historical and systemic barriers. Importantly, the Court's decision in *Griggs* shifted the burden of proof onto employers to demonstrate that their employment practices are job-related and consistent with business necessity. This means that

employers must justify any policies or practices that result in disparate impact by showing that they are necessary for the performance of the job and not merely a pretext for discrimination. By placing the burden of proof on employers, *Griggs v. Duke Power Co.* established a higher standard for evaluating the legality of employment practices and promoting workplace equity. It requires employers to critically assess the potential impact of their policies on protected groups and take proactive measures to ensure fairness and inclusivity in their hiring and promotion practices.

Legal theory intersects with broader societal issues such as intersectionality, recognizing the overlapping and intersecting forms of discrimination that individuals may face based on multiple protected characteristics. By incorporating an intersectional approach, legal theory enhances the understanding of the complex dynamics at play in workplace discrimination and informs more effective strategies for promoting diversity, inclusion, and fairness.

III. ANALYSIS OF SPECIFIC COURT CASES

A. Federal Level

In Griggs v. Duke Power Co., the company's implementation of a high school diploma requirement or passing an intelligence test for certain job positions disproportionately excluded African American employees. In 1965, the company added two employment tests: the Bennett Mechanical Comprehension Test (measuring mechanical aptitude) and the Wonderlic Cognitive Ability Test (an IQ test). The plaintiffs argued that these requirements had a disparate impact on African American employees, violating Title VII of the Civil Rights Act of 1964 by being unrelated to job performance. The Supreme Court's ruling in favor of the plaintiffs established the disparate impact standard, shifting the burden of proof onto employers to demonstrate the job-relatedness and business necessity of their employment practices. Thereby pronouncing that employment requirements must be reasonably related to the job and not disproportionately impact ethnic minorities. To which Congress affirmed, "that tests or criteria for employment or promotion may not provide equality of opportunity merely in the sense of the fabled offer of milk to the stork and the fox."[131]

In response to the Griggs v. Duke Power Co. case, Congress highlighted the limitations of merely offering equal opportunities without ensuring equitable access.[132] They illustrated this point with a metaphorical reference to the fable of the stork and the fox, suggesting that providing the same opportunities to everyone may not result in true equality if those opportunities are not accessible or suitable for all. This statement underscores the importance of evaluating employment criteria beyond mere formal equality, emphasizing the need for fairness and inclusivity in hiring and promotion practices. By recognizing the disparate impact of seemingly neutral requirements on certain groups, the Supreme Court's ruling and Congress's commentary laid the groundwork for a more comprehensive approach to combating discrimination and promoting diversity in the workplace. This landmark decision fundamentally reshaped the legal landscape by emphasizing the need for employers to critically evaluate their practices to ensure fairness and equity in employment

[131] *See supr*a note 2.
[132] See supra note 2.

opportunities, setting a precedent for addressing disparate impact discrimination and promoting workplace diversity and inclusion.

In addition to the principles outlined in Griggs v. Duke Power Co. and Meacham v. Knolls Atomic Power Laboratory, further illustrates the ongoing significance of disparate impact cases in shaping legal interpretations and enforcement of anti-discrimination laws. These cases serve to reaffirm the principles established in Griggs v. Duke Power Co. , emphasizing the importance of evaluating employment practices for fairness and equity. In Meacham, plaintiffs filed an age discrimination claim against their employer, Knolls, under the Age Discrimination in Employment Act (ADEA). Knolls conducted layoffs based on employee performance scores, leading to 30 out of 31 employees over 40 being let go. The Second Circuit sided with Knolls, using a "reasonableness" test and placing the burden on employees to prove the actions were unreasonable.[133] However, the Supreme Court reversed this decision, stating that the burden lies with the employer to prove the layoff decisions were reasonable when facing claims of disparate impact against older workers. This interpretation stemmed from a textual analysis of the ADEA, which highlighted that the statute provides exceptions for actions causing disparate impact based on reasonable factors other than age, making "reasonableness" an affirmative defense under the ADEA.[134] Thus, the employer must both produce evidence and persuade the fact finder of the validity of their reasons.

B. Texas State Level

In State of Texas v. EEOC, the State of Texas challenged guidance issued by the Equal Employment Opportunity Commission regarding interpretations of Title VII protections related to sexual orientation and gender identity discrimination. The State of Texas argued that the guidance deviated from established legal principles and sought to challenge its legality on multiple fronts. The court's ruling in favor of the State of Texas declared the guidance unlawful, setting a precedent for adherence to established legal principles in interpreting civil rights laws. This case highlighted the complexities of interpreting and applying civil rights laws in the context of evolving legal precedents and administrative guidance. It underscored the importance of compliance with anti-discrimination laws and promoting equal opportunities in employment, emphasizing the ongoing challenges in addressing discrimination and ensuring workplace equity. In April 2012, the EEOC issued "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII."[135] The guidance aimed to address the impact of blanket bans on hiring individuals with criminal records, particularly their disproportionate impact on minorities. It emphasized that employers should demonstrate that their criminal record screening policies are job-related and consistent with business necessity. Texas sued the EEOC and the Attorney General, alleging that the guidance was unlawfully promulgated as a substantive rule. The state sought to enjoin the enforcement of the guidance and requested a declaration that it could lawfully exclude felons from state employment. Initially, the district court dismissed Texas's claim for lack of jurisdiction. However, a different panel of the Fifth Circuit Court of Appeals reversed that decision in Texas v. EEOC (Texas I). The case was remanded to apply the United States Army Corps of

[133] See Meacham v. Knolls Atomic Power Laboratory, 554 U.S. 84 (2008).
[134] *See* Meacham, 554 U.S. at 84.
[135] *See supr*a note 4.

Engineers v. Hawkes Co. precedent. On remand, the district court dismissed Texas's Declaratory Judgment Act claim but stopped the EEOC from enforcing its guidance against Texas].

C. United States Army Corps of Engineers v. Hawkes Co.

The United States Army Corps of Engineers v. Hawkes Co. (2016) case involved a critical legal question related to the Clean Water Act. The Clean Water Act governs the discharge of pollutants into U.S. waters.[136] Property owners who discharge pollutants without a permit from the Army Corps of Engineers face penalties, while those who apply for a permit undergo a challenging process. Determining whether an area qualifies as "waters of the United States" can be complex.[137] The Corps allows property owners to obtain a standalone JD to determine if their property contains "waters of the United States." A JD can be "preliminary" (indicating possible presence) or "approved" (definitively stating presence or absence).[138],[139] An "approved" JD is binding for five years on both the Corps and the Environmental Protection Agency.[140] Respondents were mining peat companies seeking a permit to discharge material onto wetlands they owned. They obtained an approved JD stating their property had a "significant nexus" to the Red River of the North.[141] After administrative remedies, they challenged the JD in Federal District Court under the Administrative Procedure Act (APA). The Supreme Court held that a Clean Water Act jurisdictional determination issued by the Corps is reviewable under the APA. Jurisdictional determinations constitute "final agency action."[142]

D. Texas Local Court Case

In Yarbrough, et al. v. Glow Networks, Inc., African American employees alleged discriminatory practices in promotions and terminations within the company. Despite possessing similar qualifications and performance levels as their white counterparts, they faced differential treatment based on race. The plaintiffs' experiences highlighted the challenges of addressing systemic biases and barriers in corporate environments. They argued that Glow Networks, Inc.'s practices violated Title VII of the Civil Rights Act of 1964 by discriminating against them on the basis of race. The court's ruling in favor of the plaintiffs underscored the imperative of upholding principles of fairness and providing equal opportunities for all individuals within the workplace. This case emphasized the importance of proactive measures to promote diversity and inclusion and highlighted the ongoing struggle to address discrimination in corporate environments.

Details of the case intel, that the plaintiffs claimed race discrimination based on tangible actions and/or the alleged creation of a hostile work environment. Certain plaintiffs also alleged that Glow retaliated against them for reporting and opposing race discrimination. Glow and its co-defendant at the time, CSS Corp., moved for partial summary judgment, which the court granted in part and denied in part.Claims by some plaintiffs were dismissed, while others proceeded to trial.

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[136] *See* EPA, *Summary of the Clean Water Act,* https://www.epa.gov/laws-regulations/summary-clean-water-act#:~:text=33%20U.S.C.%20%C2%A71251%20et,quality%20standards%20for%20surface%20waters.
[137] *See* United States Army Corps of Engineers v. Hawkes Co., 578 U.S. 3, (2016).
[138] *See supra* note 12.
[139] *See* Hawkes Co., 578 U.S. at 3.
[140] Id.
[141] *See supra* note 12.
[142] *See supra* note 12.

The case proceeded to trial on the remaining claims. After plaintiffs rested their case, Glow and SlashSupport Inc. (substituted in as co-defendant) made an oral motion for judgment as a matter of law, which the court denied. Plaintiffs stipulated to dismiss certain claims during the trial. Defendants reurged their motion for judgment as a matter of law, and the court granted in part and denied in part. The jury found that:Glow retaliated against certain plaintiffs for opposing or reporting race discrimination. Glow discriminated against other plaintiffs based on race. The jury's decision was not only a moral victory but also a substantial financial one. The awarded damages amounted to a total of $70 million for the employees involved. This case stands as a powerful testament to the enduring impact of employment discrimination and underscores the legal avenues accessible to address disparities in treatment and retaliatory actions within the workplace.

E. Bostock v. Clayton County

This Supreme Court case addresses the interpretation of Title VII of the Civil Rights Act of 1964, specifically regarding protections against gender-based discrimination. The case consolidated three separate lawsuits involving employees who alleged they were fired because of their sexual orientation or gender identity. The central question before the Court was whether Title VII's prohibition on discrimination encompasses discrimination based on sexual orientation and gender identity. The Court's majority opinion, authored by Justice Neil Gorsuch, held that discrimination on the basis of sexual orientation or gender identity is inherently discrimination against gender roles and therefore violates Title VII. This decision marked a significant expansion of protections for LGBTQ+ employees under federal law. Prior to Bostock, many federal courts had interpreted Title VII narrowly, excluding sexual orientation and gender identity from its protections. The ruling provided clarity and consistency by affirming that LGBTQ+ individuals are entitled to the same legal protections against workplace discrimination as other protected classes.The impact of Bostock v. Clayton County extends beyond the immediate parties involved in the case, influencing legal interpretations and enforcement efforts nationwide. Employers are now obligated to ensure their policies and practices comply with the expanded understanding of Title VII, and LGBTQ+ employees have greater recourse to challenge discriminatory actions in the workplace.

In addition to judicial decisions like Bostock, legislative efforts play a crucial role in strengthening protections against workplace discrimination. At both the state and federal levels, lawmakers have introduced bills aimed at addressing various forms of discrimination and promoting equality in the workplace. One area of focus is pay equity, where lawmakers seek to address disparities in wages and compensation based on gender, race, ethnicity, or other protected characteristics. Proposed legislation may include measures to increase transparency around pay practices, prohibit salary history inquiries, and establish mechanisms for enforcing equal pay standards. Harassment prevention is another priority for legislators, particularly in the wake of high-profile cases and movements like #MeToo. Proposed bills may seek to strengthen anti-harassment policies, expand training requirements for employers, and provide additional resources for victims of harassment. Furthermore, efforts to expand anti-discrimination laws to cover additional protected classes reflect a commitment to inclusivity and equal treatment for all individuals. Lawmakers may propose bills to extend protections based on factors such as sexual orientation, gender identity, pregnancy status, or genetic information, ensuring that marginalized

communities are afforded legal recourse against discrimination in the workplace. By exploring these developments, your paper can provide a comprehensive understanding of the evolving legal landscape surrounding workplace discrimination and the efforts undertaken to promote equality and fairness for all employees.

The implications of these legal and legislative developments are profound in the context of combating workforce discrimination. By affirming protections for LGBTQ+ employees under federal law and expanding the scope of Title VII to include sexual orientation and gender identity, the Bostock decision sets a powerful precedent for fostering inclusivity and diversity in the workplace. This expanded understanding of gender-based discrimination underscores the importance of addressing intersectional forms of discrimination and ensuring that all employees are protected from discrimination based on their identity. Furthermore, legislative efforts aimed at strengthening anti-discrimination laws and promoting pay equity and harassment prevention initiatives reflect a commitment to addressing systemic biases and promoting fairness and equity in employment practices. Together, these legal measures provide a framework for advancing workplace equity and fostering a more inclusive and welcoming environment for all employees, irrespective of their background or identity.[143]

IV. CONCLUSION

Throughout the exploration of the necessity for proactive corporate involvement in addressing legal obstacles, it becomes evident that fostering diversity, inclusion, and equity in the workplace serves as a tangible demonstration of such engagement. Delving into historical context, fundamental legal principles, and pertinent court cases sheds light on the intricacies of tackling discrimination within corporate environments. Moreover, understanding and navigating the evolving landscape of civil rights policies is increasingly pertinent in contemporary discussions.
From the landmark Civil Rights Act of 1964 to recent court cases such as Griggs v. Duke Power Co. (1971) and State of Texas v. EEOC (2022), it's evident how legal precedents and legislative developments shape corporate responses to workplace discrimination. An analysis of disparate impact theory, intersectionality, and the roles of various entities involved in ensuring adherence to civil rights principles offers insights into the challenges and opportunities presented by discrimination in the modern workforce. In light of this analysis it is clear that proactive corporate engagement is essential for advancing civil rights agendas and fostering inclusive and equitable workplaces. By understanding the legal landscape and taking proactive measures to address discrimination, corporations can not only comply with legal requirements but also create environments where all employees feel valued, respected, and empowered to succeed.

[143] *See* Bostock v. Clayton County, 590 U.S., (2020).

DEATH PENALTY: INJUSTICE SERVED

Samaria Taylor
Edited by Arshia Verma

A person does not have to be innocent to be wrongly sentenced to death. The death penalty fails to deter crime, protect vulnerable classes, serve justice equally, eradicate legal violence, and protect the rights of the nation's citizens. Because the death penalty in the United States does not adequately serve justice, its abolishment will significantly improve and reform the criminal justice system.

The death penalty has not been proven to hinder crime or recidivism rates. There have been multiple instances in which the death penalty, in fact, raises crime rates. Studies by The Death Penalty Information Center confirmed that in 2001, murder rates in states that did not employ capital punishment were 37 percent lower than those that did.[144] According to the Death Penalty Information Center, southern states, which are responsible for 80 percent of executions in the United States, have the highest murder rates in the country.[145] Countries that have abolished capital punishment have substantially lower crime rates. Six of the abolitionist countries experienced murder rates below the baseline all ten years following abolition.[146] Four countries had either one or two years in which murder rates were higher than in the year of abolition but saw murders fall below the baseline within five years and experienced overall downward trends.[147] In an effort to reform the criminal justice system, the government can start by giving out tougher sentences, which would be a better alternative than the death penalty if they truly want to deter crime. Longer jail time for felons

[144] "Murder Rate of Death Penalty States Compared to Non-Death Penalty States." 2019. Death Penalty Information Center. May 22, 2019. https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states.
[145] *See supra* note 1.
[146] *See supra* note 1.
[147] "Study: International Data Shows Declining Murder Rates after Abolition of Death Penalty." 2019. Death Penalty Information Center. January 4, 2019. https://deathpenaltyinfo.org/news/study-international-data-shows-declining-murder-rates-after-abolition-of-death-penalty.

and first-time offenders would keep them from re-entering society until they were able to rehabilitate, which is allegedly the true responsibility of the prison system in the United States. However, the failure of the criminal justice system is that it is rooted in punishment. Longer jail times alone will not suffice, instead the system needs to be reformed.

I. INTRODUCTION

Capital punishment is mostly inflicted upon the nation's most vulnerable populations. The classes that are disproportionately impacted by the death penalty are minorities, the poor, and the mentally ill.[148] In *US v. Lisa Montgomery* (2011), the courts knew that Montgomery had experienced extreme physical and sexual abuse and at the time of her trial, and she was suffering from a mental health condition. Her mens rea or the necessary criminal intent at the time of the crime failed to be considered in her legal process. In the end, she was convicted and executed on the federal death row.

In the case of *Charles Rhines v. Darin Young* (2010), Rines was executed due to his sexuality, which is against the law. The jury deemed that serving life without parole in a men's prison would be more of a reward than a punishment, so they agreed on a death sentence for him. Additionally, many people facing death penalty charges cannot afford an attorney, and states differ widely on the standards – if any – for death penalty representation, most of the time those on trial are provided a public defender.[149] However, public defenders assigned to these types of cases often lack the resources and time to dedicate high-quality representation, subsequently reinforcing the cycle of inequality.[150]

The unfairness and disproportionate effect of the death penalty plague the system today. The Executive Director of the Equal Justice Initiative Bryan Stevenson referred to the death penalty as a "punishment that is shaped by the constraints of poverty, race, geography, and local politics." People who are well-represented at trial rarely get the death penalty.[151] Most capital punishment cases violate due process guarantees, lack access to effective legal defense, and ignore essential facts. The Department of Justice claims that the reason the proportion of minority defendants exceeds the proportion of minority individuals in the general population is not because of racial or ethnic bias, but because of the federal enforcement efforts on drug trafficking and related crimes.[152] Contrary to their statement, all capital punishment cases are solely violent criminal acts, not drug offenses. It is clear that the criminal justice system continues to be tainted by racial biases. In the case of *Buck v. Davis* (2017), his case was prejudiced by an expert trial witness who claimed Buck was more likely to be a future danger because he is Black.[153] During the penalty phase of the trial, the prosecution

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[148] The Times Editorial Board, *Editorial: 2019 Has Given Us Yet More Examples of the Inherent Injustice of Capital Punishment*, Los Angeles Times (2019), https://www.latimes.com/opinion/story/2019-11-12/rod-reed-ray-cromartie-kardashian-injustice-capital-punishment.
[149] "Representation." 2017. Death Penalty Information Center. October 12, 2017. https://deathpenaltyinfo.org/policy-issues/death-penalty-representation.
[150] "Inadequate Defense." 2023. Innocence Project. May 5, 2023. https://innocenceproject.org/inadequate-defense/.
[151] Marc Bookman, *A Descending Spiral: Exposing the Death Penalty in 12 Essays*, The New Press (2021), https://thenewpress.com/books/descending-spiral.
[152] *The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital Case Review*, U.S. Department of Justice, https://www.justice.gov/archive/dag/pubdoc/deathpenaltystudy.htm.
[153] *Buck v. Davis*, Oyez, https://www.oyez.org/cases/2016/15-8049.

presented evidence of Buck's future dangerousness. The witness Dr. Walter Quijano reported that Blacks are more prone to violence. In this case, The Supreme Court reversed the US 5th Circuit of Criminal Appeals' decision not to hear the case based on legal technicalities and remanded it back to the courts, allowing his defense to appeal.

The death sentence in the United States is simply legal violence.[154] The death penalty is rooted in histories and legacies of lynching, Jim Crow, racism, and classism. In states like Virginia, there is a clear link from slavery through Jim Crow to modern-day executions.[155] It is now legal violence instead of vigilante justice. This system has enforced racial hierarchies in America throughout history, from colonial times to the present day.[156] In the case of *The Commonwealth of Pennsylvania vs. Mumia Abu-Jamal* (1982), this legal violence is clear. Mumia Abu-Jamal was a well-known American political activist and journalist who the court convicted of murder and sentenced to death. He was arrested at the scene of the crime, savagely beaten, and eventually driven to a hospital. During his trial, the police manipulated witnesses and fabricated evidence, eventually leading to his guilt. This is a prime example of a person sentenced to death based solely on their political beliefs.

Lastly, the death penalty continuously fails to protect human rights. Rights such as due process, no cruel and unusual punishment, and guarantees of equal protection which are all found in the US Constitution are only a few of the rights violated under the death penalty. The death penalty showcases that violent crimes bring out Americans' worst human instincts – revenge, fear, retribution, prejudice. The death penalty sends the message "Don't kill or we will kill you." Punishing an action with the same action is contradictory and inconsistent. When the government or individuals make the decision to take another human life and act upon it, they commit murder. When society advocates capital punishment and allows the government to assassinate inmates, they are no better than the murderers and common criminals who fill prisons. Capital punishment is premeditated murder.

The intense pressure to obtain a death sentence and the political stakes for police, prosecutors, and even judges can cause serious legal errors that contribute to wrongful convictions and death sentences. In Alabama alone, over 160 death sentences have been invalidated by state and federal courts, resulting in conviction of a lesser offense or a lesser sentence on retrial.[157]

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[154] Colette Marcellin, Andreea Matei, Libby Doyle, *Abolishing the Death Penalty Is Critical, but Is Not Enough to Address Its Racist and Classist Harms*, Urban Institute (2021), https://www.urban.org/urban-wire/abolishing-death-penalty-critical-not-enough-address-its-racist-and-classist-harms.

[155] "Abolishing the Death Penalty Is Critical, but Is Not Enough to Address Its Racist and Classist Harms." 2021. Urban Institute. April 28, 2021. https://www.urban.org/urban-wire/abolishing-death-penalty-critical-not-enough-address-its-racist-and-classist-harms.

[156] *Enduring Injustice, The Persistence of Racial Discrimination in the U.S. Death Penalty*, Death Penalty Information Center (2020), https://deathpenaltyinfo.org/facts-and-research/dpic-reports/in-depth/enduring-injustice-the-persistence-of-racial-discrimination-in-the-u-s-death-penalty.

[157] *Death Penalty*, Equal Justice Initiative, https://eji.org/issues/death-penalty/.

II. CRIME DETERRENCE

Deterrence is the idea that criminal punishments will prevent future crimes because the offenders have learned from their punishments.[158] In other words, it is the likelihood of a person who has been released from prison to re-offend. This is important because the criminal justice system in and of itself is supposed to exist as a form of deterrence – people do bad things, go to prison, then are rehabilitated into society and never offend again. It is a common misconception that the way that the prisons are set up now, people are trained to go back into society and be "better people." The criminal justice system uses the death penalty as a practice in efforts to "deter crime."

Contrary to popular belief, the harshness of the death penalty does not serve as a way to deter crime in communities. In places where the death penalty is actively used, crime rates are higher. When heinous acts are committed, people do not lessen or increase the brutality of what they are doing because they are concerned with how they will be sentenced. People do bad things because of emotion, chance, guilt, and many other factors, with no regard for what will happen next more times than not. Oftentimes, the conditions of the environment a person grew up may play a role in increasing their likelihood of committing a crime. In Harris County, Texas where the death penalty is actively used, the crime rate is higher than in Los Angeles County, California, where the death penalty is not used. A survey done by the New York Times found that states without the death penalty have lower homicide rates than states with the death penalty. Ten of the twelve states without the death penalty have homicide rates below the national average, whereas half of the states with the death penalty have homicide rates above.[159] When comparisons are made between states with the death penalty and states without, the majority of death penalty states show murder rates higher than non-death penalty states.

On a local basis, there are better options to deter crime, if that is the government's imperative. Crime deterrence is something that can be prevented before incarceration even comes into question – an increased involvement of the police in the community is by far the simplest way to deter crime. Positive police involvement in the community can decrease the likelihood of a negative run-in with law enforcement. An example of this is community policing which uses strategies that support the systemic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.[160] Another way to prevent crime is through community-based violence intervention programs, such as violence interrupters and street outreach, which are programs that aim to connect individuals most at risk of committing or experiencing violence with those who have walked a similar path. These programs are able to identify the best services and

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[158] Adam J. Mckee, *Deterrence| Definition*, Doc's CJ Glossary, https://docmckee.com/cj/docs-criminal-justice-glossary/deterrence/#google_vignette.

[159] *The New York Times*. 2024. "ABSENCE of EXECUTIONS: A Special Report.; States with No Death Penalty Share Lower Homicide Rates (Published 2000)," 2024. https://www.nytimes.com/2000/09/22/us/absence-executions-special-report-states-with-no-death-penalty-share-lower.html.

[160] *Murder Rate of Death Penalty States Compated to Non-Death Penalty States*, Death Penalty Information Center, https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states.

resources to support alternative avenues to conflict resolution.[161] Another way to motivate deterrence that is complicated, but will have a greater impact on deterring crime is a reformation of the prison system: as of now, prisons do not serve the community in the way they should. If prisons focused on mental health, education, and the space to learn and grow, formerly incarcerated people would have a much greater chance at true rehabilitation into society.[162,163] Incarcerated people who participate in such programs are 48 percent less likely to recidivate than those who do not.[164] When prisons focus more on rehabilitation instead of punitive policies, crime deterrence becomes the norm.

III. VULNERABLE POPULATIONS

Vulnerable populations are individuals who are at greater risk of poor physical and social health status.[165] They are considered vulnerable because of disparities in physical, economic, and social health status when compared with the dominant population. This definition classifies racial or ethnic minorities, children, the elderly, the LGBTQIA+ community, and socioeconomically disadvantaged, or disabled groups as vulnerable populations. In the United States, these groups are no exception, as they all are treated as less than in their respective situations. In the criminal justice system, these differences must be recognized and treated accordingly. These differences are many times responsible for the acts one makes in their community and would explain mens rea at the time of the crime, which should be considered during sentencing. Vulnerable populations must also receive extra attention to ensure the law is being carried out equitably.

Historically, vulnerable populations have suffered in prisons, and the longer this continues to get ignored, the worse off these communities will be. It is well known that solitary confinement, especially over a long period of time, is proven to contribute to mental health issues. Solitary confinement is used as an enhanced punishment for incarcerated people, as well as where people on death row are typically held. If a person with existing mental health conditions is put into an environment like that, their condition will worsen exponentially, often proving to be fatal. Vulnerable populations as it comes to racial minorities and members of the LGBTQ+ community are overrepresented in prisons and on death row.

In the case of *US v. Lisa Montgomery*, the defendant Lisa Montgomery had experienced extreme physical and sexual abuse throughout her life, which the court was made aware of. At the

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[161] Akua Amaning, Hassen Bashir, *Community-Based Violence Interventions: Proven Strategies to Reduce Violent Crime*, Center for American Progress (June 15, 2022), https://www.americanprogress.org/article/community-based-violence-interventions-proven-strategies-to-reduce-violent-crime/.

[162] Danielle Wallace, Xia Wang, *Does In-Prison Physical and Mental Health Impact Recidivism?*, National Library of Medicine (March 20, 2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7113431/.

[163] Jamie Santa Cruz, *Rethinking Prison as a Deterrent to Future Crime*, Knowable Magazine (July 13, 2022) https://knowablemagazine.org/content/article/society/2022/rethinking-prison-deterrent-future-crime.

[164] Hayne Noon, *Back to School: A Common-Sense Strategy to Lower Recidivism*, Vera (September 19, 2019), https://www.vera.org/news/back-to-school-a-common-sense-strategy-to-lower-recidivism.

[165] Deden Rukmana, *Vulnerable Populations*, Springer Link (2014), https://link.springer.com/referenceworkentry/10.1007/978-94-007-0753-5_3184#:~:text=Vulnerable%20populations%20are%20individuals%20who,compared%20with%20the%20dominant%20population.

time of her trial, she was suffering from a mental health condition.[166] If her past and current mental state were taken into account and considered at the time of her sentencing, she would not have been convicted and executed on federal death row. It would have explained her mens rea, which should have changed her sentence. If her mental health history was considered during the trial, she would still be living and receiving proper treatment, likely in the confines of prison or a rehabilitative center. Her case, among others, continues to prove that mental health does not matter in the court of law and that the courts believe that people suffering from mental health issues should be punished to the fullest extent of the law. In 1976, the Supreme Court reinstated capital punishment so long as it is inflicted only on people who "deserve" it, in an effort to address the increasing numbers of people on death row suffering from mental health conditions. Despite this, at least 20 percent of people facing the death penalty are battling severe mental illnesses.

Another case featuring a vulnerable class is that of *Charles Rhines v. Darin Young* .[167] During the trial of Charles Rhines, the defendant's sexuality was a well-known fact of the jurors. Still, Rhines was deprived of his rights to a fair trial and due process under the Sixth and Fourteenth Amendments due to the homophobia of the jurors during his trial. They "knew that he was a homosexual and thought he shouldn't be able to spend his life with men in prison." Because of the bias of his jurors, he was sentenced to death. Similar to marginalized communities not being fully accepted in the general society, the criminal justice system continues to not accept people, risking their lives. The Supreme Court of the United States of America refused to grant a writ of certiorari in this case, which would have granted a stay of execution for Charles Rhines.[168] Instead he was executed on November 4, 2019.[169] During his case, Rhines also was given a public defender, which is common among people on death row. According to the Death Penalty Information Center, defendants are much less likely to be sentenced to death when they are represented by qualified lawyers who are provided sufficient time and resources to present a strong defense.[170] This fact reinforces the cycle of inequality in the justice system, as poor people suffer more because they cannot afford any other counsel. Over 99 percent of people on death row are labeled as indigent, so despite every one of all income levels committing crime at the same rate, lower-income people are overrepresented on death row.[171]

IV. UNFAIR AND DISPROPORTIONATE PUNISHMENT

Life in the United States is perceived to be inequitable. People who are less fortunate economically, are punished for their status, but most of them were born into it. The welfare system in the United States does not help people out of these situations, but instead criminalizes them.

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[166] *USA: UN Experts Call for President Biden to End Death Penalty*, United Nations (2021), https://www.ohchr.org/en/press-releases/2021/03/usa-un-experts-call-president-biden-end-death-penalty.
[167] *Rhines v. Young*, ACLU South Dakota, https://www.aclusd.org/en/cases/rhines-v-young.
[168] Charles Russell Rhines v. Darin Young, Warden, 589 U.S. 1,2 (2019)
[169] *Execution of Charles Rhines*, Wikipedia, https://en.wikipedia.org/wiki/Execution_of_Charles_Rhines.
[170] *Representation*, Death Penalty Information Center, https://deathpenaltyinfo.org/policy-issues/death-penalty-representation.
[171] *Some Facts About the Death Penalty*, Oklahoma Coalition to Abolish the Death Penalty (2013), https://okcadp.org/public-education/educational-resources/facts-about-the-death-penalty/#:~:text=Poor%20people%20are%20executed%20much,Mentally%20ill%20people%20are%20executed.

Since the "War on Poverty," the government has consistently victimized the economically disadvantaged. Whether it is directly or not, America's economic inequality further marginalized communities. In the criminal justice system, this is directly reflected in the overrepresentation of economically marginalized communities in prisons and on death row. The ability to pay for bail or afford an adequate attorney is a direct result of this.

Another form of oversaturation in the prison system and death row is racial minorities. There is a large demographic of people in the United States who are treated worse than any other demographic in the criminal justice system: the Black community. Historical racial biases continue to contribute to this. The criminalization of the Black community through stereotypes and generalizations is the main factor in the heightened rate of Black people in the criminal justice system.

In the case of *Buck v. Davis* , a witness at trial served as a reminder of a Black man's place in society. Due to Duane Buck's racial identity, according to the trial's expert witness, and as reinforced by the prosecuting attorney Joan Huffman, he is more likely to be a future danger to society because he is Black.[172] Allegedly, his criminal history, his conduct, and his demeanor before and after arrest only solidified this to the prosecution. In July 1995, Duane Edward Buck was arrested for the murder of his ex-girlfriend, Debra Gardner, and her friend Kenneth Butler. Buck was convicted of capital murder for both of the deaths. The expert witness on the trial, Dr. Walter Quijano, testified that African Americans are more prone to violence, when asked by the prosecution, as well as an increased likelihood of future danger. This case was eventually repealed to the Supreme Court, which overrose the US 5th Circuit of Criminal Appeals' decision, allowing for the appeal of this case. His case continued to be tainted due to both inadequate counsel and racial prejudices prevalent in the criminal justice system. Unfortunately, his case is just one of many that ended this way, as the criminal justice system refuses to acknowledge the unfairness of the system to certain crowds, despite how "far" The United States has come from civil rights.

V. LEGAL VIOLENCE

In the United States of America, legal violence against minorities has remained pervasive throughout history. From the first contact on Native land, the legality of violence against the Indigenous and African peoples became normalized. Over time there was the Trail of Tears, massacres, and lynchings to prove the dominant power structures in American society. Today, legal violence is not reflected in the routines of everyday people, but by the government. It is not a coincidence that the states that had some of the highest numbers of lynchings currently have the highest numbers of death penalty sentences. During the 1960s and 70s, the FBI and CIA killed or took part in the killings of many leaders in the Black community, including Fred Hampton, Dr.

[172] Jolie McCullough, *U.S. Supreme Court Rules in Favor of Texas Death Row Inmate*, The Texas Tribune (2017), https://www.texastribune.org/2017/02/22/supreme-court-rules-in-favor-of-texas-death-row-inmate/#:~:text=The%20U.S.%20Supreme%20Court%20has,danger%20because%20he%20is%20black.

Martin Luther King Jr., and Malcolm X, to name a few.[173,174,175] Now, this same conduct is displayed by the death penalty killings of the Black community. The Black community is overwhelmingly represented on death row, 41 percent as of January 2023, many of whom faced biases and barriers preventing them from receiving a fair trial.[176]

As far as the general public knows, the government no longer spies on Black political leaders through programs like COINTELPRO in the 70s. The Counter Intelligence Program (COINTELPRO) was created to disrupt the activities of the Communist Party of the United States.[177] This program expanded to include a number of domestic groups including: The Black Panther Party, The Nation of Islam, The Student Nonviolent Coordinating Committee, and The Southern Christian Leadership Conference.[178] COINTELPRO was responsible for the unlawful deaths and arrests of several notable Black figures of the Black Power Movement including Mark Clark, Fred Hampton, Zayd Malik, Sundiata Acoli, and Assata Shakur. The lack of prominence of these programs today does not mean that there are no political prisoners left in America. Mumia Abu-Jamal is a prime example of legal violence in contemporary America. The court believed that in 1982 Abu-Jamal shot a Philadelphia police officer, he was then arrested. During his arrest, he was beaten horribly, thrown into a paddy wagon (a police van), and later taken to the hospital. He faced deprivals of his basic right to the council as well as his right to not receive cruel and unusual punishments, in the Sixth and Eighth Amendments respectively. Abu-Jamal was a well-known political leader in his community, known as "a voice for the voiceless," and protested through reporting against police brutality and other social and racial epidemics plaguing communities of color. He is a former member of the Black Panther Party as well as president of the Philadelphia Association of Black Journalists. *The Commonwealth vs. Abu-Jamal* began with the shooting of both Abu-Jamal and a Philadelphia police officer, and the cops alleged that it was Abu-Jamal who shot the officer. During the trial, Abu-Jamal's right to choose council was revoked, and he was stuck with a public defender. Due to the police manipulation of witnesses, and fabrication of evidence, the defense's rights were severely denied, and Abu-Jamal was found guilty.[179] Many people believe that because COINTELPRO was exposed to society, nothing like what happened in the 70s could affect criminal court rulings today, but these legal violences continue to plague the criminal justice system. Abu-Jamal's case is a popular one, but not the only one of its kind. Although he is not on death row

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[173] Alicia Maynard, The Assassination of Fred Hampton, Digital Chicago: Lake Forest College, https://digitalchicagohistory.org/exhibits/show/fred-hampton-50th/the-assassination#:~:text=%5B13%5D%20It%20would%20later%20come,Party%20and%20other%20such%20movements.

[174] Overview of Investigation of Allegations Regarding The Assaassination Of Dr. Martin Luther King, Jr., Civil Rights Division: U.S. Department of Justice, https://www.justice.gov/crt/overview-investigation-allegations-regarding-assassination-dr-martin-luther-king-jr.

[175] Keldy Ortiz, Russell Contreras, New Witness at Scene of Malcolm X Assassination Says He Wasn't Interviewed, AXIOS (2023), https://www.axios.com/2023/07/25/malcolm-x-ben-crump-new-witness-fbi-dry-run#.

[176] "Racial Demographics." 2017. Death Penalty Information Center. November 29, 2017. https://deathpenaltyinfo.org/death-row/overview/demographics.

[177] *COINTELPRO,* The Federal Bureau of Investigation, https://vault.fbi.gov/cointel-pro.

[178] Assata Shakur, Assata: An Autobiography (Lawrence Hill Books, 1987), *XIII*.

[179] *The Case of Mumia Abu-Jamal: An Innocent Man on Death Row*, On A Move, https://onamove.com/mumia/#:~:text=Due%20to%20police%20manipulation%20of,solely%20on%20his%20political%20beliefs.

anymore, he is serving a life without parole sentence, biases on the federal level of the justice system led to an unfair sentence for Abu-Jamal.[180]

VI. FAILURE TO PROTECT HUMAN RIGHTS

The use of the death penalty alone violates many rights given to citizens – the most prominent of which is the Eighth Amendment. For many of the cases resulting in the sentencing on death row, the rights granted in the Fourteenth, Sixth, Fifth, and sometimes Fourth Amendments are commonly violated. Even before one is arrested, these rights are violated in an effort to convict someone to death. The criminal justice system is supposed to be "innocent until proven guilty", but that all goes out of the window the moment a person is accused of a capital crime.

The death penalty reinforces the hierarchy in American society: the people mostly represented on death row are minorities, being murdered by the elites for just being poor in the wrong place at the wrong time. "An eye for an eye" seems to justify in the eyes of death-penalty supporters, the need for the government to kill its citizens. If someone kills someone else, they deserve to be killed regardless of the circumstances. Punishing an action with the same crime blurs the line between criminal and leader. The lawful killing of people through the death penalty brings out the worst of society. All of a sudden revenge, prejudices, vigilantism, and retribution are okay. Only when it is done by certain people it seems to be right, but in other hands, likely in the hands of racial, sexual, gender, and social minorities, it is wrong and punishable by death.

Additionally, the process of killing someone on death row is extremely inhumane, although there have been methods to make it more "humane." These methods include, but are not limited to lethal injection, electrocution, or a firing squad, all of which are forms of torture.[181] Helen Prejean, author of *Executions are Too Costly – Morally* states, "Allowing our government to kill citizens compromises the deepest moral values upon which this country was conceived: the inviolable dignity of human persons."

The most simple alternative to the death penalty is a life without parole sentence. Life without parole allows someone to live the rest of their life remembering the actions that brought them to the place they are today, without torturing them under the law, allowing them to live until the end of their natural life. Something that will lessen the need for life without parole sentences is a change in the prisons in America, which would rehabilitate people convicted, truly reducing the deterrence rate in the nation. A con to life without parole sentences could be the overpopulation in prisons, but in a society that values societal rehabilitation and only imprisons for violent crimes, this would not be an issue.

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[180] "Philadelphia Judge to Rule within 90 Days on Latest Appeal from Mumia Abu Jamal." 2022. 6abc Philadelphia. December 16, 2022.
https://6abc.com/mumia-abu-jamal-trial-daniel-faulkner-murder-black-panthers-philadelphia-police/12578878/#:~:text=Abu%20Jamal%20is%20serving%20a,overturn%20his%20conviction%20have%20failed.

[181] Alisha Ott, *The Death Penalty: Society's Injustice System*, San Joaquin Delta College (2004), https://www.deltacollege.edu/student-life/student-media/delta-winds/2004-table-contents/death-penalty-societys-injustice-system.

VII. CONCLUSION

The death penalty does not serve justice. Justice requires what is right is wrong to be defined by law, but in a society where leaders are wrong, what is right becomes blurred. There are too many prejudices and systemic inequities in the criminal justice system to have death as a method of punishment. If this society values fair and equitable treatment for everyone, regardless of race, class, socioeconomic status, gender, sexuality, and ability, death row would not be seen as a valid measure of justice. If this society valued its people, the death penalty would be off the table, and there would be more holistic ways of determining punishments across the nation.

HOW WOMEN'S RIGHTS TO ABORTION WILL BECOME IMPACTED BY STATE LEGISLATIVE LAWS IN A POST *ROE V. WADE* SOCIETY

Tinley Kane
Edited by Ishika Acharya

With the overturn of *Roe v. Wade* (1973), it has become abundantly clear that the government will not give women autonomy of their bodies. With such limitations, women must resort to choices facing them with criminal charges and turn to unreasonable circumstances to seek the care and medical attention they need. After fifty years of a constitutional right to have access to abortion in the United States, the Supreme Court officially overturned this decision and has removed additional rights including privacy, life and security, nondiscrimination, and freedom from inhuman treatment.

Roe v. Wade was a Supreme Court case that pertained to the issues of a women's right to privacy, but more importantly reproductive privacy over the choice women made to pursue an abortion. A woman named Norma McCorvey challenged Texas' law that criminalized the majority of abortions. The exception at the time was only in the case of a mother at risk of death. McCovey was documented during the court case as "Jane Roe," and the Supreme Court decided that the Due Process Clause within the 14th Amendment gave permission for a woman to freely abort her pregnancy without state governments intervening. The decision ruled that within the woman's first trimester she was given the choice to continue or terminate the pregnancy. Only in the third trimester could states prohibit abortion, aside from life-threatening scenarios.

Since the Supreme Court overturned *Roe v. Wade* (1973), state legislators have taken the opportunity to limit reproductive rights for women across the country. Court cases have made it clear that women's reproductive rights are slowly becoming extinct. In the state of Oklahoma, women have inconsistent, overlapping abortion bans. The three laws include requiring physicians performing an abortion: be board certified in obstetrics and gynecology, physicians administering abortion drugs to have admitting privileges at a nearby hospital, and requiring an ultrasound 72 hours before administering abortion drugs. Eliminating the decision to have a federally constitutional right to an abortion allowed states to negate abortion, taking their constitutional right under the 14th Amendment.

Further, *Dobbs v. Jackson Women's Health Organization* (2022) decision raised questions about cases of rape and incest. By eliminating access to abortion in the US, the state legislatures are violating women's rights to religious freedom, privacy, and the ability to make medical decisions. Overall, this overturn of a law that had been upheld for five decades now impacts the constitutional right of choosing what happens to women's bodies and how courts in the future will legally rule a woman for illegal abortions.

I. INTRODUCTION

A. Dobbs v. Jackson Women's Health Organization and its Snowball Effect

In *Dobbs v. Jackson Women's Health Organization* the Supreme Court reviewed the constitutionality of Mississippi's Gestational Age Act. Their decision marked a moment for the United States that would raise questions regarding the lack of reproductive rights women have because of state regulation.[182] The law bans the majority of abortions after 15 weeks of pregnancy "with exceptions for medical emergencies and fetal abnormalities." This decision overruled what was upheld for over 50 years in *Roe v. Wade*. The Dobbs decision subjects those who can become pregnant to barriers in accessing medical care, criminalization and penalization, infringing on their privacy and on freedom of conscience, with disproportionate impact on already-marginalized populations. Justice Samuel Alito, a conservative justice, expressed his opposition to *Roe* , stating that it was "wrong from the start" and "it is time to heed the Constitution and return the issue of abortion to the people's elected representatives." Alito believed state legislators should have the control and power to alter their own state rights for the future of America and change how abortions are regulated. After the *Dobbs* decision, 14 states enacted near-total abortion bans including Alabama, Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin.[183] Indiana is one of the states that upheld a ruling in favor of the state's religious freedom law, erasing separation of church and state in regards to reproductive issues. The Religious Freedom Restoration Act protects individuals and organizations from government actions that actively impede the practice of religion. Specifically with reproductive rights, the RFRA has dealt with the debate on whether or not healthcare providers can refuse contraceptive services or any related abortion care on the basis of their religious beliefs. This debate has left individuals without access to reproductive healthcare because religious freedom overpowers healthcare.

However, not all states have been able to stop the elimination of abortion. One of those states is Texas, which has granted power to the state legislature to eliminate abortion. Texas legislature banned abortion once a "detection of a fetal heartbeat" occurs, with no exception to rape or incest, which has led many other states todebate whether they should follow in Texas' steps.[184] Texas' ruling argues that once there is a heartbeat detected at six weeks of a pregnancy, there is a presence of personhood and that justifies a pro-life stance.

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[182] 2019 Mississippi Code :: Title 41 - Public Health :: Chapter 41 - Surgical or Medical Procedures; Consents :: Gestational Age Act :: § 41-41-191. Gestational Age Act; legislative findings and purpose; definitions; abortion limited to fifteen weeks' gestation; exceptions; requisite report; reporting forms; professional sanctions; civil penalties; additional enforcement; construction; severability; right to intervene if constitutionality challenged, JUSTIA LAW.

[183] 13 States Have Abortion Trigger Bans—Here's What Happens When Roe Is Overturned | Guttmacher Institute, (2022).

[184] LegiScan. "Texas SB8 | 2021-2022 | 87th Legislature." *LegiScan*, 19 May 2021. legiscan.com/TX/text/SB8/id/2395961.

II. WHAT THIS MEANS FOR INSTANCES OF RAPE, INCEST, OR LOW INCOME INDIVDUALS

The Missouri legislature voted against section 36.1 titled "The Right to Reproductive Freedom Initiative" because they believed it interfered with women's healthcare, reinforcing a failure to account for women's healthcare in the United States.[185] As of Febuary 7, 2024, the Missiouri Senate voted against the renactment of the amendment allowing an abortion in cases of incest or rape. In these cases the only acceptable reason for an abortion is if it is a "medical emergency." A "medical emergency" is recognized and defined as allowing an abortion when if a woman continues pursuing the pregnancy, it could impose serious health or life risks for them. In these situations, consultations are made with medical experts and professions that evaluate and assess the severity that these potential issues could bring to the woman carrying a child. It is crucial that women have the ability to have an option of abortion for health and life risks in their pregnancy, and have the ability to openly consult with a healthcare expert to discuss how they proceed onward.

The court justified their reasoning for rape and incest as acceptable cases to abort, stating, "Rape and incest are often upheld as "extraordinary abortion" cases. These cases function as a tool in political debate, creating strong empathy for such exceptions." The first block that was initiated in the state was S.E.A. 1, which outlawed abortion almost entirely and threatened providers with criminal penalties.[186] The ban, however, is limited and states, "serious risk to the health or life of a pregnant person; diagnosis of a "lethal fetal anomaly;" and rape or incest before 12 weeks of pregnancy." S.E.A. 1 requires that abortions are provided by hospitals that are oftentimes extremely inaccessible and not affordable for most patients, especially those in the low-income bracket. Those in a lower income bracket already face issues with access to proper healthcare and abortion care is another issue that reiterates this struggle for them.

For those in the low-income bracket, an abortion is a costly procedure. This procedure is expensive without taking into account travel, childcare, and accommodation for the individual to access affordable abortion care and services. Oftentimes those who are unable to entirely afford the proper abortion services face financial hardships in their future which imposes a serious financial load. Allowing for abortions to only take place in hospitals raises the costs of the procedure compared to a clinic or other outpatient facilities. Due to the fact that hospitals record an abortion as a "surgical abortion," they charge a higher rate than other facilities costing as much as 2,000 dollars.[187] Hospitals are able to charge more than a clinic or other resource because they typically include prolonged hospital stays for patients.[188] Implementing a law for women to perform an abortion strictly in hospitals only limits options to accessibility both in location and price range. Now, patients are forced to flee the state to access abortion if they have the means to seek abortion outside of the healthcare system. In other scenarios, these patients will have to forcefully carry

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[185] *The Challenge of the Pro-Abortion Initiative*.
[186] Indiana Supreme Court Rules Near-Total Abortion Ban Can Take Effect | ACLU of Indiana, (2023).
[187] Catlett, Tess. "How Much Does an Abortion Cost? Insurance, Financial Aid." *Healthline*, 6 Sept. 2023, www.healthline.com/health/how-much-does-an-abortion-cost.
[188] Soleimani Movahed, Maryam, et al. "The Economic Burden of Abortion and Its Complication Treatment Cares: A Systematic Review." *Journal of Family & Reproductive Health*, vol. 14, no. 2, 7 Oct. 2020, https://doi.org/10.18502/jfrh.v14i2.4354.

pregnancies against their will. This completely revokes a woman's reproductive autonomy as it neglects a woman's ability to make her own choices about what she does with her body. It removes any agency she has over her body about when or if she chooses to have a child.

Those in a lower-income bracket also face the issue of limited options in regards to healthcare. As abortions become banned in more states this limits those with a lower income to an even smaller pool of healthcare services, which may force them to travel extreme lengths to obtain access care, adding an additional cost. This issue individuals face pertains to potential geographical barriers. Hospitals are oftentimes located in areas that are highly populated in more urbanized areas of a city or town that usually cost more than the areas that surround it. The location of hospitals does not allow those living in rural or remote parts close to a city to have easy access to the proper care they need. It is challenging for those outside of the city area to reach hospitals, placing the financial burden of driving a long distance to reach a hospital that will inevitably charge them a higher rate than other resources.

Denying a woman the ability to abort a child safely and legally does not grant her the ability to receive proper care and treatment in the appropriate time frame. What many do not realize is that pregnancy can exacerbate pre-existing health conditions in some individuals. Diseases include, but are not limited to, heart disease, blood vessel problems, and diabetes. If these women who have become pregnant continue with their pregnancy journey, they are increasing their risks tremendously of complications during delivery or post-delivery, which is referred to as maternal morbidity.[189] Maternal morbidity is defined as any health condition attributed to and aggravated by pregnancy and childbirth that has negative outcomes to the women's well-being.[190] There is also profound medical risk and life-altering consequences that include life long injuries, heavy bleeding, damage to internal organs, and fatality if a woman is forced to carry out her pregnancy.

Another factor many often neglect to realize is the lack of privacy a person has when they are forced to have an abortion in a hospital. S.E.A. 1 increases the reluctance and hesitation many women have when accessing healthcare services. The reluctance is because of the cultural background and socioeconomic status of these individuals, since their discrimination and cultural barriers prevent them from achieving the care they need. Low-income individuals are not fully informed on treatment options whether it is because of lack of education or a language barrier permitting them to have full access which causes inaccurate medical recommendations. Because of the barrier they face, the perception of healthcare providers in their mind is a negative connotation of people who judge and dismiss their needs and that has only increased since *Roe* was overturned.

III. THE CRIME OF SELF-MANAGED ABORTION

If women attempt illegal abortions there is now the possibility of them being tried for murder. With accessibility to medical records, the court can use these records as evidence and those papers will be required to be presented and reported at trial. The idea of a woman being tried for a murder case from an abortion impacts how the Constitution views the Fourth Amendment.

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[189] "What Are Examples and Causes of Maternal Morbidity and Mortality?"
[190] "What Are Maternal Morbidity and Mortality? | Office of Research on Women's Health."

Although the Fourth Amendment does not explicitly disclose abortion rights, under the Constitution an individual has the right to privacy, which many have recognized as something acknowledged by abortion rights. Laws demanding ultrasounds and waiting periods violate an individual's privacy rights, and demonstrates the idea that there is little protection for women.

In regards to Fourth Amendment rights, the New York University Law Review explained, "*Dobbs* allows states to turn those who had formerly been healthcare recipients into criminal suspects. This means they can be subjected to policing decisions legitimated by decades of Fourth Amendment decisions."[191] Women and girls seeking abortions deemed illegal in their home states encounter a stressful decision about their health and autonomy. Harvard Law Review analyzed the Fifth Amendment right in regards to self-incrimination with abortion stating, "self-managed abortions are likely to become more frequent as states implement restrictive abortion laws and access to clinic-based care becomes more difficult, especially for poor, minoritized, and young patients." State regulation of abortion, including criminalization, is entitled to a "strong presumption of validity" under rational basis review. Severe restrictions, bans, and criminalization would presumably be justified by a state's "interest in protecting fetal life." Some state abortion bans, like Wisconsin's 1849 law, were considered unenforceable after *Roe*, but are enforceable once more. The Wisconsin legislature stated in 940.04 that "any person, other than the mother, who intentionally destroys the life of an unborn child is guilty of a class H felony. Causes the death of the mother by an act done with intent to destroy the life of an unborn child."[192,193] What this law means in the 21st century is that it does not prohibit voluntary abortions, and this means facilities such as Planned Parenthood are allowed to resume their services to care for abortions for those in need. Stricter abortions lines that have been imposed because of acts such as the Gestational Age Act that move away from previous regulations by shifting towards less and less opportunity for women to receive proper access and options for their health when seeking out reproductive care.

The increase in restrictions have posed questions about how ethical these increases are and how the country continues to support states rights more so than women's individual rights.

IV. THE OHIO DECISION AND WHAT IT DETERMINES

The Ohio Supreme Court dismissed the state's appeal on the six-week ban, a case sent back to the state that originally blocked the vote. The vote for those in Ohio changes Issue 1 in Ohio's state constitution.[194] Ohio's constitution attempts to alter the rights for individuals to "make and carry out one's own reproductive decisions" before a fetus is viable outside the womb, roughly at 23 to 24 weeks of pregnancy. If the decision were to pass, Ohio would then be the latest state to protect and expand abortion rights for women. It should be noted that abortion rights in past decisions have gone six for six winning their cases in recent state constitutions. However, if the alteration gets rejected, this reinforces the ban Ohio has recently implemented on passing a six week abortion ban.

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[191] Fourth Amendment Rights as Abortion Rights, NYU Law Review.
[192] Wisconsin Legislature: 940.04, https://docs.legis.wisconsin.gov/1995/statutes/statutes/940/04.
[193] Class H Felony in Wisconsin: A Guide to Penalties & Defenses (2024).
[194] Ohio voters just passed abortion protections. When and how they take effect is before the courts, AP News (2023).

Additionally, it will change the decision of a predominantly conservative Ohio State court that has previously dismissed reproductive rights for women.

As of December 7, 2023, Ohio's new constitutional protections allowed for an individual to have the right to "make and carry out one's own reproductive decisions." This was marked as the seventh straight victory for statewide voting in support of abortion care and access.[195] It should be noted that had this decision gone the other way, six weeks would not give a woman ample time to dictate and determine whether or not she has become impregnated.[196] Furthermore, one in three women confirm their pregnancy post six weeks and one in five women confirm it post seven weeks. In younger women, this confirmation of a pregnancy exceeds the six week detection mark. By six weeks, many women do not endure pregnancy symptoms, and late menstrual cycles do not necessarily assure a woman is pregnant since menstrual cycles can be irregular and not consistently fall on the same day. On average, women will become aware they may be pregnant by seven weeks and should be given at least within their first trimester to have the opportunity to abort.

V. INDIANA RELIGIOUS CHOICE TO ENTIRELY BAN ABORTION

In August 2023, Indiana began its statewide abortion ban. However, the state was forced to halt the ban's initiation because a judge of Marion county stated the banning of abortions impacted the Religious Freedom Restoration Act. [197] The halt occurred when Planned Parenthood and other abortion providers filed a last-minute legal request with the Indiana Supreme Court, asking the justices to rehear their previous legal challenge.[198] The conversation with a current temporary hold will lead to conversations distinguishing the separation of church and state in regards to reproductive issues. The Supreme Court decision in *Roe v. Wade* legalized abortion nationwide, based on a woman's right to privacy under the Due Process Clause of the Fourteenth Amendment. While the decision was grounded in constitutional principles rather than religious considerations, it has been a subject of contention among various religious groups, particularly those who oppose abortion on moral or religious grounds. The overturning of *Roe v. Wade* has not necessarily had a direct impact on the separation of church and state, because the principle remains preserved in the Constitution. However, it could lead to increased efforts by religiously motivated groups and individuals to influence legislation and public policy on abortion and other reproductive rights issues.

The Indiana lawsuit argues the ban impacts Jewish religious teachings that "a fetus attains the status of a living person only at birth" which restricts religious spaces from speaking about their separate beliefs outside of what the government declares.[199] Justice Molter wrote "Abortion is an intractable issue because it brings two irreconcilable interests into conflict: a woman's interest in

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[195] Dabney P. Evans et al., *"A Daily Reminder of an Ugly Incident ... ": Analysis of Debate on Rape and Incest Exceptions in Early Abortion Ban Legislation in Six States in the Southern US*, 31 Sex Reprod Health Matters 2198283.

[196] Katie Watson & Cara Angelotta, *The Frequency of Pregnancy Recognition across the Gestational Spectrum and Its Consequences in the United States*, 54 Perspect Sex Reprod Health 32 (2022).

[197] "H.R.1308 - 103rd Congress (1993-1994): Religious Freedom Restoration Act of 1993." Congress.gov, 2019, www.congress.gov/bill/103rd-congress/house-bill/1308.

[198] Indiana's appeals court hears arguments challenging abortion ban under a state religious freedom law, AP News (2023).

[199] *See supra*, note 19.

ending a pregnancy and the State's interest in protecting the life that abortion would end," believing that the topic of abortion discusses two difficult topics, including women's and state's rights. Some argue that laws restricting abortion based primarily on religious beliefs violate the principle of separation of church and state by imposing religious views on individuals who may not share those beliefs. Others believe that lawmakers are entitled to consider their moral and religious convictions when shaping public policy, including on issues like abortion.

In summary, Indiana's approach to abortion policy and the role of religious beliefs in shaping that policy reflect broader debates about the intersection of religion and government, as well as the balance between individual rights and moral considerations in public policy.

VI. ALABAMA SUPREME COURT RULING

February 16, 2024 opened up new conversations about the future of frozen embryos and whether or not they are considered unborn children.[200] Three couples had undergone In Vitro Fertilization (IVF) at a clinic in Alabama and had successfully become pregnant and eventually would give birth to these babies. Through IVF, patients are able to produce several other embryos and choose not to use those embryos instantly, having the option of persevering them until they desire a child.

This process essentially assists the patient in not having to undergo extensive hormonal treatments and/or surgery once again. However, once these three couples had decided to wait out on having another child, a person had entered the Alabama clinic's cryo-preserved facility unit and attempted to obtain the frozen embryos. Since the embryos are preserved at such sub-freezing temperatures, the person had received an extreme burn and dropped the embryos they had wished to obtain onto the floor. Once the embryos were dropped on the floor, they had become instantly destroyed and therefore, could not be used in the future. Although the three couples whose embryos had been impacted filed lawsuits for negligence and wantonness, the main issue pertained to the hospital and the individual clinic regarding the Wrongful Death of a Minor Act.[201] This act is a written law passed by Alabama's legislative body that states "when the death of a minor child is caused by the wrongful act, omission, or negligence of any person, persons, or corporation, or the servants or agents of either, the father, or the mother as specified in 6-5-390, or, if the father and mother are both dead or if they decline to commence the action, or fail to do so, within six months from the death of the minor, the personal representative of the minor may commence an action."[202] At trial court, the case was quickly dismissed because the trial judge had concluded that embryos that exist in vitro do not count as people nor children to be associated with the Wrongful Death of a Minor Act.

The couples did not feel satisfied with the trial court decision and decided to bring the case to Alabama Supreme Court. For their own benefit, the court ruled in their favor saying the act does apply in this situation. They state "all unborn children without limitation" concluding that vitro

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[200] Sharfstein, Joshua. "The Alabama Supreme Court's Ruling on Frozen Embryos | Johns Hopkins | Bloomberg School of Public Health." *Publichealth.jhu.edu*, 27 Feb. 2024,

[201] 2022 Code of Alabama :: Title 6 - Civil Practice. :: Chapter 5 - Actions. :: Article 22 - Injury and Death of Minor. :: Section 6-5-391 - Wrongful Death of Minor., Justia Law.

[202] 2006 Alabama Code - Section 6-5-390 — Injury to minor child., Justia Law.

embryos are established children. Justice Jay Mitchell was quoted stating, "unborn children are 'children'...without exception based on development stage, physical location, or any other ancillary characteristics" after the all-Republican court decision.. The act applied here for the first time to take into consideration a minor under the Alabama statute for an embryo that exists in a lab, and has now caused facilities in Alabama to pause their IVF treatments because of the potential civil criminal liability patients and physicians could face. This issue is especially important in recent times.

From a legal perspective, many wonder how this will impact local and state levels of abortion. In Alabama, the state's abortion ban decided that abortion is a procedure that causes death of an unborn child in utero at viability, which means that the child would have to be inside a woman's body, and this does not impact IVF procedure. However, with the recent Alabama Supreme court decision, it can have the opportunity to change their perspective on how they view an embryo, although IVF exists to create pregnancy and is considered pro-life medical technology. The Alabama Supreme Court's ruling that deemed a child inside a mother's body as separate and distinct causes debate about how unused embryos are recognized. Since many embryos are not implanted, it questions whether or not these embryos that are not used have equal rights to born human beings. Since IVF is a tool to promote life, it is also a tool that provides multiple embryos that oftentimes are not used and it proposes the question about whether distribution, if any, should be made for the unused embryos.

VII. REPUBLICAN PARTY ALTERING PHRASING

Delving into the political theory behind abortion, Republicans used the topic as leverage to gain more voters for their party. During the 2013 debate, the "fetal pain bill" was a congressional bill that would make it unlawful to perform an abortion once a woman's carriage had exceeded 20 weeks.[203] The Republican party was reluctant to add the exception of rape and/or incest to the bill, because if they had not, the counter claims would infer that the Republican party reinforces the idea that they support a "War on Women,, which would eventually result in a negative public opinion regarding the party. In more recent approaches, the Republican party have framed their approach to abortion as promoting women's health and safety. The promotion for women's safety argues that requirements of ultrasounds and waiting periods ensure the well-being of individuals and do not violate any aspect of privacy for women in regards to their body. The healthcare approach faces critiques, as it is invasive of a woman's right to dictate what she does with her own body and causes a burden by limiting access to abortion with the requirements the Republican party requests of them.

Although it does not necessarily guarantee a win for their party, some Republican candidates, such as Glenn Youngkin of Virginia, have used certain strategies with voters. From the Virginia polls, upcoming Republican candidates have seen "national polls show that while more than two out of three Americans support abortion rights in the first trimester (when more than 90 percent of abortions take place), support falls to one in three in the second trimester." With certain phrasing on voting documents the Republicans have included an acceptance of a 15 week ban of

[203] "House Report 113-109 - PAIN-CAPABLE UNBORN CHILD PROTECTION ACT." *Www.govinfo.gov*, www.govinfo.gov/content/pkg/CRPT-113hrpt109/html/CRPT-113hrpt109-pt1.htm.

abortion for their current political campaigns.[204] This compromise they present for voters essentially is a loophole in their campaigns avoiding the entire removal of abortion.[205] It is not an assured gain in voters from the Democratic party, but Republican candidates have seen many swing voters leaning towards the Republican outlook with this strategy. Youngkin's 15 week approach caused more swing voters to opt into the Republican party. In addition, this has led to other Republican candidates such as John Stirrup to line up and stand by the openness to a 15 week ban. It completely overpowers the Democratic party's fight for abortion accessibility and to restore *Roe*.[206] The Democratic party moving forward in their campaigns will use strategies that promote women's autonomy and healthcare. Reproductive rights are an essential component of those running for political positions. Topics that they are planning to advocate for are policies that support comprehensive reproductive healthcare services, including contraception, prenatal care, and abortion, and highlight how restrictions proposed by Republicans could negatively impact women's health and well-being.

VIII. CONCLUSION

Courts across the nation have the opportunity to negate a woman's opportunity to have a choice over her body. It is evident that the overturn of *Roe v. Wade* will continue to have detrimental impacts and effects on women's autonomy and health. From the lack of understanding and choice of ignorance, the United States has encouraged women to resort to unjust alternatives to seek access to an abortion, thus causing many women to face criminal charges and go to such an extent that puts their own life at jeopardy in the future. The government has dismissed the country's Fourteenth Amendment in all regards to women having bodily autonomy and privacy. Because of the restrictions placed on abortions, fundamental rights have been violated for women in the United States. The decision the government made reinforces how much power they hold against women and even more so now in their reproductive choices. It is important to recognize that access to safe and legal abortions services have been limited since the decision of *Dobbs v. Jackson Women's Health Organization*, and because of this restriction, women will be forced to seek alternatives and use unsafe methods to terminate their pregnancies. Whether these alternatives include unsafe providers, traveling and exceeding distance, self-induced abortions, or obtaining medication illegally are all options women should not have to be forced to resort to in their country that does not permit any law to abridge the privileges or immunities of citizens in the 14th Amendment. The overall limitations women now face once again reinforce the idea that America does not give women the sense of dignity and equality that they deserve in their country. Abortion is a personal issue for women and their rights, but it's also political in how the government and each individual state chooses to decide the fate of women and their bodies.

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[204] Glenn Youngkin united Virginia Republicans around a 15-week abortion ban. Some have pushed to go further., NBC NEWS (2023).

[205] Gallup Inc, *Where Do Americans Stand on Abortion?*, GALLUP.COM (2023).

[206] Arlette Saenz, *Biden Campaign Puts Abortion Rights Front and Center as It Plans to Tie Trump to Abortion Bans | CNN Politics*, CNN (2024).

THE UNITED STATES JUDICIAL SYSTEM VIOLATES THE BASIC RIGHTS OF IMMIGRANTS AND ASYLUM SEEKERS

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Edited by Mariella Vela

Throughout US history, stigmatized conversations around immigrants propelled a hateful agenda. Because of years spent emphasizing anti-immigrant rhetoric, people in power have influenced societal attitudes and political actions; the rights of these individuals have not been protected. Immigration policy as it stands is a violation of human rights. Proper reform of US migratory processes is necessary to address the political inequalities immigrants face.

Specific cases make this inequality clear. In *Egbert v. Boule* (2022), Egbert, a border patrol agent, was asked to leave the premises of the owner's residential inn, but he refused pushing Boule to the ground. Boule filed a lawsuit against him, claiming that he had violated his First Amendment right to free speech and exercise and Fourth Amendment right to protection from search and seizure. The court's decision was based on the protection of national security and suggests that border patrol officers should do what is necessary to "protect" the border.

The case of *Johnson v. Arteaga-Martinez* (2022) exemplifies another situation in which law enforcement held more power than immigrants. Antonio Arteaga-Martinez came from Mexico to the United States without inspection and was then arrested. After six months, he requested a trial in which he could get released on bond. The judges decided against this and said that the government did not have to grant him a bond hearing within six months. They detained Arteaga-Martine in jail for "safety purposes," but it is evident this treatment was only to discriminate against his nationality and ethnicity. This decision affirmed that individuals detained for more than six months do not have a right to a trial, violating the Sixth Amendment, which guarantees the right to speedy and proper trial and an attorney for criminal defendants.

Not only have federal laws and law enforcement agencies kept immigrants detained even though they pose no harm, but the decision in the federal court case *Dawson v. Asher* (2022) ignores advice from medical professionals. The court ruled that they would not release migrants held in detention centers due to the conditions of the COVID-19 pandemic, and as a result of this, innocent lives were lost. Workers at the detention center were also vulnerable to the spread of COVID-19. The health of these individuals was not cared for, and this behavior persists. It is a violation of human rights according to the United Nations. The United States Government does not protect the physical or mental well-being of immigrants. Even in communities that were most at risk of death due to the pandemic, those who were of old age and individuals who were already diagnosed with prior illnesses, were not considered.

The extent to which immigrants' rights are protected under the United States Government is evidently minimal, calling for reformation of the immigration system. Immigrants are painted in a negative light through federal law and policy, resulting in the support of inhumane systems.

I. INTRODUCTION

Independence, democracy, and freedom are three values that the United States was built upon; however, the disparaging rhetoric surrounding immigrant communities and ethnic and racial minority groups demonstrates how these core concepts of individual autonomy do not apply to those who are not white or male. Individuals from marginalized backgrounds continue to face systemic discrimination that limits their access to education, representation in politics, and ability to move freely throughout society. Historic social prejudices and stereotypes woven into US culture result in segregation and social exclusion. These are a reflection of past and present legalities regarding immigrating communities; legal barriers and anti-immigration legislation continuously feed into the never-ending cycle of isolating and segregating people in the United States. The government has failed to protect the rights of these individuals, instead supporting blatant discrimination towards the immigrant community as seen in the decisions of three federal court cases: *Egbert v. Boule* (2022), *Johnson v. Arteaga-Martinez* (2022), and *Dawson v. Asher* (2022). The outcomes of these cases make it more difficult to seek justice against authority, to adhere to immigrants' rights to a fair trial, and to protect them from health disparities in immigration institutions. The existing immigration policy violates human rights, and immense reform of the system is necessary to overcome the political and legislative injustices that immigrants are subjected to. An immediate change in how people in power talk about and educate the American people on different ethnic and racial identities needs to occur. In addition, more in-depth diversity, equity, and inclusion laws must be implemented into the Constitution, and stronger regulations on businesses regarding exploitation need to be enforced.

II. HISTORY OF IMMIGRATION AND EXPLOITATION

Immigration has always been a piece of the United States' political story. Before approaching the current legal issues that outline the ongoing discrimination toward minority communities, it is important to understand the history of violations immigrants faced. Latino immigrants, mainly Mexican and Puerto Rican laborers, were recruited in the late nineteenth and early twentieth century to work in the areas of agricultural, mining, and railroad construction. Farmworkers faced harsh working conditions, low earnings, and a lack of access to fundamental labor rights such as overtime pay, health insurance, and workers' compensation. Furthermore, they were frequently excluded from labor organizational attempts and experienced retaliation when they tried to participate in the fight for workers' rights. They were not respected as individuals and were not seen as people worthy of workers' rights. The exploitation they faced throughout their time working for programs like the Braceros Program show clear violations of their human rights. The Bracero Program hired low-skilled workers to work on farms and railroads, however, their living conditions were cramped and consisted of food shortage and poor plumbing.[207]Latinos were not paid equally as others despite the long hours they worked without breaks or water. In addition, they were not allowed to retaliate against their farm heads or the less than liveable circumstances.

[207] Dani Thurber, Research Guides: A Latinx Resource Guide: Civil Rights Cases and Events in the United States: 1942: Bracero Program, https://guides.loc.gov/latinx-civil-rights/bracero-program (last visited Apr 15, 2024).

The attitudes towards Latinos cultivated during this time period of immigration were negative. White American farm workers believed immigrants were stealing their jobs. The rhetoric surrounding these job opportunities led to an influx of Latino immigrants into the United States. As Anglo-Saxons began noticing this pattern, they began to create narratives demonizing Latinos. Their rhetoric led to lawmakers making it nearly impossible to legally immigrate to the United States.[208] The restrictive system consists of countless barriers such as challenging documents, language barriers, and high financial expenses. Every human life should be granted the opportunity to safety, and when immigrants cannot come into the country legally, the government has made sure to punish them unrightfully. According to Cornell Law School, The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added more penalties for illegal immigrants, which include the abolishment of public relief for them and even banning their children from being born a citizen of the United States.[209] Seeking asylum is a human right, and the rights of immigrants are violated through the enactment of formal processes that are inaccessible.

Throughout the years, Latines have worked hard to curate a space for their rights, but even with their protesting and resistance, they remain subjected to unfair treatment and limited opportunities due to negative rhetoric surrounding their identity. The prevalence of attitudes in favor of strict immigration laws and the creation of countless barriers to citizenship or asylum display the persistence of this narrative. Currently, the United States poverty rate is 11.8 percent and 15.2 percent is made up of Hispanic families.[210] The disproportionate poverty rate demonstrates labor and social discrimination within US industries. Not only are Hispanics subjected to lower-paying jobs and unequal educational opportunities, but they also participate in the most dangerous occupations. According to the National Library of Medicine, Hispanics disproportionately work in industries with high incidents of workplace infractions, such as agriculture, construction, and services.[211] Undocumented workers, in particular, are subject to exploitation and abuse because of their unstable legal status, which employers use to underpay and mistreat them. Latine communities are also under-resourced and not as publicly supported through education and healthcare as predominantly white communities are in the United States. There is obvious discrimination and violation of their human rights that should give them equal access to health and public resources.

It is abundantly clear that Hispanics face pervasive discrimination in the workplace, a phenomenon deeply rooted in the historical racism embedded within US institutions. The opportunity to attain education and secure high-paying jobs are intrinsically linked, yet prejudices

[208] David J. Bier, Why Legal Immigration is Nearly Impossible, https://www.cato.org/policy-analysis/why-legal-immigration-nearly-impossible (last visited Mar 28, 2024).
[209] Illegal Immigration Reform and Immigration Responsibility Act, LII / Legal Information Institute, https://www.law.cornell.edu/wex/illegal_immigration_reform_and_immigration_responsibility_act (last visited Apr 5, 2024).
[210] Poverty rate Hispanic families U.S. 2022, Statistica, https://www.statista.com/statistics/205175/percentage-of-poor-hispanic-families-in-the-us/ (last visited Mar 28, 2024).
[211] PIA M. ORRENIUS & MADELINE ZAVODNY, Do Immigrants Work In Riskier Jobs?, 46 Demography 535 (2009), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2831347/ (last visited Mar 27, 2024).

against minority communities severely curtail these opportunities.[212] Despite progress in civil rights legislation, systemic biases persist, perpetuating disparities in access to education, employment, and economic mobility for Hispanic individuals. Moreover, legal precedents set by the Supreme Court often reinforce this narrative of inferiority, further entrenching discriminatory practices. These discriminatory attitudes are compounded by immigration policies that routinely violate the rights of immigrants, subjecting them to coercive and exclusionary treatment.

A. Egbert v. Boule: Limiting Immigrants' Rights

Egbert v. Boule (2022) is a lawsuit that parallels a landmark case that took place in 1971, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics.*[213] This federal court case was the first to recognize a citizen's constitutional rights even when they are in contact with a federal agent. The circumstances Robert Boule faced held close similarities; Boule, the proprietor of a residential inn, sued a U.S Customs and Border Protection agent, Erik Egbert, for violating his constitutional right to the Fourth Amendment. The incident occurred when Egbert entered Boule's property without a warrant or authorization to investigate a guest sleeping on his property. When Boule intervened and asked Egbert to leave, the agent threw him to the ground, subjecting him to serious injuries. Following the altercation, Boule asserted his First Amendment rights by filing a complaint and administrative claim against Egbert's supervisors. In response, Egbert retaliated by initiating multiple investigations, including tax audits and a state investigation into Boule's vanity license plate, none of which found any wrongdoing on Boule's part.

The case before the Supreme Court presents both specific and broader implications. While the facts revolve around one agent's misconduct towards an individual, the arguments raised by Egbert have far-reaching consequences. Egbert contended that the explanation should never extend to any new context, which would effectively eliminate access to remedies for plaintiffs whose claims differ even slightly from the original Bivens case. Additionally, Egbert asserted that all Customs and Border Patrol officers (CBP), including the nation's largest law enforcement agency, should be granted categorical immunity from Bivens's claims. This argument shielded agents from accountability for misconduct and abuse, undermining the judicial system's integrity. Contrary to Egbert's assertions, the American Civil Liberties Union (ACLU) argued in an amicus or friend-of-the-court brief, filed alongside the Cato Institute and other partner organizations, that money damages remedies against federal agents should remain available in situations like these.[214] The Supreme Court has historically affirmed the availability of such remedies in cases involving federal agents' violation of constitutional rights. However, the circumstances of this case led to a change in perspective for the judiciary realm. The Supreme Court came to the conclusion that "A

[212] What is a relationship between education and employment?, https://munshisinghcollege.org.in/what-is-a-relationship-between-education-and-employment (last visited Apr 15, 2024).
[213] Egbert v. Boule, 596 U.S. (2022), Justicia Law, https://supreme.justia.com/cases/federal/us/596/21-147/ (last visited Mar 27, 2024).
[214] ACLU and NWIRP Statement on Court Refusal to Release People at High-Risk of COVID-19, American Civil Liberties Union, https://www.aclu.org/press-releases/aclu-and-nwirp-statement-court-refusal-release-people-high-risk-covid-19 (last visited Mar 27, 2024).

plaintiff (did) not have a right to sue Border Patrol officers engaged in immigration-related functions for First Amendment retaliation claims or for alleged excessive force."

This judgment contradicts previous court debates and reflects a new bureaucratic perspective. By bestowing greater authority upon government agents and diminishing their accountability, it represents a direct assault on fundamental US principles of freedom and democracy because it subjects citizens and immigrants to abuse. Consequently, this court ruling has profoundly shaped public perceptions of immigration, impeding citizens' efforts to hold Border Patrol personnel accountable for respecting human rights. The unfettered power and perceived superiority granted to border agents enable them to justify any actions they deem necessary in the name of "border security." This narrative perpetuates the belief that immigrants pose an excessive threat, rationalizing the use of immense force and disregard for constitutional rights. As a result, systemic alienation inflicts harm upon individuals and corrodes societal cohesion, exacerbating existing divisions and injustices. The fear-mongering rhetoric and symbolic legal precedents further marginalize immigrants, fostering an environment where inhumane treatment is encouraged due to their government-sanctioned alienation. Not only are immigrants or people targeted by governmental agents not allowed to defend themselves if their rights are violated, but they are also not able to bring their cases against the government, in the name of the US Constitution.

Furthermore, the verdict in *Egbert* highlights the loss of accountability and control within law enforcement agencies, particularly CBP, which is heavily involved in immigration enforcement. By allowing CBP agents categorical immunity from Bivens's claims, the Supreme Court decision shields these agents from consequences when misconduct and abuse occur, worsening the already tense relationship between immigrant communities and law enforcement. This lack of accountability not only weakens public trust in the judicial system but also fosters an environment of impunity inside CBP and other federal agencies charged with implementing immigration laws. Immigrant communities may suffer additional dangers and impediments to seeking remedies for injustices committed by federal authorities. Furthermore, the precedent created by this judgment may encourage other law enforcement agencies to seek similar immunity from legal challenges, eroding constitutional protections and limiting remedies for individuals whose rights have been infringed by government agents.

B. Johnson v. Arteaga-Martinez: Denial of Due Process Rights

The case of *Johnson v. Arteaga-Martinez* (2022) concluded that the government is "not required to provide non-citizens detained for six months with bond hearings in which the government bears the burden of proving, by clear and convincing evidence, that the noncitizen poses a flight risk or a danger to the community."[215] In other words, regardless of how long proceedings take to come to a decision on deportation for an immigrant, individuals who are detained will not be given the right to leave on bond. Antonio Arteaga-Martinez, a native citizen of Mexico who did not go through inspection, requested a bond hearing six months after the start of his detention. It is particularly dangerous to be detained for a prolonged amount of time in ICE detention centers because of their unsanitary, neglected, and under-resourced conditions. Around 70 individuals per year become

[215] Johnson v. Arteaga-Martinez, 596 U.S. ___ (2022), Justicia Law, https://supreme.justia.com/cases/federal/us/596/19-896/ (last visited Mar 27, 2024).

extremely ill in the hands of US immigrant detention centers, and there is a lack of basic necessities and healthcare to care for these sick individuals or prevent the disease from spreading amongst the thousands of detainees. The decision in *Johnson* raises the question of broader human rights concerning the conditions and treatment of people detained in ICE facilities. Prolonged imprisonment in these facilities, without access to bail hearings or release, can have serious physical and psychological implications for detainees. Reports of filthy conditions, negligence, and understaffed institutions highlight the critical need for reform in the immigration detention system. The rejection of bond hearings exacerbates prisoners' vulnerability, especially those with underlying health concerns or who are at a higher risk of injury in detention.

The government's notion to assume that someone poses a danger to the United States without giving them the opportunity to provide proper evidence to release them perpetuates a cycle of racial profiling by governmental agents, even when individuals pose no harm to society. This behavior is justified under the pretext of individuals not having gone through inspection. Innocent people are unjustly detained under the guise of "safety purposes," revealing a clear discriminatory bias against their ethnicity. The recent decision further solidifies the notion that individuals detained for over six months are denied their right to a fair trial and the opportunity to regain their freedom. This action constitutes a violation of the Sixth Amendment, which "guarantees the rights of criminal defendants," including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are."[216] Moreover, the denial of bond hearings and the prolonged detention of individuals without due process not only violate their constitutional rights but also perpetuate a system of injustice and inequality within the immigration enforcement framework. By denying individuals the opportunity to challenge their detention and present evidence in a fair trial, the government undermines the principles of justice and equity that are fundamental to a democratic society. It is imperative that America recognizes the inherent human rights of all individuals, regardless of their immigration status, and work towards reforming policies that perpetuate systemic injustices and disregard fundamental constitutional protections.

Maintaining indefinite detention without bond hearings contributes to a dehumanizing image of immigrants and reinforces racial discrimination. The government feeds negative preconceptions and prejudices against immigrants by detaining people for extended periods of time without sufficient evidence or due process, many of whom come from marginalized ethnic backgrounds. The misery of incarcerated individuals is worsened by the cruel circumstances in detention facilities, which include overcrowding, poor hygiene, and insufficient medical attention. In addition to violating fundamental human rights, this treatment dehumanizes and degrades those incarcerated, making them seem like less than equal members of society. Furthermore, policies that put detention and deportation ahead of humane treatment and due process contribute to the negative public perception of immigrants by portraying them as dangerous threats to national security. Because of this, people frequently view immigrants with mistrust and anxiety, which fuels xenophobia and animosity toward immigrant communities. The unwavering support for Donald Trump's campaign

[216] Speedy trial, LII/Legal Information Institute, https://www.law.cornell.edu/wex/speedy_trial (last visited Mar 27, 2024).

to build a wall in 2016, and the discourse surrounding 'immigrants stealing jobs from American people,' exemplify the impact of this treatment. These attitudes encourage politicians to rally voters through fear-mongering, and that is why it is critical to uphold the rights and human dignity of every person, regardless of immigration status. Laws that give immigrants human rights, fairness, and compassion should be a top priority when it comes to the political arena.

C. Dawson v. Asher: Neglecting Immigrants' Health and Safety

Federal laws not only mandate the detention of immigrants, they disregard the advice of medical professionals and exhibit a lack of empathy towards the vulnerability of immigrants in detention as seen in *Dawson v. Asher* (2022).[217] Despite public health experts warning the government about the critical need to release vulnerable individuals in the face of the COVID-19 pandemic, the Supreme Court ruled against their release, leading to the tragic loss of innocent lives in 2020. The failure to implement reforms or changes to ICE procedures left both immigrants and detention center workers vulnerable to the spread of the virus. This disregard for human rights highlights a systemic failure to prioritize the health and well-being of these individuals. In *Dawson v. Asher*, the court deemed the potential harm from COVID-19 as "insufficient to warrant extraordinary relief," neglecting the heightened risks faced by communities most susceptible to the virus, including the elderly and those with pre-existing medical conditions. This approach underscores a fundamental failure to consider the well-being of vulnerable populations, perpetuating injustice and neglect within the immigration enforcement system. Instead of implementing more efficient resources to support the medical needs of detained individuals or releasing them to seek access to health care, they were forced to endure inhumane conditions. The treatment that the immigrant populations received from the federal government is a reflection of the attitude of its leaders. The conversations that surround immigration do not not shine light on the fact that detainees and non-citizen individuals are people too.

The systemic issue of discriminatory immigration policies and inhumane institutions in the United States represents a stark departure from the country's founding values of independence, democracy, and freedom. Despite these principles, minority ethnic and racial groups continue to face systemic prejudice embedded in American culture, which is exacerbated by stricter immigration laws and discrimination against asylum seekers and undocumented immigrants. Federal laws and policies reinforce the negative portrayal of immigrants, exacerbating social exclusion and limiting their rights. The recent court cases described in this paper highlight the horrendous violations of immigrants' constitutional rights and the government's failure to protect them from abuse and neglect. The rulings in these cases not only undermine accountability for government agents but also reinforce racial profiling and perpetuate a cycle of injustice and inequality in the immigration enforcement system. Denial of bond hearings and prolonged detention without due process violate fundamental human rights and undermine the principles of justice and equity that are critical to a democratic society. Furthermore, the disregard for detainees' health and well-being, as demonstrated in *Dawson* , highlights a social and legislative failure to view immigrants as people. It is critical to advocate for comprehensive immigration reform and policy changes that protect the rights and dignity of all

[217] Dawson v. Asher, American Civil Liberties Union, https://www.aclu.org/cases/dawson-v-asher (last visited Mar 27, 2024).

people, regardless of immigration status, and promote a more just and compassionate society. In order to achieve a more considerate attitude toward immigration, there has to be a change in how discourse is handled when educating people about immigrants.

III. THE SYSTEMIC ISSUE: DISCRIMINATORY IMMIGRATION POLICIES AND INHUMAN SYSTEMS

A fundamental shift in societal attitudes and political discourse toward immigrants is necessary to address the systemic flaws in the ICE detention and immigration processes.. It starts with recognizing and acknowledging that immigrants are human beings worthy of dignity and compassion. This necessitates a concerted effort to educate the public about immigrants' inherent humanity, dispelling negative stereotypes and inspiring empathy. Concurrently, politicians must revise their immigration rhetoric, shifting away from divisive language and toward a discourse that prioritizes human rights and dignity. To accomplish long-term change, individuals must engage in meaningful discussion and activism, advocating for immigrant rights and challenging oppressive systems that perpetuate injustice. Grassroots movements, community organizing, and cross-community cooperation are effective strategies to bring about change and hold those in power accountable. Furthermore, the government must take concrete actions to improve the deplorable conditions in detention facilities. This includes allocating more resources to ensure detainees receive adequate medical care, sanitation, and access to bond hearings. Creating humane conditions within these facilities is critical, as is implementing robust oversight mechanisms to ensure accountability and adherence to established standards of care.

It is also necessary that these conversations pipeline into policy change. For example, the Immigration and Nationality Act (INA) "prohibits discrimination against protected individuals on the basis of national origin, or citizenship status."[218] However, it lacks depth and does not take into account that discrimination happens regardless due to the systemic racism embedded into United States' institutions. Immigrants who come into the United States with a low socioeconomic status are often lacking substantial resources. Because of their identity, they are also most likely to be racially profiled and become victims of prejudice. A specific law that should be implemented into the US immigration system should be one that gives immigrants access to education, resources to nurture themselves, and language help.

In addition to changing cultural attitudes and improving conditions in detention institutions, enacting diversity, equity, and inclusion legislation is critical to ensuring that immigrants are treated equally under the law. These rules would protect immigrants from discrimination and guarantee they had equal access to opportunities and resources. Policymakers can assist in breaking down institutional barriers that perpetuate inequality and marginalization in immigrant communities by establishing and implementing legislation that encourages diversity and inclusion. This includes efforts to reduce inequities in education, employment, healthcare, and housing, as well as activities to encourage cultural sensitivity and resist all sorts of prejudice. Prioritizing diversity, justice, and inclusion in policy-making and governance allows society to achieve a more just and equitable future for all persons.

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[218] Immigration, DOL, http://www.dol.gov/general/topic/discrimination/immdisc (last visited Mar 28, 2024).

IV. CONCLUSION

The history of immigration and the exploitation that has come with must end. For that reason, the systemic issue of discriminatory immigration policies and inhumane processes in the United States requires immediate attention and action. Despite the United States foundation on the principles of independence, democracy, and freedom, minority ethnic and racial groups confront persistent prejudice and discrimination, which are worsened by strict immigration restrictions and policies. Recent court cases, such as *Egbert v. Boule, Johnson v. Arteaga-Martinez,* and *Dawson v. Asher*, highlight the serious abuses of immigrants' constitutional rights and the government's failure to protect them from abuse and neglect. To rectify these injustices, comprehensive immigration reform is required, as well as a determined effort to transform the public perception of immigrants and educate society about their humanity. Politicians must adjust their language to highlight human rights and dignity, while crafting policy to improve circumstances in detention institutions, including dedicating more resources, providing better medical care, and assuring access to bond hearings. Americans must support justice, equity, and equality for all people, regardless of immigration status, and strive to create a more caring and inclusive society. By recognizing immigrants' intrinsic humanity and advocating for their rights, the US can start to deconstruct the structural discrimination that plagues the immigration system and work toward a brighter, more equal future for all.

GUN CONTROL AND ITS LASTING IMPACT ON DOMESTIC VIOLENCE

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Domestic violence impacts individuals in the United States regardless of race, age, sexual orientation, religion, sex, or gender identity. It is intricately linked to gun violence, affecting communities across the country and often escalating the violence committed. Stopping domestic abuse perpetrators from accessing guns would better protect survivors.

Case precedent highlights the connection between gun violence and domestic abuse. *United States v. Hayes* (2009) marks a pivotal point regarding gun control and domestic violence, establishing a legal decision that serves as a foundation for other similar cases, including *United States v. Castleman* (2014), and *Voisine v. United States* (2016). The case involved the court's interpretation of the Lautenberg Amendment, a legislative response addressing the risk posed by allowing offenders convicted of misdemeanor crimes of domestic violence to possess firearms. The *Hayes* case evaluates the question: whether the amendment exclusively applied to offenses with explicit elements of a domestic relationship between the offender and survivor.

Hayes and the cases that followed emphasized the importance of implementing gun safety measures for domestic violence survivors, showing the need for broader scope gun control in America. The outcomes of these cases serve as protections for domestic violence survivors, and as a legal framework for legislation and cases involving domestic abuse and gun ownership. With the rise of more recent cases like *Rahimi v. United States* (2023), the legal tie between domestic violence and gun control is more important than ever. The pending case will decide the constitutionality of a federal law prohibiting possession of firearms from those with domestic violence protection orders. It is clear that the law in *Rahimi* is constitutional, falling in line with the legal system's protection orders and shielding survivors against escalating behavior. The enormous weight of this pending case sheds light on the profound impact of gun control laws on survivors of domestic violence and the importance of court rulings in providing safeguards for them.

I. INTRODUCTION

On August 2, 2017, a judge granted 24-year-old Ciera Jackson a year-long restraining order against her abusive ex-boyfriend Victor Whittier.[219] Whittier sent her threatening texts and stalked her outside her home. The order prohibited Whittier from being within 2,500 feet of Jackson and established zero contact between them. Despite these legal safeguards, just over a week later, Jackson was shot four times through her apartment window. Jackson died, and Whittier was convicted of first-degree murder. Jackson's death was foreseeable and avoidable.[220] Although she took

[219] *See* Katie Zezima, et al., *Domestic killings: Brutal and foreseeable*, the Washington Post, (2018), https://www.washingtonpost.com/graphics/2018/investigations/domestic-violence-murders/.
[220] *See* State v. Whittier, 591 S.W.3d 19 (Mo. Ct. App. 2019).

precautionary measures to protect herself and there were telltale signs of future aggression by the perpetrator, Jackson was murdered.

Not unlike Jackson, Deborah Sisco and her daughter, Marie Varsos, were also shot dead as a result of systemic failures.[221] Despite a warrant out for Shaun Varsos' arrest, the sheriff's department allowed him to slip through the cracks. Critical steps, like holding Shaun in jail for 12 hours and notifying Marie of his release, were neglected and ultimately resulted in the murder of Marie and her mother.

There are countless stories like these: instances where firearms and domestic violence converge, leading to trauma, injury, and, in the worst cases, death. These cases illustrate the deadly intersection of domestic violence and firearms and the urgent need to implement and sustain legal safeguards. Domestic violence and gun violence are deeply interconnected in the United States, affecting numerous women, families, and communities across the country. For the millions of Americans impacted by domestic violence, a perpetrator's access to firearms can mean the difference between life and death.[222] In domestic violence situations, firearms are used to escalate already dangerous situations even further. Giffords Law Center stated that an abusive partner having access to a firearm increases a victim's likelihood of dying by five times.[223] Even when a firearm is not used to kill, its presence can serve as coercion, threats, or a source of psychological trauma for abusers to use against the victims. Though individuals across demographics can be impacted, women and members of the LGBTQ+ community, specifically Black, Native, and people with disabilities, are disproportionately impacted.[224]

In many of the cases that lead to homicide, law enforcement has already become involved. According to a study conducted by Vijetha Koppa and Jill Theresa Messing, in the three years leading up to an intimate partner homicide the female victim contacted law enforcement regarding a domestic violence situation 91 percent of the time.[225] Jackon and Varsos' stories exemplify this statistic, both instances ended in homicide despite the victims informing law enforcement. These statistics and stories have a common call to action: disarming domestic violence. The law can contribute to systemic failures or act as a vital lifeline for victims of domestic violence. Landmark laws and cases regarding the issue of firearms and domestic violence have shaped the lives of survivors. The first law to limit firearm possession was the Gun Control Act of 1968, preventing anyone convicted of a felony from possessing a firearm.[226] While the Gun Control Act was a catalyst, it fell short of protecting survivors of domestic violence since felony convictions were rare.

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[221] *See* Erica Francis, *Court documents give insight into couple's troubled past following double murder suicide*, WKRN.com, (2021), https://www.wkrn.com/news/court-documents-give-insight-into-couples-troubled-past-following-double-murder-suicide/.

[222] *See Domestic Violence & Firearms*, Giffords Law Center (2023), https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/.

[223] *See* Tobin-Tyler, Elizabeth, *Intimate Partner Violence, Firearm Injuries and Homicides: A Health Justice Approach to Two* (2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10209983/#r15.

[224] *See* Tobin-Tyler, *supra* note 5.

[225] *See* Vijetha Koppa, et al., *Can Justice System Interventions Prevent Intimate Partner Homicide? An Analysis of Rates of Help Seeking Prior to Fatality* (2019), https://pubmed.ncbi.nlm.nih.gov/31161856/.

[226] *See* Gun Control Act of 1968, § 101, Pub. L. No. 90-618, 82 Stat. 1213.

Decades later, in 1994, the passage of the Violence Against Women Act (VAWA) amended its predecessor act to prohibit possession of firearms by spouses or ex-spouses subject to a domestic violence protective order. Unlike the Gun Control Act, this amendment directly addressed and targeted the threat of domestic violence perpetrators.[227] Soon after, in 1996, the Lautenberg Amendment was added to VAWA's firearm restrictions, extending the restrictions to misdemeanor crimes of domestic violence offenders who are or were married, had children, or lived with the victim.[228] These legislative milestones laid the groundwork for addressing the lethal combination of domestic violence and firearms, but their effectiveness relies on consistent enforcement and ongoing refinement to close loopholes and adapt to evolving changes.

On the judicial side of the federal government, legal cases such as *United States v. Hayes* (2009), *United States v. Castleman* (2014), and *Voisine v. United States* (2016) have served as landmark cases, addressing domestic violence issues and implementing protective measures to ensure the safety of survivors. The amendments and cases mentioned above serve as a vital piece of federal recognition that addresses the link between firearms and domestic violence and a reminder that the federal government and legal system can and should step in to prevent tragic cases of domestic violence.

A. United States v. Hayes

In 1996, Congress passed the Lautenberg Amendment, extending the federal Gun Control Act prohibition on convicted felons possessing firearms to include people convicted of a misdemeanor crime of domestic violence.[229] Designed to prevent the use of firearms in domestic violence situations, the Lautenberg Amendment serves as a significant barrier to domestic violence offenses turning lethal.

The case of *United States v. Hayes* (2009) follows an issue of interpretation of the Lautenberg Amendment.[230] In 1994, Randy Hayes was convicted of a misdemeanor battery offense against his wife. Under the Lautenberg Amendment, he qualified as a person subject to the prohibition of firearms. Then, in 2004, law enforcement discovered a Winchester rifle in Hayes' home after responding to a domestic violence call on the premises. Hayes was arrested for possessing a firearm despite being convicted of a misdemeanor crime of domestic violence back in 1994. Hayes argued that his 1994 conviction for misdemeanor battery did not qualify as a conviction for a misdemeanor crime of violence under the statute. He stated that the law he violated in 1994 did not require a domestic relationship between the victim and offender. But his defense was rejected by the US District Court for the Northern District of West Virginia. The case was then appealed to the US Court of Appeals for the Fourth Circuit, which reversed the District Court's ruling. The court agreed with Hayes, holding that the legislative intent of the amendment suggested that the original offense needed to involve a "domestic" relationship between the victim and offender. Noting that this requirement was not met in Hayes' case, the Fourth Circuit reversed his conviction. This divergence in interpretation threatened to undermine the Lautenberg Amendment's purpose and effectiveness in preventing domestic abusers from accessing firearms.

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[227] *See* Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902.
[228] *See* Lautenberg Amendment, 18 U.S.C. § 922(g)(9).
[229] *See supra* note 10.
[230] *See United States v. Hayes*, 555 U.S. 415 (2009).

Appealed to the Supreme Court of the United States (SCOTUS), this case addressed the question of whether or not the Lautenberg Amendment exclusively applied to offenses with an explicit domestic relationship between the offender and victim. The Supreme Court ultimately decided to reverse the Fourth Circuit's ruling, holding that the Lautenberg Amendment applied to offense statutes that both included and didn't include the existence of a domestic relationship as an element of the crime. This ruling broadened the applicable law, clarifying which situations qualified as "misdemeanor crime of domestic violence."

*Haye*s had the potential to reverse the protective measures established by the Lautenberg Amendment and cause serious harm to victims of domestic violence. The repercussions of reversing one of the only statutes that addressed the significant link between domestic violence offenses and firearms would have been deadly. By analyzing the nuances of the Lautenberg Amendment, the Supreme Court's decision carries extended implications for the safety of individuals vulnerable to domestic violence. Not only did the outcome of this case serve as a pivotal protection for victims of domestic violence, but it also emphasizes a legal framework for legislation and cases that involve the intersection between domestic violence and gun control. *United States v. Hayes* reinforced the Lautenberg Amendment's safeguards for domestic violence victims, preventing lethality in at least some cases. The Supreme Court's decision in *Hayes* demonstrated the crucial role of the judiciary in ensuring that legislative intent is upheld and that laws designed to protect victims of domestic violence are applied consistently and effectively.

B. Addressing Harmful Gaps: Restricting Firearm Access from Abusers

United States v. Hayes left a significant impact on victims and perpetrators of domestic violence. It also established a precedent for future cases that revolved around a similar issue. One such case, *United States v. Castleman* (2014), concerned the issue of interpretation of the phrase "use…of physical force."[231] In 2001, James Alvin Castleman was convicted of a misdemeanor domestic assault under a Tennessee statute for intentionally or knowingly causing bodily harm to the mother of the defendant's child.[232] Seven years later, in 2008, he was charged with possession of firearms under the Lautenberg Amendment. Just like Hayes, Castleman sought to dismiss his indictment under 18 U.S.C. § 922(g)(9). He claimed that because his crime lacked the "use…of physical force," the Tennessee offense did not qualify as a misdemeanor crime of domestic violence.

The Tennessee statute that the court convicted the defendant of in 2001 prohibited an assault against a family or household member. The statute defined assault through a three step process: (1) intentionally, knowingly, or recklessly causing bodily injury to another, (2) intentionally or knowingly causing another to reasonably fear imminent bodily injury, or (3) intentionally or knowingly causing physical contact with someone else in a way that a reasonable person would regard as extremely offensive or provocative.[233] The charges were dismissed by the District Court, and the US Court of Appeals for the Sixth Circuit affirmed that decision. Both courts argued that Castleman's offense and the Tennessee law did not qualify as a misdemeanor crime of domestic violence as described in the Lautenberg Amendment.

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[231] *See* United States v. Castleman, 134 S. Ct. 1405, 1414 n.8 (2014).
[232] *See* Tenn. Code Ann. § 39-13-111(b).
[233] *See supra* note 14.

The question, then, brought to the US Supreme Court was whether or not Castleman's conviction under Tennessee law constituted a domestic violence misdemeanor under 18 U.S.C. § 922(g)(9). Specifically, the Supreme Court sought to clarify the category of violence. Recognizing that Congress passed the Lautenberg Amendment to close a "dangerous loophole" that allowed perpetrators of domestic violence, convicted of misdemeanors, to possess firearms, the Court looked at Congress' intention behind the amendment to help decide the case. The Court acknowledged that the term "violence" involves ambiguity and that domestic violence can include acts that are inconsistent with some people's idea of "violence." Where someone might believe the act of shoving falls under the umbrella of violence, another might disagree. Like Tennessee, many other states had established a high standard for what counted as a misdemeanor crime of domestic violence, categorizing some actions as "offensive touching." Realizing that these standards of these state laws limit the applicability of the Lautenberg Amendment, the Court determined that Congress could not have intended the amendment to be so ineffective. The Court explained that causing any bodily injury necessarily involves physical force. They found that the Tennessee law requiring intentional and knowing causation of bodily injury qualified as enough to prohibit firearms for the perpetrator. The Court unanimously affirmed Castleman's initial conviction.

The Castleman holding is a landmark opinion. Not only did the Supreme Court understand the nuances of domestic violence, their decision was unanimous and unwavering. Though the case involves the interpretation of statutes, it exemplifies the enduring struggle to properly define and contextualize domestic violence occurrences.[234] Castleman serves as another challenge against the Lautenberg Amendment that failed. The Court's decision sent a clear message that domestic violence, in all forms, should be taken seriously and that abusers should not be allowed to exploit legal technicalities to maintain access to firearms.

Furthemore, the case of *Voisine v. United States* (2016) serves as yet another case that centers around a dangerous loophole left unaddressed in the Lautenberg Amendment.[235] The petitioner, Stephen Voisine, was convicted of a misdemeanor under a Maine law; he assaulted his girlfriend in 2003 and 2005. The Maine statute states that a person who knowingly, intentionally, or recklessly causes bodily injury or offensive physical contact to another person is guilty of assault. It outlines that it is illegal for a person convicted of a misdemeanor crime of domestic assault to possess a gun. After being convicted, the police arrested Voisine for killing a bald eagle in 2009, and upon investigation, the police discovered that the petitioner had a rifle in his possession. Voisine was arrested and charged with violating the statute. The court convicted another petitioner in this case, William Armstrong, in Maine for assaulting his wife. A couple of years later, police discovered six guns in Armstrong's home during a narcotics investigation. Armstrong was charged under the same statute as Voisine for unlawfully possessing firearms.

Under the Maine statute, but not the federal statute, recklessness is sufficient for a conviction of a misdemeanor domestic violence.[236] Realizing this, both petitioners argued that they

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[234] *See* Lynn Rosenthal, *Supreme Court Decision in U.S. v. Castleman Will Save Women's Lives,* (2014), https://obamawhitehouse.archives.gov/blog/2014/03/28/supreme-court-decision-us-v-castleman-will-save-womens-lives#:~:text=Summary%3A,that%20will%20save%20women%27s%20lives.

[235] *See* Voisine v. United States, 579 U.S. 686 (2016).

[236] *See* Title 17-A. Maine Criminal Code § 207. Assault.

should not be subject to the Lautenberg Amendment's prohibition because their prior convictions could have been based on reckless conduct instead of intentional or knowing conduct. These claims were struck down by the District Court, so the petitioners appealed the case. The Court of Appeals for the First Circuit affirmed the District Court's ruling, and Voisine and Armstrong petitioned for a writ of certiorari from the Supreme Court. SCOTUS remanded the case due to the *United States v. Castleman* decision. The appellate court maintained its initial ruling, and the case moved back up to the Supreme Court. The issue brought forth to the Supreme Court was whether or not a misdemeanor crime that requires only a showing of recklessness qualifies as a misdemeanor crime of domestic violence under the federal statute 18 U.S.C. § 922(g)(9).

The Court established that under § 922(g)(9), Congress outlined that a misdemeanor crime of domestic violence involves the "use…of physical force." From this fact, the Court then reasoned that reckless assaults fulfilled that condition to the same extent as knowing and intentional assaults addressed in *United States v. Castleman*. Similar to their reasoning in *Castleman*, the Court addressed Congress' intent behind the federal statute and looked at the gap between the federal statute and state laws. Because the majority of state laws regarding misdemeanor domestic violence include recklessness, prohibiting crimes committed under recklessness would severely undermine the federal statute. Implying that Congress did not intend for the amendment to include such a wide gap between the federal and state levels, the Court ruled that the federal restriction on possessing firearms extends to individuals with a previous misdemeanor conviction related to the "use...of physical force" in the context of domestic violence, even if the actions were committed recklessly.

The Court's ruling in *Voisine v. United States* followed the rationale and reasoning set by its earlier precedents. By grouping reckless misdemeanors with knowing and intentional ones, the Court reinforced the strength of the federal statute as an effective tool to separate domestic violence and firearm usage. Domestic violence is known to escalate over time: the abuser gradually exerts more and more power over the victim.[237] This escalation often starts subtly, like verbal abuses, and can end in death, especially with the involvement of firearms. Knowing these facts, this ruling serves as a vital lifeline for restricting firearms use from abusers. By restricting firearm use early on, even in cases pertaining to reckless harm, this ruling serves as a barrier for perpetrators. The *Voisine* decision recognized the importance of early intervention in preventing the escalation of domestic violence and the critical role that firearm restrictions play in protecting victims and survivors.

Despite marking a huge process for survivors of domestic violence, the Lautenberg Amendment and the cases discussed above still left victims vulnerable to gun violence. The amendment excludes dating partners by requiring the perpetrator to be the spouse or ex-spouse, parent, current or former cohabitant, or share a child with the victim.[238] This is known as the "boyfriend loophole," a critical gap in the Lautenberg Amendment that allows non-live-in partners convicted of stalking and abuse to own and buy firearms. Despite its name, this loophole can apply to both genders. Because the statute omits non-live-in partners, individuals convicted of a violent

[237] *See* Amanda Kippert, *Abuse Almost Always Escalates*, (2020), https://www.domesticshelters.org/articles/identifying-abuse/abuse-almost-always-escalates.

[238] *See* Abigail Higgins, *The gun deal could close the 'boyfriend loophole.' Here's what it is,* the Washington Post, (2022), https://www.washingtonpost.com/nation/2022/06/14/boyfriend-loophole-bipartisan-gun-deal/.

assault that have never been married, had children, or lived with the victim are not prohibited from purchasing or owning firearms. This narrow interpretation of "intimate partner" perpetuates this loophole's existence. This loophole has left countless victims of dating violence vulnerable to the combination of domestic violence and firearms, emphasizing an urgent need for legislative action to provide comprehensive protection and close this gap.

Efforts to address the "boyfriend loophole" have not resulted in large-scale changes. In 2015, Michigan Congresswoman Debbie Dingell introduced the Zero Tolerance for Domestic Abusers Act. This act proposed expanding the definition of "intimate partner" to include partners present in the "boyfriend loophole" and widening the offenses that qualified under the "misdemeanor crime of domestic violence."[239] Unfortunately, this bill died within two months of its introduction, allowing the loophole to persist on a federal level. It wasn't until 2022 that the Bipartisan Safer Communities Act passed and addressed the "boyfriend loophole."[240] Extending the definition of a misdemeanor crime of domestic violence to include abusers who have or have had a current or recent relationship of a romantic or intimate nature with the victim, this Act filled in the gaping hole left by the Lautenberg Amendment.

United States v. Hayes, United States v. Castleman, *Voisine v. United States,* and the Bipartisan Safer Communities Act display the issues that arose as a result of the cracks left open in the Lautenberg Amendment. These examples emphasize that judiciary rulings and legislation provide a solid foundation for addressing the convergence of domestic violence and firearm access. The decisions of these court cases consistently provide a precedent that favors victims and survivors of domestic violence, which serves as an extremely valuable component for addressing the persisting issue.

II. THE FUTURE IS UNCERTAIN

Despite these cases providing important progress for survivors of domestic violence, a current case has the potential to undo those advancements. *United States v. Rahimi* (2023) will decide if an abuser who has a restraining order or protection order against them can legally keep their firearms.[241] The statute at issue, 18 U.S.C. § 922(g)(8), deprives an abuser of a domestic violence restraining order or protection order with the right to bear arms. Persisting for nearly 30 years, the law protected many domestic violence victims and survivors from firearm violence from their abusers.[242]

This case follows Zachery Rahimi, an individual involved in several shootings in Arlington, Texas, between December 2020 and January 2021. Under a civil protective order for alleged assault against his ex-girlfriend, the law prohibited Rahimi from possessing firearms. After searching his home, the police retrieved two guns, and indicted Rahimi for violating 18 U.S.C. § 922(g)(8).

The Fifth Circuit Court of Appeals heard the *Rahimi* case and overturned the federal statute in the states it holds jurisdiction over: Texas, Louisiana, and Mississippi. The Court held that even individuals subject to domestic violence restraining orders should have the right to bear arms. They argued that violators had this right on the grounds of a recent decision for *New York State Rifle &*

[239] *See* Zero Tolerance for Domestic Abusers Act, H.R. 3207, 115th Cong. (2017).
[240] *See* Bipartisan Safer Communities Act, P.L. 117-159, 117th Cong. (2022).
[241] *See* United States v. Rahimi, 22-915 (2023).
[242] *See supra* note 10.

Pistol Association, Inc. v. Bruen (2022).[243] In *Bruen*, the Supreme Court struck down a New York law that required individuals to demonstrate a special need for self-protection to obtain a permit to carry a concealed firearm outside the home. The Court held that the Second Amendment protects an individual's right to carry a handgun for self-defense outside the home and that the New York law violated this right by imposing a subjective "proper cause" requirement.

The *Bruen* decision has far-reaching implications for other firearm regulations, including those related to domestic violence.[244] The Court's ruling in *Bruen* established a new standard for evaluating the constitutionality of gun laws, requiring them to be consistent with the nation's historical tradition of firearm regulation. This means that courts must now assess whether modern gun laws have a historical analog rather than relying on a means-end scrutiny analysis that evaluates the government's justification for conduct that harms individuals. This form of scrutiny examines the purpose of a specific government conduct and the methods used to further those purposes. This perspective hurts people experiencing threats that the government has only recently acknowledged and allows for the continued oppression of marginalized groups that have not had historical legal protections.[245] This case has the potential to significantly impact the outcome of *United States v. Rahimi* and the future of firearm restrictions related to domestic violence.

The application of this new standard in *United States v. Rahimi* could potentially lead to the invalidation of 18 U.S.C. § 922(g)(8), the federal law that prohibits individuals subject to domestic violence restraining orders from possessing firearms. The Fifth Circuit Court of Appeals, in its ruling on *Rahimi*, interpreted *Bruen* as requiring a historical twin law to uphold the current statute. This interpretation poses a significant threat to the protections afforded to domestic violence victims and survivors, as it fails to account for the evolving understanding and legal recognition of domestic violence throughout history.

Contrary to this interpretation, it is essential to recognize that the government implemented historical twin laws prohibiting dangerous people from accessing firearms; they served as a foundation for statutes like 18 U.S.C. § 922(g)(8). For instance, surety laws required potentially dangerous individuals who carried weapons to post bonds. By drawing parallels between historical surety laws and the current federal law, it is clear that the statute is consistent with the nation's historical tradition of firearm regulation.[246] In addition, there even existed discriminatory laws that prevented marginalized groups from owning guns, revealing a historical belief that disarming individuals was acceptable.[247] Section 922(g)(8) should be considered as a law that reflects those historical statutes.

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[243] *See* New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. (2022).

[244] *See United States v. Rahimi*, ACLU, (2023), https://www.aclu.org/cases/united-states-v-rahimi.

[245] *See Understanding the Supreme Court's Gun Control Decision in NYSRPA v. Bruen,* League of Women Voters, (2022), https://www.lwv.org/blog/understanding-supreme-courts-gun-control-decision-nysrpa-v-bruen.

[246] *See* Robert Lieder, *Constitutional Liquidation, Surety Laws, and the Right to Bear Arms,* George Mason University, (2021), https://www.law.gmu.edu/pubs/papers/ls2106#:~:text=These%20surety%20laws%20required%20that,the%20surety%20laws%20(which%20they.

[247] *See* Adam Winkler, *Racist Gun Laws and the Second Amendment*, Harvard Law Review, (2022), https://harvardlawreview.org/forum/vol-135/racist-gun-laws-and-the-second-amendment/.

The federal government believes that someone under a domestic violence protective order does not fall under a law-abiding citizen, and individuals who don't fall under the category of "law-abiding" have a historical precedent of being disarmed. On the other hand, Rahimi argues that since he is subjected to a civil order of prediction, it has not been determined that he is not law-abiding. He believes that since he hasn't been convicted of a domestic abuse crime, then he should be considered a law-abiding citizen and have access to firearms.

Looking at how protective orders are issued, it is clear abusers subject to protective orders do fall into the category of "potentially dangerous" and should be subject to disarming, like in surety laws mentioned above. The statute 18 U.S.C. § 922(g)(8) was issued as a preventative measure regarding gun violence against domestic abusers who have been proven dangerous but not yet convicted of domestic violence crimes. This law requires three stipulations for its application, ensuring a thorough process for determining whether or not an individual should be subject to a protective order.[248] First, the individual must be subject to a protective order prohibiting them from harassing, threatening, or stalking an intimate partner or the partner's child. Second, the individual must have received notice of an opportunity to participate in the hearing that issued the protective order. Finally, the individual must be found as a threat to their partner or child.

The link between historical laws prohibiting firearm access for potentially dangerous individuals and 18 U.S.C. § 922(g)(8) is explicit. The statute 922(g)(8) presents a hurdle for perpetrators of domestic violence, stopping them from exponentially escalating their abuse against their victims. The potential consequences of this case are extremely significant, putting the Supreme Court in a precarious position. The Supreme Court's decision in *United States v. Rahimi* will have significant implications for the safety and well-being of domestic violence victims and survivors.[249] By recognizing the historical roots of firearm restrictions for potentially dangerous individuals and the importance of preventative measures in addressing domestic violence, the Court has the opportunity to uphold the protections provided by 18 U.S.C. § 922(g)(8). A ruling in favor of maintaining the federal statute would reaffirm the legal system's commitment to protecting those most vulnerable to the devastating intersection of domestic violence and gun violence, building upon the progress made in landmark cases like *United States v. Hayes*, *United States v. Castleman*, and *Voisine v. United States*.

III. CONCLUSION

Domestic violence is an exceedingly prevalent issue in the United States, impacting millions of individuals across the country. Firearm access conveniently escalates domestic violence to the point of lethality, expanding the threat posed to victims and survivors of domestic violence. The cases of Ciera Jackson, Deborah Sisco, and Marie Varsos exemplify the devastating consequences when firearms are involved in domestic violence situations.

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[248] *See supra* note 10.

[249] *See* Eric Ruben, *Second Amendment Meets Domestic Violence in the Supreme Court*, Brennan Center for Justice, (2023), https://www.brennancenter.org/our-work/analysis-opinion/second-amendment-meets-domestic-violence-supreme-court.

Over the years, landmark laws and legal cases have played a critical role in addressing this issue and providing protection for victims. The Gun Control Act of 1968, the Violence Against Women Act, and the Lautenberg Amendment have contributed to restricting firearm access for individuals convicted of domestic violence offenses. Notable legal cases such as *United States v. Hayes*, *United States v. Castleman*, and *Voisine v. United States* clarified applications of the Lautenberg Amendment and expanded the law to further protect victims and survivors of domestic violence. Although these cases provided further safeguards, challenges, like the "boyfriend loophole," persisted, leaving non-live-in partners vulnerable to firearm access. The passage of the Bipartisan Safer Communities Act in 2022 addressed this gaping hole in the statute, further expanding the federal statute to apply against abusers that were not explicitly mentioned earlier.

While progress has been made, the evolving landscape is uncertain, with the current case of *United States v. Rahimi* posing a potential threat to existing safeguards. This case challenges the right of individuals under domestic violence restraining orders to bear arms, highlighting the ongoing struggle to balance individual rights and public safety. As the US navigates an uncertain legal future, it is essential to recognize the importance of comprehensive legislation and judicial rulings that address the nuances of domestic violence and firearm access. The Supreme Court's decision in *United States v. Rahimi* will undoubtedly have far-reaching implications for the safety of domestic violence victims and survivors. The need to close legal gaps, prevent loopholes, and continually refine legislation remains a critical aspect of safeguarding individuals from the devastating consequences of domestic violence and firearm use. The lessons learned from past cases emphasize the vital role that the legal system plays in protecting those most vulnerable to the intersection of domestic violence and gun violence, empowering the court to take further steps to protect those who need it most.

DISCRIMINATION IN HEALTHCARE IS MEDICAL MALPRACTICE

Elif Painaik
Edited by Lily Gold

Discrimination by medical professionals violates multiple federal anti-discrimination laws and legally qualifies as medical malpractice.

In *California DOJ v. Jamaluddin & Anucha* (2021), the Justice Department filed a suit against two California doctors who refused to treat a patient because of their HIV status. The department concluded that discrimination against anyone with a disability violated Title III of the Americans with Disabilities Act (ADA) and fined the two doctors 80,000 dollars each. This type of discrimination violated the duty of care both doctors owed to the patient and kept her from receiving preventative health care that could potentially save her life. In other cases where there was significant damage as a result of refusal to treat this would have qualified as medical malpractice based on discrimination that was clearly present.

In a similar case, Charles Johnson IV of *Johnson v. Cedars Sinai Hospital* (2022) alleged that Cedars-Sinai neglected his wife's medical treatment due to a culture of racism at the hospital. He believed that she would not have died from a simple childbirth procedure had she been a white woman. Although the case is still ongoing, it fulfills the four tenets of malpractice. These tenets are (1) a duty of care existed from the doctor to the patient, (2) said duty of care was breached, (3) that breach caused injury to the patient, and the patient or their representative is seeking damages to compensate for the losses suffered because of that injury. The case here includes all of those tenets – a duty of care was breached when Ms. Johnson's doctors hastily performed a C-section and ignored her claims of internal bleeding, resulting in her death. This malpractice was based on discrimination, proving that most medical discrimination cases are in fact malpractice.

Finally, in *Cox v. NYPD & FDNY* (2013), the plaintiff sued after the death of her daughter, Shaun Smith. When Smith went into diabetic shock her mother called 911, and when emergency services arrived they claimed there was nothing they could do despite the fact that all Smith needed was insulin. Smith's mother alleged that the lack of care was due to the fact that her daughter was transgender. Just like the two cases before, this case fulfills the four tenets of malpractice. A duty of care was breached when EMS responders failed to treat Smith's life threatening injury, resulting in her death.

Discrimination by medical professionals violates several laws, including the Civil Rights Act, the Equal Protection Clause, and the Americans with Disabilities Act. Inequity in the medical field consistently results in death or injury and qualifies as malpractice. Therefore, such discrimination should formally qualify as malpractice under the law and must receive the same punishment as malpractice.

I. THE DEFINITION AND ILLEGALITY OF HEALTHCARE DISCRIMINATION

Discrimination by medical professionals is immensely harmful to patients of marginalized groups and to the reputation of the medical profession. It violates multiple federal anti-discrimination laws, legally qualifies as medical malpractice, and should face the same legal penalties as medical malpractice.

Medical discrimination exists on numerous levels, such as in the hiring process and within workplace hierarchies. The most harmful type is against patients. Discrimination in the healthcare setting can be defined as "negative actions or lack of consideration given to an individual or group that occurs because of a preconceived and unjustified opinion."[250] In practice, discrimination against patients typically takes the form of denying a patient care, not listening to their concerns, or simply perpetrating discrimination in a healthcare setting. This sort of discrimination can be extremely harmful and result in unnecessary injury or death, demonstrating medical malpractice. Medical malpractice is defined as "a medical professional's act or omission that deviates from the accepted medical standard practice."[251] There are four legal elements to medical malpractice. The first is that there is a duty of care owed to a patient, where in an existing doctor-patient relationship the doctor had a duty to provide competent and sufficient treatment for the patient's ailments or health issues.[252] The second element is a breach of duty of care through a lack of sufficient care, intentional harm on the doctor's part, or negligence.[253] The duty of care can be breached through numerous forms, such as leaving a medical tool inside of a patient, prescribing an incorrect medication, making an incorrect diagnosis, or denying necessary medical treatment. The third element is that this breach directly caused injury or harm to the patient. Perhaps a patient died because they received the incorrect dosage of a medication, or they suffered surgical complications because their doctor made a preventable error while operating.[254] Finally, the fourth element is that the patient suffered losses due to the breach. These losses may take the form of financial costs, emotional distress, or loss of bodily function.[255]

Medical malpractice is often difficult to prosecute. However, anti-discrimination law provides an easier route to prosecute medical malpractice. For example, Section VI of the Civil Rights Act prevents discrimination by programs and activities that receive federal funds.[256] This includes doctor-patient discrimination, although it does not directly apply to privately-owned hospitals or healthcare facilities. However, it does apply to those that receive federal funding for very common programs such as Medicaid.

Another applicable piece of legislation is the Affordable Care Act. The ACA includes language regarding medical discrimination in Section 1557. This section prohibits discrimination on

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[250] Brandon M. Togioka et al, *Diversity and Discrimination in healthcare,* StatPearls (14 August 2023), www.ncbi.nlm.nih.gov/books/NBK568721/#article-130469.s8.
[251] *What Are the Four Elements of Medical Malpractice?*, Ben Crump Law, bencrump.com/faqs/what-are-the-four-elements-of-medical-malpractice/.
[252] *Supra*, note 2.
[253] *Supra,* note 2.
[254] *Supra*, note 2.
[255] *Supra,* note 2.
[256] *See* Civil Rights Act, title VI, 42 U.S.C. 2000d et. seq § 601 (July 2, 1964).

the grounds of race, color, national origin, sex, age, or disability in certain health programs and activities.[257] Similar to the Civil Rights Act, this legislation only has power over publicly owned and funded facilities, but it does cover a vast number of facilities that accept funding from the Department of Health and Human Services and that use Medicare or Medicaid. Under this legislation, individuals also cannot be denied care or coverage based on their sex or pregnancy status. It requires the equal treatment of female patients to male patients and exceedingly persuasive justification for gender-specific health programs or activities.

Finally, the Americans with Disabilities Act also discusses medical discrimination, specifically for those with disabilities. Once again, this act is enforced by the Department of Health and Human Services, which requires equal treatment for those with disabilities in publicly owned or funded hospitals. Title II in particular specifies that, among other things, sign language interpreters and other auxiliary aids must be present in hospitals to ensure effective communication among all parties involved.[258] Overall, all of this legislation provides a safety net for those in marginalized groups in medical settings, and outlaws discrimination in publicly funded or owned facilities.

Medical discrimination is clearly illegal under several pieces of legislation, but often doesn't face appropriate consequences. To understand how and why this is true, one must first understand the long and fraught history of medical discrimination.

II. HISTORY OF MEDICAL DISCRIMINATION

Healthcare discrimination has a long history in the United States, and it remains a practice of medical professionals and is embedded in US healthcare policy. Despite improvements in both of these areas over time, it is still an important issue and greatly affects marginalized communities in the US today.

While healthcare discrimination exists against many groups, one of the most discriminated against are Black Americans. One of the oldest known examples of a doctor practicing discrimination in the United States revolves around the work of James Marion Sims. Born in 1813 in South Carolina, he did most of his work in Alabama and is known as the father of modern gynecology.[259] However, his methods of research remain under-discussed. Sims pioneered a treatment for vesicovaginal fistulas, a condition that affects bladder control and fertility in women. He carried out experimental treatments on enslaved Black women without anesthesia. Sims was a strong believer in slavery and also in the false notion that Black people could endure more pain than white people, an idea that continues to persist in the medical field. This notion has adversely affected health outcomes for Black Americans and has resulted in skepticism of the medical field among many Black Americans.

Healthcare discrimination can take place in a variety of healthcare settings, including against Black children in educational healthcare. Behavioral counseling and psychotherapy for school-aged Black children has historically contained systemic racism and often has life-long consequences. One example of this is Dr. Orlando J. Andy at the University of Mississippi Medical School in the

[257] *See* Affordable Care Act, 42 U.S.C. 18001 § 1557 (a) (Mar. 23, 2010).
[258] *See* Americans with Disabilities Act, title II, 42 U.S.C. § 12101 (July 26, 1990).
[259] Kat Stafford et al, *Medical Racism in History*, AP News (May 23, 2023), projects.apnews.com/features/2023/from-birth-to-death/medical-racism-in-history.html.

1960s.[260] Andy testified that he performed 30 to 40 lobotomies and other brain operations on Black children as young as six. While claiming his operations were a "last resort" for these children, they needed other kinds of medical care that they would have received if their lives were considered to have more value. Some of Andy's patients lived the rest of their lives with deteriorated intellectual capacity due to his experimentation. Where white children could not be used as subjects for these experiments, Black children were seen as disposable and inherently better suited to being test subjects.

Finally, Black Americans have not been able to escape medical discrimination even in death. Today, graveyard diggers often target Black graveyards for the sake of medical research or studies.[261] Harriet Washington, author of the book "Medical Apartheid," noted that Black graveyards were regularly targeted. Dr. John D. Goodman paid the manager of a public graveyard "for the privilege of 'emptying the pits' of about 50 to 85 cadavers a month during each 'dissection season.'" Historian Todd Savitt said Black people were well aware of the grave robbery that occurred, but did not have the power to prevent it. They could only hope that their bodies would be left in peace when they died – one woman said she prayed that when she died, "it [would] be the summertime," so that her body would rot in the heat before it could be stolen.

Significant medical discrimination has also occurred throughout history against women. One of the most well-known examples of this is 'female hysteria,' a fabricated condition doctors frequently used to mollify women seeking medical care, or even to subdue women at their husbands' behest.[262] The idea dates back to Ancient Greece and was discussed by figures such as Hippocrates and Plato. They wrote that the womb, or the *hystera*, tended to wander around the female body, causing an array of mental and physical conditions. Later on, physician Joseph Raulin noted in 1784 that although both men and women could contract 'hysteria,' women were more predisposed to it because of their "lazy and irritable nature."[263] Another physician, Francois Bossier de Sauvages, wrote that sexual deprivation was often the cause of female hysteria, giving men an excuse to have intercourse with women who were allegedly suffering from the condition.[264] The prevalence of the idea of female hysteria is so pervasive in society that it can be seen in media and entertainment throughout history. A clear example of this is in Charlotte Perkins-Gilman's 1892 short story "The Yellow Wallpaper," which follows a woman with postpartum depression who is diagnosed with hysteria and driven to insanity by being locked away, to the point of hallucination.[265] Although female hysteria has been thoroughly debunked, the same discrimination that led to its invention still exists today.

Medical discrimination is perpetuated against countless other oppressed groups, but discrimination against those in the LGBTQ+ community is yet another example. Since homosexuality was declassified as a mental illness in 1973, LGBTQ+ people have faced

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[260] *Supra,* note 10.
[261] *Supra*, note 10.
[262] Maria Cohut, *The Controversy of Female 'Hysteria'*, Medical News Today (October 13, 2020), www.medicalnewstoday.com/articles/the-controversy-of-female-hysteria.
[263] *Supra*, note 13.
[264] *Supra*, note 13.
[265] Charlotte Perkins-Gilman, *The Yellow Wall-Paper* (1892).

discrimination in healthcare that has resulted in higher death rates and higher prevalence of certain health issues in the community. HIV is one of the most commonly known issues that impacts LGBTQ+ people, and those who seek care for it are still often discriminated against in healthcare. In 2017 the HHS signaled it would roll back regulations prohibiting discrimination against transgender people in federally funded healthcare facilities.[266]

Discrimination exists in medical practice, but it also exists structurally in US healthcare policy, law, and health insurance practices. For example, one study found that low income minority people with poor health had a 68 percent lower chance of being insured than high income white Americans with good health.[267] Systemic economic oppression largely contributes to this, with some premiums being so high that the lower class simply cannot pay them. Racism remains implicitly and explicitly involved in health policy since the Jim Crow Era, as far back as 1946 with the Hill-Burton Act.[268] This act allowed states to construct racially separate and unequal facilities, and programs that provided inferior healthcare to the poor and to Black Americans were chronically underfunded. Additionally, while many Americans receive health care coverage from their employer, systemic economic oppression has placed many minority Americans in low income jobs ensuring they work with no insurance benefits. These are just a few policy and societal examples that enact healthcare discrimination through legislation.

Medical discrimination still has drastic effects today, as seen in the COVID-19 pandemic and other wide-spread illnesses. Black Americans greatly distrust the American healthcare system and doctors in general. Many draw parallels in this case between the 1918 Spanish Influenza pandemic and the 2020 COVID-19 pandemic. In 1918, during a time of legal segregation, those who were sick had to go to Black hospitals, clearly displaying the racial inequities of healthcare. Although these hospitals were seen as equal, they usually received far less funding. The realities of the 1918 pandemic were repeated with the 2020 pandemic. Black Americans face a higher death rate from COVID-19 than white Americans.[269] Many claim this is because of pre-existing conditions that Black people have, but those pre-existing conditions are often the result of economic oppression that leads to lack of healthcare and absence of proper care for many Black Americans. In addition, COVID-19 vaccines remained less accessible to Black Americans, and many of the healthcare professionals and essential workers who could not afford to work from home, and therefore contracted the coronavirus at higher rates during the pandemic were Black.[270]

Medical discrimination against women, people of color, and other groups has existed for centuries and still drastically affects these marginalized groups. Examining the statistical effects of

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[266] Ryan Thoreson, *Trump Administration Moves to Roll Back Health Care Rights*, Human Rights Watch (August 13, 2019), www.hrw.org/news/2019/08/13/trump-administration-moves-roll-back-health-care-rights.
[267] Ruqaiijah Yearby et al, *Structural Racism in Historical and Modern US Health Care Policy*, volume 41, no. 2., Health Affairs (February 2022).
[268] *Supra*, note 18.
[269] Yamiche Alcindor et al, *With a History of Abuse in American Medicine, Black Patients Struggle for Equal Access*, PBS (February 24, 2021), www.pbs.org/newshour/show/with-a-history-of-abuse-in-american-medicine-black-patients-struggle-for-equal-access.
[270] *Supra*, note 21.

discrimination on health outcomes demonstrates exactly how these groups have been affected in a quantitative way

III. STATISTICAL EFFECTS OF MEDICAL DISCRIMINATION

Medical discrimination is immensely harmful, both to health outcomes and to society's perception of the medical field. It frequently results in death and injury, delegitimizes the medical field, and makes people of certain demographics distrust medical professionals so that they are far less likely to rely upon them when they are facing an illness or injury.

According to a 2019 study[271], the effects of medical discrimination on subjects included depressive symptoms, unhealthy BMI, substance use, and high blood pressure, and more. A similar 2015 study[272] reported that effects of medical discrimination are more severely felt on mental health than they are on physical health, which corroborates the 2019 study showing depressive symptoms as well as anxiety, psychiatric symptoms, and overall psychological distress.

Although less commonly discussed, medical discrimination also exists against older Americans in the form of ageism. Older adults in the United States are more likely to report racial and ethnic discrimination in the health system, compared with their peers in 10 other high-income countries.[273] More than a quarter of US older adults said they did not get the care or treatment they felt they needed because of discrimination.[274] Additionally, this issue is compounded by minority status. In the United States, one in four Black and Latinx adults aged 60 and older reported that they have been treated unfairly or have felt that their health concerns were not taken seriously by health professionals because of their racial or ethnic background.[275] This ageism and racism has drastic effects; older American adults who have experienced discrimination in a health care setting were more likely to have worse health status, face economic hardships, and be more dissatisfied with their care than those who did not experience discrimination.

Oftentimes, healthcare discrimination can become most apparent in childbirth as women of the exact same medical situation can have completely different results due to their race or other minority status. In fact, Black women in America are the most likely to die during childbirth. In 2021, Black women had 69.9 deaths per 100,000 live births, nearly three times the maternal mortality rate for white women in the US.[276] As shown in cases such as *Johnson v. Cedars-Sinai Hospital* (2017), white women and women of color can receive completely different treatment in hospitals. Additionally, birthing doctors often rely on what the pregnant mother tells them during labor, and

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[271] David R. Williams et al, *Understanding how Discrimination can Affect Health*, Health Services Research (2019), www.ncbi.nlm.nih.gov/pmc/articles/PMC6864381/.
[272] *Supra*, note 22.
[273] Michelle M. Doty et al, *How Discrimination in Healthcare Affects Older Americans, and what Health Systems and Providers Can Do*, The Commonwealth Fund (April 21, 2022), www.commonwealthfund.org/publications/issue-briefs/2022/apr/how-discrimination-in-health-care-affects-older-americans.
[274] *Supra*, note 24.
[275] *Supra*, note 24.
[276] Kat Stafford, *Why do so many Black women die in pregnancy? One reason: Doctors don't take them seriously*, AP News (May 23, 2023), projects.apnews.com/features/2023/from-birth-to-death/black-women-maternal-mortality-rate.html#:~:text=Black%20women%20have%20the%20highest,for%20Disease%20Control%20and%20Prevention.

Black women who are not taken at their word about their pain or about what they are experiencing are more likely to die as a result. Black babies are also more likely to die or be born prematurely, increasing the risk for health issues that could follow them throughout their lives. In 2021, 14.8 percent of Black babies in the US were born preterm, compared to only 9.5 percent for white babies and 9.2 percent for Asian babies.[277] Birth advocates and civil rights activists have tried to raise alarms for decades about how discrimination in hospitals can affect mothers and newborn babies, typically to no avail. However, medical discrimination in hospitals still has a dire effect on birthing mothers and must be eradicated.

As previously mentioned, discrimination exists in a variety of settings and amongst all ages, including children. Children with disabilities or medical complexities often face discrimination, and the toll falls not just on them but also on their parents. Studies have shown that discrimination towards one's child causes loss of trust and deterioration of relationship between healthcare provider and parent, decreased parental well-being, and increased burden on a family who may already be struggling to take care of their child.[278] Of course, this issue is further exacerbated if the child happens to be a person of color or a member of another marginalized group.

Finally, healthcare discrimination against women of all races and backgrounds can have dire health effects. Studies have shown that doctors are more likely to believe a woman's health conditions are due to a mental condition than a man's, stemming back to the idea of female hysteria.[279] This leads many women to not receive diagnosis for what is really a far more serious condition than 'hysteria,' causing some illnesses to progress further than they would have if they were caught earlier by their doctor. Surprising inequities also exist in medical research. In the past, many scientists believed that males made the best test subjects because they do not have menstrual cycles and cannot become pregnant, issues that they said complicated research on women. This meant that a vast amount of research only involved male participants. Even today, women only tend to account for 29 to 34 percent of early clinical drug testing despite making up around half of the population.[280] The important biological differences between the sexes can influence how diseases, drugs, and other therapies affect people, meaning that many medical treatments are not as suited to women and many studies from before the 1990s are flawed. The lack of inclusivity in studies has left doctors with a more limited understanding of the health of female and intersex people.

It is clear that health outcomes are negatively impacted by medical discrimination, but several studies have shown how discrimination can lead to distrust of the medical field by marginalized groups. Due to this distrust, one study showed that only 42 percent of Black Americans in

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[277] *Supra*, note 27.
[278] Stefanie G Ames et al, *Impact of Disability-Based Discrimination in Healthcare on Parents of Children with Medical Complexity*, Dev Med Child Neurol (February 8, 2024), pubmed.ncbi.nlm.nih.gov/38327250/#:~:text=Interpretation%3A%20The%20experience%20of%20discrimination,to%20decreased%20parental%20well%2Dbeing.
[279] *Gaslighting in Women's Health: No, it's not just in your head*, Northwell Women's Health, www.northwell.edu/katz-institute-for-womens-health/articles/gaslighting-in-womens-health.
[280] Urtė Fultinavičiūtė, *Sex and science: Underrepresentation of Women in early-stage clinical trials*, Clinical Trials Arena (October 17, 2022), www.clinicaltrialsarena.com/features/underrepresentation-women-early-stage-clinical-trials/.

November of 2020 said they would be willing to take the COVID-19 vaccine.[281] With a field that has historically done great harm to marginalized groups, many members of these groups cannot find it in them to wholeheartedly trust medical professionals. In this case, that distrust ended up harming not just those groups but everyone, as those who did not trust the vaccine inevitably spread COVID-19 in their communities.

Another example of this distrust and negative effects of discrimination is among women. One study found that mistrust of doctors is also rampant among women, especially those with intersectional identities. Although distrust is not as large of an issue among women as it is with people of color, women's symptoms are often dismissed as mental health issues, menstrual symptoms, and hormonal side effects. In fact, one study showed that women who went to the ER for stomach pain faced 33 percent longer wait times.[282]

Overall, discrimination in healthcare is shown to be both quantitatively and qualitatively harmful towards minority groups. The harmful effects of discrimination are shown on a more individual and personal level in several legal cases that have charged doctors or facilities with medical discrimination.

IV. CASE ARGUMENTS

Discrimination is clearly harmful in a medical setting and typically leads to medical malpractice, but medical discrimination does not face the same penalties as medical malpractice. However, there is a legal basis for qualifying it as such. Due to their disadvantaged status, medical discrimination cases tend not to go to trial or even get filed. However, these cases are just a handful of those that show that medical discrimination fits the bill for medical malpractice and can have incredibly severe outcomes, including severe economic loss, emotional damage, and death.

In *California DOJ v. Jamaluddin & Anucha* (2021), the Justice Department filed a suit against two California doctors who refused to treat a patient because of their HIV status.[283] The department concluded that discrimination against anyone with a disability violated Title III of the Americans with Disabilities Act (ADA) and fined the two doctors 80,000 dollars each, stating that those with HIV deserve the same medical treatment and care as those without and that this qualified as medical discrimination on the basis of a disability.[284] This could have also qualified as discrimination based on LGBTQ+ identity. Under the definition of medical malpractice, this type of discrimination violated the duty of care both doctors owed to the patient and kept her from receiving preventative health care that could have potentially saved her life.[285] In other cases where there was significant damages as a result of refusal to treat, this would have qualified as medical malpractice based on

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[281] Martha Hostetter, Sarah Klein, *Understanding and Ameliorating Medical Mistrust Among Black Americans*, The Commonwealth Fund (January 14, 2021), www.commonwealthfund.org/publications/newsletter-article/2021/jan/medical-mistrust-among-black-americans.
[282] *Supra*, note 30.
[283] *Justice Department Resolves Lawsuits with Bakersfield Doctors to Ensure Equal Access to Health Care for People with HIV*, United States Attorney's Office (February 17, 2022), www.justice.gov/usao-edca/pr/justice-department-resolves-lawsuits-bakersfield-doctors-ensure-equal-access-health#:~:text=The%20department%20sued%20Dr.,people%20with%20disabilities%2C%20including%20HIV..
[284] *Supra*, note 22.
[285] *Supra*, note 2.

discrimination. Additionally, the penalty for medical malpractice would likely have been much higher than 80,000 dollars, and may have even included the doctors losing their medical licenses. As a result, these doctors got to keep practicing despite their discriminatory tendencies and may end up harming patients in the future. There is nothing keeping these doctors from turning away other patients with HIV, and those patients might not be so lucky as to find care elsewhere.

In a similar case, Charles Johnson IV of *Johnson v. Cedars Sinai Hospital* (2022) alleged that Cedars-Sinai neglected his wife's medical treatment due to a culture of racism at the hospital.[286] He believed that she would not have died from a simple childbirth procedure had she been a white woman, and backed up his claim with information he discovered surrounding the hospital's history of racism during depositions for a previous wrongful death case. Additionally, Johnson pointed out the fact that pre-COVID-19, Black women in the US died during childbirth at 2.5 times the rate of white women, which is likely even higher after the pandemic.[287] Although the case is still ongoing, it fulfills the four tenets of malpractice: a duty of care existed, that duty of care was breached, said breach caused injury to the patient, and the patient or their representative is seeking damages.[288] The case includes all of those tenets. A duty of care was breached when Ms. Johnson's doctors hastily performed a C-section and ignored her claims of internal bleeding, resulting in her death.[289] This malpractice was based on discrimination, proving that most medical discrimination cases are malpractice. The case is still ongoing, but it is imperative that the hospital and these doctors be charged with discrimination and/or malpractice and have their licenses revoked so that their discrimination will not lead to further preventable deaths in the future.

In *Cox v. NYPD & FDNY* (2013), the plaintiff sued after the death of her daughter Shaun Smith.[290] When Smith went into diabetic shock, her mother called 911. When emergency services arrived, they claimed there was nothing they could do despite the fact that all Smith needed was insulin. The case hinges on whether or not Smith was dead when EMS arrived on the scene. However, Smith's mother claimed that she was alive at that point and alleged that the lack of care was due to the fact that her daughter was transgender. Additionally, when Smith had checked into Harlem Hospital two years prior complaining of a headache induced by taking "too many diet pills," she was referred to a mental health clinic rather than being given medical care that may have resulted in discovery of her diabetes.[291] This is yet another example of how women and minorities often have their serious health conditions chalked up to mental health issues. Just like the two cases before, this case fulfills the four tenets of malpractice. A duty of care was breached when EMS responders failed to treat Smith's life threatening condition. This resulted in her untimely death, a clear loss on the part of Smith and her family.

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[286] The Associated Press, *Lawsuit says a Black patient bled to death because of a hospital's culture of racism*, NPR (May 5, 2022), www.npr.org/2022/05/05/1096833756/racism-lawsuit-cedars-sinai-medical-center-wife-death.
[287] *Supra*, note 25.
[288] *Supra*, note 2.
[289] *Supra*, note 25.
[290] Bensonhurst Bean, *EMS Denied Transgender Patient Care Causing Her Death, Alleges Sheepshead Bay Lawyer*, Bklyner. (April 2, 2013), bklyner.com/ems-denied-transgender-patient-care-causing-her-death-alleges-sheepshead-bay-lawyer-sheepshead-bay/.
[291] *Supra*, note 29.

Finally, in *Aniya and Nigha Robertson v. Centinela* (2023), another Black mother died during childbirth in a preventable death that was clearly caused by discrimination.[292] April Valentine walked into the maternity ward at Centinela Hospital in Los Angeles to give birth to her first child and died the next day during labor. Her death was caused by a blood clot in her leg. Her family and her partner Nigha Robertson filed a wrongful death lawsuit in the Los Angeles County Superior Court claiming that negligence on the part of doctors and hospital staff at Centinela contributed to the death of the 31 year old woman who was otherwise completely healthy.[293] Centinela Hospital denies the allegations of systemic racism and sexism within the hospital. Valentine was keenly aware of the risks associated with walking into an American hospital as a Black woman when she became pregnant, knowing that Black women in the US are nearly three times as likely to die from a pregnancy related issue.

Valentine took great steps to ensure that her pregnancy would go well and sought out a Black physician to support her pregnancy. However, those steps were not enough to save her from the negligence present within Centinela. Her partner, Robertson, alleged that Valentine's obstetrician did not arrive for hours while Valentine was in the hospital despite repeated requests to nurses.[294] The nurses and other medical professionals were inattentive to Valentine throughout the course of her labor despite repeated cries for help from her, her partner, and her sister. The lawsuit claims that nurses refused to give Valentine water and also administered her epidural poorly, neglecting her to the point that Robertson had to attempt CPR on his partner himself. Additionally, Robertson claimed uncomfortable and unhygienic conditions within the hospital. Valentine's daughter survived but was unresponsive, and the hospital was fined for a mere 75,000 dollars over the death. Luckily, the maternity ward has closed within Centinela. Just like the previous three cases, this case fits all four tenets of medical malpractice and should be treated as such.[295] The obstetrician and nurses owed Valentine a duty of care which was breached when they neglected her and consistently ignored her cries for help, resulting in her tragic and untimely death.

Medical discrimination violates several laws, including the Civil Rights Act, the Equal Protection Clause, and the Americans with Disabilities Act. Inequity in the medical field consistently results in death or injury and qualifies as malpractice, as proven by the above cases that all pass the four elements of medical malpractice. Therefore, such discrimination must formally qualify as malpractice under the law and should receive the same punishment as malpractice. Otherwise, medical professionals will continue to neglect patients based on their identities and potentially cause preventable injury or death.

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[292] Nathalie Basha, *The Inglewood Community is Grappling with the Loss of Centinela Hospital's Maternity Ward*, Spectrum News 1 (October 26, 2023), spectrumnews1.com/ca/la-west/health/2023/10/27/centinela-hospital-closes-maternity-ward#:~:text=Mack%27s%20cousin%2C%20April%20Valentine%2C%20died,her%20down%2C%E2%80%9D%20he%20said.
[293] *Supra*, note 31.
[294] *Supra*, note 31.
[295] *Supra*, note 2.

V. PENALTIES FOR MEDICAL DISCRIMINATION AND MALPRACTICE

Discrimination in the medical field typically receives much lighter penalties for malpractice even though they are nearly the same concept, and malpractice is typically present where discrimination is.

The initiation of any doctor-patient relationship is voluntary for both parties, meaning that a doctor is not legally obligated to accept *any* patient that comes their way.[296] However, a doctor may only reject a patient for a reason that is not prohibited by law, meaning that rejecting a patient on the basis of sex, race, gender, identity, or other factors qualified as discrimination are illegal. In fact, laws on this subject greatly vary by state, and in some progressive states lesser known types of medical discrimination are illegal. One example of this is discrimination based on weight. However, rejection based on factors that are not legally protected such as political views, inability to pay, and lifestyle decisions are considered up to the physician's personal discretion.[297]

Under Texas law, most forms of medical discrimination qualify as a misdemeanor, either Class A or Class B.[298] In Texas, a Class A misdemeanor is punishable by either up to one year in jail, up to a 4,000 dollar fine, or both.[299] A Class B misdemeanor will result in up to 180 days in jail, up to a 2,000 dollar fine, or both.[300] The only exception to this is if the discrimination results in death of the patient, in which case the perpetrator incurs a third-degree felony.[301] Being charged with this type of felony will result in between two to ten years in prison and a 10,000 dollar fine, although it is rare for doctors who commit medical discrimination to be charged with this kind of felony.[302]

Punishments for medical malpractice, on the other hand, are more severe. Settlements for medical malpractice lawsuits typically range from 250,000 dollars to 750,000 dollars depending on the scale of the damages that the plaintiff suffered.[303] Additionally, plaintiffs can file against many types of defendants, including individual doctors, entire healthcare facilities, assisted living facilities, and even an entire hospital system.[304] Medical malpractice does not tend to result in jail time although it is technically possible, but more often it can result in a doctor losing their medical license, especially if the doctor shows a repeated tendency towards negligence or error.[305]

Examining the real life penalties given for a medical malpractice and a medical discrimination case demonstrates this in practice. In cases that deal strictly with medical discrimination such as the *California DOJ* case, the penalty for the most severe and egregious medical discrimination is only monetary, and not nearly as high a financial penalty as that of medical malpractice. These doctors did not have their medical licenses taken away and were not charged more than 100,000 dollars, allowing

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[296] Holly Fernandez Lynch, *Discrimination in the Doctor-Patient Relationship*, Bill of Health (September 7, 2012), blog.petrieflom.law.harvard.edu/2012/09/07/discrimination-in-the-doctor-patient-relationship/.
[297] *Supra*, note 48.
[298] *See* Tex. Code Ann. § 311-022 (e) (1989).
[299] *See* Tex. Code Ann. § 12-21 (2019).
[300] *See* Tex. Code Ann. § 12-22 (2019).
[301] *Supra*, note 50.
[302] *See* Tex. Code Ann. § 12-34 (2009)
[303] *Medical Malpractice Laws in Texas*, Buckingham and Vega Law Firm (October 2022), www.medmal-law.com/blog/2022/october/medical-malpractice-laws-in-texas/.
[304] *Supra*, note 55.
[305] *Supra*, note 55.

them to perpetrate injustice and negligence in the future.[306] In the *Aniya and Nigha Robertson v. Centinela Hospital* case, the hospital as a whole was charged only 75,000 dollars for a wrongful death, although the maternity ward was shut down.[307]

In true medical malpractice lawsuits the penalties are much greater. In 2023 alone, there were several medical malpractice cases that made national news and resulted in penalties worth tens of millions of dollars. For example, a Philadelphia man who filed against Temple University Hospital after an unnecessary below-the-knee amputation was awarded 25 million dollars.[308] A Baltimore family who filed against the University of Maryland St. Joseph Medical Center after their son developed brain damage following a premature emergency C-section was awarded 34 million dollars.[309] Finally, former NFL player Chris Maragos sued orthopedic surgeon James Bradley and Rothman Orthopaedics following surgery complications and was awarded 43.5 million dollars.[310] Money awarded in discrimination cases is only a fraction of that awarded in medical discrimination cases, although they often have the same result and involve the same actions.

On a much smaller scale and with less well known hospitals or plaintiffs, there is still a difference in penalties. Take the 2023 example of a Washington woman who was left permanently disfigured after a series of cosmetic procedures including a breast lift, tummy tuck, arm lift, and liposuction.[311] The cosmetic surgeon never deemed her a poor candidate for surgery despite her status as an uncontrolled diabetic. He cut off too much skin during her surgery and failed to address surgical-site infections or use postoperative care treatments, resulting in scarring and disfigurement. A jury awarded this woman 13 million dollars for the damages and emotional pain suffered.[312] While this case is tragic and this woman deserved the money she was awarded, these damages are drastically higher than those for any of the medical discrimination cases previously discussed despite the fact that some of those cases resulted in death. This disparity in penalties needs to be fixed in order to serve proper justice and prevent further medical discrimination by dissuading doctors from practicing discrimination for fear of monetary charges.

Overall, it is very clear that the penalties for malpractice are much more severe. Whereas the medical discrimination penalties often do not get higher than 10,000 dollars, medical malpractice penalties are frequently in the millions. Medical discrimination often goes unnoticed, so doctors do not have to pay any sort of penalty. However, it is clear that it is often the same as medical malpractice despite not facing the same punishment.

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[306] *Supra*, note 35.
[307] *Supra*, note 44.
[308] Michael M. Wilson, *2023 Medical Malpractice Statistics*, The Law Offices of Dr. Michael M. WIlson M.D. J.D. (November 21, 2023), wilsonlaw.com/blog/2023-medical-malpractice-statistics/#:~:text=A%20Pennsylvania%20jury%20awarded20a,C%2Dsection%20at%2032%20weeks.%.
[309] *Supra*, note 60.
[310] *Supra*, note 60.
[311] Linda Childers, *8 outrageous malpractice cases-and what physicians can learn from them*, MDLinx (January 3, 2024), www.mdlinx.com/article/8-outrageous-malpractice-cases-and-what-physicians-can-learn-from-them/4XBlMttc0S3Vd2JFFqtJuq.
[312] *Supra*, note 63.

VI. POSSIBLE SOLUTIONS

Medical discrimination is a problem that will likely only improve with time as doctors and people everywhere become less discriminatory. However, that doesn't mean that action cannot be taken to eliminate discrimination, save innocent patients, and prevent unnecessary injury and death. Equalizing penalties and legally specifying medical discrimination as medical malpractice will deter doctors from treating patients differently on the account of race, sex, gender, and other minority classifications. Finally, doctors must receive more training in providing equitable healthcare along with the bedside manner training they typically have to undergo before they receive their medical license. Hospitals must create a culture of equality and heal from historical cultures of systemic racism within medical facilities, and penalties for medical discrimination should be more severe considering the immense economic, emotional, and physical damage it can cause.

Sensitivity training is a tactic often used by government agencies and in workplaces in order to prevent discrimination, assault, harassment, and other serious offenses.[313] It is also used after an employee or company has suffered allegations of these kinds of offenses. Sensitivity training is available for doctors and medical professionals from outside companies or inside members of the hospital's HR department in order to improve relations within the workplace and with patients. The training teaches doctors to deal with cultural, generational, religious, and other differences more sensitively, prevents legal trouble based on discrimination or offense, improves professional communication, and addresses the most common causes of insensitivity or disrespect. The skills doctors learn in these training sessions could help them set aside their own biases when it comes to treating patients, and it would also improve relationships among hospital/healthcare staff. This would create a more effective, inclusive, and harmonious workplace and provide better services for patients, especially those of marginalized groups who typically face discrimination in hospitals.

One concept these sensitivity trainings or similar workplace training may address is the idea of health equity vs. health equality. Whereas both are important to healthcare settings, health equality calls for equal treatment for all patients while health equity brings the idea of social justice into healthcare.[314] Although two patients could be suffering from the same condition, the treatments they may require could be vastly different based on their background, beliefs, and individual needs. When equality does not go far enough in the healthcare setting or when discrimination takes place, health disparities are created and health equity becomes necessary. Other factors that can contribute to health disparities are poverty, educational inequality, inadequate access to healthcare, and environmental hazards. According to the CDC, health risks such as these are "directly related to the historical and current unequal distribution of social, political, economic, and environmental resources." [315] If our healthcare system, government agencies, and communities can work together, we may be able to reorganize and rebuild healthcare systems to reduce and prevent increasing health disparities. In a way, this starts with the front-line workers themselves: the doctors, nurses, and other

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[313] *Sensitivity Training for Doctors*, Proven Training Solutions, www.proven-training-solutions.com/sensitivity-training/sensitivity-training-for-doctors/.
[314] *Health Equity vs. Health Equality: What's the Difference?*, St. Catherine University (April 25, 2022), www.stkate.edu/academics/healthcare-degrees/health-equity-vs-health-equality#:~:text=In%20healthcare%2C%20equality%20means%20treating,risks%20to%20each%20of%20theirs.
[315] *Supra*, note 23.

medical professionals who work in this system on the ground. Training medical professionals in these concepts can help begin to repair a broken medical system that does not always prioritize helping the individual, and often allows discrimination to be swept under the rug.

Additionally, the government and the courts need to take action to equalize penalties for medical discrimination and medical malpractice, and the connection between the two concepts should be examined in a court setting. Medical discrimination faces minor punishment. If that punishment were to be increased, it would likely deter many potential offenders and make a more effective healthcare system for women, people of color, people with disabilities, and other historically marginalized groups. In some states, such as California, medical discrimination faces much harsher penalties, as seen in the *California DOJ* case. However, this is one example that was caught out of many more that were not, and these doctors faced penalties much lower than they deserved. In more conservative states, it is even more common for discrimination to be met with a slap on the wrist, complete ignorance, or to never be brought to trial at all. Cases like these have the potential to make legal progress and precedent, but it is ultimately up to the courts to decide whether they want to progress or regress on the issue of medical discrimination and if they want to let medical discrimination slide or to start protecting patients who need their help.

VII. CONCLUSION

Medical discrimination is not an issue unique to the United States, although it is extremely prevalent in America. There is a long, complicated, and largely unknown history of discrimination against patients of marginalized groups in healthcare, dating back to the idea of the wandering *hyster*a in Ancient Greece. Women, people of color, disabled people, and LGBTQ+ people in America have been experimented on, had their bodies dug up, and have been denied proper medical care because they were viewed as less valuable, less sensitive, and less important than white men. This has led to worse health outcomes for people of marginalized groups in healthcare settings, including many unnecessary deaths and countless more injuries, as well as a higher prevalence of mental and physical conditions than in majority groups. Additionally, minority groups in America often have a deeply rooted distrust in doctors and in the healthcare system. This system tends to ignore their worries due to implicit and systemic racism, sexism, homophobia, ableism, and ageism. One study has shown that 55 percent of Black Americans say that they distrust the American healthcare system.[316] This causes these groups to avoid seeking medical treatment they may desperately need altogether or to ignore medical advice. In some cases such as the COVID-19 pandemic, this distrust can end up harming the greater community.

Proven by the cases above, this ignorance and refusal of treatment almost always qualifies as medical malpractice based on the four tenets of malpractice. In many cases, such as the cases of April Valentine and Kira Dixon Johnson, this discrimination results in death. For others, it can be loss of income, serious financial setback, emotional distress, or loss of some bodily function. In some cases, such as the case of the California doctors, it can have no clear negative results but still hold the potential for those results. Although it can be due to negligence in some cases, it is most often due to bias in the medical professional that causes them to refuse treatment or give insufficient

[316] *Supra*, note 32.

treatment to a patient. Discrimination is also often enumerated in American policy, as proven by the American history of segregation in healthcare and the disparities in health insurance coverage for people of marginalized groups. Finally, medical research has historically ignored these groups, making it harder to treat them as there is limited scientific evidence to prove that treatments work or are safe for these groups.

Although there are some cases where medical discrimination has gone to trial, there are many more where the victim had to suffer in silence because they had no way of winning or being able to afford a legal case. This issue was further exacerbated by a global pandemic where people of color were both on the frontlines and not receiving proper treatment or vaccinations. Additionally, insufficient insurance coverage for many minority groups has made the issue worse as many cannot afford proper treatment, which is caused by historical systemic oppression present in America.

Overall, this is an issue that must be addressed as soon as possible by our lawmakers, medical professionals, and court systems. More steps should be taken to prevent medical discrimination through education of medical professionals and policy that prevents it from happening and increases the penalties if it does. It is clear that medical discrimination is a form of medical malpractice, and this needs to be specified more clearly in a legal setting so that those who discriminate against patients and cause them harm can be properly brought to justice. With more severe punishment and therefore less common instances of medical discrimination, women and people of color, members of the LGBTQ+ community, those with disabilities, elderly people, and other marginalized groups would have far better health outcomes and feel far safer about putting their health in the hands of a doctor or another medical professional. The long-standing disparities in death and injury rates between minority and majority groups in America would likely decrease, creating a better, more effective, and more equitable healthcare system for all.

When doctors become licensed, they swear the Hippocratic oath, which binds them to do no harm during their time as a doctor. Unfortunately, medical professionals do not always uphold this oath, and it does not seem to be enough to keep them to their duty anymore. The deaths of innocent people like Kira Dixon Johnson and April Valentine were preventable. These women and countless others like them left behind devastated families who felt powerless to act, but chose to take on a legal and political system that doesn't view them, and people like them, favorably. They deserve proper economic reparations for their loss, but more than that, their loss should never have even happened. Had they or their loved ones been born different people, it may never have happened. Americans shouldn't have to rely on luck or put in the effort to find doctors from the same demographic groups as them to gain proper medical care. When someone is in the hospital, they're usually already scared and in pain. That shouldn't have to be exacerbated by a medical system that doesn't care about them or doctors that are willing to break their sworn duty and neglect them because of biases. People like Charles Johnson and Nigha Robertson shouldn't have to suffer the way that they are suffering now. People like the woman in the California doctors case shouldn't have to struggle to find proper medical care just because of their medical conditions, disabilities, LGBTQ+ identity, age, weight, or any other factor. With legal action, proper sensitivity education, and legislative action, doctors would truly be bound to uphold their Hippocratic oath and do no harm, especially to marginalized groups that deserve the same healthcare as everyone else.

EXAMINING THE DETRIMENTAL IMPACT OF INTERNATIONAL TRADE PROTECTIONISM ON GLOBAL SUPPLY CHAINS

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Edited by Arshia Verma

One of the most pressing issues in the global economy centers around the international trade system. A main cause of conflicts between states is the utilization of trade protectionism. Trade protectionism can be described as the allocation of economic and political resources to reduce the influence of international actors in certain sectors of the economy in order to strengthen domestic actors in that same sector. These policies tend to be controversial within the international community as a result of their exclusionary outcomes and their promotion of nationalistic ideals.

Trade protectionism often triggers retaliatory responses from trading partners, escalating tensions and increasing trade conflicts. When one country implements tariffs or other trade barriers to protect its domestic industries, trading partners who have been affected by these actions may retaliate by imposing their own tariffs or trade restrictions. This cycle can quickly turn into a full-blown trade war, with each side attempting to damage the other's economy more than the amount they have been damaged. Such retaliatory actions not only harm the targeted industries but also have broader negative consequences on the global economy. This can be seen when trade flows and supply chains are disrupted and consumer prices rise, leading to a no-win situation for all parties involved because the costs of protectionism outweigh any short-term benefit of protecting domestic industries.

Regardless of their intentions to protect domestic companies, protectionism within one industry often leads to a chain reaction that will end up affecting multiple separate industries. All companies are connected to one another so if one is weakened, others begin to weaken as well. Examining the relationships between industries and the effects trade protectionism has on these relationships is vital in understanding the intricacies of the global economy.

I. INTRODUCTION

Trade protectionism has persisted in the history of the US economy. The US has undergone numerous economic reformations that have changed the public's opinion on free or liberalized trade. There are certain periods in time where the US citizenry is highly in favor of international trade but there are other periods where people are highly critical of any international sourcing of products. This all depends on various factors, including the global political condition, as well as the administrations in power during that time. Trade protectionist policies are usually implemented based on the times in which they are presented.[317]

[317] Robert Z. Lawrence & Robert E. Litan, *Why Protectionism Doesn't Pay*, Harvard Business Review, May 1987, https://hbr.org/1987/05/why-protectionism-doesnt-pay (last visited Mar 26, 2024).

In the past, trade protectionist policies were commonplace, especially during the era of the Great Depression when countries were focused on maintaining their industries above ground. As countries began to realize the necessity of international economic solidarity and interdependent relationships, trade protectionism became less common. In fact, treaties in support of trade relationships between countries were formed in order to regulate trade and to create a system that all parties are obligated to abide by. Regardless of the newfound support and acceptance of international trade relationships, the US government still has protectionist policies to protect vulnerable industries and maintain control over the national economy.

Many examples of influential US protectionist policy in recent memory are the tariffs placed on US steel and aluminum industries.[318] The tariffs were put into place in March 2018, by former President Donald Trump, in response to supposed security concerns revolving around US overreliance on products from unsafe sources and threats to American industries. These tariffs put a 25 percent tax on some imported steel and a slightly lower tariff of 10 percent on some imported aluminum. This led to retaliation from steel and aluminum exporters, mainly members of the European Union, which in turn harmed other American industries by imposing their own tariffs on American products. Due to the extensive negative impact these tariffs had on manufacturing industries in the United States, like the automobile and energy sectors, the Bureau of Industry and Security (BIS) created a process that would allow those businesses affected by the tariffs to submit an exclusion request that would allow them to import the metals they needed without applying tariffs. After the Trump administration left office, the Biden administration was set on removing these tariffs.[319] The leaders of the United States and the European Union agreed upon a treaty regarding the lifting of trade barriers on steel and aluminum in October 2021. Although the Trump Administration's tariffs were lifted, steel and aluminum were still not a liberated sector of the global economy. Instead of permitting this industry to benefit from free trade, the Biden Administration imposed quotas on steel and aluminum exporters, which were international companies selling goods in the US, and importers, domestic companies who were reliant on international producers, which placed a limit on the products a singular country can export to the United States before tariffs began to take effect. Although these controversial tariffs were lifted, the effects of them can still be felt today by the exporters and US industries that are dependent on steel and aluminum exporters.

More aggressive protectionist policies tend to target countries instead of industries or companies. These types of policies often lead to what recognized as a trade war. One of the most prominent trade wars that the United States continues to engage in is with China.[320] These tense relations can be traced from the very beginning of their trade relationship. As China began to develop economically at a previously unprecedented rate, the US began to largely depend on

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[318] U. S. Government Accountability Office, *Steel and Aluminum Tariffs: Agencies Should Ensure Section 232 Exclusion Requests Are Needed and Duties Are Paid | U.S. GAO*, https://www.gao.gov/products/gao-23-105148 (last visited Mar 26, 2024).

[319] Bown, C.P. and Russ, K. *Biden and Europe remove Trump's steel and aluminum tariffs, but ...*, *Peterson Institute for International Economics*.
https://www.piie.com/blogs/trade-and-investment-policy-watch/biden-and-europe-remove-trumps-steel-and-aluminum-tariffs (ast visited Mar 26, 2024).

[320] The Contentious U.S.-China Trade Relationship, Council on Foreign Relations,
https://www.cfr.org/backgrounder/contentious-us-china-trade-relationship (last visited Mar 26, 2024).

low-priced manufactured products. The US utilizes these products, previously obtained from countries with higher production costs, to produce higher-end goods. China's high product output rates, along with their low prices, made them quickly turn into an anchor manufacturer in the global economy. Many countries depend on China to produce the parts they use to produce the products they export. The US is no exception to this.

The main problem the US has faced, in addition to the concerns surrounding human rights violations for workers, is the destruction of domestic manufacturing jobs due to the increase of Chinese influence in the economy.[321] Threatened by the economic domination displayed by China, the US imposed tariffs specifically on the nation of China. China retaliated against these trade barriers by imposing its own tariffs on the United States. The continuous trade war reached an all-time high during the 2020 COVID-19 pandemic due to the US blaming China for the spread of the disease. Since then, it has simmered down but the trade barriers still remain imposed on both sides.

The United States is no stranger to other types of protectionism. American protectionism, dating back to the country's establishment, includes tariffs initiated during Washington's administration to develop domestic economies and to divide itself from England.[322] During this time, protectionism did not really hurt supply chains within the United States because the Industrial Revolution had not occurred yet. At this point, the US was mainly producing low-skilled goods, in comparison to the products made today. In addition, protectionism was not as damaging due to the lack of affordable and accessible transportation. This lack of transportation meant that there were fewer competitors due to the inability to sell things at a large scale overseas. Trade relations rely heavily on the accessibility of long-distance transportation. Production costs go down when transportation costs go down and high-efficiency transportation leads to the easy exchange of imports and exports.

After the United States established itself as a big name in the international economy and most of the world underwent the effects of the Industrial Revolution, trade protectionism eased up in the United States. This is due to the shift in the production of low-skilled goods to the production of high-skilled goods. For example, US factories shifted from producing textiles to producing more complicated goods like automobiles. At this point, producing every part of the automobile would be too expensive for a single country so more developed countries began to depend on less-developed countries to make parts that required less skill to make. The problem began when previous US manufacturers began to be displaced. As a result, the US government hit a second wave of trade protectionism and once industries became stable, trade would open up again. It became a cycle with the USswitching between a protectionist state and a free trade state.

The main effect of trade protectionism is the effects that trade barriers have on the global supply chain. A global supply chain can be described as the steps in the manufacturing or production

[321] What is the National Security Rationale for Steel, Aluminum and Automobile Protection? | Econofact, (2018), https://econofact.org/what-is-the-national-security-rationale-for-steel-aluminum-and-automobile-protection (last visited Mar 26, 2024).
[322] Robert W. Merry, *America's History of Protectionism*, The National Interest (2016), https://nationalinterest.org/feature/americas-history-protectionism-18093 (last visited Mar 26, 2024).

process that go across multiple countries in order to make a product.[323] If a global supply chain is tampered with via trade restrictions, every country in the supply chain also gets affected. For example, if there are tariffs on steel and aluminum, other industries that rely on steel and aluminum parts are affected and their products become more expensive to produce and purchase. In addition, exporters of aluminum and steel are forced to hold on to the products they wish to ship out and are limited in how much they can export.[324]

The topic of trade protectionism is highly controversial but also highly complicated. As stated earlier, protectionism has had a long history in the United States, and through these varying periods in the US economic system, there have also been varying underlying reasons for the implementation of exclusionary trade policies. These reasons can be domestic or external but nevertheless, the effects they have on the United States have led to an increase in the feeling of desperation to preserve and protect domestic industries.

II. ROOTS OF TRADE PROTECTIONISM

Understanding the roots of trade protectionism is important for comprehending the historical presence of tariffs, in addition to other trade barriers, and the continuing impact these policies have on not only the US but also the global economy. Trade protectionism, known as policies aimed at preserving domestic industries from foreign competition, has characterized itself as an important issue in the history of the US economy. From mercantilist policies of the Washington era to modern-day trade disputes, exploring the roots or reasons for protectionism showcases the complicated combination of interests, ideologies, and global dynamics that have shaped international trade relations. It is important to explore the history and roots of trade protectionism within this country in order to understand why it is currently such a controversial and contentious topic for many economists and political figures.

One of the main concerns surrounding the liberalization of trade is the inability of domestic firms to compete in international markets. The cheap prices of production in less-developed countries make it nearly impossible for domestic firms in highly-developed countries to compete. This is partly due to the increase in wages and standards for workers' rights. Less-developed countries have not reached the landmarks that cause companies to agree to liveable and sustainable working conditions so they can get away with paying less and making their employees work more. Once civil rights and workers' rights become a topic citizens fight for, labor and production tend to become more expensive.

During Washington's era, the US government implemented a tariff meant to protect domestic manufacturing industries. The main goals of this policy were to protect US industries from European competition and to encourage long-term industrial growth, which was vital for a new

[323] What is a Global Supply Chain, BDC.CA, https://www.bdc.ca/en/articles-tools/entrepreneur-toolkit/templates-business-guides/glossary/global-supply-chain (last visited Mar 26, 2024).
[324] The future of global supply chains: What are the implications for international trade?, BROOKINGS, https://www.brookings.edu/articles/the-future-of-global-supply-chains-what-are-the-implications-for-international-trade/ (last visited Mar 26, 2024).

country to secure. As the United States developed into an economic superpower, these tariffs were pushed aside but that does not mean that new ones were not implemented.

During the 1920s, which marked a period of extreme American protectionism, the main industry that the US government focused on protecting was agriculture.[325] Since agriculture utilizes low-skill labor, it was cheaper to produce abroad than to produce domestically. As a result, domestic farmers were not doing well financially and were having trouble competing with overseas competition. In an effort to protect these farmers, the US imposed tariffs on agricultural products exported to the US from Europe. The problem with these tariffs is that they lead to overproduction of agricultural products in the countries that were no longer able to export, resulting in an extreme decrease in international prices. As a result, farmers lost revenue and there was an increase in food waste. Much like the previous wave of tariffs, these were also eventually lifted.

After the tariffs imposed during the Great Depression, the United States entered an era of free trade.[326] The world as a whole began to strive for trade liberalization in order to encourage teamwork and camaraderie between nations. Not only did it benefit international relations, but it also focused on countries' individual economic growth because they were able to focus their gaze on industries where they had a comparative advantage. This essentially focuses on industries where their resources are best suited to make products.

However, in recent years, the United States has shifted back to a slightly more protectionist economy. The main industries that are being focused on are US steel/aluminum plants and automobile factories. Most tariffs implemented are to protect these industries because these industries tend to have the most vulnerable workers who have the highest risk of losing their jobs. There are four main types of protectionist policies that can be implemented: tariffs, quotas, subsidies, and standardization.[327] Each of these is different but they have the same goal in mind, which is to limit the amount of foreign influence in the US economy.The first and most common type of protectionism is tariffs. Tariffs are essentially taxes placed on imported goods as they enter domestic markets. The main purpose of this type of protectionism is to increase the cost of imported goods, which encourages consumers to not buy these products from domestic companies.The second type of protectionism is quotas. Quotas are restrictions on the amount of product that can be imported during a certain period of time. Although there are no taxes directly on the goods or services being imported, the limited quantity causes the prices to rise, which then causes consumer demand to reduce.

The third type of protectionism is subsidies. Instead of targeting foreign producers, subsidies tend to focus on domestic producers. Subsidies can be seen as production incentives for domestic firms. They are essentially "negative taxes" since domestic producers are given tax credits if they produce a certain product. This is the government's way of encouraging firms to produce goods

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[325] Milestones: 1921–1936 - Office of the Historian, https://history.state.gov/milestones/1921-1936/protectionism (last visited Mar 26, 2024).

[326] A Brief History of Tariffs in the United States and the Dangers of their Use Today, (Mar. 17, 2019), https://news.law.fordham.edu/jcfl/2019/03/17/a-brief-history-of-tariffs-in-the-united-states-and-the-dangers-of-their-use-today/ (last visited Mar 26, 2024).

[327] Protectionism, Corporate Finance Institute, https://corporatefinanceinstitute.com/resources/economics/protectionism/ (last visited Mar 26, 2024).

rather than discouraging foreign firms from exporting to the US. The final type of protectionism is standardization policies. These types of policies give guidelines or instructions to all producers of a specific product. In order for that firm's product to enter the US market, they must meet all the criteria or they will not be able to sell their good or service. Oftentimes, these guidelines dissuade foreign firms from exporting to the United States because it seems senseless to make some products specifically following US guidelines and make the same product with a completely different process for the rest of the world.

As discussed above in previous paragraphs, the overlapping theme is the concern with preserving domestic industries.[328] As the country continues to develop, the need for certain industries lessens and their chances of being displaced become higher. Most of the time, these jobs tend to be reliant on low-skill labor. The issue lies with the fact that low-skill labor jobs are becoming less accessible but there is still a significant portion of Americans that rely on these types of jobs to survive. To lessen the impact of displacement in these fields, the government implements protectionist policies but in the end, they are only short-term solutions.

Overall, the history and details of trade protectionism in the United States have shown difficulty in understanding them. The topic is extremely broad, which can make it difficult for policymakers to make the "correct" decision regarding the protection of domestic industries. There is almost no knowing when it is the time for protectionism or liberalization due to the extreme changes in ideologies and rationale every few decades. In addition to that, there are so many different types of policies that it can be confusing not only for policymakers but also constituents, regarding the benefits that domestic industries will receive at that particular moment. Regardless of the idea surrounding the preservation of domestic industries, legislators often forget that other parties also get affected by their policies. The reality of the global economy is that industries across the globe depend on each other in order to reach their production and financial goals. By aiming to protect a singular domestic industry, US policymakers are indirectly harming hundreds of other industries with millions of workers.

III. GLOBAL SUPPLY CHAIN

Supply chains are such an important factor in businesses. It is not convenient for a company to produce every facet and detail concerning their product so they work with other companies to make the production easier and cheaper. This is extremely true for domestic industries. Each factory or company has a specialization in what product they choose to create. The reason for this common business model is that some companies have a comparative advantage in a specific good when comparing themselves to another company. This means that they are able to produce a good at a faster and cheaper rate than another company could. This production advantage leads companies to focus on the production of this singular good in order to maximize profit and minimize waste. This goes across hundreds, if not thousands, of companies. These companies will then sell their products to other companies, who will then use them as parts in the production of their own product.

[328] Protectionism: Examples and Types of Trade Protections, INVESTOPEDIA, https://www.investopedia.com/terms/p/protectionism.asp (last visited Mar 26, 2024).

Imagining the amount of materials it can take to produce a high-skilled product means that there must be hundreds of industries involved in making a singular high-end product. This is especially true when considering the international economy and the roles industries play in other countries.

Nowadays, most industries rely on some level of international support in order to produce their goods but there are some industries that rely more than others. These industries tend to produce more high-end goods. Some of the most notable industries that rely on foreign capital/goods are refined petroleum, automobiles, machinery, metal, and electronics. All of these industries heavily rely on a lengthy process to produce their final product and a significant portion of their process tends to take place in a less-developed country, where they can get part of their product completed quickly and cheaply.[329]

As stated earlier, trade protectionism is only a short-term solution in the grand scheme of the domestic and international economies. Although these short-term solutions save and protect some citizens' jobs in the industries that initially were protected by them, they do not ensure that these jobs are protected forever. To protect these jobs, the US government ends up harming other industries that need imported goods to produce their products. As a result, jobs in a completely different sector face the risk of displacement, which eventually works further down the line to affect the industries that rely on them to do their jobs.

Besides the individual effects that trade protectionism has on domestic economies, it also has a very significant effect on the world economy. One of the main effects is the lack of technological advancement. Since industries do not have competition domestically, they do not feel the need to innovate. As a result, the rest of the world also does not benefit from an innovation that could potentially make a product easier to produce and more effective for a consumer to use.

In addition to technological advances, trade protectionism causes economic, cultural, and political isolation. Protectionism limits the interaction and agreements formed between countries, so there is less of a relationship between different nations. This makes it more difficult for countries to have good relationships and alliances with one another.[330] Alliances are often seen as the backbone of the international economy, as well as overall international relations. Without the good relationships that come with these trade deals, it can be difficult to maintain civility and cooperation between a group of countries.

IV. STRESS ON INTERNATIONAL RELATIONS

International relations are such an important part of global stability and cooperation. One of the greatest catalysts for international relationships is the formation of trade treaties and deals between various different countries. By forming these trade relationships with other countries, the United States is allowing itself to enhance its reputation as a good ally and trading partner. However, this has not occurred in recent years. In modern times, the United States has entered a more

[329] Investigating the U.S. Reliance on Foreign Suppliers, https://www.stlouisfed.org/on-the-economy/2021/may/investigating-us-reliance-foreign-suppliers (last visited Mar 26, 2024).
[330] Protectionism, Corporate Finance Institute, https://corporatefinanceinstitute.com/resources/economics/protectionism/ (last visited Mar 26, 2024).

traditional protectionist era when referring to its international economic approach. They have reduced access to liberalized and free trade while erecting trade barriers such as tariffs and quotas. The implementation of these trade barriers has caused the decline of industries outside of the US that previously relied on exportation to the United States for a large portion of their income. When these types of policies have such an extenuating effect on a different nation, it can often be seen as aggressive. Instead of enhancing the United States' reputation as a good trading partner, it enhances its reputation as an unreliable one. This leads to the exhaustion of good relations and the disruption of previous economic alliances that played a large role in each country's economy.

As discussed earlier, one of the prime examples of the US targeting a specific country with a tariff is the long-time trade war with China. The concern regarding over-dependence on a country to produce goods that domestic industries need is one of the main reasons that the US has placed such extensive tariffs on Chinese imports. There is also the concern for national security that the US claims whenever referring to the tariffs placed on China. They allege that the security concern around China's unreliability as a product source and the way in which overreliance on Chinese imports led to the weakening of US industries. An increase in Chinese influence in overseas markets tends to make it easier for China to have some influence in the US economy and political world.

Another case of a specific country being targeted by US protectionism is the case *Transpacific Steel LLC v. United States* (2021).[331] When it was presented before the Court of International Trade, Transpacific Steel LLC argued that the increase in tariffs on imported steel was illegal on two separate grounds. Firstly, it was argued that the tariff increase occurred after the timeframe designated by the presidential appointment. Additionally, the company argued that singling out Turkish steel constituted a violation of the equal protection guaranteed under the Fifth Amendment of the Constitution. This legal battle showcases the negative effects of protectionist measures on industries, especially on those in countries that heavily rely on them.

Hostile relations are never a good thing when it comes to the economic system, especially on the international scale. There can be a variety of responses from "targeted" countries. As seen in *Transpacific Steel LLC v. United States,* countries can take the issue to court. Most trade disputes are settled through the World Trade Organization (WTO). However, there are no real punishments given to the defendant if they are found guilty of discriminatory trade policies. Instead, the WTO authorizes the affected country to impose their own trade barriers against the defendant in order to regain the amount of money they lost due to the original barriers. This outcome is almost the same as the one that occurred in the fallout of the US-China trade relationship. To punish the US for its newly imposed tariffs, China implemented its own tariffs against the US, which led to a full-blown trade war. This escalation can be attributed to the lack of a third party like the World Trade Organization. Apart from these two cases, there are many other cases that showcase their disapproval of trade protectionist policies.

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[331] *Transpacific Steel LLC v. United States*. http://cafc.uscourts.gov/sites/default/files/opinions-orders/20-2157.OPINION.7-13-2021_1803293.pdf (last visited Mar 26, 2024).

V. CASES AGAINST PROTECTIONISM

The United States is no stranger when it comes to being the defendant in a case concerning its international trade policies. When the Trump Administration chose to impose these tariffs, especially those on the steel industry, it was extremely controversial, mostly with companies that relied on the exporting and importing of steel. Many companies, foreign and domestic were hurt by the tariffs on the steel/aluminum industries so many of them aimed to get justice through suing the United States. Their disapproval of their policies led many companies to support these companies with the aim of opening up trade again and boosting their sector of the economy. Through these cases, it is possible to see the effects that trade protectionism had on companies directly and how these problems can be contested in court.[332]

A case that argued against the tariffs implemented by the Trump administration was *PrimeSource Building Products Inc. v. United States* (2021).[333] One of the main focuses of this case was the unlawful nature of the imposed tariffs. PrimeSource Building Products Inc. focused on challenging a policy implemented by the Trump administration. The main argument centered around the provision's enforcement beyond the set timeframe for presidential action.

A second case against trade protectionism was *Oman Fasteners LLC v. United States* (2021).[334] *Oman Fasteners LLC v. United States* focused on the lawfulness of Proclamation 9980. Oman, which was a significant steel importer, faced challenges sustaining its business pace due to the tariffs on steel. The protective measures aimed at American industries ended up hurting foreign firms like Oman, which supply products to US companies, which benefits US customers.

In both of these cases, it is possible to see the effects and disadvantages certain countries and companies faced at the hands of the steel/aluminum tariffs. Although they challenged policies on different grounds, they both aimed for the same goal: the repeal of these policies or financial compensation for their losses.

VI. BENEFITS OF TRADE PROTECTIONISM

Despite the damage done so far, there are some benefits to protectionist policies. Policymakers would not be implementing these policies if there were not some sort of benefit seen in the domestic economy. The concept of trade protectionism is so controversial because there are good arguments and benefits on both sides of the issue. Just as there are benefits to the liberalization of trade, there are also benefits to protectionism.

One benefit of trade protectionism is the creation and preservation of jobs within the sectors they are meant to protect. By limiting imports, domestic producers receive a competitive advantage, which allows them to maintain their employee base. For example, in industries like manufacturing or agriculture, protectionist policies can protect jobs by ensuring that domestic

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[332] Benn Steil & Benjamin Della Rocca, *Unalloyed Failure*, Foreign Affairs, May 2021, https://www.foreignaffairs.com/articles/united-states/2021-05-07/trump-disastrous-steel-tariffs (last visited Mar 26, 2024).

[333] PrimeSource Building Products, Inc. v. United States. https://cafc.uscourts.gov/opinions-orders/21-2066.OPINION.2-7-2023_2076649.pdf (last visited Mar 26, 2024).

[334] Oman Fasteners, LLC v. United States, No. 20-00037 | Casetext Search + Citator, https://casetext.com/case/oman-fasteners-llc-v-united-states (last visited Mar 26, 2024).

products are more in demand than otherwise cheaper imported products. While these policies provide clear short-term benefits, their long-term impacts on global trade and economic development are a more controversial topic.

Trade protectionism has the goal of protecting domestic industries from overseas competition. By imposing trade barriers to imports, protectionist policies decrease the amount of foreign goods coming into a country, which reduces competition for domestic firms and encourages consumers to buy domestically produced products. This can create a better import-export ratio by reducing imports and increasing exports as domestic products become cheaper and more enticing in the domestic market. However, these policies can also create a rift with trading partners, which would lead to trade wars and disruption in the global supply chain.

Protectionist policies can lead to increased production and sales within the domestic market, customers are more willing to buy domestic products since they would be cheaper. Increased demand for domestic products leads to economic growth and increases GDP because the money made from selling products would stay in the country rather than go to foreign producers.

These benefits of trade protectionism are substantial for the people and industries that they affect. The benefits witnessed after these policies are implemented show that protected industries really are protected to some extent and that there is some merit in implementing these policies. However, it is also evident that there are some major drawbacks to the implementation of trade protectionist policies and that there are many industries and people that are harmed by them. The question is whether the costs outweigh the benefits.

VII. NEGATIVES OF TRADE PROTECTIONISM

When looking at the positive side of trade protectionism, it seems evident that a large portion of the benefits go to the industry that is being protected. In comparison to the costs of trade protectionism, whose negative effects go across a large spread of industries and people. Not only do these costs affect foreign firms, but they also hurt domestic industries. The costs tend to travel through supply chains instead of isolating in international firms. While the industries policymakers aim to protect are safe, other industries that rely on goods and services from other countries lose a significant portion of their income and production value.

When trade barriers are imposed to protect domestic firms, they can block the flow of goods and services within the economy. Industries that rely on imported goods have to pay more for these goods, which leads to higher prices for consumers and a decrease in demand for their products. This can result in a decrease in production, which could lead to a decrease in jobs. Also, retaliation from trading partners can cause job losses by restricting exports and reducing demand for domestically produced goods in the international economy.

Tariffs imposed on imported goods raise their prices, which makes them less competitive compared to domestically produced products. This can result in higher prices for consumers who rely on imported products, as well as for industries that use them as parts in their production process. Quotas restrict the quantity of imported goods, leading to a reduced supply in the market. With limited availability, prices may rise due to increased demand. Subsidies given to domestic industries can lower production costs, making products cheaper compared to imports. This can

result in lower prices for domestically produced goods, but may also lead to retaliation from trading partners, further fluctuating prices.

When markets are isolated from international competition, domestic producers face less pressure to innovate and remain competitive. Without competition, there is no incentive for companies to invest in research and development or to adjust production methods. Consumers will have lower quality products when they could have had higher quality products if companies were in competition with one another. Without exposure to ideas from international competitors, domestic industries will become stagnant.

The numerous effects of trade protectionism not only affect industries but they also affect consumers. Since these policies tend to focus on the production of goods and the steps within that process, the quality of the product takes a hit. This hurts the industry by substantially increasing their production costs and by making their products less enticing to local consumers. It also hurts the consumers by raising prices and by decreasing product quality. It is evident that there are many advantages to the utilization of free and liberalized trade that industries and consumers lose access to if trade is cut off or impeded. Without some form of international cooperation in the economy, various industries take a large amount of damage and consumers lose the choices they once had in the products that they wanted to purchase. Within the United States, this is especially prominent because trade protectionism can have specialized effects on certain industries that have a large reliance on international producers.

VIII. EFFECTS ON US INDUSTRIES

The United States is one of the most developed countries in the world and as a result, the country is often in charge of producing high-end or high-skilled goods. This is partly due to their increasingly highly educated population and the success of domestic companies and corporations. The production of these complicated and high-end goods leads to these corporations relying on the global supply chain to make the production of these goods cheaper. The cheaper production allows corporations to make more money and increase their output. As a result, the implementation of trade barriers has a large effect on these industries, which have great prominence in the United States. One of the tariffs that has a large effect on these highly-influential industries is the steel/aluminum trade barrier.

The limited amount of steel within domestic markets has caused a surge in prices for domestically produced steel. As the availability of steel lessens, producers are tempted to adjust their pricing because of the limited supply and increased production costs. This imbalance between supply and demand not only impacts the steel industry but also various sectors reliant on steel as a manufacturing component, leading to effects on construction, manufacturing, and infrastructure development. Also, consumers may face higher prices for goods and services dependent on steel, which could lessen growth in affected industries.

Trade protectionism creates exceptionally difficult challenges for the automotive industry by disrupting global supply chains and decreasing access to resources and technologies. Tariffs on imported products not only raise production costs but also lessen collaboration with international partners, which hurts innovation and limits the industry's ability to adapt. Retaliation from trading

partners can lead to reduced exports of domestic vehicles, lessening profits and destroying job opportunities.

In the energy industry, protectionist policies can stop the adoption of renewable energy technologies by increasing the costs of imported solar panels, wind turbines, and other essential components. This not only hurts efforts to combat climate change but also lessens the competitiveness of American energy companies in the global marketplace.

Similarly, manufacturing industries that rely on imported materials face supply chain disruptions and increased production expenses, which lessens their ability to offer competitive pricing and invest in research and development.

Trade protectionism not only increases prices but it also affects consumers' buying habits. As tariffs increase production costs and prices, consumers are affected by higher prices on goods like automobiles, energy products, and manufactured items. Consumers may have to find cheaper alternatives or not buy anything at all. This decrease in consumer spending not only impacts the affected industries but also affects the national economy, because it lessens the demand for goods and services across many sectors. Less purchasing power due to higher prices can lead to a stagnancy in economic activity since consumers cut down on spending. This can lead to decreased business investment, job losses, and less economic growth.

Protectionism inflicts significant harm on the US economy and American consumers. Protectionist measures such as tariffs and trade barriers do not allow resources to be properly allocated to where they need to be. By protecting domestic industries through tariffs or subsidies in the short term, protectionism blocks them from competition, which reduces the incentive to innovate and improve. This lack of competition not only lessens innovation but also leads to inefficiencies in production, which drives up costs for consumers. With fewer options available in the market due to restricted imports, consumers are faced with higher prices and less purchasing power. Protectionist policies can trigger retaliation from trading partners, which can lead to trade wars. These conflicts disrupt global supply chains, increase market volatility, and lessen economic growth. Protectionism can also have detrimental effects on the US's reputation as a reliable trading partner, which can lead to decreased foreign investment and job losses in export industries. Also, protectionism tends to benefit a select few industries or companies at the expense of the national economy, empowering income inequality and social disparities. Instead of creating sustainable growth, protectionism often leads to economic stagnation. By threatening competition and innovation, protectionism jeopardizes the long-term economic growth in the United States.

Highly-valuable and influential industries often suffer damaging effects perpetuated by the implementation of trade protectionist policies. Despite the United States wanting to protect American industries, there are many other American industries that are harmed by them. These industries tend to be bigger in size with more employees than those in the industries that the United States is trying to protect. As a result, many jobs in the non-protected sectors could get eliminated and by trying to save jobs, the US could potentially lose even more. These industries are not only influential in the economic sector of the United States but they are also influential in the employment sector of the nation. They are large employers of the country's citizenry so the chances of losing more jobs in these industries is highly likely. These companies also consist of a large

portion of the United States' GDP so if they start to lose money and influence, the US's GDP will also decrease with them. Not only will the industries begin to suffer, but the country as a whole will begin to suffer.

IX. CONCLUSION

Trade protectionism is such a complicated and contested issue so it can be difficult for individuals to form an opinion of the correct way in which the United States should handle trade in the economic sense. Regardless of what decision is made, there will always be winners and losers. Whether trade protectionist policies are implemented or not, there will be those who benefit and those who fall victim to the competitive economy. The aim of the US government is to make sure as many US industries are deemed winners as possible. They view trade protectionism as a way to ensure the presence of winners within the American economy but they often disregard the losers they end up turning other US industries into. There are so many conditions and situations that policymakers, as well as the citizenry, must consider before making a decision or forming an opinion on the state of the US economy and the position the country is taking regarding international trade relationships. To ensure that the United States is making the correct decision, it must go down the supply chain and analyze the downstream effects certain policies can have on certain industries because the fact of the matter is that economic policy is full of cause-and-effect relationships.

Protectionism tends to lead to long-term consequences. Increased costs, stemming from higher prices for imported goods, lessen consumer purchasing power and global competitiveness. Retaliation from other countries in response to trade barriers can cause trade wars, disrupting supply chains and reducing overall trade volume. Protectionism causes inefficiency within domestic firms, weakening innovation and productivity improvements due to reduced competition. The misallocation of resources threatens economic growth as capital and labor remain trapped in less efficient sectors without competition.

Instead of depending on protectionism, the United States should prioritize innovation and improving access to high-skill training. Investing in research and development can help companies achieve technological improvements, which would make American industries more competitive in the world economy. Also, initiatives for accessible high-skill training, such as vocational programs and university training, allow workers to gain skills that could apply to sectors like technology, healthcare, and renewable energy. Supporting the shift to high-skill labor through things like funding accessibility and reduced barriers strengthens innovation and generates new employment opportunities. Combined efforts between industry, academia, and government lead to sharing knowledge and transferring technology, making innovation more common and increasing competition. Emphasizing fair and open trade agreements, rather than protectionism, makes the exchange of goods and services easier while making sure American industries can compete. Through these strategies, the US can increase its competitiveness, increase economic growth, and create sustainable long-term prosperity.

Regardless of the intentions of these protectionist policies, it is evident that these policies are not efficient and sustainable long-term solutions. By raising prices for consumers and reducing purchasing power, protectionism harms consumption, which means it lowers the demand for goods

and services. It also hurts competition and innovation by not allowing domestic firms to learn/compete with foreign firms, which can lead to complacency and a lack of investment in research. To truly protect American industries, the US government must find alternative methods because current policies make it more difficult for firms to compete due to the lack of innovation and the increase in stagnancy.

There are many different sectors of global society that can face a large impact due to trade protectionist policies. As a result, the different aspects involved in the realm of trade protectionism demand a nuanced approach in policy implementations and evaluation of the costs and benefits provided by every possible approach. While protectionist measures may aim to protect domestic industries and address disadvantages they might face in the global competitive markets, they often carry unintended and disregarded consequences and can provoke retaliation from the part of former trading partners, increasing tensions in global trade relations, and overall international relations. It is extremely important for policymakers to weigh the short-term benefits against the long-term costs, and they must consider not only the immediate effects on specific sectors but also the broader future implications for economic growth, international cooperation, and geopolitical stability. Embracing open and liberalized trade policies, coupled with targeted measures to address legitimate concerns revolving around vulnerable domestic industries, offers a more sustainable path toward ensuring the development of inclusive prosperity and channeling a more interconnected global economy. As a result, increasing dialogue and collaboration between nations remains largely essential in navigating the complexities and complications of trade protectionism and advancing shared interests and concerns in an ever-evolving economic sphere.

DON'T BREAK THE BANK – OR THE EDUCATION SYSTEM: U.S. POLICIES ALLOW THE EXPLOITATION OF K-12 EDUCATION

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Edited by Lily Gold

Commercialization in the United States public education system exists primarily in educational technology (EdTech). EdTech encompasses a wide array of adaptive education technologies, translation tools, software programs, and databases. While these technologies can provide valuable assistance to students in need, such as disabled individuals or non-native English speakers – they come with a cost. This tech exacerbates educational disparities, particularly in districts that cannot afford these resources, and allows corporations to prey on student information to turn it into a profit. The welfare of students is compromised by the increasing commercialization of K-12 education.

Historically, the Federal Acts and Education Privacy Act (FERPA) has not allowed the ubiquitous right to student privacy. In *Owasso Independent School Dist. v. Falvo* (2008), the Supreme Court ruled that tests and peer-reviewed grades do not qualify as educational records, and are therefore not protected under FERPA. This decision and similar cases have limited the scope of FERPA during the time of their decision. The question of how much legal protection children's privacy should warrant has thus been an issue of concern accompanying the last couple of decades. Limitations on FERPA, even if reasonably placed, ultimately place obstacles in the way of prosecuting individuals or organizations who may invade student privacy.

However, these policies are inadequate in addressing the increasingly pervasive role that technology plays in society. Furthermore, corporations prioritize maximizing their profits at the expense of resource accessibility and students' privacy rights, focusing instead on enhancing the relevance and algorithm of their advertisements.

In *Williams v. State of California* (2000), the Superior Court of California San Francisco upheld the fundamental right of all students to access basic educational necessities. As schools increasingly turn towards technology and digital media to provide this education, the state included EdTech in the decision. This ruling not only affirmed the absolute right of students to an equal quality of education but also stressed the critical importance of ensuring equal access to EdTech. Consequently, EdTech is now considered to play an essential role in modern education.

Concerns about the rise of EdTech have recently become more prominent. In *United States v. Edmodo LLC* (2023), the Federal Trade Commission filed that Edmodo, an EdTech company, violated the Children's Online Privacy Protection Act Rule (COPPA) through the collection of students' personal data without their consent.

Although the ethicality or virtue of the private sector might be debated, malicious corporations should play no role in the education of children. The encroachment of technological commercialization on public education has a detrimental impact on both student welfare and institutional disparities.

I. EDUCATION AS A FUNDAMENTAL HUMAN RIGHT

Educating young people is key to building a new generation of productive citizens, empathetic people, and progressive changemakers. It is also more than an avenue to fulfillment and enlightenment: it is a fundamental right. It is the prerequisite for people to learn about themselves and their environment and how to interact within the spaces they live. It is thus fundamentally necessary in order to live a quality life. Furthermore, the role that education plays in K-12 children has expanded beyond simply learning how to read, write, and think: it encompasses vast social, economic, and welfare programs that make up the essential infrastructure of the United States. Schools also provide spaces for students to interact with their peers. This is especially important because it allows them to connect with others with similar identities while also learning how to treat others who are different than them. They provide an educational opportunity for children to attend the majority of the working day, allowing parents to responsibly go to work. In cases of abuse, they allow the separation of children from unsafe domestic environments and provide an avenue for authority and legal figures to intervene. Furthermore, cafeterias and reduced lunch programs take care of the health of children. Altogether, schools protect both the physical and mental well-being of young individuals.

Education is fundamental on its own, but the roles that schools play are indispensable and contribute to the importance of education as a basic human right. In the United States, however, this does not clearly translate to a constitutional right to education. *Brown v. Board of Education* (1954) famously proclaimed that separate but equal is unconstitutional. The decision also broadly asserted the importance of education in the United States and the 14th Amendment's protection of equal access to education. However, in *San Antonio Independent School District v. Rodriguez* (1973), the court struck down the idea that the right to education was guaranteed by the Constitution. The San Antonio school district brought a suit concerning the partial reliance of public school funding on local property taxes. The district proclaimed that because the surrounding area had primarily low-income residents, the students were not receiving fair access to educational resources. The court's decision states that this was not in violation of the 14th Amendment because the equal protection clause does not require "precisely equal" advantages to every student.[335]

This precedent means that students in K-12 public education are vulnerable to inequalities in education and the institutions that perpetuate those inequalities. In particular, the rise of EdTech, the unequal distribution of those technologies, and how its commercialization negatively affects all students involved is an issue of modern concern lead to calls for increased protection for students in order to ensure equitable access to education.

Historically, although cases like *San Antonio ISD* may fail to fall directly under the federal government's jurisdiction they play an important role in and have the capabilities to regulate educational policies. Although education is usually left to the jurisdiction of state governments, there is a national interest in improving academic performance, clearly demonstrated through policies like the 2002 No Child Left Behind Act (NCLB) and its successor, the 2015 Every Student Succeeds Act (ESSA). NCLB's installment of nationally standardized curriculums and mandatory state testing

[335] *See* San Antonio Independent School District et al., Appellants, v. Demetrio P. Rodrigues et al. 411 U.S. 959, 93 (1973).

emphasized the importance of improving student performance and educational quality, particularly for minority students.[336] ESSA, in turn, reformed many of NCLB's shortcomings by providing more support for financially disadvantaged schools and instilling a requirement for schools to prepare children for the future, ultimately exemplifying how both schools and governments have an interest in improving test scores and other measures of academic performance.[337] Therefore, governments have an obligation to protect the educational well-being of students – encompassing their academic, mental, and physical welfare – especially in the largely unregulated landscape of EdTech.

II. RISE OF EDTECH AND THE ROLE IT PLAYS IN EDUCATION

Technology over the last three decades has vastly changed the way Americans receive information, communicate, and interact with the world around them. This is just as true for education. The right technology can enhance the overall quality of education for students, from more precise grading infrastructures, to the opportunity for research, to the availability of support for independent study, to the transcendence of traditional physical barriers. Notably, technology as a way to supplement education arose during COVID-19 and the suspension of in-person instruction. For the first time, despite difficulties in sustaining the same quality of instruction, classrooms widely moved online and were able to continue teaching.

EdTech thus plays an integral role in K-12 education in the United States today. As adaptive translation and tutoring programs become more advanced and hybrid instruction becomes more popular, an ever-growing number of districts rely on platforms like Google Suite or Microsoft Office to facilitate education. It accordingly becomes increasingly difficult to meaningfully distinguish the quality of access to education from the quality of access to educational technology.

If education is a fundamental right, then EdTech should similarly be considered as fundamental. States like California have realized this and have begun to acknowledge this shift. In *Williams v. State of California* (2000), the Superior Court of California San Francisco upheld the fundamental right of all students to access basic educational necessities, including access to EdTech.

The American Civil Liberties Union (ACLU) filed a lawsuit against California on behalf of San Francisco students, parents, and teachers citing inadequacies in the quality and distribution of instructional materials. The claim was that the failure to provide basic educational necessities detrimentally impacted the education of public school students, particularly for the students of Balboa High School. The Superior Court of California found that the equality and standard of education was a question of utmost importance, which concerned things like safe schools, qualified teachers, and EdTech. Citing educational technology as a key provision in equal access to education affirms the irreplaceable role that technology plays in the American education system and the increasing need to regulate it.[338]

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[336] *See* No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 115, Stat. 1425 (2002).
[337] *See* Every Student Succeeds Act 20 U.S.C. § 6301 (2015). congress.gov/114/plaws/publ95/PLAW-114publ95.pdf In-text: (Every Student Succeeds Act, 2015).
[338] *See* Williams v. State of California 34 Cal.3d 18, 192 Cal. Rptr. 233; 664 P.2d 137 (1983).

III. HISTORY OF FERPA AND EXISTING PRIVACY LAWS

The Family Education Rights and Privacy Act (FERPA) was passed and signed into law in 1974 in order to protect the privacy of student education records.[339] This standard applies to all schools that receive funding from the US Department of Education and requires schools to have written consent from the parent (or student, upon turning 18) before releasing any information about a student's education record. The act itself has two parts: (1) giving students the right to inspect and review their own educational records, and (2) prohibiting educational institutions from disclosing education records without consent. This legislation is crucial because student records contain private information, which is privileged in principle, but also academic information, medical information, and disciplinary records that could affect the future of a student.

Since its creation, FERPA has been amended a total of eleven times in order to accommodate changing educational standards. In 2001, for example, the threshold for what was considered an "educational record" was challenged by *Owasso Independent School Dist. v. Falvo* (2002). The Supreme Court ruled that tests and peer-reviewed grades do not qualify as educational records, and are therefore not protected under FERPA. As a result, the amendments excluded grades on peer-graded papers from the definition of education records.[340]

The most recent amendment was made in 2013 as part of Congress's Uninterrupted Scholars Act. The Act changed some of the mandatory requirements regarding consent in cases of foster care or subpoenas, ultimately allowing educational institutions to disclose personally identifiable student records without notifying the parent or student as long as broad notice about welfare or court proceedings was made.[341]

Decisions like those made in *Owasso Independent School District* or the Uninterrupted Scholar's Act, while logically and appropriately made given their context, ultimately represent how FERPA is limited in the protection of privacy for students.

Adjacently, the Children's Online Privacy Protection Rule (COPPA) was enacted by Congress in 1998 and imposed certain requirements on operators of online services and websites that have "actual knowledge" that they intend to collect or disclose personal information from children under 13.[342] COPPA was originally created in response to a complaint in 1996 about KidsCom, one of the internet's first sites geared towards children. The Federal Trade Commission (FTC) found that KidsCom had been collecting personal information from children through contest entries and pen-pal programs and sharing that data with third parties without the consent of the children or their parents. Although KidsCom reformed its practices in response to the investigation, the problem of children's privacy became a more apparent and pressing issue. Congress thus passed COPPA in order to give the FTC more control over the regulation of children's online privacy.

COPPA was last amended in 2013 to reflect the growth of social networking by expanding the definition of personal information to include meaningful identifiers like photos, videos, audio recordings, or cookies that track a child's web usage. However, because of COPPA's unique and

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[339] *See* FERPA 20 U.S.C. § 1232g; 34 CFR Part 99 https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html.
[340] *See* Owasso Independent School District v. Falvo 534 US 426 (2002).
[341] *See* FERPA, Uninterrupted Scholars Act (2013) www.congress.gov › bill › 112th-congress S.3472 - Uninterrupted Scholars Act (USA) 112th Congress https://www.congress.gov/bill/112th-congress/senate-bill/3472/text.
[342] *See* COPPA https://www.ftc.gov/legal-library/browse/rules/childrens-online-privacy-protection-rule-coppa.

limiting wording–particularly the ambiguity between "knowledge" and "actual knowledge"– it is hard to assign concrete definitions to the ever-changing field of technology. COPPA also permits the collection of information by educational technology companies as long as it is "for the use and benefit of the school, and for no other commercial purpose," without clearly defining where that boundary is.[343] The FTC has accordingly received criticism for failing to truly enforce the act as people call for COPPA to expand privacy protections for children.[344]

Policies like FERPA and COPPA exist as vital safeguards for protecting the privacy of children both academically and technologically. However, although both COPPA and FERPA have been added to and amended in order to address issues that arise, the last time either act was updated was in 2013. These policies are inadequate to address the increasingly critical and pervasive role that technology plays in society, particularly in the intersection between education and online activity.

IV. PRIVACY LAWS LEAD TO THE COMMERCIALIZATION OF EDUCATION

The landscape of the internet today is a very different place than it was a decade ago. From the necessity of remote learning to the prevalence of online student interfaces (i.e. canvas, turnitin.com) to recent concerns about the rise of AI, technology has irreversibly become an essential part of American education. As technology takes a more central role, the question turns to the companies that create, monitor, and market these tools. The fact is that EdTech is a profitable industry. In 2023, the US EdTech industry was worth 145 Billion USD, a number that is only projected to increase. The market is anticipated to reach a value of 491.2 billion dollars by 2033.[345] This means that private corporations have a stake in the public education of students and will market themselves to schools.

Even without EdTech, commercialism in education is widespread and relentless. Corporations subsidize programs and activities in exchange for their logo and branding to be associated with the event or organization and form exclusive agreements with schools to sell goods.

At the Commercialism in Education Research Unit (CERU) at the University of Colorado Boulder, a series of reports documented seven primary types of corporate activity in schools: sponsorship of programs and activities, exclusive agreements, incentive programs, appropriation of space, sponsored educational materials, electronic marketing, and fundraising. In the early 1990s, corporations primarily engaged in sponsorship of school activities as their way of marketing.[346] With the advent of EdTech, however, they have shifted to be more "educationally based." For example, Apple's "Kids Can't Wait" campaign donated 9,000 Apple computers to schools in the name of improving access to and quality of education. Since then, Apple has continued to sponsor technology in schools, demonstrating the extent of commercialization in school districts.

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[343] *See* COPPA: Complying with COPPA: Frequently Asked Questions.https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions.
[344] Debra A. Valentine, Privacy and the Internet: the Evolving Legal Landscape https://www.ftc.gov/news-events/news/speeches/privacy-internet-evolving-legal-landscape.
[345] EdTech Market Statistics: Global EdTech Market Analysis By Type (Feb 2024) https://market.us/report/EdTech-market/#:~:text=The%20global%20EdTech%20market%20has%20witnessed%20unprecedented%20growth%2C%20with%20a,the%20landscape%20of%20educational%20technology.
[346] Boninger, F. & Molnar, A. (2016). Learning to be watched: Surveillance culture at school — The eighteenth annual report on schoolhouse commercializing trends, 2014-2015. Boulder, CO: National Education Policy Center.

However, regardless of the questionable efficacy of virtual learning or the clear necessity of remote instruction during COVID-19, it still stands that corporations have firmly cemented themselves in American education and will only continue to do so as technology becomes a clear avenue of irreplaceable value.[347] Although EdTech companies claim that they uphold the protection of student information and do not sell records to third-party sources, the actual contracts that bind them often leave room for questionable activity such as data profiling and targeted student advertising without any obligatory transparency or accountability by school districts or governments. This is problematic because COPPA and FERPA operate on the scale of the individual student and their family: parents must consent to the sharing of a child's personal information. However, because corporations make deals with schools or districts and not individuals, students are not able to consent to the collection of their information. COPPA allows for EdTech providers to rely on the authorization of schools as adequate consent for students under the assumption that schools act as agents for parents.[348]

More concretely, while privacy laws like FERPA regulate how student data can be shared with third parties, they do not prevent the commercialization of education. They merely establish guidelines for how student data should be handled by educational institutions.[349] But the commercialization of K-12 education typically involves more than student records; it also involves partnerships between educational institutions and third-party companies that provide educational products and services, such as software, textbooks, or online platforms.[350]

V. NEGATIVE EFFECTS OF COMMERCIALIZATION ON THE EDUCATION SYSTEM

The commercialization of education has a psychological consequence: it celebrates and relies on the generosity of corporations instead of promoting the idea that education is a fundamental social institution. Moreover, commercialization is an unsustainable industry that teaches moral lessons that are at odds with the behaviors and values that children will need to carry into the future. It advocates for a fast-paced, highly individualistic, often wasteful environment as opposed to one that promotes the genuine education, connection, and understanding of children.

The prevalence of EdTech as a profitable industry is susceptible to the same concerns about the rise of commercialization, marketing, and for-profit motivations. Although companies may claim to be interested in the development of education and opportunity, they are ultimately a business that prioritizes profits. This is apparent in how the results of financial and educational investments in schools – such as test score margins – create disparities based on the number of investors and return on profit that the companies receive. In turn, this creates a limited use and adoption of EdTech in the classroom.

EdTech is a manifestation of private interests first and a tool for learning second. While on the surface, private firms may appear to hold the interests of education and children at hand, they

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[347] Alex Molnar, Faith Boninger The Commercial Transformation of America's Schools (Sep 21, 2020) https://kappanonline.org/commercial-transformation-americas-schools-molnar-boninger/.
[348] *See* COPPA.
[349] *See* FERPA.
[350] *See* Molnar & Boninger, 2015, chapter 2.

will always prioritize the corporate interest over that of schools. The harmful conjunction of these two entities will only lead to the neglect of the intellectual, social, and physical well-being of children.[351]

While some call for EdTech and the rise of 'personalized learning technology' as a way of "promoting efficacy and equity whereby all students are viewed as unique individuals with the capacity to learn if provided with the right conditions and tools," this view is idealistic and unwilling to recognize the motivations of these corporations.[352] EdTech certainly has the potential to improve the accessibility of education, but "personalized learning technologies reflect narrow corporate-driven educational policies and priorities such as privatization, standardization, high stakes assessment, and systems of corporate management and accountability."[353]

The goal of tech is rooted in maximizing efficiency. Similarly, the prominence of EdTech in education transforms the goal of education to produce the most productive worker. Technologies are pushed because they create a 'more efficient learning environment,' using criteria that makes everything a skill, from pure statistics to social ability to logical reasoning. But children are more than future workers and the education system should be more than an industrialized factory line that serves corporate interests. Measuring students solely by numbers and results neglects the development of complex innovation, creative thinking, and perseverance. Instead, it restricts them to what can be measured by an algorithm.

In her article on personalized learning Heather Roberts-Mahoney stated, "the way to support critical thinking, creativity, innovation, perseverance, tenacity, and other advanced cognitive and non-cognitive capacities is simply to invest in schools, communities and young people in order to create the social conditions in which these capacities can develop and flourish. Even if one does subscribe to the inherently reductive notion of education as purely about advanced human capital development, privatized and standardized customization through personalized learning technology does not appear to effectively support this goal."[354]

The encouragement governing bodies provide to the corporate intersection of education furthers this idea: the Office of Educational Technology, a subset of the US Department of Education, released a report titled *Transforming American Education: Learning fueled by Technology*. In the report, a key section Assessment: Measure what Matters details the goals of the education system and calls on the technologies that will lead there. However, the stated goal is to have "better performance and greater efficiency across the entire system," demonstrating the extrapolation of students as more than workers but less than people. No matter how advanced or multifaceted the

[351] Davis, Dowayne D. "Educational Technology Commercialization, Use, and Adoption in Public K-12 Schools (2018), New Jersey City University https://eric.ed.gov/?id=ED596386.
[352] Heather Roberts-Mahoney, Alexander J. Means Netflixing human capital development: personalized learning technology and the corporatization of K-12 education (Jan 14, 2016) https://doi.org/10.1080/02680939.2015.1132774.
[353] *See* Mahoney, Means.
[354] *See* Mahoney, Means.

technology is, as long as the goal is efficiency and not the quality of education or life of the student, the US will never have an education system that prioritizes the individual.[355]

VI. MODERN MOVEMENTS TOWARD MORE RESTRICTED TECHNOLOGY

The Electronic Privacy Information Center (EPIC) was founded to safeguard privacy in the new digital age through policy, advocacy, and litigation.[356] In pursuing its mission to reduce corporate involvement in determining standards of privacy and protect users from exploitative surveillance, EPIC has been at the forefront of many complaints and movements against social media companies in the last two decades. As early as 2003, with a complaint against Amazon's alleged collection and disclosure of children's personal information, EPIC has fought to secure children's privacy rights both under COPPA and more broadly across the political landscape. Most recently, in 2019, EPIC helped file a FTC complaint against TikTok for violating COPPA by collecting children's data without clear parental consent. After pressure from EPIC and the FTC, TikTok settled for 5.7 million dollars, the largest COPPA penalty paid at the time.

The emergence of advocacy groups like EPIC underscores a clear concern about preserving privacy for the country's most vulnerable populations. The rapid expansion of technology and its increasing prevalence in every facet of daily life – including, and perhaps most concerningly, education – thus necessitate direct and ever-evolving action to regulate potential abuses in privacy, even beyond the standards that COPPA provides.

In regard to education, recent events highlight the validity of privacy concerns in EdTech. For instance, *K12*, a for-profit EdTech company that runs the Agora Charter School in Virginia, was sued by former employees. The suit claimed that "*K12*-managed schools aggressively (and) recruited children who were ill-suited for the company's model of online education… then manipulated enrollment, attendance, and performance data to maximize tax-subsidized per-pupil funding."[357] Capitalizing on Virginia's student welfare laws, *K12* gained significant funding from each student as they billed for the residence they would have taken at a school. The lucrative industry of EdTech thus encouraged the augmentation of student enrollment – without regard to the quality of education – and carefully orchestrated numbers by utilizing the collected student data.[358] While misuse of personal children's information to this extent is clearly restricted, similar and less clear abuses of student privacy are technically protected under the existing FERPA and COPPA doctrines. Similar lawsuits have emerged as EdTech, making the potential for harm more apparent. Edmodo LLC is a business-to-consumer online learning platform that facilitates communication between teachers,students, and parents using online submission forms, virtual classrooms, and training

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[355] U.S. Department of Education, Office of Educational Technology Transforming American Education Learning Powered by Technology (National Education Technology Plan 2010) https://www.ed.gov/sites/default/files/netp2010.pdf.

[356] Electronic Privacy Information Center (EPIC), Data Protection>Children's Privacy *https://epic.org/issues/data-protection/childrens-privacy/*.

[357] Benjamin Herold K12 INC. Sued Over For-Profit Education Company's Tax-Subsidezed Funding Manipulation (Jan 23, 2013) last updated March 25, 2013 https://www.huffpost.com/entry/k12-inc-sued-over-for-pro_n_2535359.

[358] Ex-workers claim operator of cyber-charters played games with enrollment figures (Jan 21, 2013) https://whyy.org/articles/k12cyber21/.

tools.[359] In 2023, the FTC launched a suit against Edmodo for violating COPPA by collecting and disclosing student records without the consent of the parents and institutions. Although COPPA relies on the assumption that districts serve as consenting agents for the parents, the FTC found that Edmodo's use of data collection for strictly commercial purposes required the individual consent of students. This case has the potential to transform the way that for-profit companies in tech are viewed in the educational sphere by ensuring the enforcement of COPPA standards and changing the perceived relationship between the corporation and the individual.

Modern movements towards more restricted technologies seem to second this idea. In 2023, the Federal Trade Commission proposed changes to COPPA that would place new restrictions on the disclosure of children's personal information and the ability of companies to monetize children's data in order to address the evolving ways that personal information is being collected and used in a new digital age.[360] This could be the first step towards building adequate, enduring, and constantly evolving protections for children as the question of EdTech becomes more pressing.

Cases like the *K12* lawsuit and *Edmodo LLC* represent the ongoing movement towards making EdTech more regulated and indicate a future where the protection of student privacy is a priority. Further collaboration of judicial reform, advocacy groups, and policymakers is essential for building resilient frameworks in a new digital world.

VII. CONCLUSION: LOOKING TO THE FUTURE

Children are the future of America and one of the most vulnerable populations to commercialization. Despite the existence of privacy laws like FERPA and COPPA, student privacy is not adequately protected in the digital age, particularly with the increasing prevalence of EdTech. Therefore, there is a pressing need for policy reforms to address these shortcomings and better safeguard student privacy.

While EdTech presents many opportunities for the growth of equal, improved, and more individualized learning opportunities, technology cannot be viewed in a vacuum. Advancements in education and technology – specifically where those two ideas intersect – will always exist within the context that is subject to and embedded within the corporations that create them, the schools that use them, and the government that regulates them. Currently, there are no true or enduring limitations on where the lines between corporate profit and school interests should be drawn, resulting in an overlapping system that will only continue to become more synonymous with private interests unless US privacy regulations are adequately reformed.

One of the key concerns about regulating a landscape that is always changing is how to implement a policy that maintains effectiveness over time. The solution is to create a policy that is open to change and ever-evolving. Alternatively, policies could be made that tackle some of the root

[359] United States of America v. Edmodo LLC.

[360] FTC Proposes Strenthening Children's Privacy Rule to Further Limit Companies' Ability to Monetize Children's Data (December 20, 2023) https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-proposes-strengthening-childrens-privacy-rule-further-limit-companies-ability-monetize-childrens#:~:text=The%20Federal%20Trade%20Commission%20has%20proposed%20changes%20to,condition%20access%20to%20services%20on%20monetizing%20children%E2%80%99s%20data.

concerns with the takeover of corporations and the monetization of the American education system. Improving the accessibility of educational resources and allocating more funding to all schools – from physical classrooms to higher teacher salaries to testing materials to all schools – would decrease the appeal of EdTech in bridging educational disparities removing the necessity of corporation involvement in public school settings, as well as increasing the quality of education in the United States.

The pressing need for reform is continually displayed in the various lawsuits and cases already mentioned. It is long past time for the federal government to play a more active role in the protection of students.

LEGISLATION AND THE CRIMINAL JUSTICE SYSTEM: EXAMINING THE IMPACT ON THE LGBTQ+ COMMUNITY AND QUEER PEOPLE OF COLOR

Esmeralda Barrera
Edited by Hillary Dang

Discrimination and the LGBTQ+ community have remained inextricably linked throughout history. Legislation and the criminal justice system play pivotal roles in shaping the experiences of LGBTQ+ individuals, particularly transgender and queer people of color, showcasing the pervasive discrimination they face and its connection to an ingrained heteronormative mindset. Key legal cases, such as *Bowers v. Hardwick* (1986) and *Eisenstadt v. Baird* (1972), highlight the complex and contentious interpretations of the US Constitution that hindered the recognition of privacy rights for the LGBTQ+ community.

Today, legislative efforts threaten the basic human rights of LGBTQ+ individuals, with a specific focus on transgender youth through the ban on puberty blockers and hormone therapy in Texas. Furthermore, the intersection of law enforcement and the LGBTQ+ community underscores the heightened vulnerability of transgender individuals and queer people of color to police misconduct.

Through an examination of recent landmark cases like *Bostock v. Clayton* (2020) and the proposed Equality Act, it is clear that the legal landscape is evolving to better protect the rights of LGBTQ+ individuals, giving them the privacy rights they deserve. However, despite these positive changes, substantial challenges persist. In the face of discriminatory legislation and an imperfect criminal justice system, the LGBTQ+ community demonstrates remarkable resilience, leading the way toward a more equitable and inclusive society.

I. INTRODUCTION

The relationship between legislation, the criminal justice system, and the LGBTQ+ community in the United States is fraught with complexity, discrimination, and the pursuit of equality. The impact of legal frameworks on the lives of LGBTQ+ individuals, particularly transgender individuals and queer people of color, cannot be overstated. It is within the framework of the law that their struggles for recognition, acceptance, and basic human rights have unfolded, reflecting and perpetuating deeply ingrained heteronormative beliefs that have long marginalized LGBTQ+ individuals.

Throughout history, discrimination against the LGBTQ+ community has remained pervasive, with legal structures often serving as both a reflection and a reinforcement of societal biases. Key legal cases, such as *Bowers v. Hardwick* (1986) and *Eisenstadt v. Baird* (1972), have exemplified the contentious interpretations of the US Constitution that have hindered the

recognition of privacy rights for LGBTQ+ individuals.[361,362] These cases have underscored the challenges faced by LGBTQ+ individuals in asserting their rights within a legal system that has, at times, failed to protect them adequately.

In contemporary society, despite strides towards greater acceptance and legal recognition, the LGBTQ+ community continues to face significant challenges. Recent legislative efforts, such as the ban on puberty blockers and hormone therapy for transgender youth in Texas, highlight the ongoing threats to the basic human rights of LGBTQ+ individuals. Moreover, the intersection of law enforcement and the LGBTQ+ community has exposed the heightened vulnerability of transgender individuals and queer people of color to police misconduct, further exacerbating the challenges they face.

However, amidst these challenges, there are also signs of progress and hope. Landmark cases like *Bostock v. Clayton* (2020) and the proposed Equality Act signal a shift toward greater legal recognition and protection for LGBTQ+ rights.[363,364] These developments reflect an evolving legal landscape that is increasingly responsive to the needs and experiences of LGBTQ+ individuals, offering hope for a future where their rights are fully recognized and respected.

Yet, despite these positive changes, substantial challenges persist. Discriminatory legislation and systemic biases within the criminal justice system continue to hinder the full realization of LGBTQ+ rights. In the face of these obstacles, the LGBTQ+ community has demonstrated remarkable resilience, leading toward a more equitable and inclusive society. It is through their ongoing advocacy, activism, and unwavering determination that progress is made, reaffirming the importance of continued efforts to dismantle discriminatory barriers and advance the rights and dignity of all LGBTQ+ individuals.

II. LEGAL MILESTONES AND SETBACKS: THE IMPACT OF BOWERS V. HARDWICK

The history of LGBTQ+ rights in the United States is a complex tapestry woven with significant legal milestones and setbacks, among which the case of *Bowers v. Hardwick* (1986) stands as a pivotal moment in LGBTQ+ legal history.[365] This landmark case serves as a stark reminder of the challenges and barriers faced by the LGBTQ+ community in their pursuit of equality under the law. Originating from Georgia, *Bowers v. Hardwick* (1986) centered on the constitutionality of a state law criminalizing private sodomy between two consenting adults. The case ignited a firestorm of controversy and debate, as it brought to the forefront fundamental questions about privacy rights, sexual orientation, and constitutional protections.

The Supreme Court's ruling in *Bowers v. Hardwick* (1986), which upheld the constitutionality of Georgia's sodomy law, sent shockwaves throughout the LGBTQ+ community. It represented a significant setback in the fight for LGBTQ+ rights, reinforcing the marginalization and

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[361] See Bowers v. Hardwick, 478 U.S. 186 (June 30, 1986).
[362] *See* Eisenstadt v. Baird, 405 U.S. 438 (March 22, 1972).
[363] See Bostock v. Clayton Cty., 140 S. Ct. 1731 (2020).
[364] H.R.5 - 117th Congress (2021-2022): Equality Act." Congress.gov, 2021, www.congress.gov/bill/117th-congress/house-bill/5.
[365] Bowers 478 U.S 186.

discrimination faced by LGBTQ+ individuals within the legal system. The decision underscored the deeply entrenched societal biases and heteronormative attitudes that permeated judicial interpretations of the US Constitution at the time, further complicating efforts to secure legal recognition and protection for LGBTQ+ individuals.

Despite the disappointment and frustration stemming from the *Bowers* ruling, the case also catalyzed change and activism within the LGBTQ+ community. *Bowers* galvanized LGBTQ+ advocates, legal scholars, and allies to challenge prevailing attitudes and seek redress through legislative reform and strategic litigation. It sparked a nationwide conversation about the intersection of privacy rights, sexual orientation, and constitutional liberties, prompting a reevaluation of existing legal frameworks and the need for greater protections for LGBTQ+ individuals.

In the aftermath of *Bowers v. Hardwick* (1986), LGBTQ+ activists and organizations mobilized to challenge discriminatory laws and advocate for LGBTQ+ rights at both the state and federal levels.[366] The case energized efforts to repeal sodomy laws across the country, leading to a wave of legislative reform aimed at decriminalizing consensual same-sex conduct. Moreover, it laid the groundwork for subsequent legal challenges and landmark victories, such as *Lawrence v. Texas* (2003), which struck down Texas's sodomy law and affirmed the right to sexual privacy for all individuals, regardless of sexual orientation.[367]

While *Bowers v. Hardwick* (1986) represented a significant setback in the struggle for LGBTQ+ rights, its legacy endures as a reminder of the resilience and determination of the LGBTQ+ community in the face of adversity. The case serves as a testament to the power of activism, advocacy, and legal reform in advancing equality and justice for all individuals, regardless of sexual orientation or gender identity. As the legal landscape continues to evolve, the lessons learned from *Bowers v. Hardwick* (1986) remain relevant, guiding ongoing efforts to dismantle discriminatory barriers and secure full recognition and protection of LGBTQ+ rights under the law.

III. RESURGENCE OF ANTI-LGBTQ+ LEGISLATION TARGETING TRANSGENDER YOUTH

Recent years have witnessed a resurgence of anti-LGBTQ+ legislation, particularly those targeting transgender youth. These legislative initiatives, often championed by conservative lawmakers, seek to restrict access to medical treatments, amend birth certificates, and curtail participation in school activities for transgender individuals. The motivations behind such legislation are multifaceted, ranging from ideological beliefs about gender identity to concerns about parental rights and religious freedom. One notable example is Texas's recent ban on puberty blockers and hormone therapy for transgender youth, exemplified by Senate Bill 14, which went into effect on September 1, 2023. This legislation prohibits crucial and oftentimes life-saving medical treatment for gender dysphoria in transgender youth, while mandating the Texas Medical Board to revoke the medical licenses of doctors who offer standard care to their transgender patients.[368] Such measures

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[366] *Bowers* 478 U.S 186.
[367] See Lawrence v. Texas, 539 U.S. 558 (2003).
[368] Boston Children's Hospital. Childrenshospital.org, 2024, www.childrenshospital.org/conditions/gender-dysphoria#:~:text=Gender%20dysphoria%20occurs%20when%20there,that%20they%20express%20their%20gender.

have triggered legal challenges and drawn national attention to the broader implications for LGBTQ+ rights. This section delves deeper into the social and political contexts driving the resurgence of anti-LGBTQ+ legislation, exploring the role of conservative interest groups, religious organizations, and grassroots activism in shaping public discourse and legislative agendas. It also examines the potential consequences of such legislation on the mental health, well-being, and civil liberties of transgender youth and their families, highlighting the need for comprehensive legal protections and advocacy efforts to safeguard LGBTQ+ rights in the face of discriminatory laws and policies.

To provide more context on the forces behind this resurgence, it is crucial to delve deeper into the social and political contexts driving these legislative efforts. Conservative interest groups, such as the Family Research Council and Alliance Defending Freedom, wield significant influence by funding research, organizing lobbying efforts, and endorsing political candidates who align with their anti-LGBTQ+ agendas.[369,370] For instance, these groups have actively supported initiatives to prohibit transgender students from using bathrooms and locker rooms that correspond with their gender identity.

Similarly, religious organizations, including evangelical churches and Catholic advocacy groups, play a pivotal role in shaping public opinion and influencing policymakers. These organizations often frame their opposition to LGBTQ+ rights within religious frameworks, arguing that such rights undermine traditional family values and religious liberties. For example, the Catholic Church has been vocal in its opposition to LGBTQ+ rights, advocating for policies that uphold traditional understandings of marriage and sexuality.

Furthermore, grassroots activism among conservative communities has become increasingly influential in shaping public discourse and legislative agendas. Organizations like Focus on the Family and Concerned Women for America mobilize supporters through grassroots campaigns, rallies, and social media advocacy to promote anti-LGBTQ+ legislation at the local, state, and federal levels.[371,372] These grassroots movements amplify the voices of those opposed to LGBTQ+ rights and contribute to the momentum behind legislative initiatives targeting transgender individuals. Examining the interplay between conservative interest groups, religious organizations, and grassroots activism provides insight into the complex dynamics driving the resurgence of anti-LGBTQ+ legislation. It underscores the need for comprehensive legal protections and advocacy efforts to safeguard LGBTQ+ rights in the face of discriminatory laws and policies.

Moreover, discriminatory legislation targeting the LGBTQ+ community can have profound and far-reaching consequences on the mental health, well-being, and civil liberties of transgender youth and their families. Such legislation not only exacerbates feelings of marginalization and stigmatization but also contributes to increased rates of anxiety, depression, and suicidal ideation

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369 FRC | pro Marriage & pro Life Organiza
tion in Washington DC." Frc.org, 2024, www.frc.org/.
370 Wikipedia Contributors. "Alliance Defending Freedom." Wikipedia, Wikimedia Foundation, 13 Mar. 2024, en.wikipedia.org/wiki/Alliance_Defending_Freedom.
371 "Home." Focus on the Family, Mar. 2024, www.focusonthefamily.com/.
372 AMERICA. "Home." Concerned Women for America, 25 Mar. 2024, concernedwomen.org/.

among LGBTQ+ individuals, particularly transgender youth who may already face significant societal challenges. Moreover, these discriminatory policies limit access to vital healthcare services and support networks, further compounding the barriers to achieving optimal mental and physical health outcomes. Additionally, discriminatory laws can push LGBTQ+ youth towards criminalized behaviors such as drug dealing, theft, or even prostitution, as they navigate the challenges of societal rejection and lack of support. These behaviors increase their risk of arrest and confinement, perpetuating a cycle of poverty and incarceration. Furthermore, discriminatory laws perpetuate a climate of fear and hostility, fostering a sense of insecurity and vulnerability within the LGBTQ+ community. Consequently, these laws infringe upon the civil liberties and fundamental rights of LGBTQ+ individuals, denying them equal opportunities and protections under the law. In light of these adverse effects, there is an urgent need for comprehensive legal protections and advocacy efforts to safeguard LGBTQ+ rights and ensure equitable treatment for all members of society, regardless of sexual orientation or gender identity.

IV. POLICING INEQUITIES: LGBTQ+ COMMUNITY AND LAW ENFORCEMENT

At the crossroads of law enforcement and the LGBTQ+ community lies a stark absence of justice. Transgender individuals and queer people of color bear the brunt of this systemic injustice, grappling with elevated vulnerability to police misconduct. These injustices compound the community's struggles, reflected in disproportionate arrest rates and overrepresentation within the juvenile justice system.[373] Throughout history, the relationship between the LGBTQ+ community and law enforcement has been marred by systemic bias, discrimination, and violence, with transgender individuals and queer people of color disproportionately affected, facing heightened risks of arrest, harassment, and incarceration.

In the juvenile justice system, LGBTQ+ youth encounter disproportionate representation, with an estimated 20 percent of juveniles identifying as lesbian, gay, bisexual, questioning, gender nonconforming, or transgender, compared to only six to eight percent in the general population.[374] Research also indicates that approximately 40 percent of girls in the juvenile justice system identify as LGBTQ+ and/or gender nonconforming. These disparities stem from the challenges LGBTQ+ youth confront, including fleeing abuse and facing rejection at home due to their sexual orientation or gender identity. Consequently, many LGBTQ+ youth are forced into criminalized behaviors such as drug dealing, theft, or prostitution, thereby escalating their likelihood of arrest and incarceration.[375]

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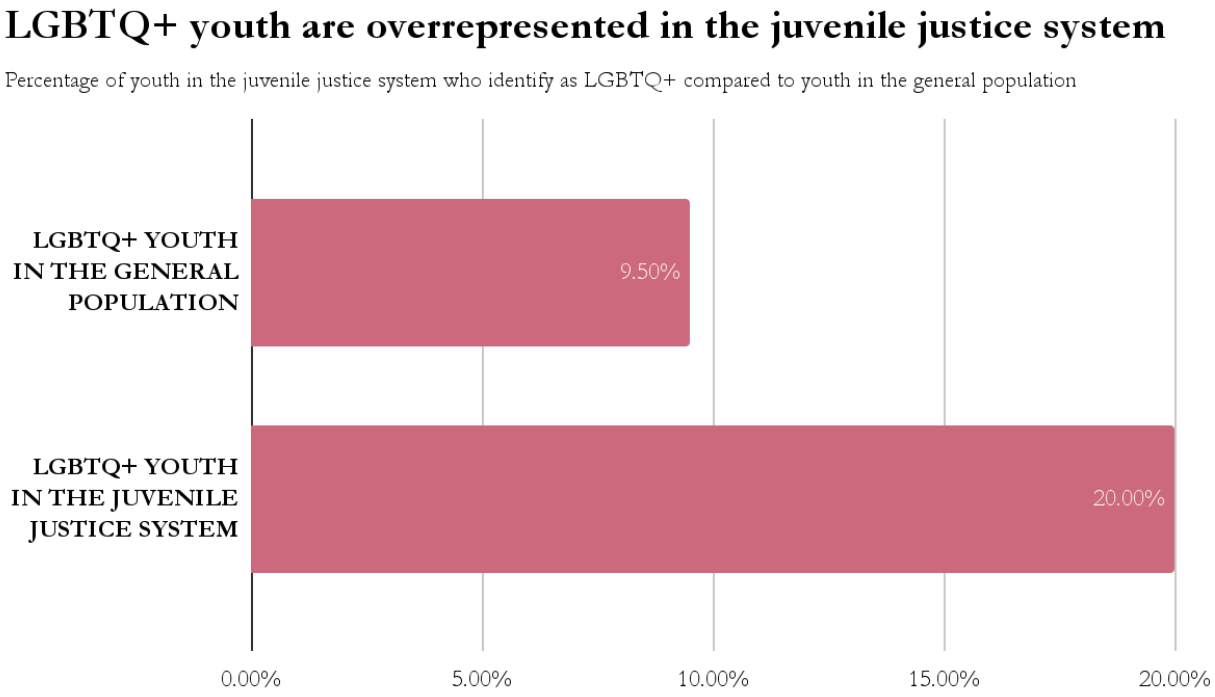
[373] Literature Review: Racial and Ethnic Disparity in Juvenile Justice Processing | Office of Juvenile Justice and Delinquency Prevention." Office of Juvenile Justice and Delinquency Prevention, 2021, ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity.

[374] Racial and Ethnic Disparities in the Youth Justice System | CJJ." Juvjustice.org, 2023, www.juvjustice.org/blog/1436.

[375] Prison Policy Initiative. "Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System." *Prisonpolicy.org*, 2021, www.prisonpolicy.org/blog/2021/03/02/lgbtq/.



The history of LGBTQ+ individuals' interactions with law enforcement is punctuated by events like the Stonewall Riots. The Stonewall riots erupted in the early hours of June 28, 1969, in response to a police raid on the Stonewall Inn, a popular LGBTQ+ establishment in New York City's Greenwich Village.[376] The raid was a common occurrence at the time, reflecting the widespread harassment and discrimination faced by LGBTQ+ individuals by law enforcement and society at large. However, on this particular night, patrons of the Stonewall Inn, including transgender women of color, drag queens, butch lesbians, and gay men, refused to acquiesce quietly to police intimidation. In acknowledging the historical context, it's important to recognize that many of those fighting against this oppression were women of color, such as Marsha P. Johnson and Sylvia Rivera, transgender activists who played pivotal roles in the Stonewall riots and subsequent LGBTQ+ rights movements. Their courage and activism paved the way for progress and continue to inspire advocacy efforts aimed at addressing the systemic injustices faced by LGBTQ+ communities, particularly those at the intersections of race, gender identity, and socioeconomic status.

The spontaneous resistance to police harassment at Stonewall ignited several days of protests, demonstrations, and clashes with law enforcement. The riots symbolized a collective assertion of dignity, agency, and pride in the face of oppression, sparking a new era of LGBTQ+ activism and organizing. The Stonewall uprising catalyzed the formation of LGBTQ+ advocacy

[376] Research Guides: LGBTQIA+ Studies: A Resource Guide: Before Stonewall: The Homophile Movement." Loc.gov, 2020, guides.loc.gov/lgbtq-studies/before-stonewall.

groups, such as the Gay Liberation Front and the Gay Activists Alliance, which mobilized communities to demand civil rights and social recognition.

While the legal repercussions of the Stonewall riots were not immediately apparent, its legacy reverberated throughout the LGBTQ+ rights movement, inspiring ongoing efforts to challenge discriminatory laws and societal norms. The uprising served as a rallying cry for LGBTQ+ individuals to assert their rights and visibility, laying the groundwork for subsequent legal battles and legislative reforms.

V. DISCRIMINATORY LAWS AND LAW ENFORCEMENT PRACTICES

The history of LGBTQ+ individuals' interactions with law enforcement is rife with examples of discriminatory laws and practices. Anti-sodomy laws, which were historically enforced across various jurisdictions, criminalized consensual same-sex relationships, subjecting LGBTQ+ individuals to legal persecution and perpetuating societal stigma and discrimination.

Furthermore, discriminatory policing tactics like "stop and frisk" policies, criticized for disproportionately targeting communities of color, also impact LGBTQ+ individuals, particularly those who are people of color.[377] Research indicates that LGBTQ+ people of color are more likely to experience police harassment and violence as a result of these discriminatory tactics, exacerbating distrust between law enforcement and marginalized communities. Although data concerning transgender individuals within the criminal justice system is less available, existing research suggests a prevalent bias against transgender individuals by law enforcement, particularly affecting Black transgender individuals. Nearly half of transgender individuals expressed discomfort in seeking assistance from the police. Additionally, one in five transgender individuals who have interacted with the police reported experiencing harassment, with Black transgender individuals being disproportionately affected, constituting 38 percent of those harassed. Six percent of respondents reported instances of physical assault by the police, while two percent reported experiencing sexual assault.[378]

Another significant issue arises from laws and regulations that restrict access to gender-affirming healthcare for transgender individuals, or impose barriers to changing gender markers on identification documents. Beyond denying essential healthcare services, these laws perpetuate discrimination and marginalization within the LGBTQ+ community, creating significant obstacles to accessing crucial resources and support systems.

VI. IMPACT ON LGBTQ+ COMMUNITIES

The pervasive discrimination and harassment faced by LGBTQ+ individuals at the hands of law enforcement has severe mental health repercussions. Studies consistently show higher rates of depression, anxiety, and post-traumatic stress disorder among LGBTQ+ individuals who have experienced police misconduct or violence. This fear of encountering law enforcement exacerbates these mental health challenges, contributing to a cycle of trauma and distress within the community.

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[377] "Stop and Frisk." LII / Legal Information Institute, 2015, www.law.cornell.edu/wex/stop_and_frisk.
[378] Law Enforcement and Transgender Communities | FBI: Law Enforcement Bulletin." FBI: Law Enforcement Bulletin, 2015, leb.fbi.gov/articles/featured-articles/law-enforcement-and-transgender-communities.

Economic disparities within the LGBTQ+ community are also exacerbated by policing inequities. Discriminatory practices such as selective enforcement of anti-LGBTQ+ laws and profiling of LGBTQ+ individuals in low-income neighborhoods can lead to job loss, housing instability, and financial hardship. These economic barriers further marginalize LGBTQ+ individuals, particularly those who face intersecting forms of discrimination based on race, gender identity, or socioeconomic status.

Moreover, pervasive distrust of law enforcement among LGBTQ+ communities creates significant barriers to reporting instances of violence, harassment, or hate crimes. Fear of retaliation, disbelief, or further victimization often deters LGBTQ+ individuals from seeking assistance from law enforcement agencies, leaving them vulnerable to ongoing abuse and exploitation.

The entrenched discrimination and harassment endured by LGBTQ+ individuals at the hands of law enforcement takes a profound toll on mental health. Research consistently highlights elevated rates of depression, anxiety, and post-traumatic stress disorder among LGBTQ+ individuals subjected to police misconduct or violence. This persistent fear of encountering law enforcement only compounds these mental health struggles, perpetuating a cycle of trauma and anguish within our community.

Furthermore, policing disparities worsen economic inequalities within the LGBTQ+ population. Biased practices like the selective enforcement of anti-LGBTQ+ laws and the profiling of LGBTQ+ individuals in impoverished neighborhoods can result in job loss, housing insecurity, and financial strain. These economic hurdles further marginalize LGBTQ+ individuals, especially those facing compounded discrimination based on race, gender identity, or socioeconomic status.

Widespread distrust of law enforcement in LGBTQ+ communities poses significant obstacles to reporting instances of violence, harassment, or hate crimes. The fear of reprisal, disbelief, or additional victimization frequently dissuades LGBTQ+ individuals from seeking aid from law enforcement agencies, leaving them vulnerable to continued abuse and exploitation.

It is imperative that communities take action to address these systemic injustices. The US must advocate for equitable policing practices, promote mental health support services tailored to LGBTQ+ individuals, and work towards building trust and collaboration between law enforcement and our communities. Only through collective effort can Americans dismantle these barriers and ensure the safety, well-being, and dignity of all LGBTQ+ individuals.

VII. LEGAL PROGRESS AND ONGOING CHALLENGES: BOSTOCK V. CLAYTON AND THE EQUALITY ACT

As societal attitudes and legal frameworks continue to evolve, pivotal cases such as *Bostock v. Clayton* (2020) and legislative initiatives like the proposed Equality Act symbolize promising advancements toward bolstering LGBTQ+ rights.[379,380] The Supreme Court's groundbreaking ruling in *Bostock v. Clayton* (2020) stands as a monumental milestone in the annals of LGBTQ+ legal progress, firmly establishing safeguards against employment discrimination rooted in sexual orientation and gender identity. This landmark decision, rooted in the provisions of Title VII of the

[379] H.R. 5 (117th): Equality Act (2021).
[380] *See* Bostock v. Clayton Cty., 140 S. Ct. 1731 (2020).

Civil Rights Act of 1964, not only underscored the intrinsic connection between gender identity and sex discrimination but also heralded a new era of legal protections for LGBTQ+ individuals within the professional sphere.[381]

By elucidating that discrimination against individuals based on their sexual orientation or gender identity inherently constitutes discrimination "because of sex" as prohibited by Title VII, the Court's decision in *Bostock v. Clayton* (2020) sent a powerful message of inclusivity and equality. Justice Neil Gorsuch's majority opinion elucidated how employers engaging in discriminatory practices against gay or transgender employees effectively endorse differential treatment based on sex-related attributes or expectations, thereby violating the principles of Title VII. This pivotal ruling has not only solidified legal protections for LGBTQ+ individuals in the workplace but has also set a precedent for broader recognition of their rights and dignity across various facets of society.

Furthermore, the significance of *Bostock v. Clayton* (2020) transcends its immediate legal ramifications, resonating deeply within the broader landscape of LGBTQ+ rights advocacy. Widely hailed as one of the most consequential legal decisions concerning LGBTQ+ rights in the United States, alongside landmark cases like *Lawrence v. Texas* (2003) and *Obergefell v. Hodges* (2015), the ruling has galvanized efforts toward achieving greater equality and inclusion for LGBTQ+ individuals nationwide.[382,383] Legal scholars and analysts have also noted the case's pivotal role in delineating Justice Neil Gorsuch's jurisprudential approach, highlighting his adherence to textualist principles in statutory interpretation.[384] As such, the legacy of *Bostock v. Clayton* extends far beyond its immediate impact, serving as a testament to the ongoing struggle for LGBTQ+ rights and the transformative power of legal advocacy in advancing social justice.[385]

Additionally, the proposed Equality Act represents a critical step toward enshrining protections against LGBTQ+ discrimination into federal law, addressing gaps in existing civil rights legislation, and promoting greater legal recognition and equality for LGBTQ+ individuals across the United States.

VIII. CONCLUSION

In conclusion, the interplay between legislation, the criminal justice system, and the LGBTQ+ community underscores a complex and ongoing struggle for equality and justice. While landmark legal decisions like *Bostock v. Clayton* and legislative initiatives such as the proposed Equality Act signify significant progress towards bolstering LGBTQ+ rights, substantial challenges persist. Discriminatory laws, biased policing practices, and systemic inequities continue to marginalize and harm LGBTQ+ individuals, particularly transgender individuals and queer people of color, perpetuating cycles of discrimination, harassment, and violence.

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[381] Pub. L. 88-352 (Title VII).
[382] See Lawrence v. Texas, 539 U.S. 558 (2003).
[383] See Obergefell v. Hodges, 576 U.S. 644 (2015).
[384] Krishnakumar, Anita S. "TEXTUALISM AND STATUTORY PRECEDENTS." Virginia Law Review, vol. 104, no. 2, 2018, pp. 157–233. JSTOR, http://www.jstor.org/stable/44863678.
[385] *Bostock* Cty., 140 S. Ct. 1731 (2020).

The historical context of legal milestones and setbacks, exemplified by cases like *Bowers v. Hardwick*, illustrates the enduring struggle for LGBTQ+ rights within the legal system. Despite setbacks, the LGBTQ+ community has demonstrated resilience and perseverance, mobilizing advocacy efforts and challenging discriminatory laws and practices. The legacy of pivotal events like the Stonewall riots serves as a testament to the power of collective action and grassroots activism in effecting social change.

In confronting the resurgence of anti-LGBTQ+ legislation targeting transgender youth and other vulnerable communities, it is imperative that Americans remain vigilant and proactive in defending LGBTQ+ rights. Addressing the root causes of discrimination and inequality requires comprehensive legal protections, equitable policing practices, and robust advocacy efforts aimed at dismantling systemic barriers and fostering inclusivity and acceptance.

As the US navigates the complexities of the legal landscape and confronts ongoing challenges, Americans must remain steadfast in their commitment to advancing LGBTQ+ rights. By amplifying LGBTQ+ voices, challenging discriminatory laws, and fostering collaboration between communities and policymakers, Americans can strive towards a future where all individuals, regardless of sexual orientation or gender identity, are treated with dignity, respect, and equality under the law.

EXPLORING WRONGFUL TERMINATION LAWS IN TEXAS: BETTER PROTECTING WORKER RIGHTS

Kirsten Padilla
Edited by Zoe Guillen

Wrongful termination laws in Texas challenge the unrestricted nature of the employment-at-will doctrine, aiming to provide protections against discrimination, retaliation, and breaches of contractual agreements. These laws strive to promote workplace equality and fairness by prohibiting dismissals based on protected characteristics and retaliatory actions against employees engaging in legally protected activities. Understanding and upholding these legal protections are essential for fostering a work environment grounded in justice and respect for individual rights, especially within Texas's intricate employment law landscape, characterized by the employment-at-will doctrine and a complex interplay of federal, state, and local regulations.

However, the employment-at-will doctrine's historical roots and controversial nature have sparked debates due to its perceived bias favoring employers, leaving employees, particularly Black and Latinx workers, vulnerable to arbitrary dismissals. Racial discrimination in employment persists in Texas despite legal safeguards, with subtle biases complicating the identification and addressing of discriminatory practices, thus exacerbating existing racial disparities in the workforce. The state's diverse demographic makeup further compounds these challenges, intersecting with historical patterns of racial and ethnic segregation, particularly evident in essential job roles disproportionately held by Black and Hispanic workers.

Beyond the historical backdrop of the employment-at-will doctrine, the issue of wrongful termination affects Texans more than any other state in the United States of America; and Texan employees are often hesitant or ignorant of the action they can take if they feel like they were wrongfully terminated. The reality is that many of the employees who take legal action after being wrongfully terminated achieve justice through settlements or other forms of redress. *Patricia Hahn v North DFW Urology Associates* (2016) and *Tonya Sadler Grayson v. Dallas Independent School District* (2018) are two examples of Texans who were able to avoid court litigation altogether by settling with their previous employers.

Upholding wrongful termination laws is of utmost importance to ensure that workplaces are equitable and fair.

I. INTRODUCTION

The concept of wrongful termination is a shield against arbitrary dismissals and provides essential safeguards for employees. The foundational principle of at-will employment characterizes the freedom of either party to terminate the employment relationship at any time and for any

reason.[386] However, even within this seemingly unrestricted framework, exceptions exist. Wrongful termination laws challenge the absolute nature of at-will employment, introducing constraints on dismissals that go beyond the surface of contractual flexibility.

A cornerstone of wrongful termination laws lies in the prohibition of discrimination and the legal safeguards against retaliation. Employees are shielded from termination based on protected characteristics such as race, gender, age, disability, religion, national origin, or sexual orientation.[387] The essence of these laws is to foster workplace equality and prevent dismissals rooted in prejudice, fostering a fair and just working environment. Employees utilize these safeguards against termination as a form of protection for engaging in legally protected activities. Whether it be reporting workplace harassment, disclosing illegal activities, or participating in whistleblowing endeavors, termination as retaliation is unacceptable. Wrongful termination laws underscore the importance of safeguarding employees who speak out against wrongdoing or injustice within their professional spheres.

The violation of public policy and contractual agreements serves as another dimension through which wrongful termination claims can be substantiated. Employers are expected to uphold ethical standards and adhere to legal norms. Dismissing an employee for refusing to engage in illegal activities, reporting unlawful behavior, or exercising a legal right constitutes a breach of the implied standard of good faith and fair dealing, forming the basis for a wrongful termination claim.[388] In certain instances, employees may argue that constructive discharge is a form of wrongful termination. Constructive discharge occurs when a workplace becomes intolerable, resignation becomes the empoyee's only viable option. Wrongful termination laws recognize the impact of pervasive hostility or adverse conditions on an employee's decision to leave their position, offering protection against such constructive terminations. For those under contractual employment arrangements, adherence to the terms specified in the contract is paramount. Wrongful termination claims can arise if an employer fails to uphold the conditions outlined in the employment agreement. This aspect of wrongful termination laws emphasizes the significance of contractual obligations in shaping the dynamics of employer-employee relationships.

Wrongful termination laws play a pivotal role in ensuring fairness and equity within the employer-employee relationship. From challenging the at-will employment doctrine to safeguarding against discrimination and retaliation, these laws embody the principles that underpin a just and respectful workplace. As employees navigate the complexities of the professional sphere, understanding and upholding these legal protections become integral to fostering a work

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[386] *See* National Conference of State Legislatures, "At-Will Employment Overview," https://www.ncsl.org/labor-and-employment/at-will-employment-overview#:~:text=At%2Dwill%20means%20that%20an,with%20no%20adverse%20legal%20consequences](https://www.ncsl.org/labor-and-employment/at-will-employment-overview#:~:text=At%2Dwill%20means%20that%20an,with%20no%20adverse%20legal%20consequences).

[387] *See* Federal Trade Commission, "Protections Against Discrimination," https://www.ftc.gov/policy-notices/no-fear-act/protections-against-discrimination](https://www.ftc.gov/policy-notices/no-fear-act/protections-against-discrimination).

[388] *See* Charles J. Muhl, "The Employment-at-Will Doctrine: Three Major Exceptions," *Monthly Labor Review*, January 2001, https://www.bls.gov/opub/mlr/2001/01/art1full.pdf](https://www.bls.gov/opub/mlr/2001/01/art1full.pdf).

environment built on justice and respect for individual rights. The Civil Rights Act of 1964, specifically Title VI, prohibits employers from terminating individuals based on their race, national origin, sex, color, or region.[389] Additionally, the age discrimination outlined in the Employment Act of 1967, safeguards workers age 40 and above from discriminatory termination based solely on their age.[390] Similarly, the Americans with Disabilities Act serves as a protective measure, prohibiting discrimination and dismissal based on disability status.[391]

Traversing the intricate terrain of Texas employment law reveals a complex landscape, largely shaped by the enduring and controversial employment-at-will doctrine — a fundamental pillar of employment relationships in the state. This doctrine, granting employers the authority to terminate employees without cause, has led to a multifaceted framework of federal, state, and local laws intricately interwoven through pivotal court cases. Meticulously sculpted by these cases, these frameworks underscore the critical need for enhanced workers' rights protections. Within this dynamic, the roles of influential agencies, such as the Equal Employment Opportunity Commission (EEOC) and the Texas Workforce Commission (TWC), assume paramount significance.[392]

Delving into the nuanced landscape shaped by federal, state, and local court decisions, the intricate web of wrongful termination laws unfolds, emphasizing the need for comprehensive understanding to effectively safeguard workers' rights. The multifaceted nature of the legal framework illuminated through these court cases, reinforcing the urgent need for an informed approach to navigate the complexities in Texas's unique employment landscape.

The Texas employment-at-will doctrine is a legal principle that defines the default employment relationship between employers and employees in the state. Under this doctrine, employment is considered voluntary and indefinite for both parties, allowing employers to terminate employees at any time, with or without cause, and permitting employees to resign at their discretion. Thus, "employment-at-will doctrine" encapsulates this fundamental aspect of Texas employment law.

II. UNDERSTANDING EMPLOYMENT-AT-WILL

As a predominant employment practice in the United States, employment-at-will affords employers the flexibility to terminate employees without cause or justification. This means that employers generally have the legal prerogative to end employment unexpectedly, sans prior warning and without the obligation to explain the termination. In reality, many employers opt to disclose minimal information, sometimes even disguising the termination as a layoff, as a cautious measure to avoid potential legal implications associated with discriminatory reasons. The sole exception to this norm is if the employment contract or employee are covered by a collective bargaining agreement

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[389] *See* Equal Employment Opportunity Commission, "Title VII of the Civil Rights Act of 1964," https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964.
[390] *See* "Age Discrimination," United States Department of Labor, https://www.dol.gov/general/topic/discrimination/agedisc#:~:text=The%20Age%20Discrimination%20in%20Employment,conditions%20or%20privileges%20of%20employment.
[391] *See* "Americans with Disabilities Act," U.S. Department of Justice, https://www.ada.gov/.
[392] *See* Robert Iafolla, "State of Texas Successfully Messes With EEOC in Courtroom Wins," Bloomberg Law, https://news.bloomberglaw.com/daily-labor-report/state-of-texas-successfully-messes-with-eeoc-in-courtroom-wins.

stipulating a specific notice period. Absent such agreements, it is entirely within the legal bounds for an employer to terminate employment abruptly and without any prior notice.

To establish a case of wrongful termination, an employee must initially provide evidence confirming the existence of an employment relationship with their employer and demonstrate either an actual termination or a "constructive" termination. Constructive discharge occurs when an employer creates working conditions so intolerable that the employee is compelled to resign instead of facing dismissal. It's crucial to emphasize that courts evaluate whether a reasonable person would perceive the working conditions as unusually egregious and adverse, rather than relying solely on the employee's subjective belief in the intolerability of these conditions. In cases of constructive discharge, the employee's resignation is treated similarly to a termination, as the employer's unlawful conduct effectively terminates the employment relationship involuntarily.

Proving wrongful termination presents inherent challenges because employers are unlikely to admit to an illegal motive for firing an employee, as such an admission would expose them to legal liability. Instead, employers typically attempt to justify terminations by presenting nondiscriminatory reasons, concealing their true unlawful motivations. Therefore, it is imperative that employees present compelling evidence that unveils their employer's discriminatory intentions to successfully prevail in a wrongful termination claim. Mere feelings of the termination being "wrongful" are insufficient, even if the termination lacks good cause or occurs for an arbitrary reason. For a termination to be considered wrongful, it must result from an illegal motive, encompassing violations of anti-discrimination laws or breaches of contractual agreements.

The recent court ruling responding to Texas' legal challenge against the EEOC guidance, which deemed the guidance unlawful and vacated it on a nationwide scale, introduces new complexities into the realm of employment-at-will and wrongful termination. Stemming from the pivotal case *Bostock v. Clayton County* (2020), where the Supreme Court extended Title VII protections to encompass sexual orientation and gender identity, this subsequent court decision accentuates the intricacies surrounding the permissible conduct under these newly recognized protected classes.[393] While *Bostock* broadened the scope of Title VII, the recent ruling suggests that specific conduct related to sexual orientation and gender identity is still subject to future legal interpretations. This legal ambiguity injects uncertainty into employment-at-will doctrine scenarios, complicating the understanding of acceptable behaviors within the workplace and potentially influencing wrongful termination claims. The court's insistence on awaiting future cases to delineate the permissibility of certain policies requires employers to carefully navigate the evolving legal landscape concerning discrimination and termination based on sexual orientation and gender identity.

III. FEDERAL LEVEL

A. Sabine Pilot Services, Inc. v. Hauck (1985)

Safeshred, Inc. v. Martinez (2012) remains a significant legal milestone in the exploration of punitive damages for employment termination, particularly in cases related to the "Sabine Pilot" cause of action in Texas.[394] This case serves as a lens through which to examine the flaws inherent in

[393] *See* Oyez, "Bostock v. Clayton County" https://www.oyez.org/cases/2019/17-1618.
[394] See "SafeShred, Inc. v. Martinez," CaseText, https://casetext.com/case/safeshred-1.

the employment-at-will doctrine, shedding light on the intricate dynamics surrounding wrongful terminations and the pursuit of punitive damages.

The roots of the *Safeshred* case trace back to *Sabine Pilot Service, Inc. v. Hauck* (1985) which marks a landmark decision by the Texas Supreme Court.[395] The case involved plaintiff Michael Andrew Hauck, an employee who, conscientious of legal and ethical standards, refused to carry out an illegal directive from his employer, Sabine Pilot Services. Subsequently, Hauck faced termination for his insubordination. The court, in its judgment, not only delved into the specifics of Hauck's case but also established a public policy cause of action, creating an exception to the employment-at-will rule in Texas. This exception rendered it illegal to terminate an employee for refusing to engage in a criminally illegal act. Henceforth, the Sabine Pilot cause of action became a crucial tool in protecting employees from arbitrary and unjust dismissals, marking a departure from the unrestricted nature of employment-at-will doctrine.

In *Safeshred, Inc. v. Martinez* (2012), the Texas Supreme Court scrutinized the issue of punitive damages within the context of the *Sabine Pilot* case. The case emphasized the significance of deterring employers from engaging in wrongful terminations and violating the public policy established in *Sabine Pilot*. Punitive damages, in this context, serve as a deterrent, aiming to discourage employers from flouting the law and infringing upon the rights of employees.

The *Safeshred* case indirectly underscores the flaws embedded in the employment-at-will doctrine. While it provides flexibility to both parties, it leaves employees vulnerable to arbitrary dismissals. The *Sabine Pilot* cause of action and cases like *Safeshred* challenge the inherent shortcomings of the employment-at-will model by carving out exceptions based on public policy considerations.

The *Sabine Pilot* cause of action exposes the fundamental flaw in the employment-at-will doctrine by recognizing that certain terminations can violate public policy. Terminating an employee for refusing to participate in an illegal act not only violates legal principles but also challenges the ethical and moral fabric of employment relationships. The *Safeshred* case, within the broader context of *Sabine Pilot*, highlights the necessity of curbing the absolute power granted to employers under the employment-at-will doctrine, asserting that public policy considerations should prevail over arbitrary employment decisions.

Safeshred, Inc. v. Martinez serves as a legal beacon illuminating the flaws within the employment-at-will doctrine. By delving into the complexities of *Sabine Pilot* cases and the pursuit of punitive damages, the case underscores the need to reassess the unbridled authority granted to employers. The recognition of exceptions based on public policy considerations challenges the at-will paradigm, signaling a call for a more balanced and equitable approach to employment relationships that prioritizes justice, fairness, and the protection of employee rights.

In the dynamic legal landscape of Texas, Attorney Sarah Rodriguez embarked on a formidable journey to champion a high-profile wrongful termination case, grappling with the intricacies of the state's employment laws. Representing her client, Jane Thompson, who alleged wrongful termination on grounds of gender discrimination, Rodriguez meticulously navigated the

[395] See "Sabine Pilot Services, Inc. v. Hauck," Justia US Law, https://law.justia.com/cases/texas/supreme-court/1985/c-3312-0.html.

nuances of Texas labor laws in *Safeshred, Inc. v. Martinez*. The epicenter of this legal battle encompassed a plethora of statutes, notably the Texas Labor Code Chapter 21, prohibiting employment discrimination, and federal laws such as Title VII of the Civil Rights Act of 1964. Drawing a parallel with real-life examples like *Brown v. Energy Servs. Grp. Int'l* (2021), where racial discrimination claims were fiercely contested in Texas courts, illuminated the pervasive nature of workplace discrimination challenges in the state.[396]

Rodriguez encountered formidable challenges while confronting the employment-at-will doctrine, a prominent feature of Texas employment law that grants employers the ability to terminate employees without cause. T]Further shedding light on flaws within the employment-at-will doctrine, Rodriguez strategically navigated the complexities of the Hauck case to highlight how it laid the groundwork for understanding the limitations and exceptions to the employment-at-will doctrine, influencing the trajectory of wrongful termination disputes in Texas. This emphasized the significant role of local ordinances in shaping wrongful termination disputes, seamlessly tying back to the overarching theme of navigating legal intricacies within Texas.

As Rodriguez strategically positioned her legal arguments, referencing authoritative sources such as the Texas Workforce Commission and notable court decisions, she skillfully traversed the complex web of laws governing employment relationships in the state. This comprehensive approach underscored the imperative for a nuanced understanding and strategic expertise to safeguard the rights of employees within the intricate Texas legal framework, with the Hauck case serving as a pivotal guidepost in unraveling the complexities of wrongful termination laws.

At the federal level, the watershed case of *Sabine Pilot Services, Inc. v. Hauck* (1985) reshaped the landscape of wrongful termination law in Texas, leaving a lasting impact on the state's employment-at-will doctrine. In recognizing the importance of preserving public policy, the court established a narrow exception to the prevailing at-will doctrine and ruled that terminating an employee for refusing to participate in an illegal activity violated fundamental ethical standards. This judicially created exception introduced a crucial nuance to Texas employment law, permitting employees a limited safeguard against arbitrary termination when confronted with requests conflicting with legal and ethical norms. The *Sabine Pilot* case, therefore, became a cornerstone in shaping wrongful termination claims, offering a principled basis for employees to challenge dismissals that transgressed public policy and elevating their rights within the broader framework of employment-at-will doctrine.

IV. STATE LEVEL

A. Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.

The *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* (2015) case marked a pivotal moment in the interpretation of the Fair Housing Act , specifically addressing the issue of disparate-impact claims.[397] In this case, the Texas Department of Housing and Community Affairs (TDHCA) faced allegations from the Inclusive Communities Project, Inc. (ICP)

[396] See "Brown v. Energy Servs. Grp. Intl.," CaseText, https://casetext.com/case/brown-v-energy-servs-grp-intl.
[397] See Oyez, "Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.," https://www.oyez.org/cases/2014/13-1371.

that its selection criteria for distributing federal tax credits resulted in discriminatory practices, disproportionately favoring predominantly black neighborhoods over white neighborhoods. ICP argued that the Department's conduct created a disparate impact on black communities, violating the provisions of the Fair Housing Act. The Act, in 42 U.S.C. §§ 3604(a) and 3605(a), prohibits discrimination in making dwellings available and engaging in real estate transactions based on race, color, or national origin.[398] The central question before the United States Supreme Court was whether disparate-impact claims were allowed under the Act. The Supreme Court's ruling confirmed the viability of disparate-impact claims under the Fair Housing Act. The decision ruled that even if the department did not intend to discriminate, the impact of its policies could still be discriminatory. This groundbreaking ruling recognized the importance of addressing not only intentional discrimination but also practices that disproportionately affect protected groups, reinforcing the broader goal of promoting fair and equal housing opportunities. The significance of *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* (2015) reverberates beyond housing issues. The case reflects a broader societal commitment to combating systemic discrimination and upholding principles of fairness and equity. In the realm of employment, this commitment is equally vital.

In Texas, employment laws strive to strike a balance between the rights of employers and employees. While Texas is known for embracing the employment-at-will doctrine by providing flexibility to employers and employees, it also recognizes the need to protect workers from discrimination. Various state and federal laws, including the Texas Labor Code and the Civil Rights Act of 1964, prohibit discrimination based on race, color, national origin, religion, sex, age, and disability. The precedent set by the *Inclusive Communities Project, Inc.* underscores the importance of scrutinizing not just explicit discriminatory practices but also the broader impact of policies on protected groups. In the context of employment, this calls for a vigilant examination of hiring practices, promotions, and terminations to ensure that they do not disproportionately disadvantage certain groups of employees based on protected characteristics.

At the state level, the landmark case of *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* serves as a pivotal illustration of the intricate interplay between state agencies and employment disputes, providing insight into the complex dynamics shaping the Texas legal landscape. The complexities of Texas employment laws, the principles of fairness, equity, and the prohibition of discrimination remain at the forefront, guiding the pursuit of a just and inclusive workforce. In this notable case, the Inclusive Communities Project, Inc. engaged in a legal battle with the Texas Department of Housing and Community Affairs over alleged discriminatory housing practices. The heart of the matter revolved around whether the TDHCA's allocation of tax credits perpetuated racial segregation. This dispute not only delved into the nuances of fair housing practices but also highlighted the substantial role played by state agencies, such as the TDHCA, in matters of housing discrimination.

The implications of *Texas Department of Housing and Community Affairs* extend beyond its immediate context, resonating throughout the broader legal landscape in Texas and setting a

[398] See "42 U.S. Code § 3604 - Discrimination in the sale or rental of housing and other prohibited practices," Legal Information Institute, Cornell Law School, https://www.law.cornell.edu/uscode/text/42/3604.

precedent for future cases. It underscores the authority and influence wielded by state agencies in addressing contentious issues related to housing and discrimination, raising implications for their involvement in employment disputes. This legal saga serves as a critical reminder of the necessity for a balanced and comprehensive approach when navigating the intricate web of state-level laws governing various practices, including employment-at-will. The outcome highlighted in this housing case further emphasizes the impact that such legal decisions can have on the rights and classifications of individuals, underscoring the need for organizations to remain vigilant and well-versed in state-specific regulations across different legal domains, including the realm of wrongful termination.

The interplay between state agencies and employment disputes in Texas, as showcased by these cases, extends beyond legal intricacies to impact the broader organizational and societal landscape. As organizations grapple with compliance, the principles in the housing discrimination case highlight the evolving nature of laws at the state level and the critical role played by state agencies in shaping and interpreting these regulations. Through an in-depth exploration of such cases, a more comprehensive understanding emerges, offering valuable insights into the multifaceted dynamics of state-level employment laws and the influence of regulatory bodies on the rights and classifications of individuals.

V. LOCAL LEVEL

A. Patricia Hahn v North DFW Urology Associates and Tonya Sadler Grayson v. Dallas Independent School District)

Wrongful termination cases in Texas offer a revealing glimpse into the complexities of employment law, shedding light on the dynamics of settlements and court battles. While many cases are resolved through settlements outside of court, those that do reach litigation provide valuable insights into the challenges faced by employees seeking justice. Discrimination based on various factors such as race, gender, disability, and whistleblowing allegations often serve as focal points of these legal disputes. In the Lone Star State, wrongful termination cases are notably widespread, a trend attributed to Texas' substantial population and vast geographical expanse. Data obtained from the Wrongful Termination Settlements website indicates that Texas surpasses all other states in the US in terms of the sheer volume of wrongful termination filings.[399] This statistical observation serves as a poignant reminder of the significance of comprehending the legal intricacies that encompass employment termination practices within the state. Given the prevalence of such cases, individuals and organizations alike must navigate the complex legal terrain with diligence and awareness to safeguard their rights and interests.

Tonya Sadler Grayson v. Dallas Independent School District (2018) serves as a poignant illustration that many wrongful termination cases are resolved through settlements outside the courtroom,

[399] *See* WrongfulTerminationSettlements.com, "Texas Wrongful Termination Case Settlements and Amounts," https://www.wrongfulterminationsettlements.com/state-cases-amounts/texas/](https://www.wrongfulterminationsettlements.com/state-cases-amounts/texas/).

sparing both parties the protracted ordeal of litigation.[400] Grayson, an African American woman who held the position of executive director of human resources, levied allegations of racial discrimination, sexual harassment, and retaliatory actions against the district. Her lawsuit underscored the grim reality of a hostile work environment, alleging that she endured racial discrimination and sexual harassment, followed by retaliation upon reporting these incidents to the district. Furthermore, Grayson claimed to have been deprived of due process during her termination, which subsequently tarnished her prospects for future employment opportunities.

In her legal action, Grayson accused her superior, Dewayne Blackburn, of soliciting "sexual favors in return for protecting her job and supporting her in the workplace." Although Blackburn vehemently denied these allegations, they formed a central component of Grayson's case. However, in March 2017, US District Judge David Godbey dismissed a significant portion of Grayson's amended complaint, thereby removing Blackburn from the suit entirely. Judge Godbey's ruling emphasized Grayson's failure to demonstrate a "persistent and widespread practice of discrimination amounting to a custom" within the district. Additionally, Grayson's allegations regarding Blackburn's involvement in denying her appeal of termination based on her race were deemed insufficiently substantiated. Notably, Blackburn had been part of a three-member panel tasked with reviewing Grayson's appeal.

Despite the setbacks encountered during the legal proceedings, Grayson and the Dallas Independent School District opted for alternative dispute resolution, a form of mediation, in October. This decision underscores the pragmatic approach of resolving disputes efficiently and amicably outside the courtroom. Ultimately, the mediation process culminated in a 60,000 dollar settlement for Grayson, highlighting the efficacy of alternative dispute resolution mechanisms in mitigating the financial burdens and uncertainties associated with prolonged litigation.

On a grander scale, *Patricia Hahn v North DFW Urology Associates* (2016) stands as another example, illustrating how an individual seeking restitution for being wrongfully terminated achieved justice without having to undergo courtroom litigation.[401] Patricia Hahn's experience at North DFW Urology Associates highlights the detrimental effects of workplace harassment and subsequent termination. Despite reporting her supervisor's abusive behavior, Hahn was fired weeks later. Her case, which involved allegations of discrimination and retaliation, culminated in a 440,000 dollar settlement.

The circumstances surrounding her termination, rife with allegations of discrimination and retaliatory actions, encapsulated the profound challenges faced by employees in hostile work environments. Hahn's ordeal, fraught with intimidation and professional repercussions, vividly illustrates the power dynamics at play and the vulnerability of individuals in navigating such fraught circumstances. The legal saga that ensued following Hahn's termination culminated in a noteworthy

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[400] See Eva-Marie Ayala, "Details of settlement in Dallas ISD sexual harassment, racial discrimination suit are released," The Dallas Morning News, https://www.dallasnews.com/news/2018/01/31/details-of-settlement-in-dallas-isd-sexual-harassment-racial-discrimination-suit-are-released.

[401] See Claire Z. Cardona, "Grapevine clinic to pay fired nurse $440k in discrimination, bullying lawsuit," The Dallas Morning News, https://www.dallasnews.com/news/courts/2016/08/10/grapevine-clinic-to-pay-fired-nurse-440k-in-discrimination-bullying-lawsu.i

settlement of 440,000 dollars. This resolution was reached moments before a Dallas County jury was poised to award Hahn over one million dollars, underscored the gravity of her grievances and the imperative for accountability in the workplace. Hahn's attorney, Rogge Dunn, hailed the settlement as a significant victory, particularly for a nurse earning a modest salary. The case reverberated beyond mere monetary compensation, serving as a resounding statement against workplace bullying and harassment. Despite attempts to undermine Hahn's claims during the trial, including assertions that she strategically filed lawsuits and EEOC claims to safeguard her position, the substantial settlement emphasized the gravity of her experiences and the resolve of the legal system to hold perpetrators accountable for their actions.

These settlements not only provide redress to the aggrieved employees but also serve as deterrents against future instances of unjust conduct by employers. Punitive damages, aimed at discouraging unlawful behavior, often contribute significantly to the settlement amounts, underscoring the severity of the employer's misconduct and the need for accountability. However, determining the average wrongful termination settlement in Texas proves challenging due to the unique circumstances of each case, with settlement amounts varying based on factors such as lost wages, emotional distress, and the severity of the termination's impact on the employee. Despite the financial implications, pursuing legal action for wrongful termination requires careful consideration of the potential outcomes and costs involved, with attorneys playing a crucial role in negotiating favorable settlements and leveraging their expertise to secure just compensation. While jury awards may result in larger settlements, the uncertainty and expenses associated with litigation often prompt organizations to opt for out-of-court settlements.

In conclusion, wrongful termination cases in Texas serve as poignant reminders of the need for robust legal protections for employees, highlighting the importance of understanding employment law and seeking recourse through legal avenues to safeguard rights and hold employers accountable for unjust conduct, thereby promoting a just and inclusive workforce.

VI. THE INTERPLAY BETWEEN FEDERAL, STATE, AND LOCAL LAWS

The interplay between federal, state, and local wrongful termination laws in Texas is a complex dynamic shaped by real-life court decisions that collectively define the legal framework governing employment relationships. Notable cases at various levels contribute to the evolution of wrongful termination laws, creating a mosaic of legal principles that define the rights and obligations of employers and employees. Federal decisions, such as *Garcetti v. Ceballo*s (2006), set overarching precedents, while state-level cases, like *Newsome v. Harris County* (2013) add nuances specific to Texas.[402,403] Local cases, exemplified by *Patricia Hahn v North DFW Urology Associates* (2016) and *Tonya Sadler Grayson v. Dallas Independent School District* (2018), further tailor the legal landscape, demonstrating how each level of court decisions cumulatively influences the overall framework.

Conflicts and inconsistencies within wrongful termination laws manifest as a complex tapestry woven from diverse sources, including federal statutes, state laws, and local ordinances. In navigating this intricate legal landscape, both employers and employees grapple with challenges

[402] See Oyez, "Garcetti v. Ceballos," https://www.oyez.org/cases/2005/04-473.
[403] See "Newsome v. Harris Cnty.," CaseText, https://casetext.com/case/newsome-v-harris-cnty?resultsNav=false.

arising from the potential tensions among these various legal frameworks. The real-world dynamics are underscored by instances such as the landmark case *Burwell v. Hobby Lobby Stores, Inc.* (2014), which spotlighted the conflict between federal employment protections and corporate claims of religious freedom.[404] This case serves as a vivid illustration of how divergent legal sources can create uncertainties and legal complexities, requiring meticulous consideration to ensure compliance.

The challenges faced by employers and employees become particularly pronounced when navigating the multifaceted web of federal, state, and local wrongful termination laws. This multiplicity of legal sources, each delineating its own set of requirements and exceptions, demands a nuanced understanding to navigate the intricacies of the applicable regulations. Employers find themselves maneuvering through potential conflicts between various legal standards, as exemplified by cases like *Ledbetter v. Goodyear Tire & Rubber Co.* (2007), where federal and state laws on pay discrimination intersected, adding layers of complexity to employment practices.[405]

Conversely, employees encounter formidable obstacles when seeking to assert their rights effectively within this intricate legal framework. The need for legal expertise and guidance becomes glaringly apparent, as both employers and employees strive to comprehend and comply with the nuanced interplay of federal, state, and local laws. Cases like *Ledbetter* highlight the significance of understanding the intricate connections between different layers of legislation to ensure fair treatment and protection for all parties involved within the dynamic Texas employment landscape. The legal intricacies underscore the essential role of legal professionals in providing guidance and clarity amidst the complexities of wrongful termination laws, fostering an environment of equitable treatment and adherence to legal standards within the state.

VII. WORKER RIGHTS PROTECTION

Worker rights protection in Texas requires a thorough examination, particularly when analyzing specific cases that underscore the need for substantial improvements within the current legal framework. The federal case of *Thompson v. Wal-Mart Stores, Inc.* (2006) serves as an example that highlights the challenges employees face in seeking protection against discriminatory practices. In a similar vein, the state-level case of *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* sheds light on the difficulties employees encounter when asserting their rights.[406]

The examination of these cases brings forth a compelling discussion on the need for enhanced worker rights protection in Texas. The state's adherence to the employment-at-will doctrine, evident in both cases, exposes the vulnerability of workers in a system that allows termination without cause. The potential reforms or improvements necessary to address these issues include strengthening anti-discrimination and anti-retaliation provisions, providing clearer guidelines on termination procedures, and implementing comprehensive protection against workplace discrimination.

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[404] See Oyez, "Burwell v. Hobby Lobby Stores, Inc.," https://www.oyez.org/cases/2013/13-354.
[405] See Oyez, "Ledbetter v. Goodyear Tire & Rubber Co.," https://www.oyez.org/cases/2006/05-1074.
[406] See "Thompson v. Wal-Mart Stores," CaseText, https://casetext.com/case/thompson-v-wal-mart-stores-3#:~:text=Plaintiff%20Castural%20Thompson%20brought%20this,its%20decision%20to%20demote%20Plaintiff.

Comparisons with other states' employment laws offer valuable insights into potential reforms. For instance, when comparing Texas to California, a state known for robust worker protections, the disparities become apparent.[407] California's more stringent labor laws include greater protections against unfair terminations and a broader scope of anti-discrimination regulations. These comparisons serve as benchmarks for Texas, highlighting areas where the state can make significant strides in fortifying worker rights.

Drawing on these real-life cases, the discussion extends beyond the legal intricacies to the human stories behind them. The experiences of employees in each case exemplify the challenges faced by employees in a system that often favors employer flexibility over worker rights. By weaving in such narratives, this comprehensive examination emphasizes the urgency for reforms in Texas to better safeguard worker rights and align with evolving standards observed in jurisdictions with more robust employment laws.

The intricacies of the Texas legal framework surrounding wrongful termination extend beyond a mere interplay of federal, state, and local laws; they are deeply entrenched in a complex web of statutes, precedents, and regulations that pose considerable challenges for both employers and employees. Employers in Texas are confronted with navigating a multifaceted system where federal laws, such as the Civil Rights Act of 1964, set overarching standards that are supplemented by a mosaic of state-specific regulations. For instance, the Texas Labor Code Chapter 21 enforces prohibitions against employment discrimination, bringing in an additional layer of consideration.[408] At the local level, municipalities may have ordinances that further shape employment practices, adding to the complexity. This intricate legal tapestry necessitates not only a thorough grasp of federal statutes but also an acute awareness of nuanced state laws, like the Texas Payday Law, governing wage payments, and the Texas Whistleblower Act, protecting employees from retaliation for reporting illegal activities.[409] Employees, on the other hand, grapple with understanding the diverse layers of protection offered by these laws and potential exceptions to the employment-at-will doctrine. This complexity is further exemplified by the Texas Workforce Commission's role in overseeing employment disputes, as seen in cases like *Hahn v North DFW Urology Associates* and *Grayson v. Dallas Independent School District*, emphasizing the influence of state agencies in shaping the legal landscape. Without a comprehensive understanding of these legal intricacies, compliance becomes a formidable task, exposing both employers and employees to legal pitfalls.

In this intricate context, legal professionals specializing in employment law emerge as crucial guides. The expertise of these professionals serves as a compass, aiding stakeholders in deciphering the complexities of the Texas legal framework. For instance, legal professionals often leverage the *Sabine Pilot* exception, established in *Sabine Pilot Services, Inc. v. Hauck* , as a strategic tool to protect employees who refuse to engage in unlawful activities.

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[407] See "California Law for Texas Employers," Cornell Smith, https://cornellsmith.com/california-law-for-texas-employers-2/.
[408] See "Texas Labor Code Title 2 Subtitle A Chapter 21," Public Law, https://texas.public.law/statutes/tex._labor_code_title_2_subtitle_a_chapter_21.
[409] *See* Texas Workforce Commission, "Texas Payday Law," https://www.twc.texas.gov/programs/wage-and-hour/texas-payday-law](https://www.twc.texas.gov/programs/wage-and-hour/texas-payday-law).

The resolution of wrongful termination cases in Texas requires not only legal acumen but also an understanding of the state's unique employment rules. This involves considering the broad principles set by federal laws, delving into the nuances of Texas-specific statutes, and navigating through local ordinances. As Texas continues to shape its employment laws, the challenges presented by this intricate legal landscape highlight the indispensable role of legal professionals in ensuring a fair and just resolution to employment disputes, providing a vital link between the complexities of the law and the practical realities faced by both employers and employees.

VIII. THE EMPLOYMENT EMPLOYMENT-AT-WILL DOCTRINE IN TEXAS: THE INTERSECTION OF RACE

The roots of the employment-at-will doctrine, particularly pertinent in Texas, can be traced back to the 19th century when courts began adopting this principle as a default rule in employment contracts. This historical context, deeply entrenched in the state's legal landscape, reflects the broader societal shift towards laissez-faire economic principles, emphasizing minimal government intervention in private business affairs. However, over time, this doctrine has evolved into a subject of controversy due to its perceived imbalance in favor of employers, leaving employees vulnerable to arbitrary dismissals. As industrialization progressed and the balance of power in employer-employee relationships shifted, critiques of the doctrine emerged. Detractors argue that the employment-at-will doctrine fosters an environment where employees lack job security, making them susceptible to unfair treatment and dismissal without recourse.

In Texas, the intersection of race and wrongful termination represents a critical juncture in the ongoing struggle for equality within the realm of employment. As societies strive for inclusivity, the scourge of racial discrimination continues to manifest in workplaces, often resulting in unjust dismissals. The historical backdrop of racial discrimination in employment casts a long shadow over contemporary issues of wrongful termination, especially in a state with a complex history of race relations like Texas. Decades of systemic racism have left an indelible mark on workplace dynamics, with discriminatory practices persisting despite legal strides toward equality. As a consequence, race often becomes a contentious factor in employment relationships, leading to the disproportionate termination of individuals from marginalized racial backgrounds.

Legal safeguards against racial discrimination in the workplace form a cornerstone of efforts to combat wrongful termination based on race. Various jurisdictions, including Texas, recognize and prohibit termination motivated by an individual's race or ethnicity. Employees in Texas, as elsewhere, are entitled to protection from discriminatory dismissals, emphasizing the importance of fostering diverse and inclusive work environments. While overt acts of racism are readily condemned, subtle forms of discrimination can be more insidious and challenging to address, a challenge faced by Texas employees as well. Wrongful termination cases based on race often involve more covert biases, including microaggressions, biased decision-making processes, or discriminatory policies that disproportionately affect certain racial groups. Identifying and proving such subtle discrimination poses unique challenges within the legal landscape of Texas.

Similarly to other jurisdictions, the burden of proof in Texas can be daunting for employees seeking justice, and the intricacies of discrimination cases may require comprehensive evidence to

establish a causal link between termination and racial bias. This complexity underscores the need for ongoing legal and societal efforts to improve accountability and redress for victims of racial discrimination, especially considering the unique legal framework and history of states like Texas.

In an article by Rebecca Dixon, the author traces the 150-year-old legal doctrine to the passage of the 13th Amendment, acknowledging its profound impact on individuals in the United States, including those in Texas.[410] Rooted in the historical context of an inherently biased and racist legal system, the employment-at-will doctrine reinforces existing power imbalances, making it particularly difficult for Black and Latinx workers in Texas to exercise their right to resign from an unfair workplace. The historical narrative woven throughout the article exposes the profound impact of the employment-at-will doctrine on individuals in Texas and across the United States. Despite ongoing efforts to rectify these inequities through just-cause protections, the historical roots of the employment-at-will doctrine continue to cast a shadow over the economic security and rights of workers in Texas, underscoring the persistent challenges faced by individuals in the workforce. The employment-at-will doctrine in Texas addresses America's troubling past with slavery, and there is a call to establish a fairer system that restores authority to the working people, particularly in Texas.

The employment-at-will doctrine's impact on Texas is particularly pronounced due to the state's diverse demographic composition and historical context. Texas, as a Southern state with a complex history tied to slavery and racial dynamics, grapples with unique challenges in its application of this doctrine. Its influence is not uniform across all communities within Texas, where significant racial and ethnic diversity exists. The legal authority granted by this doctrine empowers employers to terminate employees without justification, disproportionately affecting certain racial and ethnic groups. In the Texan business culture, while the doctrine contributes to the state's pro-business image, it intersects with the demographic landscape, inadvertently perpetuating existing racial and ethnic disparities. Studies highlight that people of color, especially Black and Latinx workers, often face unjust dismissals, as supported by Dixon's analysis. Legal cases reveal a complex network of wrongful termination laws in Texas, further intertwined with the racial composition of the workforce. Thus, within Texas's employment framework, the employment-at-will doctrine becomes not merely a legal structure but a factor exacerbating racial inequities, adding complexity to the state's employment laws.

Moreover, Texas's history as a Southern state deeply entrenched in the legacy of slavery shapes the application of the employment-at-will doctrine. The demographics dominating various industries in Texas, reflecting historical patterns of racial and ethnic segregation, further underscore its implications. This historical context not only informs the doctrine's impact on employment practices but also influences perceptions of Texas's pro-business environment. By examining these historical and demographic dynamics, we gain deeper insights into how the employment-at-will doctrine perpetuates racial disparities and reinforces the state's pro-business image, thereby highlighting the multifaceted challenges within Texas's employment landscape.

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[410] See Rebecca Dixon, "Hear Us, Cities Working to End Another Legacy of Slavery: At-Will Employment," Next City, https://nextcity.org/urbanist-news/hear-us-cities-working-to-end-another-legacy-of-slavery-at-will-employment.

While the impacts of this doctrine negatively affect America, its implications on Texas are particularly pronounced due to the state's diverse demographic makeup. Since the national emergency declaration for COVID-19, over 33 million Americans have filed for unemployment insurance, with Latinx workers disproportionately affected.[411] For the first time since 1973, the Latinx unemployment rate is the highest among all racial and ethnic groups, reflecting a legacy of exploitation and occupational segregation. These challenges underscore the need for strategies to address the disproportionate unemployment risk facing Latinx people.

Structural inequalities exacerbate these challenges, as Black and Hispanic communities are overrepresented in essential jobs, including those in warehouses, which require them to work outside the home and often lack reliable social distancing and paid leave. According to a recent report by the Urban Institute, 31 percent of Hispanic workers and 33 percent of Black workers were in essential jobs in 2018, compared to 26 percent of White workers. In New York City, a significant proportion of frontline workers are Black or Hispanic, further highlighting the racial disparities in essential job roles.[412]

The Centers for Disease Control and Prevention (CDC) acknowledges that essential work positions pose a higher risk of exposure, particularly for Black and Hispanic workers, who are more likely to lack benefits such as paid sick days and health insurance.[413] Studies from the Centers for Disease Control and Prevention (CDC) and the National Institute for Occupational Safety and Health (NIOSH)[414] confirm that essential workers, disproportionately Black and Hispanic, face greater challenges in maintaining social distancing and accessing protective measures like masks. These structural inequalities underscore the intersection between race, employment, and health outcomes, further emphasizing the need to address racial disparities within the workforce.

In Texas, where racial and ethnic diversity is significant, the influence of this doctrine is not uniform across all communities. The legal authority it bestows allows employers to terminate employees without offering justification, creating a scenario where the consequences disproportionately affect certain racial and ethnic groups. Within the Texan business culture, this doctrine, while contributing to the state's pro-business image, intersects with the demographic landscape. The flexibility granted to employers can inadvertently perpetuate existing racial and ethnic disparities. Studies indicate that people of color, particularly Black and Latinx workers, often bear the brunt of unjust dismissals, a claim defended by Dixon. By exploring exceptions and limitations, many legal cases reveal a vast network of wrongful termination laws in Texas that intersect with the racial composition of the workforce. Thus, within the Texan employment framework, the

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[411] *See* Erica Marriott and Taryn Morrissey, "Latinx Unemployment Is Highest of All Racial and Ethnic Groups for First Time on Record," Urban Institute, https://www.urban.org/urban-wire/latinx-unemployment-highest-all-racial-and-ethnic-groups-first-time-record.

[412] *See* "Black, Hispanic Americans are Overrepresented in Essential Jobs," University of Illinois at Chicago School of Public Health, https://publichealth.uic.edu/news-stories/black-hispanic-americans-are-overrepresented-in-essential-jobs/.

[413] *See* Centers for Disease Control and Prevention, "Telework, Race, and the COVID-19 Pandemic," April 26, 2022, https://blogs.cdc.gov/niosh-science-blog/2022/04/26/telework-race-covid/](https://blogs.cdc.gov/niosh-science-blog/2022/04/26/telework-race-covid/).

[414] *See MDPI, "International Journal of Environmental Research and Public Health," https://www.mdpi.com/1660-4601/19/8/4680.*

employment-at-will doctrine becomes not just a legal structure but a factor that can perpetuate or exacerbate racial inequities, adding an additional layer of complexity to the already intricate landscape of employment laws in the state.

IX. CONCLUSION

Wrongful termination laws in Texas, influenced by pivotal federal, state, and local court cases, underscore the critical imperative for strengthening worker rights protection. As we navigate this complex legal terrain, the roles of influential agencies like the EEOC and the Texas Workforce CommissionTWC become paramount. These agencies, integral to Texas employment law, contribute to the understanding necessary to effectively safeguard workers' rights within the state's unique employment landscape. The delicate balance between employer prerogatives and employee rights is further emphasized through federal, state, and local court decisions, underscoring the need for a well-informed approach to navigating the intricacies inherent in Texas's employment framework.

The foundational employment-at-will doctrine, deeply ingrained in Texas business culture, has faced criticism for its perceived bias in favor of employers, leaving employees vulnerable to arbitrary dismissals. Real-life cases, such as *Sabine Pilot Services, Inc. v. Hauck* vividly illustrate the legal complexities surrounding racial discrimination, exceptions to employ

At the federal level, Sabine Pilot Services, Inc. v. Hauck (1985) introduced a critical exception to the employment-at-will doctrine, reshaping wrongful termination claims by preserving public policy against the termination of employees who refuse to engage in illegal activities. The intricate legal framework in Texas extends beyond federal, state, and local laws, encompassing statutes, precedents, and regulations. Employers navigate this multifaceted system, guided by legal professionals versed in employment law.

While punitive damages may contribute significantly to settlement amounts, determining the average settlement in Texas proves challenging due to each case's unique circumstances. Despite the financial implications, pursuing legal action requires careful consideration of potential outcomes and costs. Attorneys play a pivotal role in negotiating settlements, balancing the interests of both parties.

As Texas continues to shape its employment laws, the need for a comprehensive approach to ensure fair treatment and protection for both employees and employers becomes increasingly apparent. The exploration of these cases provides valuable insights into the complexities of wrongful termination laws, emphasizing the importance of a well-informed approach to address the nuances inherent in Texas's employment landscape. In conclusion, robust legal protections are essential to safeguarding employee rights and promoting a just and inclusive workforce in Texas.

PUBLIC HEALTH: AIR CONDITIONING IS ESSENTIAL TO THE EIGHTH AMENDMENT

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Incarcerated individuals face excruciating summer heat and a lack of resources to deal with such weather extremities. The Eighth Amendment highlights that no cruel and unusual punishment can be inflicted upon citizens by the state; therefore, access to AC in the majority of US prisons should be deemed a constitutional right rather than a luxury.

In *Ball v. Leblanc* (2015), Louisiana hesitated in adding air conditioning in Angola Prison. After prison officials tended to the needs of the Louisiana prison population, the state still refused to add AC because they believed that installing this necessity would lead to demands from other state prisoners to establish air conditioning at other carceral institutions. However, by denying prisoners access to AC the state violated their citizens' rights.

In a similar case, *Yates vs. Collier* (2017), incarcerated people in the Wallace Pack Unit, in Navasota, Texas argued that because of the state's high temperatures, a lack of AC is a violation of the Eighth amendment. Homes surrounding the prison had previously installed AC, yet the prison refused to add one.

In *Jones, Quintero DeVale v. State of Texas* (2012), A family sued the Texas Department of Criminal Justice because they mistreated prisoner Quintero Devale Jones during an asthma attack caused by his heat overexposure. The prison guards ignored Jones' request for medical assistance and had confiscated his inhaler in a previous incident, causing his death.

State governments continue to believe that spending on air conditioning for a prison is not worth state or federal funds, instead implementing cold water and fans as a method of preservation. However, this violates the Disabilities Act and the Rehabilitation Act, disregarding a constitutional requirement to provide access and resources to those in particular circumstances or vulnerable positions.

Air conditioning is nothing less than a personal right and the lack of it within prison institutions highlights a failure to protect citizens from cruel and unusual punishment.

I. INTRODUCTION

The Eighth Amendment states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[415] The lack of air conditioning in correctional facilities violates the Eighth Amendment. State governments reject and overlook the idea that air conditioning is nothing less than a requirement, violating the Eighth Amendment's clause of no cruel and unusual punishment.

In *Laube v. Haley* (2002), 15 incarcerated females, each from three different facilities in Alabama, state that the conditions in which they must live in are unattainable to their regulatory

[415] U.S. Const. Amend. Ⅷ § 3.

needs.[416] The women believed the conditions target their Eighth Amendment rights. The overcrowding, inadequate supervision in dorms, and other insufficient attendance to their needs served as their evidence. The women claimed that a lack of air conditioning is an endangerment to their wellbeing.

The violation extends to the Disabilities Act and the Rehabilitation Act, depicted in *Bailey v. Livingston* (2016).[417] The Disabilities Act of 1990 forbids discrimination against people with disabilities in terms of transportation, public accommodations, communications, and access to government programs and services.[418] The Rehabilitation Act of 1973 states that discrimination on the basis of disability in programs conducted by federal programs or agencies is prohibited.[419] The Wallace Pack Unit is a correctional facility managed by the Texas Department of Criminal Justice (TDCJ). In the *Bailey v. Livingston* case, individuals at the Wallace Pack Unit were elderly and those with chronic medical conditions. TDCJ prisons manages inmates in state jails, and private correctional facilities that usually contract with the TDCJ. The plaintiffs, or the inmates at the Wallace Pack Unit, alleged that the Texas Department of Criminal Justice, which provides confinement, supervision, rehabilitation, and reintegration to convicted felons, is subjecting inmates to unconstitutional conditions within the Wallace Pack unit.

In *Ball v. Leblanc* (2015), inmates on death row at a new facilitation center in Louisiana, believed that the heat that endured on summer days and the lack of air conditioning for the heat was a direct threat to their well-being and Eighth Amendment rights.[420] The plaintiffs also believed their living conditions violate the Disabilities and the Rehabilitation Act. The plaintiffs suffer from chronic illnesses that required them to take medication that puts them at risk of heat strokes with lack of proper conditions within the prison. They were also put at risk during the summer season argued that they deserve air conditioning due to their indoors confinement for full days.

Government officials believe air conditioning is a luxury that prisons don't need. The prison system emphasizes safety over temperature control; however, their point of view came under question when the Texas Legislature decided to not spend a budget surplus to buy cooling systems.[421] The budget surplus was distributed in different areas, despite the Texas Senate agreeing upon the installation of air conditioning in Texas prisons. Because state governments fail to provide funds for air conditioning in correctional facilities, inmates are required to cope with jarring conditions.

The constitutional infringement goes beyond Texas and its scorching summer temperatures, as the climate continues to change globally. Prisons across the nation face the reality that the lack of

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[416] *See* Laube v. Haley, 234 F. Supp. 2d U.S. 1227 (M.D. Ala. 2002).

[417] *See* Bailey et al v. Livingston et al, No. 4:2014cv01698 - Document 477 (S.D. Tex. 2016).

[418] "The Americans with Disabilities Act." *ADA.Gov*, https://www.ada.gov/. Accessed 22 Mar. 2024.

[419] "The Rehabilitation Act of 1973." *US EEOC*, https://www.eeoc.gov/statutes/rehabilitation-act-1973. Accessed 22 Mar. 2024.

[420] See Ball v. LeBlanc, No. 14-30067 U.S. 2 (5th Cir. 2015).

[421] McCullough, Jolie. "Despite Budget Surplus, Texas Legislature Makes Little Money Available for Prison Air Conditioning." *The Texas Tribune*, 26 May 2023, https://www.texastribune.org/2023/05/26/texas-prisons-air-conditioning/.

air conditioning could be a death sentence. The persistent violations in each relevant case demonstrate the argument that lack of air conditioning is a violation of constitutional rights.

II. THE STATE OF TEXAS

Plaintiffs allege that the Texas Department of Criminal Justice created life threatening conditions for the inmates at the Wallace Pack Unit, who are elderly individuals and inmates with medical conditions. The high temperatures of Texas summers and the lack of air conditioning is detrimental to the well being of inmates, and the TDCJ continues to promote the importance of hydration, specifically through the rotation of ice and drinking measures. For example, the TDCJ encourages inmates to drink 2 gallons of water, rather than focusing on the government to attend to these basic needs.[422]

The United States Environmental Protection Agency (EPA) claims that the prison's water is contaminated with two to four and a half times the level of arsenic permitted in drinking waters.[423] Arsenic is a naturally occurring substance within water, air, and soil, but is also carcinogenic, producing or tending to produce cancer. The average amount of arsenic in water is 10 micrograms per liter. The evidence within the Wallace Pack Unit case was supported by testimonies from professionals and doctors who testified that the facility lacked the proper necessities for these individuals that are at risk.[424]

The findings of this case demonstrate that the inmates are exposed to extreme temperatures and must be given a permanent resource to help combat these conditions. The EPA lowered the maximum contaminant level of drinking water from 50 parts per billion to 10 ppb in 2001. By 2006, the EPA required water systems to comply with this containment level. In 2007, the prison system installed a filtration system, but the TDCJ had issues troubleshooting the system, based on testimony from Brian Carney, a project engineer for the TDCJ.[425] More than 10 years after this requirement was implemented in the Wallace Pack Unit, the facility planned on installing a second filtration system to help meet this requirement for both the EPA and the needs of the inmates. The presentation of this data leaves the correctional facility's disregard for drinking water conditions undisputed, indicating the unconstitutionality of the situation.

The inmates at the Wallace Pack Unit, being elderly individuals with different medical conditions, claim to have their Disabilities Act and Rehabilitation Act rights violated. In 2016, approximately 728 inmates were diagnosed with hypertension, 212 with diabetes, 111 with obesity, 53 with a psychiatric condition, 22 with cirrhosis of the liver, and 113 with asthma. Additionally, approximately 188 inmates were over the age of 65. Regarding the summer heat conditions, between the months of June and September the heat index reached between 80 degrees Fahrenheit to 95 degrees Fahrenheit inside the unit. In South Texas, heat is the number one weather-related death that usually occurs indoors. These heat indexes integrate into the medical conditions of the inmates due to some of their inability to thermoregulate, or regulate temperature especially of one's internal

[422] *See* Bailey 477 U.S. at pg 3.
[423] *See* Bailey 477 U.S. at pg 2.
[424] *See* Bailey Id.
[425] *See* Bailey 477 U.S. at pg 4.

body temperature. The condition of the facility puts inmates, young and old, at a higher risk of facing dire consequences in the future.

Governmental authorities avoid attending to these needs, as shown by the evidence of the State of Texas failure to use a budget surplus to implement air conditioning units in correctional facilities.[426] The House hoped to put some of the estimated money surplus towards covering two phases of a four phase plan to install air conditioning in all Texas prisons by 2031. The House passed a bill in 2023, HB 1708, to require prisons to be kept between 65 and 85 degrees Fahrenheit, although this measure failed in the Senate.[427] Additionally, the TDCJ claimed that the alternative usage of water bottles would be problematic and unfeasible. Both instances demonstrate the drawbacks of costs for air conditioning in prison systems and other alternatives that would benefit inmate conditions. Although these certain systems are feasible, evident within the Texas surplus, governmental authorities do not believe it is necessary to meet these needs.

III. OUTSIDE OF TEXAS

Similar to the conditions within Texas, the lack of air conditioning creates issues across the United States. In the case of *Laube v. Haley* and *Ball v. Leblanc*, inmates in Alabama and Louisiana petition for carceral institutions to uphold their eighth amendment rights.

In *Laube v. Haley*, 15 female plaintiffs from the Julia Tutwiler Prison for Women, the Edwina Mitchell Work Release Center, and the Birmingham Work Release Center claim that the conditions of the Alabama prison system is a direct threat to their human rights.[428] The women were subjected to poor conditions such as overcrowding, inadequate inmate classification, inmate violence, inadequate dorm conditions, poor living spaces, and inadequate ventilation systems. Tutwiler was established to house approximately 364 inmates but in 2002, it housed a total of 1,017 inmates. There are 10 dorm rooms that each housed different classified inmates such as the mentally ill, drug addicts, and the elderly. Tutwiler had a lack of ventilation, there were no air handlers except in dorm 10, which had exhaust fans that air out old air and circulate new air throughout the dorm. In dorm 8, where intakes and new inmates are placed, inmates are not allowed to go to the open yard and smoking usually occurs within the dorm's quarters. In dorm 9, which houses the general population, is considered the "hot house" because the floor and wall fans do a poor job of circulating air within the dorm room. The conditions within these specific dorm rooms are demonstrations of the poor living conditions within the Tutwiler prison.[429] Minimal measures have been put in place to combat the temperatures such as the warden opening dorm windows, placing large fans in dorm aisles, and adding fans to the walls. These measures pose problems because frequent inmate violence outbreaks would occur, due to aggressive inmates refusing to allow the fans to move on the regulatory schedule. There are also measures such as ice calls in the morning and night, but not during midday

[426] McCullough, Jolie. "Despite Budget Surplus, Texas Legislature Makes Little Money Available for Prison Air Conditioning." *The Texas Tribune*, 26 May 2023, https://www.texastribune.org/2023/05/26/texas-prisons-air-conditioning/.
[427] "88(R) HB 1708 - Introduced Version - Bill Text." Accessed March 24, 2024. https://capitol.texas.gov/tlodocs/88R/billtext/html/HB01708I.htm.
[428] See Laube 234 U.S. at 1230.
[429] *See* Laube 234 U.S. at 1232.

when the heat reaches its peak, or measures for when the heat rises above 90 degrees Fahrenheit. However, the facility never knows when the heat has risen past 90 degrees because they lack the instruments to measure heat.

In Mitchell and Birmingham, Alabama, the same issues arise: inmate disputes, poor system management, inadequate dorm conditions, and poor ventilation. In Birmingham, "holding cells" are used as segregation units, however, they were initially used as storage units. This area was converted to a cell that holds up to four inmates and leaves no room for adequate ventilation systems. The cell contains no windows and although there is a vent, there is no moving air besides a fan outside of the cell. The inmates housed in this segregation unit are given one pitcher of ice every eight hours to help cool themselves. These conditions led to the death of an inmate in the segregation unit on July 27, 2002.[430] The inmate was asking for medication and "hollering," until she became unresponsive. The Warden noted that no officer checked on her from the hours of 3:00 AM to 4:30 AM. In Mitchell, the inmates, fortunately, are allowed to move in and out of their dorm rooms when they desire fresh air. There are no air handlers within the dorm rooms, and there is no way to monitor heat or humidity. Comparatively, Birmingham has air handlers in the dorm rooms, aside from the segregation unit, and has central air conditioning, proposing no immediate suspicions about poor ventilation. However, in July 2002, conditions became so uncomfortable for inmates that they sent complaints to the Health Department. The department cited the facility for failing to ventilate the area and posed a health hazard to inmates.

The findings of *Ramos v. Lamm* (1981) demonstrate that poor ventilation is proper evidence of an issue that violates the Eighth Amendment rights of inmates.[431] The court ruled, however, that there is insufficient evidence that this proposes a constitutional threat for inmates. The court turned to the case of *Benjamin v. Fraser* (1996) to demonstrate the evidence needed to allow ventilation relief, such as health experts, air flow readings, and smoke tests.[432] The plaintiffs lacked this specific evidence in this case, leading to the conclusion that there was no constitutional threat towards inmates. In conclusion, the court could not provide relief for the inmates on ventilation until such evidence was proven to the court.

IV. THE STATE OF LOUISIANA

In *Ball v. Leblanc*, inmates in the new facility that houses death row inmates, sued the Louisiana Department of Corrections due to heat conditions that pose a threat to inmates' pre-existing medical conditions.[433] The facility, a Louisiana state penitentiary named after the former slave territory Angola, had inmate complaints during the summer months. The plaintiffs claimed that the lack of air conditioning violates the Americans with Disabilities Act and the Rehabilitation Act.

The Angola prison is a 25,000 square foot facility that has a pod of administrative offices, visitation rooms, medical and dental clinics, a control center, and an execution chamber. None of the housing pods are air conditioned, but the rest of the facility is air conditioned. Windows line the

[430] *See* Laube 234 U.S. at 1237.
[431] *See* Justia Law. Ramos v. Lamm, 520 U.S. 1061, 1062 (D. Colo. 1981).
[432] See Benjamin v. Fraser, 161 F. Supp. 2d U.S. 151, 155.
[433] See Ball No. 14-30067 pg 1.

exterior wall of each housing tier with 30 inch fans next to the windows. Death row inmates spend 23 hours inside their cells, but are given access to potable water from sinks and ice. The ice chests run out from time to time, due to complications with the ice machine. The three plaintiffs suffer from hypertension, one has diabetes and is obese, another is obese and has hepatitis, and the other was diagnosed with depression and has high cholesterol. The plaintiffs sought an injunction to keep the facility at 88 degrees Fahrenheit. The United States Risk Management assessed that the temperature within the two tiers the inmates are housed in, tier A and H, showed that both tiers ranged from 78.26 to 92.66 degrees Fahrenheit. The heat index ranged from 81.5 to 107.79 degrees Fahrenheit, and in tier H, the heat index surpassed 100 degrees Fahrenheit over seven days.

The evidence shows that the heat index was inadequate to meet basic human needs within the prison, although using the heat index to make a ruling is insufficient evidence to make a court decision.[434] The heat index is a derived number, claimed by the state's expert meteorologist, Jay Grymes, yet Dr. Susi Vassallo, the plaintiff's expert, claims the heat index is used to see a correlation between morbidity and mortality. The constitution claims that it "does not mandate comfortable prisons but neither does it permit inhumane ones." With the evidence provided, the state claims that the plaintiffs are at no substantial risk of serious harm. Vassallo claimed that the temperatures and conditions of the plaintiffs put them in substantial risk, due to hypertension and diabetes affecting the cardiovascular system, which is critical for maintaining normal body temperatures. The Eighth Amendment violation was also asserted on the basis that the state knew the circumstances of the inmates and still disregarded the need for improvements.[435] Although the defendants claimed to monitor inmates who have heat-related illnesses, the defendants began to soak the exterior walls with water and install awnings during the court's monitoring period. This incident revealed that the prison system acknowledged the heat conditions as extraneous, yet never intended to repair the faults properly.

To remedy their Eighth Amendment violation, the district court stated that Louisiana must develop a plan to reduce the heat index or maintain it. This means that the prison must establish air conditioning throughout death row housing. The Prison Litigation Reform Act (PLRA) curtails meritless inmate litigation and restricts remedies for prison condition lawsuits. The PLRA was violated because the prison facility did not meet the request to establish air conditioning, which asserts that inmates are not entitled to the most effective remedy, but a remedy that eliminates constitutional injury. Dr. Vassallo states that the defendants can divert cool air from the guards' pod to the tiers, allowing inmates to access air conditioned areas during their tier time, giving access to cool showers at least once a day, providing ample supply of cold drinking water and ice throughout the day, and installing additional ice machines. The PLRA requires remedies such as those suggested by Vallasso to be installed within prison systems, rather than reprimanding the issue another way. In conclusion, the court affirmed the Eighth Amendment and disability claims, but vacated and remanded the district court's injunction.[436]

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[434] *See* Ball No. 14-30067 pg 21.
[435] *See* Ball No. 14-30067 at pg 11.
[436] *See* Ball No. 14-30067 at pg 23.

The case serves as an understanding that air conditioning within prisons is not a simple fix. Inmates are subjected to harsher conditions due to their status as incarcerated individuals and must abide by the rules established through acts, such as the PLRA. The PLRA also enforces the idea that if an inmate requests rehabilitation of certain needs within the court, the court must only seek fixes for that individual only, rather than the entire prison system. In the case of the Angola prison, the entire facility was fortunate to get court instituted changes because the inmates or plaintiffs were subject to move at any given point during their time serving. Inmates must go through a series of considerations from governmental authorities in order to get a mediocre remedy. Most inmates that deal with excruciating heat temperatures have to undergo a procedure of court deliberations and jury predictions to gain justice for the circumstances they are forced to endure.

V. AIR CONDITIONING IN PRISONS

Air conditioning in prisons seems like an arbitrary issue that can be resolved with facilitation throughout the United States. However, this is not the case. Prison systems run under the authority of the government through the ideology that prisons are not meant to be comfortable. However, this ideology creates Eighth Amendment rights issues across the country.

According to the Texas Department of Criminal Justice, 14 percent of prisons in Texas do not have air conditioning, 55 percent have partial air conditioning, and 31 percent have full air conditioning. As of 2023, the prisons in Texas that have partial or no air conditioning are Beto, Coffield, Micheal, Powledge, Bradshaw, Johnston, Wainwright, and Telford.[437] With the universal lack of air conditioning, TDCJ officials highlight the presence of ice and water within correctional facilities as a beneficial substitution for inmates' conditions. The TDCJ also highlights the attention given to inmates who pose a higher risk of heat-related illnesses. These inmates are put into air-conditioned dorms based on age, health conditions, or medications. Inmates with medical conditions are subjected to these negative conditions more easily due to most medications affecting thermoregulation and causing symptoms such as dizziness and headaches.

Heat related deaths are common due to unruly temperatures that incarcerated individuals face. Quintero Jones was an inmate in a prison in South Texas where he passed away from an asthma attack caused by high temperatures within the prison. His inhaler was taken away earlier during a search and his unit was on lockdown. The medications Jones took also had side effects that increased due to heat or affect sensitivity to heat. Jones was not the only case of an inmate passing away from a heat-related death. Ten inmates have passed away since 2011 under TDCJ custody. Even after these deaths, the TDCJ made minimal changes to policies regarding safety within the correctional facilities.[438] The state of Texas is not alone on this issue; Alabama only has four out of 26 correctional facilities that have air conditioning in all dormitories. Twenty-four percent of Florida's state-run prison housing-units are air conditioned. Alaska and Montana have no air

[437] cbs19.tv. "TDCJ: 14% of Texas Prisons Have No Air Conditioning," July 18, 2023. https://www.cbs19.tv/article/weather/as-temperature-continue-to-rise-14-of-texas-prison-facilities-are-feeling-the-heat-with-no-air-conditioning/501-e0cf7ae7-bbd4-4e02-a145-f734301741d4.

[438] Santucci, Jeanine, and U. S. A. Today. "Most US States Don't Have Universal Air Conditioning in Prisons. Climate Change, Heat Waves Are Making It 'Torture.'" Accessed March 24, 2024. https://phys.org/news/2022-09-states-dont-universal-air-conditioning.html.

conditioning in any of their prisons. In Michigan, only those in dire need of air conditioning have units that allow ventilation. Only Tennessee states that all of their correctional facilities have air conditioning in them. In total, 44 out of 50 states do not universally air condition their prisons. The absence of air conditioning in carceral institutions throughout multiple states represents the governmental disregard toward improving conditions of prison systems, even through minimal installations.

In a journal article, published by Brown University, titled the "Provision of Air conditioning and Heat-related Mortality in Texas Prisons," a 1-degree increase in prisons without air conditioning was associated with a 0.7 percent increase in the risk of mortality.[439] There have been a total of 3,464 deaths in Texas prisons from 2001-2019, and the data showed that a heat index above 85 degrees Fahrenheit and extreme heat were associated with increased risk of daily mortality in Texas prison facilities without AC. From this same data analysis based on mortality in prisons from heat, the researchers were able to come to the conclusion that a heat index above 85 degrees would be enough cause for extreme heat temperatures to arise in these correctional facilities.

Scholars from Brown University state that a 1 degree increase above 85 degrees fahrenheit can elevate the daily risk of dying by 0.7 percent. The researchers were able to come up with a conclusion that there are higher death rates among people in prisons without air conditioning compared to those in climate-controlled conditions. There were 14 heat-related deaths in Texas prisons, but not a single death occurred in climate-controlled prisons. The researchers suggest that an air conditioning policy for Texas prisons may be an important part of protecting the lives of inmates.

Both researchers propose that the Texas Department of Criminal Justice work with these correctional facilities to offer better living conditions and lower the risk of dying from poorly conditioned dormitories and units. The addition of air conditioning units could be enough to prevent heat related deaths from climate changes and temperature changes during the warmer summer months. The Texas Department of Criminal Justice facilitates these conditions within prison systems resulting in the conclusion that TDCJ prisons are held responsible for unruly conditions in specific correctional institutions. Because the TDCJ is held responsible in the cases of heat-related deaths, poor conditions within correctional facilities should be monitored more closely.

VI. THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

The Texas Department of Criminal Justice (TDCJ) manages the overall operation of prison systems, parole, and state jails. They are responsible for the operation of ventilation in prisons, and are involved in any case that includes violations to inmates rights and basic necessities. The Department of Criminal Justice was created in 1848 when An Act to Establish a State Penitentiary was passed by the 2nd Texas Legislature.[440] The act established a governing body for penitentiaries

[439] Dimitri, Carl, Senior Writer, and School of Public Health. "Extreme Temperatures Take Deadly Toll on People in Texas Prisons, Study Finds." Brown University, March 18, 2024. https://www.brown.edu/news/2022-11-04/prison-heat.

[440] "GOVERNMENT CODE CHAPTER 497. INDUSTRY AND AGRICULTURE; LABOR OF INMATES." Accessed March 24, 2024. https://statutes.capitol.texas.gov/Docs/GV/htm/GV.497.htm.

as a three-board member board of directors. Today the TBCJ, the nine member board, is appointed by the governor to oversee the TDCJ.

The Texas Department of Criminal Justice was one of the biggest barriers in a lawsuit involving establishing air conditioning within a correctional facility in Texas.[441] The Wallace Pack Unit was able to reach a settlement with the prison which costed 7 million dollars. The TDCJ claimed that prison systems should give adequate amounts of water, ice and fans to combat rising heat temperatures. This led Texas Attorney General Ken Paxton stating that these precautions were enough for the inmates, avoiding having to spend that much money on air conditioning. The TDCJ was then accused of jeopardizing the lives of almost 900 inmates in the unit that the judge ruled to be kept in cooler temperatures.[442] The TDCJ was responsible for informing attorneys when air conditioning failed for more than 24 hours, and they were also responsible for attaining previous precautions, such as cold showers, ice, water, and fans. Inmates were given 150 dollars for every day they were kept in these harsh conditions to prompt the TDCJ to facilitate better conditions.

This disagreement between the TDCJ and the Wallace Pack Unit inmates occurred in 2019 and since then, the TDCJ added more air conditioning beds to correctional facilities. The 88th Texas Legislative session funded the TDCJ 85 million dollar installment of additional air conditioning. As of December 2, 2023, there are 43,572 cool beds available, 3,437 cool beds under construction, and 11,455 cool beds in design. The TDCJ also launched an online dashboard to publicly track air-conditioning construction across Texas.[443]

The Texas Department of Criminal Justice is held responsible for the cases that insinuate poor temperatures in prisons are putting inmates at risk and for attaining to the needs of these individuals. The 88th legislative session made it possible for the TDCJ to prove their assistance for these issues and have added air conditioned beds within prisons. However, disregarding the heat-related deaths, violations to the ADA and Rehab Act, and most importantly violations to the Eighth Amendment, serves as reason to continue to advocate for the rights of incarcerated individuals.

VII. THE EIGHTH AMENDMENT WITH THE DISABILITIES AND REHABILITATION ACT

The Eighth Amendment states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Americans with Disabilities Act "prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government' programs and services." And the Rehabilitation Act "prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial

[441] McCullough, Jolie. "After $7 Million Legal Fight over Air Conditioning, Texas Prison System Touts New Heat Safety Policies." The Texas Tribune, July 26, 2018. https://www.texastribune.org/2018/07/26/texas-prison-heat-air-conditioning-costs/.
[442] McCullough, Jolie. "After $7 Million Legal Fight over Air Conditioning, Texas Prison System Touts New Heat Safety Policies." The Texas Tribune, July 26, 2018. https://www.texastribune.org/2018/07/26/texas-prison-heat-air-conditioning-costs/.
[443] TDCJ News, https://www.tdcj.texas.gov/news/air-conditioning_dashboard_to_monitor_project.html (last visited Mar 24, 2024).

assistance, in federal employment and in the employment practices of federal contractors." These three serve as core pieces of legislation in the argument for prison to meet inmate needs. In the case of *Ball v. Leblanc,* the prison system violated the ADA, the Rehab act, and the Eighth Amendment.[444]

Because the Eighth Amendment states that cruel and unusual punishment is unconstitutional, the extreme temperatures of prisons is a violation to the Eighth Amendment. The state asserted in this case that the plaintiffs were not at a risk from these temperatures, nor are they posed to serious harm. However, expert witness Dr. Vassallo used her testimony to show that the inmates who suffer from chronic diseases, like hypertension and diabetes, take medications that create a risk at these temperatures. Additionally, diabetes and hypertension both butcher the function of the cardiovascular system.[445] Hypertension causes a decrease in the abilities for blood vessels to open and close and in turn causes them to not open when there is extreme heat. Diabetes causes the arteries and blood vessels to harden and pause circulation of blood. Beta blockers are used to combat blood pressure by preventing blood vessels from dilating properly while also decreasing the heart's ability to pump as hard. These ailments give way for heat stroke to occur because a proper amount of fluids is needed to make sure these ailments don't cause detrimental effects on individuals who are taking them. Due to the state's statements following Dr. Vallaso, there was an error within their judgment. The state also knew and disregarded the risks these conditions posed to the plaintiffs, which is another aspect of the Eighth Amendment that states that"prison officials (must) have a sufficiently culpable state of mind."' This means that the prison workers must acknowledge and alleviate the conditions presented in prison environments. The state attempt to reduce temperatures after this claim was made by installing awnings and soaking the tiers exterior walls with water to reduce interior temperatures.[446] The court used this tactic and prior evidence to state that there was knowledge of risk and harm since the plaintiffs sprayed water on the walls outside and installed awnings to intentionally bring down temperatures. The conclusion based on the evidence led the court to believe that these temperature risks are enough to violate the Eighth Amendment for these inmates.

The Disability claims within this case demonstrate that the state violated inmate rights to accommodations from both the ADA and RA. The district court claimed that there was no evidence that the plaintiffs were disabled, with backlash from the inmates stating that they are defining disabled on an abbreviated definition and superseded case law. Nonetheless, the case ruled them to not be disabled. According to the definition upheld by the court, a person is disabled if he has "a physical or mental impairment that substantially limits one or more major life activities." Major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, and sleeping. The prisoners can prove themselves disabled if their ailments substantially limit either a major life activity or operation of a major bodily function. Because the court only used the first definition of disability, the prisoners believed this to be an error of the court. Regardless of these statements and disagreements within the plaintiff and state, the court found that the inmates had no impairment of

[444] Ball, *supra* note 6.
[445] *See* Ball No. 14-30067 pg. 8.
[446] *See* Ball No. 14-30067 pg. 11.

their thermoregulatory systems, so it denies them the access to claim that the court is violating their ADA and RA rights.[447]

Both of these instances explain how the Eighth Amendment was g violated within cases of correctional facilities versus inmates, and how the American Disabilities Act and Rehabilitation Act are defined within the courts. The court believes that prisons aren't made to be comfortable for inmates, but they must obtain their regular needs..

VIII. CONCLUSION

Inmates in prisons continue to petition for their rights to be met through the simple act of establishing air conditioning in prisons for better living conditions. Due to the lack of attention the government gives this idea, inmates are forced to compromise with harsh conditions throughout the seasons and deal with a lack of resources that ignore their needs. The PLRA serves as a reminder for inmates that their petitions for air conditioning and for their rights to be met will never fully be attained due to the idea that they can only be given the most convenient method of fixing. Within the state of Texas, inmates are subjected to harsh weather temperatures, especially within the summer months, leaving them to fend for their well being until cooler temperatures arise.[448] Due to the continuous decline of global warming, inmates are put at an even larger risk during humid and hot months. In the state of Louisiana, inmates also deal with similar restrictions and barriers while trying to attain their personal needs through other resources.[449] The inmates in Alabama also argue that the lack of air conditioning is part of the violation towards the eighth amendment of citizens.[450]

Through the court cases of *Laube v. Haley, Ball v. Leblanc,* and *Bailey v. Livingston,* the excruciating summer heat presents an issue across many states in the US. Individuals who undergo these heat changes are given the minimal necessities, such as ice, water, and cold showers, required by the TDCJ. The Americans with Disabilities Act and the Rehabilitation Act serve as a barrier between inmates who suffer with diseases and proper care and attention they need. The ADA and RA are implemented to give protections to those who need it most, but many prison systems lack leniency towards inmates with chronic conditions. Heat-related deaths are on a rise within the United States and higher temperature prone regions in the summer due to this lack of care. Research has proven that risks of increasing temperatures are more serious than expected, especially in poorly situated correctional facilities. The lawsuit filed against the Texas Department of Criminal Justice from the family of Quintero Jones serves as a reminder for the general public that these inmates deserve to have proper living conditions to avoid unnecessary deaths within these facilities.[451] Nonetheless, change is being initiated, with the TDCJ and the House advocating as a helping hand for correctional facilities to implement these changes and avoid losing inmates.

Governmental attention is required for these inmates. With the established straying away from costly expenditures of air conditioning in prisoners, authoritative figures must present plans

[447] *See* Ball No. 14-30067 pg. 14, 15.
[448] *See* Bailey, *supra* note 3.
[449] *See* Ball, *supra* note 6.
[450] *See* Laube, *supra* note 2.
[451] *See* Jones v. State.

and initiatives to fix the conditions in these facilities. Correctional facilities and governmental authorities are responsible for every citizen regardless of their status. The adding air conditioning in correctional facilities is just the start of attaining the rights upheld to citizens in the Constitution.

GOVERNMENT FREEDOM & RESPONSIBILITY: THE CONSEQUENCES OF US MILITARY ACTIVITY ON THE ENVIRONMENT

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Edited by Abigail Mimbela

Responsibility and apprehension for the natural environment remains deeply woven into the fabrics of societies and cultures, dating as far back as the 18th century. Even seen through the works of scholars of the Enlightenment, such as Thomas Jefferson, who articulated in his *Notes on the State of Virginia* the "scenic beauty of the region" and later on in the Declaration of Independence invoked the "laws of nature and of nature's God," American environmentalism has continued to intertwine with US history.[452] Pertinent to American environmentalism, it is worth noting that environmental conservation and protection is frequently marginalized, specifically during periods of warfare. Signed and enacted by former President Richard Nixon, the National Environmental Policy Act (NEPA) invokes certain requirements for federal agencies and their subsequent activities, such as military complexes. NEPA was the first of its kind of law to play such an executive and legislative role within government and soon became the cornerstone of environmental law. However, after decades of conflict and war, the US military still lacks an adherent body of environmental laws. While the entirety of the military cannot foresee the ecological consequences of engagement in warfare, it is imperative that the whole of the Department of Defense should not be given a consistent exemption from existing environmental laws intended to deter them away from illegal and unnecessary action.

I. INTRODUCTION

In 1969, the National Environmental Policy Act (NEPA) was signed and, through its passing, sparked significant scrutiny and debate as to its intended purposes and implications. NEPA was signed into law with the intention of expanding US federal agency mandates through national environmental policy, creating a tailored procedure for agencies to follow, encouraging the development and improvement of environmental quality, establishing the Council on Environmental Quality (CEQ), and thus providing annual CEQ reports of progress made towards accomplishing aforementioned environmental goals. The CEQ was established specifically to review and enforce NEPA requirements and therefore promote the guidelines within compliance of NEPA and assist agencies in carrying out NEPA mandates, which are altered annually to reflect constantly changing environmental morals, values and technologies. After some time had passed since its enactment, NEPA became heavily scrutinized by both citizens and government officials as to what exactly it was accomplishing or, in some cases, failing to accomplish–this intense scrutiny prompted the CEQ to conduct a study into NEPA's effectiveness which was mainly based on the structural concerns with

[452] Robert B. Smythe, Environmental Policy and NEPA: Past, Present, and Future 4, (E. Ray Clark and Larry W. Canter, 1st ed. 1997).

NEPA. An additional large governmental concern with NEPA is that the statute was utilized solely to obstruct decisions made by federal agencies and to slow down agency individual progress, essentially to impede the ability of agencies to continue with their statutory duties. A surge in these complaints led to an eventual congressional intervention and created the statutes that would revise NEPA procedures within legislation that apply to only individual federal programs, ultimately making them more streamlined.

Despite the performance and obstructional problems with the statutes and its regulations, the process through which NEPA carries out its environmental mandate was also subject to thorough investigation. Because NEPA is a brief and vague law, there are no clear set of instructions on how it should be administered from its legislative history. Reviews conducted of NEPA's performance, along with any interventions made to alter its processes and implementation, stem from both obstruction and implementation issues. At the core of the statute is a very unclear mandate that requires a "detailed statement…on the environmental impact of the proposed action."[453] Because of the amorphous nature of this mandate, federal agencies were left with few options on its interpretation, one of these interpretations being "categorical exclusion" which posits that if a category of actions is not identified as actions that have a significant impact on the human environment, the agency retains the discretion of going straight to preparing an environmental impact statement. However, in practice, an agency will more likely prepare an environmental assessment. Additional to an impact statement, NEPA requires that applicable federal agencies should "utilize a systemic, interdisciplinary approach which will insure the integrated use of the natural and social sciences, and the environmental design arts in planning and in decision making which may have an impact on man's environment," an overall action-driven statement emphasizing the significance of integrating diverse disciplines to ensure balanced actions that effectively address complex environmental challenges. There is a lack of data on the numbers of categorical exclusions prepared by agencies, but judicial history suggests that agencies leave this up to their own biased interpretations. It is also noted that the count of environmental assessments prepared is believed to outnumber environmental impact statements by a ratio of one hundred to one; this practice of allowing agencies to decide whether their actions have any significant impact on the human environment is strategic and, although not specifically authorized by regulation, appears to be judicially accepted.

A prevailing rationale behind the courts reluctance to review implementations of the substantive sections of NEPA, or why most enacting decisions are left to the discretion of federal agencies unless in clear violation of NEPA, is because the environment is not constitutionally protected, thus, NEPA is predominantly regarded as procedural legislation. Fundamentally, neither NEPA nor environmental regulations are deemed a priority for the courts or legislative bodies.

II. APPLICATION OF NEPA

The US Department of Defense has historically argued that because NEPA has "unqualified applications" to all federal agencies, any national security activities should be exempt from this Act.

[453] Lynton K. Caldwell, Environmental Methods Review: Retooling Impact Assessment for the New Century 12, (Alan L. Porter and John J. Fittipaldi, 1st ed. 1998).

At the time of NEPA's establishment, the courts did not explicitly address its capacity to intervene with military activity. However, a subsequent legal case determined that the military does indeed have an obligation to adhere to NEPA requirements.

In 1981, the case of *Weinberger v. Catholic Action,* the Supreme Court adopted a newer applicability of NEPA to military projects and the court put military projects that had involved classified information as out of scope of practice for NEPA; according to the Court at the time, whether or not the military had complied with NEPA to the fullest extent possible was beyond judicial scrutiny. Section 102 of NEPA states "to the fullest extent possible…the policies and regulations, and public laws of the United States shall be administered in accordance with the policies set forth" in NEPA. Section 102(2) stands as the most operative component of NEPA, mandating that all environmental considerations are brought into the decisions that federal agencies make. To ensure this analysis properly incorporates all environmental components, NEPA requires agencies to prepare a "detailed statement" or an environmental impact statement (EIS) which should be considerate of the environmental impact of the proposal, unavoidable or irreversible consequences, and potential alternative courses of action. As such, the EIS assumes a central role as the cornerstone of NEPA's evaluation framework.

The scope of NEPA on a surface level seems established, particularly its unequivocal extension to "all agencies of the Federal government." The Department of Defense has previously established environmental regulations that are pursuant to NEPA, has in fact prepared impact statements on several projects, and has overall been relatively compliant with the provisions of NEPA, however, the Department of Defense also argued that certain circumstances should be exempt from the strict compliances NEPA asks. The courts have, after reviewing the legal sufficiency of the impact statements, rejected this contention and unanimously decided that the military should not be exempt. Despite this judicial agreement, the courts have been reluctant and apprehensive in requiring the military to meet these obligations. In the case of *McQueary v. Laird* (1971), the plaintiff had asked to enjoin the storage of chemical and biological warfare agents at the Rocky Mountains Arsenal in Colorado. The Tenth Circuit Court of Appeals, although not responsible for creating a military exemption, did state that the government had typically graced the military in managing their own facilities. Because the court found that NEPA did not consult with the plaintiffs any significant right to "raise the environmental challenge," the court concluded that it lacked jurisdiction over the matter. In cases like *Citizens for Reid State Park v. Laird* (1972) and *Nielson v. Seaborg* (1972), district courts of Maine and Utah, respectively, similarly held that there was not substantial environmental concern for NEPA and its out of their jurisdiction. Particularly seen in the case of *Committee for Nuclear Responsibility, Inc., v. Seaborg* (1971), eight separate environmental groups had petitioned to halt an underground nuclear test. During the pretrial discovery, the plaintiffs had requested the production of multiple Atomic Energy Commission (AEC) documents that were indicated to have contained evidence that the nuclear test would have detrimental environmental consequences not addressed by the AEC's impact statement. The documents were ordered, along with in camera proceedings that had shown "compelling evidence," that the Commission's EIS had

underestimated the potential environmental impacts of the project. Yet again, the district court held that the impact statement was sufficient enough.[454]

In the wake of NEPA's establishment, numerous cases have emerged involving conflicts between citizens and organizations, typically resulting in courts favoring military exemptions, yet, keeping their opinions vague and limiting it to jurisdictional issues or hyperfocusing on the "sufficiency" of the prepared EIS. However, the inherently interpretive nature of the EIS fails to hold agencies, most notably the Department of Defense, up to a high standard, undermining the fundamental objectives of NEPA.

III. VIETNAM CONFLICT

Case law in this area has manifested itself throughout history, tracing back to the 1800s. Notably exemplified by the recent case of *Islamic Republic of Iran v. United States of America* (1986). From 1984 to 1988, Iran initiated attacks on US ships as well as vessels from other neutral countries in the Persian Gulf. The courts responded ruling that Iran's utilization of oil platforms to perpetuate attacks on ships were wrongful. The Conflict and Environment Observatory (CEOBS), an organization dedicated to increasing understanding of the intersection between environmental and humanitarian crises deriving from military activities, states that the attack of industrial, oil, or energy facilities can lead to large-scale pollution. This case centered on how to handle the lasting effects of oil infrastructure damage or if it could have been prevented altogether, nonetheless, the misuse of the environment in times of war is not new to Iran or the United States.

Dating back to the 1800's, where from 1860 to 1864, long before the establishment of any real environmental regulation, the United States destroyed livestock and crops part of the Navajo as part of its strategy of subjugation.[455] During the Civil War, the Union had utilized a strategy of scorching earth to prevent rebelling states from eating. This practice was once again repeated in one of the largest cases of environmental warfare, seen in the Vietnam conflict. From 1961 to 1975, the United States used a strategy that consisted of constant rural bombing, chemical and mechanical deforestation, the disruption of both natural and human ecologies, and large scale crop destruction.[456] This Second Indochina War is largely known for the severe extent to which environmental disruption was enforced. This conflict was particularly characterized for its unsuccessful attempt by the United States to prevent South Vietnam from being replaced by the National Front for Liberation of South Vietnam, as the United States had a heavy involvement in halting North Vietnam from succeeding. Among these strategies to stop North Vietnam included heavy bombing, naval shelling, damaging transportation networks, and destroying public buildings. These strategies heavily contrast to those used by the United States' against South Vietnam which consisted of rural bombing, destruction of food stores, hospitals, and human and natural ecologies. The large-scale population displacement was extremely transparent and an estimated four percent of

[454] Cary Ichter, *Beyond Judicial Scrutiny*, 18 Georgie L.R., 639, 648 (1984).
[455] Stephen C. Jett and John Thompson, *The Destruction of Navajo Orchards in 1864: Captain John Thompson's Report*, 16 Arizona and the West 366, 365-78 (1974) (New Mexico Cavalry report on Navajo orchard destruction)
[456] Arthur H. Westing, *The Environmental Aftermath of Warfare in Viet Nam*, 23 Natural Resources Journal 374, 365-79 (1983) (physical and chemical damage on Vietnam natural resources).

the entire Vietnamese population was killed.[457] As seen by the military strategies in South Vietnam, the use of advanced anti-ecological weapons to cause extensive damage to fields and forests was an attempted procedure against any peasant army, and in the process, caused irreversible damage to the native lands.

Many people today know about dioxin (TCDD), recognized by its better known name Agent Orange. Agent Orange, an anti-plant chemical warfare agent, was dispersed in substantial quantities across the South Vietnamese environments. Although there is a lack of data on the locations and dates of dioxin dispersal, the estimate for total quantity applied ranges around 110 kg to 170 kg. About 90 percent of this estimate was part of the anti-forest program and was applied to roughly one million hectares of land in South Vietnamese territory. Vietnam has some notable renewable resource sectors that depend on its forests, fields, and waters for industrial raw materials. Forests compose about two-thirds of all of Vietnam and trees are among one of Vietnam's most important natural resources.[458] During French colonial rule and the Japanese occupation during World War II, the forestry in Vietnam suffered greatly in severe exploitative measures. During the Second Indochina War, the forests in Vietnam were severely degraded and roughly six million hectares of commercial forests were attacked by a combination of chemical attacks, bombing, and Rome plowing or tractor clearing; Rome plough land-clearing tractors, to summarize, was the complete tree removal and topsoil disturbance of 325,000 hectares of three percent of South Vietnam's total forest lands.

There were two stages of this attack: complete obliteration and severe damage. In the "complete obliteration" stage, a very extensive forest turned into a valley of craters through a series of explosive munitions and these craters are composed of roughly one percent of the entire South Vietnamese forest. Present day, these crates have become a semi-permanent feature of the southern regional geomorphology. The second stage of "severe damage" consisted of land that was abused with flying metal fragments, or shrapnel, to an intensity of a minimum of 50 percent of exposed personnel amounts that is roughly five million hectares or over 40 percent of the total forest in South Vietnam. The trees that were injured by the shrapnel were followed by a large proportion of tree mortality, and in the tropics, led to fungal entry and decay. The damage in forests in Southern Vietnam caused by chemical anti-plant agents were also considered to be under two main categories: complete obliteration and partial obliteration. In "complete obliteration," the upland forest land was dispersed with chemical anti-plant agents a minimum of four times and covered roughly 50,000 hectares; this chemical agent caused 85 percent to 100 percent tree mortality. In "partial obliteration," upland forests were sprayed from one to three times and covered about 1.3 million hectares, or 12 percent of the total of South Vietnam's forests; this second stage experienced about 10 percent to 50 percent tree mortality. To contribute specifically to military damage in Vietnam, the damage resulted in 75 million m^3 of destroyed timber, a primary natural resource for Vietnam's economy, which left about 14 percent of the remaining merchantable timber crop of South Vietnam or eight percent for all of Vietnam.

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[457] Arthur H. Westing, *The Environmental Aftermath of Warfare in Viet Nam*, 23 Natural Resources Journal 369, 365-79 (1983) (casualty reports during Vietnam War).

[458] Arthur H. Westing, *The Environmental Aftermath of Warfare in Viet Nam*, 23 Natural Resources Journal 371, 365-79 (1983) (dioxin dissemination in South Vietnam).

Even given the assumed growth rate of 0.6 percent each year, it will take upward of forty years of commercial forest to make up for this loss. The effects of loss of nutrients in soil and particulate erosion will reduce this annual increment further to more damaged areas and extend this recovery period. Beyond the attack on forests, these attacks extended to a number of other natural resources Vietnam relied on. The coastal mangrove area, which was of regional importance as a source of smaller timbers for pilings, construction, firewood, charcoal, honey, and other resources, was also completely destroyed through chemical attacks. The anti-plant chemical warfare agents left the region barren, additionally, these attacks also allowed for sheet and shoreline erosion and in the early 1970's, research stated that biotic recovery would take over a hundred years. With destruction to the mangroves comes the destruction of the fishing industry, rice industry, and large species loss that Vietnam, to this day, is in recovery for.[459]

A. Makua v. Rumsfeld

Not only are there outstanding inquiries on the applications of NEPA, but there also exists a deliberation on the extent of state responsibility. The case of *Makua v. Rumsfeld* (2000) addressed violations highlighted by the plaintiff, Malama Makua, who challenged the Supplemental Environmental Assessment for Routine Training at the Makua Military Reservation and PFC Pililaau Range Complex Hawaii (SEA) and Finding of No Significant Impact (FONSI), contended that both the SEA and FONSI violated the National Environmental Policy Act.

In the case of *Makua v. Rumsfeld*, wildfire threats posed by military training endangered indigenous species and cultural resources in the Makua valley. These threats conclude that the lack of regulation in armed bases, regardless of an ongoing conflict, greatly impacts surrounding communities. After protests, collective community activism and Congressional inquiries over the span of years, a suit by Mamala Makua against the United States army was filed in 1998. This suit essentially stated that the army had failed in complying with NEPA during their training at Makua Military Reservation. Makua Military Reservation is a training range on the Waianae Coast of Oahu, Hawaii. Residents, including a large portion of Native Hawaiians, were heavily opposed to the usage of Makua Valley for military training. This opinion was heavily influenced through previous military usage of a site in Makua for open burning and open detonation of waste ammunition, hazardous materials, and waste which led residents to be concerned about the contamination from the site reaching their fishing grounds and swimming areas.

The lawsuit was settled initially when the US army had agreed to present additional NEPA documentation and complete supplemental environmental assessments for live fire training at Makua. However, Malama Makua filed suit following this stating that the supplemental environmental assessment that was completed should have been an EIS. Malama Makua seeks the immediate halt of military training at Makua Valley, to reclaim their stolen land which was taken from the illegal overthrow of the Hawaiian kingdom, and the reclamation of its property to its original traditional and cultural purposes. On October 4, 2001, the United States Army and Malama Makua reached a settlement and the Army immediately began training exercises, which is speculated to be, in large part, because of the acts of September 11, 2001. Sparky Rodrigues, a leader of Malama

[459] Arthur H. Westing, *The Environmental Aftermath of Warfare in Viet Nam*, 23 Natural Resources Journal 365, 365-79 (1983) (detailed account of destruction during and post-war).

Makua, stated that the attacks on the World Trade Center and Pentagon made it difficult to separate Makua with September 11, 2001 and presented the case with brand new circumstances.

With the aid of the Earthjustice Legal Defense fund and the public interest environmental law firm that represented Malama Makua, the Army eventually complied in preparing an EIS within three years and paid 50,000 dollars to Malama Makua so that the community would be able to hire independent experts to review the EIS. The United States Army had additionally agreed to allow access to cultural sites in the valley and clear unexploded ordinance within 3000 feet from the rood between the beach and valley. However, due to the events of September 11, this specific contractual agreement was seen as resolved on both sides, but more or less environmentally protected in light of the unusual and special circumstances. On October 5, 2001, several members of the House of Representatives corresponded with the Secretary of Defense Rumsfeld with the "ongoing concern with the challenge of encroachment upon [the] military bases, test ranges and training facilities, and the negative effect this has had on combat readiness, effectiveness and safety." The letter to the Secretary of Defense stated "we are confident that you are well aware of the many examples we were provided where training effectiveness and reality have been sacrificed to bureaucratic strangulation, misguided litigation, and 'feel good' environmentalism without a shred of science to support the decision," which calls into question the Department of Defense's position on the challenges it faces with complying with and the policy for consideration of ESA and ESA exemptions; the letter implies the possibility of an ESA exemption being granted on national security grounds for local projects.[460]

Although the concern for national security is understandable given the recent events at the time, the desire for a strong national defense does not have to come at the expense of poorly-made and ignorant environmental decisions. As seen by the resolution in the Makua Valley local project, a balanced resolution does exist that can comply with both residents and the government. Although every scenario may not be as easy to resolve, it's important to acknowledge all sides and opinions, especially those without the use of legal exemptions.

B. Peterson Air Force Water Contamination

Military impact on local areas is undeniable, often leading to conspicuous environmental contaminants via water, land, or air. A glaring example of these effects can be seen at the Peterson Air Force Base in Colorado Springs, Colorado, who employs a firefighting foam similar to that used in other Air Force bases worldwide, containing per- and polyfluorinated chemical compounds (PFCs or PFAs). In 2016, the irrigation water in Colorado Springs was found to contain elevated levels of perfluorinated compounds (PFCs) along with a string of other bases with contaminated water. Also in 2016, the United States Environmental Protection Agency (EPA) issued a health advisory stating the PFOAs and PFOs have a threshold of 70 parts per trillion and levels higher than that can lead to negative health effects that occur.

Aqueous film forming foams (AFFFs) first made their appearance in the 1960's and were mainly used to extinguish Class B fires, cases in which flammable, volatile liquids are the fuel source

[460] Nancye L. Behurem, *Environmental Destruction in the Name of National Security: Will the Old Paradigm Return in the Wake of September 11*, 8 Hastings Environmental L.J. 110, 128-30 (2002) ("The United States' implications on the environment following Sept. 11, 2001.").

for the fire. AFFFs to extinguish Class B fires started as a PFC foam concentrate that became extremely effective at suppressing a Class B fire, however, they came at the expense of the potential for leaks and infiltration into groundwater. The chances of a leak were in large part due to the volume of AFFF used in training and emergency operations. There is an immense variety of adverse health effects that stem from exposure to PFCs which are supported by the limits set by the EPA; these health effects range from pregnancy and healthy birth development to thyroid hormonal dysfunction, immunotoxicity, and chronic toxicity and the potential for carcinogenic effects.

Releasing PFCs into the environment creates the potential to bioaccumulate and biomagnify within food webs. Known as the "forever chemical," PFCs have a long lasting, persistent complexion. The Peterson Air Force base experienced a water contamination issue, similar to many other military communities. Areas surrounding military fire training run-off areas experience high rates of PFA contamination in the drinking water. Since the 1970's, the Department of Defense has utilized 3M-produced PFA chemicals in their firefighting foam which military bases across the nation have utilized. Fountain, Colorado, a community near the Peterson Air Force base has experienced a spike in their cancer rates in the areas downstream from the point source of pollution. The AFFF containing the PFA chemical compound at the site of pollution leaked into the groundwater had then made its way into the municipal water system through the drainage network at the base.[461] It is noteworthy that once PFAs infiltrate a water supply, the effects are fundamentally irreversible and the levels of contamination are untreatable for years to come. The lack of even an attempt to clean up or mitigate the effects of PFAs are, on a national scale, disregarded by the US environmental protection laws, the military, and governmental authority figures. Water contamination negligence on this scale is a human rights violation, epitomizing military impunity at its most egregious and realistic form.[462]

C. Weinberger v. Catholic Action of Hawaii/Peach Education Project

An unmistakable national pattern emerges within the military environmental complex, marked by a limited amount of scrutiny. The level of protection for the environment has increased since it was introduced as part of the national agenda, still, financial settlements and placing responsibility on a party who initiated the problem could better be spent on preventative measures. In the case of *Weinberger v. Catholic Action of Hawaii/Peach Education Project* (1981), the applications of nuclear testing set by NEPA was called into question and, in the years following, set a precedent for many following environmental law applications. The *Weinberger v. Catholic Action of Hawaii/Peach Education Project* case revolved around the military's compliance with NEPA.

In 1972, only a few years after the enacting of NEPA, the US Navy had made the decision to transfer weapons from the Waikele naval branch to the West Loch branch in Oahu, Hawaii. The West Loch facility was typically used to store only conventional weapons, but the Navy also had goals of building newer facilities that would be capable of storing both conventional and nuclear weapons. Under regulations made by the CEQ and Department of Defense (DOD), the Navy

[461] *See* Alexander Michaud, Analysis of Perfluorinated Compounds (PFCs) in the Fountain Creek Watershed by Liquid Chromatography Tandem Mass Spectrometry 8-13, (2019) ("Analysis of PFCs in the Fountain Creek Watershed by Liquid Chromatography Tandem Mass Spectrometry - ProQuest," n.d.).
[462] *See* Kaleb Blane Pietkoski, Military Impunity and PFAs: The Privilege to Pollute, 17-23, (2014) ("Military Impunity and PFAs: The Privilege to Pollute - ProQuest," n.d.).

additionally prepared an EIA, serving as an official statement analyzing and disclosing any potential environmental consequences, but also as a prerequisite in determining whether the next step taken should be to prepare an environmental impact statement. The military can prevent the disclosure of activities that involve national security, an action protected by the Freedom of Information Act (FOIA) where NEPA protects military secrets by exempting properly classified national security matters from being disclosed. However, this portion of the act was still vague and hard for judiciary courts to determine where the line should be drawn in terms of providing the military with environmental law exemptions in the name of national security. Within this particular EIA, the Navy made no statements about nuclear weapons, but focused on conventional weapons and thereby concluded that this transfer of weapons would have no significant impact on the environment, therefore there was no need for an EIS. Given the long past of nuclear weapons testing that has had detrimental effects such as exposing portions of the population to radiation, leaving areas indefinitely contaminated, radiation exposure holds many negative consequences, both for the environment and general human health. The weapons technology produced by nuclear, chemical, and biological weapons bring severe environmental health hazards with long-term effects such as carcinogens and undetected groundwater contamination. For nuclear weapons specifically, an overbearing worry lies in the potential of a nuclear catastrophe. After the Navy had made this decision to exempt themselves from preparing an EIS, protests arose from concerned citizens and environmental groups about the storage of nuclear weapons and other apprehensions about the construction of new Navy facilities to hold nuclear weapons, hoping it would pressure the Navy into preparing an EIS. However, this was dismissed by the US District Court of Hawaii on the basis that an EIS would clash with classified information and the Navy had already complied with NEPA's regulations to what they believed to be the "fullest extent possible within the restrictions."[463]

This case was appealed and brought to the Ninth Circuit who reversed the district court's ruling. In the district court decision, Catholic Action had stated that the EIA did not comply with NEPA and was missing several crucial factors. However, the Navy persisted in stating that disclosure of classified information prevented them from releasing any more information in compliance with NEPA. The Ninth Circuit stated in its opinion that it mainly considered that the Navy should be aware of the consequences of the decisions, particularly in how the transfer of weapons pertains to the environment, and that the general public should have access to this knowledge and can subsequently hold these decision makers accountable. Overall, the Ninth Circuit had found that the potential consequences of disclosing classified information by preparing an EIS was outweighed by the Navy's own right to make informed decisions and be fully aware of its effects, as well as the rights that lie in public interest.

The Supreme Court later reversed the Ninth Circuit's decision after a thorough analysis of NEPA goals and requirements. In their decision, the Supreme Court noted that Section 102(2)(C) of NEPA states a requirement that an EIS is prepared in "every…report…significantly affecting the

[463] Amy J. Sauber, *The Application of NEPA to Nuclear Weapons Production, Storage, and Testing: Weinberger v. Catholic Action of Hawaii/Peace Education Project*, 11 Boston College Environmental Affairs L.R., 805, 822-35 (1984).

quality of the human environment."[464] Not only was it stated that this section proclaims a need for an EIS, but that the EIS is readily available to the public through the justification of FOIA. The court also found that this EIS requirement was made on the basis of two rationale: firstly, that environmental considerations are taken into account of an agency's decisions and alternative options are examined, and secondly, that the public is made aware of these decisions and additionally assures the public that practical environmental choices were considered.

FOIA is also referred to several times throughout the opinion delivered by the Supreme Court justices as it has the right to command NEPA disclosure and exemptions from disclosure. Where the court of appeals had attempted to find the intersection to which NEPA's environmental concerns crossed national security interest, the Supreme Court stated that legislature had already defined this threshold and the courts did not have the right to change this or come up with their own interpretation. In the Court's conclusion, they stated that determining whether or not the Navy had in fact complied with NEPA's requirements to the "fullest extent possible" and the understanding of whether a prepared EIS is needed is "beyond judicial scrutiny." Moreover, through a difficult environmentally challenging debate, the law has remained in its position to maintain neutrality and leave interpretations up to the lower judiciary courts, unless in direct violation of an act.

IV. CONCLUSION

In the name of national security, the United States has allowed the military to harm the environment and leave lasting impacts. The existing environmental legal landscape has proven to be ill-equipped in protecting the United States. The interactions between humans and the natural environment should be prioritized and not be sacrificed in warfare. There are many case precedents and actions that continue to exist that have led to the destruction and weaponization of the environment by the United States military which expands beyond just American military strategies, but extends to global environmental warfare. For the United States, this dates back to colonialism where the expansion of the United States came at the expense of environmental degradation via war, famine, and agricultural shifts. Manifest Destiny, for instance, was a driver of colonial, American expansion and the actions of population increase and dispersal along with shifting to long term housing relied on growing settlements, hydraulic mining, exploitation of natives, and native lands. The legacy of Manifest Destiny continues to reverberate in modern-day America where the conflicts over land rights, resource extraction, and environmental conservation persist. The disregard for indigenous rights and lands replicates itself in the disregard for environmental sustainability and habitat destruction. The idea that American expansion is the equivalent of ecologic destruction can

[464] Melody Wilder, *Weinberger v. Catholic Action of Hawaii/Peace Education Project: Assessing the Environmental Impact of Nuclear Weapons Storage*, 3 Virginia Journal of Natural Resources Law, 335, 336-42 (1984) (the Supreme Court decision that national security needs should exempt the Navy from making the required EIS before storing nuclear weapons.).

be paralleled to the conflicts in modern day America. Humanitarian crises and environmental degradation often go hand in hand and these injustices are carried on into today.[465]

[465] Erich Webb Bailey, *Incorporating Ecological Ethics into Manifest Destiny: Sustainable Development, the Population Explosion, and the Tradition of Substantive Due Process*, 21 Tulane Environmental L.J., 473, 478-83 (2007) (explaining the intersection between population growth, historical context, and environmentalism).

EDUCATIONAL FUNDING CONTINUES TO NEGATIVELY IMPACT TEXAS MINORITIES

Valeria Gonzalez
Edited by Madison Romero

Allocating educational resources is crucial for ensuring equitable opportunities for all students to learn and succeed academically. However, disparities in funding between affluent and marginalized school districts persist, perpetuating inequalities in educational performance among students. The unequal distribution of resources in Texas school districts is displayed through discrepancies in funding allocation, the underlying laws governing financial accountability, the scientific basis behind income inequality's impact on funding, and specific examples of how these disparities manifest in educational settings.

The history of Texas is deeply intertwined with racial inequality, particularly in the realm of education, where race has often been a decisive factor in determining an individual's opportunities for success. Across small, rural communities and economically underdeveloped areas, institutions have historically segregated children of color from their white counterparts, leading to disparities in access to quality education and resources. The state's method of funding education further exacerbated these inequalities, with districts receiving funding based on their tax contributions. Predictably, districts with higher proportions of white residents, typically possessing greater economic resources, received more funding than minority-dominated districts.

I. TIMELINE ON THE FIGHT AGAINST EDUCATIONAL INEQUALITY

A. San Antonio Independent School District v. Rodriguez

The issue of educational inequality was present decades prior to the Supreme Court Landmark Case. The fight began when a group of parents from Edgewood District Concerned Parents Association. Mexican American parents from a low-income community, protested outside of the Administrative Offices in San Antonio, Texas on May 16, 1968. They called for basic needs like better educational materials and installations, better teachers, and access to textbooks. These demands were more than met in rich and whiter schools. Their cries went unheard. In June 1969, the Edgewood District Concerned Parents Association, led by Demeretio P. Rodriguez, filed a lawsuit in the District Court of the Western District of Texas. This case came to be known as *Rodriguez v. San Antonio Independent School District* (1969). This case challenged the state's finance methods as a violation of the Equal's Protection Clause and the Fourteenth Amendment.[466] The case was heard by a federal three-judge court, which ruled that the state's school funding scheme was unconstitutional.[467]

The State of Texas fought back, appealing the case by claiming that the ruling was made with no clear basis, since they held that the use of property taxes was in no way discriminating. They argued that there was nowhere in the law that states that it was meant to harm a specific community,

[466] *See* Rodriguez v. San Antonio Independent School District, 299 F. Supp. 476 (W.D. Tex. 1969).
[467] *Id.*

or that the state of Texas did not not suspect any specific socio-economic class.[468,469] This case *San Antonio Independent School District v. Rodriguez* resulted in the US Supreme Court ruling that while the Texas educational funding system was unfair, it was not unconstitutional.[470,471]

B. The Edgewood Independent School District v. Kirby

To address systemic injustices, Rodriguez and a group of parents from Edgewood, San Antonio, took a bold step by filing a class-action lawsuit against the State of Texas.[472]Their claim centered on the blatant disparity in educational funding based on race, arguing that the existing system perpetuated inequality and hindered the educational opportunities of minority students.[473] However, when the case reached the Supreme Court in 1973, the ruling upheld the constitutionality of allocating educational funds based on an area's financial income and tax revenues. This decision effectively justified the provision of more funds to higher-learning communities, even if it meant further marginalizing lower-income, minority-dominant districts.[474]

The Supreme Court's ruling in 1973 marked a significant setback in the fight against educational inequality in Texas. Despite efforts to challenge the status quo and advocate for equitable funding, the legal system upheld a framework that perpetuated racial disparities and reinforced the cycle of poverty and inequality. The decision underscored the entrenched nature of systemic racism within the educational system, highlighting the need for continued activism and advocacy to effect meaningful change.

C. House Bill 72 (HB72) - Texas Reform Act of 1984

In response to the ongoing cases, the Texas State Legislature passed House Bill 72, or HB 72, 68th 2nd C.S. This bill equalized funding among school districts, aiming to reduce disparities in funding levels between wealthier and poorer districts. This was done by changing the state's funding formulas.[475]

While HB 72 aimed to equalize funding among school districts, it did not fully address the underlying systemic inequities that disadvantaged minority-majority school districts. Wealthier districts often had more resources available to supplement state funding, exacerbating the disparities faced by minority-majority districts. As a result, the Mexican American Legal Defense and Educational Fund (MALDEF) took further action.

D. Edgewood Independent School District v. Kirby Appeal

While the Rodriguez v. San Antonio Independent School District case did not result in the desired outcome, it catalyzed future efforts to address educational inequality in Texas. Subsequent legal challenges, such as the landmark case of *Edgewood Independent School District v. Kirby* in 1984 sought to dismantle discriminatory funding practices and promote equity in education.[476] These

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[468] *See* San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), Pp. 411 U. S. 18-44.
[469] *Id.* at Pp. 411 U. S. 18-28.
[470] Id.
[471] *Id.* at Page 412 U. S. 2.
[472] *See Maldef's landmark fight for education equality in Texas,* MALDEF (2021).
[473] *See* Edgewood Independent School District et al. v. William N. Kirby, et al., Cause No. 362,516 (250th Dist. Ct., Travis County, Texas).
[474] *See Edgewood I.S.D. v. Kirby, Tex. Sup Ct., at 397.*
[475] *See* HB 72, 68TH 2ND C.S. (1984).
[476] *See* Edgewood Independent School District v. Kirby (804 S.W.2d 49)(1991).

ongoing struggles reflect the enduring commitment of activists and communities to confront racial injustice and ensure equal access to quality education for all Texans, regardless of race or socioeconomic status.

In the quest for educational equity and justice, the community of Edgewood, in collaboration with the Mexican-American Legal Defense and Educational Fund, embarked on a monumental legal battle that reshaped the landscape of educational funding in Texas. Despite this setback, the fight for equality persisted. In 1984, the community of Edgewood with the support of MALDEF, once again challenged the court's decision. At the heart of the matter lay the deep-rooted inequalities inherent in the educational finance system of Texas. The reliance on local property taxes meant that affluent districts with high property values received more funding, while economically disadvantaged districts struggled to provide essential resources and opportunities for their students. This perpetuated a cycle of inequality, disproportionately impacting minority communities like Edgewood, where students faced barriers to academic success due to inadequate funding and resource

In the landmark case of Edgewood Independent School District v. Kirby in 1992, MALDEF took center stage, representing the community of Edgewood in a historic legal battle against William Kirby, the Texas commissioner of education. The lawsuit challenged the constitutionality of a financial system that perpetuated unfair and racist practices, denying minority students their right to equal educational opportunities. The case brought to light the glaring disparities in educational funding and underscored the urgent need for systemic. reform to address these injustices.

The legal battle was arduous and fraught with challenges, but the perseverance of the community of Edgewood and the unwavering dedication of MALDEF ultimately paid off. In a landmark decision, the Texas Supreme Court ruled in favor of Edgewood, declaring the state's school finance system unconstitutional since it was a violation of Article VII, Section 1 of the Texas Constitution.[477]

This watershed moment marked a significant victory for educational justice and set a precedent for future reform efforts aimed at dismantling systemic barriers to equality in education The impact of the *Edgewood v. Kirby* case reverberated far beyond the borders of Texas, inspiring similar legal challenges and reform initiatives across the country. It served as a powerful reminder of the transformative power of grassroots activism and legal advocacy in the pursuit of social justice. The case also underscored the critical role of organizations like MALDEF in advancing the rights of marginalized communities and holding institutions accountable for their actions.

E. Post Edgewood ISD. v. Kirby

In the aftermath of the *Edgewood v. Kirby* decision, Texas embarked on a journey of educational reform, implementing measures to ensure fair and equitable funding for all students. While significant progress has been made, the fight for educational justice continues, with ongoing challenges and obstacles that demand collective action and unwavering commitment. The legacy of *Edgewood v. Kirby* serves as a beacon of hope and inspiration for future generations, a testament to the power of perseverance, resilience, and the relentless pursuit of equality in education.

[477] *Id.*

II. PRESENT DAY ISSUES

A. Discrepancies in Funding Allocation

Reports from the Texas Education Agency (TEA) shed light on the discrepancies in funding allocation between affluent and marginalized school districts.[478] Analyzing budget allocations and expenditure patterns reveals stark differences in resource availability, impacting the quality of education provided to students.[479] Affluent districts often receive more funding, allowing for updated resources, smaller class sizes, and enhanced extracurricular opportunities, while marginalized districts face budget constraints, leading to outdated textbooks, inadequate facilities, and limited access to support services.[480]

B. Laws and Financial Accountability

The Texas Education Code (TEC) establishes regulations to ensure financial accountability in school districts.[481] Chapters such as Subchapter D of Chapter 39 outline interventions and sanctions for districts facing financial challenges. TEC §39.051 addresses accreditation status, emphasizing the importance of fiscal responsibility for maintaining accreditation. These laws aim to uphold transparency and accountability in funding allocation, yet disparities persist, particularly in marginalized communities.[482]

C. Scientific Basis: Income Inequality and Funding

Empirical studies provide insight into the relationship between income inequality and changes in government funding.[483] The study links rising income inequality to significant increases in tax revenue and public expenditure at the municipal level, resulting in funding disparities between school districts. This scientific evidence highlights the systemic nature of educational inequities rooted in broader socioeconomic factors.

By using empirical analyses, Boustan et. al uncovered a relationship between income inequality and changes in government funding at the municipal level, where most of these inequalities are prevalent, yet disregarded.

D. Specific Examples of Inequities

Underfunded schools often work with outdated textbooks and learning materials, hindering students' academic progress. Insufficient funding may also limit their participation in extracurricular activities like sports teams and clubs, depriving them of personal growth opportunities. Moreover, poorly maintained facilities in marginalized schools contribute to a substandard learning environment, and minority communities lack resources to adequately support students with special needs due to underfunded special education programs. The digital divide further exacerbates disparities, disproportionately affecting minority students' access to technology resources, while inadequate support services such as counseling and academic tutoring compound challenges

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[478] *See* Texas Education Agency, *Operating Budget Fiscal Year 2022*, .4.A. (2022).
[479] *See* Bruce D. Baker, et al. *The adequacy and fairness of State School Finance Systems 2024 School Finance Indicators Database* (2024).
[480] *See* Leah Boustan et al. *The effect of rising income inequality on taxation and public expenditures: Evidence from U.S. municipalities and school districts*, MIT Press (2013).
[481] *See* Texas Education Agency, *Texas Education Code (TEC), Education code Chapter 39, Subchapter D.*
[482] *Id*. at TEC §39.051.
[483] See Leah Boustan et al. (2013).

stemming from funding constraints.[484] Additionally, educators in marginalized schools may face reduced opportunities for professional development and training, and minority students encounter barriers to accessing career and college readiness programs, further providing evidence of perpetuating socioeconomic disparities.

E. Impact on Academic Achievement

Lower funding in schools often correlates with inadequate resources, leading to larger class sizes, fewer extracurricular opportunities, and ultimately hindering academic success among students. This issue is particularly pronounced in minority dominant schools, where financial constraints exacerbate existing disparities in educational outcomes. Academic studies have extensively examined the correlation between educational funding and academic achievement among minority students in Texas, shedding light on the complex relationship between resource allocation and student success.[485]

The study explores the variation in the relationship between school spending and student performance, emphasizing the importance of progressive spending in addressing equity in education. The study underscores that progressive school funding — investing more in communities with fewer financial resources — is not only justified for equity but also for efficiency. It argues that communities with limited financial resources often invest less in children, making it costlier for schools to help students achieve academic success that would benefit community development in the future. This insight challenges traditional notions of educational funding and highlights the need for targeted investment in marginalized communities to bridge the achievement gap.

Moreover, the study delves into the equity rationale behind progressive school funding, emphasizing that investing more in underprivileged communities is essential for leveling the playing field and providing equal opportunities for all students, regardless of their socioeconomic background. By allocating resources based on financial need, schools can address the unique challenges faced by minority students and create a more equitable learning environment conducive to academic success.

Furthermore, empirical evidence from academic studies supports the assertion that inadequate funding in schools disproportionately affects minority students, perpetuating educational disparities[486]. Research findings reveal that lower funding levels correlate with lower academic achievement, higher dropout rates, limited access to advanced coursework and extracurricular activities among minority students, causing a lower percentage of minority students to comprise higher education institutions' admissions profiles. These disparities not only hinder individual academic success but also contribute to broader socioeconomic inequalities, perpetuating cycles of poverty and marginalization.

In light of these findings, policymakers and education stakeholders must prioritize equitable funding mechanisms that ensure all students have access to the resources and support needed to succeed academically. This may entail revising funding formulas to allocate more resources to schools serving marginalized communities, implementing targeted interventions to address the

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[484] *See* Texas Education Agency, *Financial integrity rating system of Texas (first) Texas Education Agency.*
[485] *See* Emily Rauscher & Yifan Shen, *Variation in the relationship between school spending and achievement: Progressive spending is efficient.* (2022).
[486] See Leah Boustan et al. (2013).

unique needs of minority students, and fostering partnerships between schools, communities, and government agencies to leverage additional resources and support services.

In conclusion, the correlation between educational funding and academic outcomes among minority students in Texas underscores the urgent need for progressive spending and targeted investment in underprivileged communities. By addressing the root causes of educational disparities and prioritizing equity in resource allocation, policymakers can create a more inclusive and equitable education system that grants all students the opportunity to reach their full potential.

III. TEXAS TODAY: THE RIO GRANDE VALLEY

Across Texas, there are several examples that show how this issue continues to have modern day prevalence. An excellent regional example recognized for its Hispanic and low-income population is the Rio Grande Valley in Southeast Texas, which highlights various educational inequality cases.[487]

A. Resource Disparities

Schools in the Rio Grande Valley (RGV), particularly those serving predominantly minority and low-income communities, often lack sufficient resources compared to schools in wealthier areas.[488] This can manifest as a result of inadequate facilities, outdated textbooks, limited extracurricular activities, and insufficient technology resources, which can hinder students' learning experiences.

As data shows, the RGV has had a proportion of Hispanic residents steadily growing over the second half of the 20th century. In 1940, Hispanics accounted for little over 61 percent and in 1970 – 76 percent of the RGV population. Today, more than 90 percent of the 1.3 million RGV residents are Hispanic.[489]

The region is not only predominantly Hispanic but is also characterized by persistent poverty and low educational levels among its population. The four border counties – Cameron, Hidalgo, Starr, and Willacy – comprising the RGV are among the poorest in the nation with a traditional double-digit unemployment rate.

When comparing two districts, a predominantly white school district in a wealthy Texan region versus one in the RGV, there is a clear distinction in how local tax revenues can impact the quality of education.

A clear example is the comparison of Carroll ISD to Brownsville ISD using the Data from the District Spending Adequacy Profile of 2020.[490] Carroll ISD is composed of a student body of 63.1 percent white students and 9.8 percent Hispanic students.[491] Meanwhile, Brownsville ISD has a student body of 1.3 percent white students and 98.3 percent Hispanic students.[492] Per the results from the District Spending Adequacy Profile data, Carroll ISD needs to spend 5,979 dollars per

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[487] *See* The University of Texas at Austin: Education Research Center, *RGV'S LEAD Regional Data Report (2017).*
[488] Id. at Section III. pg. 19.
[489] *See* Igor Ryabov et al. *Recent Demographic Change in the Rio Grande Valley of Texas: The Importance of Domestic Migration* (2017).
[490] *See* Bruce D. Baker et. al *The adequacy and fairness of State School Finance Systems 2024 School Finance Indicators Database - Visualization: district spending adequacy profiles* (2024).
[491] *Id*. at *District Spending Adequacy Profile of 2020 - Carroll ISD: Characteristics.*
[492] *Id*. at. *District Spending Adequacy Profile of 2020 - Brownsville ISD: Characteristics.*

pupil in order to satisfy the educational needs for students. However, the district's spending per pupil is 9,800 dollars, leaving a 3,871 dollar difference.[493] On the other hand, Brownsville ISD needs a required 21,177 dollars per pupil to satisfy their educational needs, yet they only spend 11,612 dollars per pupil, leaving a negative 9,565 dollar difference.[494]

As communicated through the data, the Hispanic majority school district is spending more than the predominantly white district, yet they are still far from reaching the required spending to meet the student's needs in order to set them in a proper position for academic success. The correlation between spending and academics is quite noticeable, with Carroll ISD displaying a 0.995 standard deviation above the United States test score average.[495] Meanwhile, Brownsville ISD has a -0.010 standard deviation below the United States test score average.[496] Overall, Brownsville is receiving more money than Carroll ISD, yet their average test score compared to the national average is significantly lower. This is a direct result of a lack of resources, as shown by the 9,565 dollar difference needed in order for public institutions to afford appropriate student resources, and supply educators with a reasonable payroll.

B. High Poverty Rates

The RGV has some of the highest poverty rates in the nation. Economic disparities can have a profound impact on students' educational opportunities, as they may face challenges such as inadequate access to healthcare, unstable housing situations, food insecurity, and limited access to educational resources outside of school.[497]

The extent of necessary spending for an RGV school district compared to a predominantly white district depends entirely on the economic development of the region. Given that the RGV area is often characterized as one of the nation's lowest-income areas, with elevated poverty rates, this consideration becomes increasingly important.[498] This fact is built upon the very real concept of financial segregation

C. Financial Segregation

Income segregation refers to the phenomenon where individuals or families of similar income levels tend to live in close proximity to each other, leading to the concentration of wealth or poverty within specific neighborhoods or communities.[499] This can result in distinct geographic areas characterized by either high levels of affluence or high levels of poverty, similar to the case of the RGV.[500]

Per capita income in the RGV was approximately 13,500 dollars, which is about half the national level. According to the 2010 Census, the percentage of the adult population (25 years of age and over) without a high school diploma was almost 40 percent in the RGV, while the US average is

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[493] *Id*. at *District Spending Adequacy Profile of 2020 - Carroll ISD: Spending Adequacy.*
[494] *Id*. at *District Spending Adequacy Profile of 2020 - Brownsville ISD: Spending Adequacy.*
[495] *Id*. at *District Spending Adequacy Profile of 2020 - Carroll ISD: Adequacy/Outcomes.*
[496] *Id*. at *District Spending Adequacy Profile of 2020 - Brownsville ISD: Adequacy/Outcomes.*
[497] *See* Leah Boustan et al. (2013).
[498] *See* The University of Texas at Austin: Education Research Center, *RGV'S LEAD Regional Data Report (2017).*
[499] *See* Ann Owens et. al,. *Income Segregation between Schools and School Districts* (2016).
[500] *See* The University of Texas at Austin: Education Research Center, *RGV'S LEAD Regional Data Report (2017): Section III. pg. 19.*

14 percent.[501] The increasing income segregation within schools and districts could have significant implications for the inequality in students' access to resources that affect academic achievement and in turn, life and community advancement.[502]

As a result, students from low-income backgrounds in the RGV may face barriers to academic achievement, including limited access to quality instruction, inadequate support services, and reduced exposure to enrichment activities. Income segregation exacerbates educational inequities, perpetuating cycles of poverty and limiting opportunities for people in the region.[503]

IV. CONCLUSION

In conclusion, the examination of landmark cases such as *San Antonio Independent School District v. Rodriguez* and *Edgewood Independent School District v. Kirby,* alongside legislative interventions like House Bill 72 and the Texas Reform Act of 1984, underscores the persistent and complex nature of the battle against educational inequality. Despite decades of legal challenges and legislative reforms, educational disparities persist, reflecting a broader societal struggle to achieve equitable access to quality education. The protracted legal processes and recurring appeals exemplify the formidable obstacles encountered in the pursuit of educational justice.

As evidenced by the case of the Rio Grande Valley, where income segregation exacerbates educational disparities,the legacy of cases such as *Edgewood ISD v. Kirby* looms large, revealing the enduring impact of systemic inequalities on educational outcomes.[504] The continued discrepancy in educational spending and test scores between white and Hispanic communities underscores the ongoing relevance of addressing the root causes of inequality and the imperative of sustained efforts to ensure educational equity for all students.[505]

As Texans reflect on nearly six decades since the inception of the Mexican-American community from *Edgewood*'s advocacy for educational equality, it becomes evident that the struggle against educational inequality remains a crucial and protracted goal, necessitating steadfast commitment to transformative change at both the legal, economic, and societal levels.

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[501] *See* Igor Ryabov et al. *Recent Demographic Change in the Rio Grande Valley of Texas: The Importance of Domestic Migration* (2017).
[502] *See* Ann Owens et. al,. *Income Segregation between Schools and School Districts* (2016).
[503] *Id.*
[504] See Igor Ryabov et al. Recent Demographic Change in the Rio Grande Valley of Texas: The Importance of Domestic Migration (2017).
[505] *Id*. at *District Spending Adequacy Profile of 2020 - Brownsville ISD: Adequacy/Outcomes*.

STOLEN YOUTH: HOW BELIEFS ON IMMIGRATION IN THE UNITED STATES HAVE AFFECTED CHILDREN

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The United States government continues to face immigration issues. Greed and pride have puppeteered the legal system, neglecting the improvement of the government's response to illegal border crossing. Innocent children continue to be deprived of their human rights to protection under the law, emphasizing the need to reform the immigration system to comply with the Fifth Amendment's Due Process Clause.

An egregious example is Donald Trump's "zero tolerance" federal policy implemented in 2018, that prosecuted all immigrants apprehended crossing the border illegally. Children were forced to face immigration proceedings without their guardians by their side.

The Supreme Court decision in *Plyler* v. *Doe* (1982) struck down Texas's section 21.031 of the Texas Education Code that allowed public school districts to deny admission or charge tuition to undocumented children. The Supreme Court ruled that all children were entitled to free public education under the Equal Protection Clause of the 14th Amendment. On behalf of detained undocumented adolescents who protested ill-treatment by the Immigration and Naturalization Service (INS), immigrant rights organizations, such as the Center for Human Rights and Constitutional Law (CHRCL), filed the class action lawsuit that led to the US Supreme Court case *Reno* v. *Flores* (1993). The court held that children must be released only to a parent or legal guardian based on an Immigration and Naturalization Service regulation, corresponding with the Due Process Clause and the Immigration and Nationality Act. The case established the guidelines for the placement and release of immigrant children. In the 2023 class action case liflif*J.E.C.M. et al.* v. *Dunn Marcos et al.* (2023), the US District Court for the Eastern District of Virginia established that immigrant families have a constitutional right under Title 8 of the US Code (8 U.S.C. § 1232(c)(2)(A)) to be together and be unrestrained from government custody.

Children who experience forced separation are more likely to experience mental health illnesses such as post-traumatic stress disorder, anxiety, depression, and behavioral issues.

The lack of humanity within immigration law has caused the lives of children to become pieces in a game of politics and greed. The legal system needs to reevaluate its stance to fulfill its purpose of justice and constitutionality.

I. THE TIMELINE OF IMMIGRATION

Through centuries of anti-immigration policy, the United States has conditioned Americans to view the word "immigration" as fearful. However, in the subtext of the threat of immigration lies the humanity that America has come to villainize. Generalizations have forced marginalized communities into categories that liken them to terrorists and murderers. Innocents carry the weight of the American perspective, all while fighting to achieve the "American dream." Immigrants are referred to as "aliens," comparing them to creatures, further dehumanizing them. Meanwhile, the

separation of innocent children from their families in an attempt to keep Americans safe haunts the justice system. All while the Constitution echoes that everyone deserves to be treated like a human and has inalienable rights in the United States.

The history of immigration is needed to understand the present and future of the American attitude toward immigration policy and law. After ratification, the Constitution allowed Congress to establish a uniform rule of naturalization in Article I, Section 8, making immigrants eligible for all federal offices, excluding the presidency and vice presidency.[506] However, this led to states regulating immigration through their policing powers granted by the Tenth Amendment.[507] In turn, this laid the groundwork for methods such as banishing non-citizens to persecute immigrants. Congress passed the Naturalization Act of 1790 that extended citizenship to "free white persons" of good character who had lived in the United States for two years and accepted an oath of allegiance. The act correspondingly applied citizenship to the children of naturalized citizens so long they were 21 and under. However, the act excluded indentured servants, non-whites, and enslaved people.[508] In 1798, Congress passed the Alien and Sedition Acts that would threaten non-citizens to national surveillance and random arrest and bestowed the president power of deporting non-citizens via decree.[509] These laws would portray the American ambition of discriminating against immigrants while simultaneously finding societal, political, and economic benefits from their existence.[510]

After 1800, the legislature would continue to pass several laws that fit the range of American interests. Most notably, the 1882 Chinese Exclusion Act highlights the extent to which the United States is willing to bear to justify xenophobia with the concerns of its citizens.[511] The Chinese Exclusion Act was the first United States attempt to regulate immigration through a race-based lens, primarily due to the white American concern of economic competition, white unemployment, dwindling wages, and the concept of racial inferiority. The act restrained the inpouring of Chinese immigrants to the United States by stopping Chinese immigration for ten years and disclosing them as ineligible for naturalization. However, Congress extended the ban throughout 1943. In 1910, immigration officials built Ellis Island on the West Coast. This facility isolated Chinese immigrants, separated children from their families, and interrogated applicants to prove that they were the children of legal Chinese citizens. Despite the concept of universal child innocence, children of Chinese descent carried the burden of the Act as well. The racial discrimination and social exclusion of Chinese descent children experienced rid them of their childhood, forcing them to grow up with a fostering resentment that led to future protests against the Act's racial discrimination. Instead of being met with wealth and prosperity from the illusion of the California Gold Rush, Chinese

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[506] *See* U.S. Const. art. I, § 8; U.S. Const. art. II § 1.

[507] *See* U.S. Const. amend. X.

[508] *See* 1790 Naturalization Act, 1st Cong., March 26, 1790.

[509] *See* 1798 Alien Enemies Act, 5th Cong., June 25, 1798; 1798 Alien Friends Act, 5th Cong., June 25, 1798; and 1798 Sedition Act, 5th Cong., June 25, 1798.

[510] *See* Andrew M. Baxter & Alex Nowrasteh, *A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day*, https://www.cato.org/policy-analysis/brief-history-us-immigration-policy-colonial-period-present-day.

[511] *See* Chinese Exclusion Act, 47th Cong., May 6, 1882.

immigrants encountered brutal discrimination and persecution, the underlying premise of the purpose for advocating for immigrant rights.

In the wake of the Chinese Exclusion Act, a pronounced anti-immigrant sentiment pervaded the American socio-political landscape, furthering a xenophobic narrative. Notably was the Immigration Act of 1917, which redirected its focus from Chinese immigration to individuals immigrating from the established "Barred Zone," comprising the entirety of Asia except the Philippines and Japan.[512] However, given the prior exclusion of Chinese and Japanese laborers and the classification of Filipinos as "nationals" due to American colonial rule in the Philippines, the primary target of this prohibition was the Indian population. The Barred Zone contained territories perceived to pose political, economic, and racial threats to the security of the United States. Consequently, the Act increased the statutory period for deportation from three to five years for any "alien" suspected of holding dangerous political affiliations or ideologies.

Furthermore, the legislation imposed a compulsory literacy test for immigrants over 16 years old to demonstrate basic reading comprehension in any language and prevent the entry of "undesirable" individuals into the United States.[513] Despite the pervasive presence of anti-Asian prejudices within American society, as demonstrated by the Chinese Exclusion Act, the exclusionary measures against Indians were predicated upon perceptions of their economic threat to white labor and their perceived deviation from the American ethos. Seven years later, in conjunction with the Immigration Act of 1917, the Johnson-Reed Act of 1924 established the national origins quota system.[514] Initially, the system provided immigration visas to three percent of the total number of people of each nationality in the United States as of the 1910 national census, which limited overall immigration to 350,000 per year. However, it was then adjusted to provide immigration visas to two percent of the total number of people of each nationality in the United States as of the 1890 national census, restricting immigration to 150,000 per year.[515] Quantitative discrimination in immigration policy and law would continue to prosper within America.

Thus, the path to immigrant prosperity has been slow. The United States chooses to proceed with its policies and laws through an ethical claim. However, ethics fall short in its dehumanizing actions against immigrants, specifically the innocent children forced to be puppets in a political game. Anti-immigration beliefs stay firm in the view of children being separated from their families and thrown into detention centers they condition themselves to deem normal. The problem, thus, does not lie in the misconceptions of immigrants but rather in a deep-rooted xenophobia that has grown on American soil for centuries.

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[512] *See* Immigration Act of 1917, Pub. L. No. 64-301, 39 Stat. 874 (1917).
[513] *See* Immigration Act of 1917 (Barred Zone Act), IMMIGRATION HISTORY, https://immigrationhistory.org/item/1917-barred-zone-act/.
[514] *See* Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153 (1924).
[515] *See* Milestones: 1921–1936 - Office of the Historian, https://history.state.gov/milestones/1921-1936/immigration-act.

II. THE IMMIGRANT THREAT NARRATIVE

Throughout the centuries of American history, a perspective that likens itself to vulgar violence has manipulated the narrative of immigrants. A primary controller of this corrupted narrative lies in the game of politics. One of the main purposes behind politics is to understand who the audience with the influence is, thus the majority. In the heart of the red, white, and blue, the majority are white Americans. Policies that can reap benefits for immigrants threaten white Americans, causing a domino effect that leads to their opposition. In turn, this leads to politicians disregarding the immigrant perspective. The American political system is not the same as in the nineteenth century when the wave of immigration was fundamental for politicians. Now, politicians tend to shift attention away from immigrant voters unless it is to shine a light on anti-immigration policies.

In a country that prides itself on a representative democracy, America paints an immigrant threat narrative as a result of the white majority. The immigrant threat narrative focuses on four aspects: education, health, crime, and economic factors.[516] The narrative explains the attributes beyond xenophobia that white Americans refer to when preaching anti-immigration. Under the narrative, immigrants' usage of public services such as education and health care constructs a consequential fiscal strain while emphasizing the assumed criminality of the immigrant population and the presumption that immigrants do not pay taxes.

In 1994, California's Proposition 187 was approved and marked a significant effort to begin reducing immigration. Proposition 187 established a state-mandated screening system for those aiming for tax-supported benefits through five factors. First, the proposition blocked immigrants from the state's public education systems and required public educational institutions to verify the citizen status of both students and their parents. Therefore, the proposition denied immigrant children an education beyond what their families could offer. Second, the proposition required all publicly paid, non-emergency health care services to verify legal status before aiding anyone. Third, the proposition required anyone seeking cash assistance and other help to confirm their legal status before receiving benefits. The state added a state-run verification system to the existing federal screening system to confidently verify that no undocumented immigrants were receiving these benefits. Fourth, all service providers were required to report suspected undocumented immigrants to California's Attorney General and the Immigration and Naturalization Service (INS). Finally, crafting, distributing, and using false documents to access public benefits or employment by hiding legal status became a state felony. Fines and imprisonment threatened families immigrating to provide a better future for their children. Eventually, the courts ruled Proposition 187 unconstitutional under the Equal Protection Clause of the 14th Amendment, as the clause ensures that all individuals within a state are treated equally under the law and prohibits states from discriminating against certain groups or classes of people.[517] By singling out undocumented immigrants and denying them access to essential services that are available to other residents,

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[516] *See* Marisa Abrajano & Zoltan L. Hajnal, How Immigration Shapes the Vote, in White Backlash: Immigration, Race, and American Politics 88–112 (Princeton University Press 2015), http://www.jstor.org/stable/j.ctt1h4mhqs.9.
[517] *See* Philip Martin, *Proposition 187 in California*, 29 THE INTERNATIONAL MIGRATION REVIEW 255 (1995), https://www.jstor.org/stable/2547004.

Proposition 187 discriminated against a specific group based on their immigration status, thus violating constitutional rights. Unfortunately, its legacy would echo within the opposition to the education and health benefits immigrants fought to receive.

Criminality is another common theme in how American citizens justify their anti-immigration beliefs. The notion that immigrants feed into crime has consistently been disproven throughout the centuries. In addition, several studies have confirmed that the correlation between undocumented immigrants and crime lies on a negative line, thus being the opposite of the century-old myth that foreign-born people increase American crime. According to Micheal Light and Ty Miller, both police reports and victimization data prove the negative association between undocumented immigrants and violence.[518] Furthermore, a 2013 study from the University of Minnesota established that immigration decreases violent crime more in cities with pro-immigration policies, such as policies that restrict local law enforcement collaboration with immigration authorities, than in those with a less receptive political climate for immigrants.[519] In addition, an American Economic Review study from 2015 uncovered the legalization of virtually three million undocumented immigrants from the Immigration Reform and Control Act of 1986 (8 U.S.C. § 1101), which sought to reduce the number of jobs that attracted undocumented immigrants by fining employers who intentionally hired undocumented workers.

This strategy focused on the financial incentives behind undocumented immigration, acknowledging that job opportunities constituted a major attraction for those attempting to enter the nation. Most notably, the act provided permanent legal residency to undocumented employees who had resided in the United States before 1982, resulting in substantial reductions in property crime.[520] Therefore, the link between immigration and crime among white Americans has no merit. Instead, it is a last resort in defending an argument with no ethical or moral qualms.

Illustrations of the immigrant population also link to employment. White Americans tend to refer to rates of unemployment and low wages as problems caused by the influx of undocumented immigrants coming across the border. Although there is an abundance of evidence that the economic benefits of immigration overpower its costs, the anti-immigration mentality argues that immigrants are the cause of the economic problems in the United States. In their narrative, undocumented immigrants and documented immigrants alike are "stealing" their jobs. This narrative is known as the lump of labor fallacy, which refers to a misconception that there is a fixed amount of labor. Due to the "fixed" availability of employment, the lump of labor position argues that employing immigrants decreases the availability of work for American citizens. However, the correlation of unemployment rates to immigration has no merit because the quantity of jobs available depends on various economic factors and is never stable.[521] Furthermore, both

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[518] *See* Michael T. Light & Ty Miller, *DOES UNDOCUMENTED IMMIGRATION INCREASE VIOLENT CRIME?**, 56 Criminology 370 (2018), https://onlinelibrary.wiley.com/doi/10.1111/1745-9125.12175.

[519] *See* Christopher J. Lyons, María B. Vélez & Wayne A. Santoro, *Neighborhood Immigration, Violence, and City-Level Immigrant Political Opportunities*, 78 Am Sociol Rev 604 (2013), http://journals.sagepub.com/doi/10.1177/0003122413491964.

[520] See Scott R. Baker, *Effects of Immigrant Legalization on Crime*, 105 AMERICAN ECONOMIC REVIEW 210 (2015), https://www.aeaweb.org/articles?id=10.1257/aer.p20151041.

[521] See Alex Nowrasteh, *Three Reasons Why Immigrants Aren't Going to Take Your Job*, Cato Institute (2020), https://www.cato.org/blog/three-reasons-why-immigrants-arent-going-take-job.

undocumented and documented low-wage immigrants are centralized in a limited number of domains, causing little to no competition with American citizens, who tend to refuse to work in brown-collar jobs. The displacement effect, a term referring to immigrants pushing native-born American workers out of labor, is discredited by most economic research on the impacts of immigration on employment, where no statistically substantial evidence supports the former claim. Moreover, immigrants and natives move to the same economically growing areas of the United States, disproving immigrant-native competition in the labor market.[522] However, the facts did not deter immigration programs from pushing these narratives.

In 1942, an executive order established the "Bracero Program." The program, arranged between Mexico and the United States, provided short-term labor contracts to Mexican men to allow them to work legally in the United States for the duration of their contract. Due to the Mexican Revolution instituting economic adversities, increasing United States deportation of Mexicans during the Great Depression, and the labor shortages occurring in the United States during World War I, the program strove to grant relief within both countries. However, the scale was unbalanced as the United States brought more than four million arms to work for their agriculture and railroads while simultaneously ignoring broken protocols that flourished a lasting xenophobic presence towards Mexicans.[523] Furthermore, the United States issued Operation Wetback during the program in 1953. The operation, whose name was a derogatory term for Mexican immigrants living in the United States without documentation, conducted military-style round-ups that resulted in the deportation of one million workers. One of the primary factors regarding the creation of the operation was a concern about employment availability for returning World War II soldiers.[524] Thus, the United States contradicted its program's purpose and arrangement with Mexico to satisfy national economic hardships and American concerns. Over ten years later, President Lyndon Johnson signed the Hart-Celler Immigration Act of 1965, which abolished the national origins quota system established by the Johnson-Reed Act of 1924. Each country received an annual cap of 20,000, and several non-European individuals immigrated, many arriving via the employment preferences that favored highly educated workers.[525] However, no act could erase the decades of suffering due to xenophobia in the face of the American dream.

Immigrant children bear the brunt of these systemic prejudices, facing profound challenges in education, health, and economic well-being. The narrative of immigrants as a threat perpetuates a cycle of discrimination, particularly impacting children's access to education and healthcare, as depicted in the denial of accessible public education, effectively limiting their prospects. Additionally, the false association between immigrants and crime not only stigmatizes immigrant communities but

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[522] *See* Nowrasteh, A., Three Reasons Why Immigrants Aren't Going to Take Your Job, Cato Institute (2020), https://www.cato.org/blog/three-reasons-why-immigrants-arent-going-take-job.
[523] *See* Dani Thurber, *Research Guides: A Latinx Resource Guide: Civil Rights Cases and Events in the United States: 1942: Bracero Program*, https://guides.loc.gov/latinx-civil-rights/bracero-program.
[524] *See* Depression, War, and Civil Rights | US House of Representatives: History, Art & Archives, https://history.house.gov/Exhibitions-and-Publications/HAIC/Historical-Essays/Separate-Interests/Depression-War-Civil-Rights/.
[525] *See* Jerry Kammer, *The Hart-Celler Immigration Act of 1965*, CIS.ORG (2015), https://cis.org/Report/HartCeller-Immigration-Act-1965.

also leads to policies that harm children by perpetuating fear and mistrust. The economic narrative further heightens their difficulty, portraying immigrants as employment stealers despite evidence to the contrary. This hostile environment not only undermines the potential of immigrant children but also perpetuates intergenerational cycles of disadvantage, hindering their ability to thrive in a society that claims to offer equal opportunity.

III. HISTORY OF PRESIDENTIAL ACTION TOWARDS IMMIGRATION

The campaign for immigrants' rights in the United States has and continues to fluctuate. Within decades of organizing and advocacy, progress continues to meet regression. From John F. Kennedy's Cuban Refugee Program to Joe Biden's lack of action on the matter, the removal of immigrant rights transpires as momentarily as they are delivered. Thus, the back and forth results in millions of families and children suffering who become the faces of America's failures in establishing their principal purpose: freedom.

In response to the influx of Cuban refugees escaping dictatorship in Florida, Miami, President John F. Kennedy made his concern for those persecuted clear, beginning the groundwork for the 1961 Cuban Refugee Program. Kennedy proposed nine actions to further the goals of the aid program. These included offering financial assistance for the care and protection of unaccompanied children, starting a surplus food distribution program to be run by the county welfare department, providing federal assistance for local public school operating costs related to the impact of Cuban refugee children, and providing essential health services through the financial assistance program supplemented by public health services. Notably, the Cuban Refugee Program emphasized aiding those considered to be the "most defenseless and troubled group among the refugee population" — children. The Florida Department of Public Welfare issued a cash assistance program in Dade County and provided social services to refugees and refugee children living with parents or relatives. Furthermore, the program acknowledged unaccompanied children. A significant number of children fled from Cuba unaccompanied by their parents or acting in their parent's place. As a result, group care or individual foster homes provided care for them.[526] Kennedy concentrated several efforts on ensuring that these children's traumatic experiences wouldn't mar their personalities.

Presidents Ronald Reagan and George Bush Sr. followed suit in protecting immigrant children, using their executive authority to defend the spouses and children of individuals who were in the process of legalization. This usage of executive authority was known as "Family Fairness" actions and aided in evading separating families. In 1997, Reagan's Immigration and Naturalization Service (INS) Commissioner Alan C. Nelson fully declared the "Family Fairness" executive action, highlighting the Congressional intent to exclude family members from the legalization program. The INS postponed deportation for children whose parents or single parents were in the process of legalization. In 1990, President Bush extended Reagan's Family Fairness policy to legalize family members' prior ineligible spouses and children under 18. Furthermore, it provided them with eligibility to apply for work authorization. Soon after, Bush Sr. implemented the Immigration Act of 1990, which expanded the number of visas open to spouses and minor children of those with lawful

[526] *See* William L. Mitchell, *The Cuban Refugee Program*, https://www.ssa.gov/policy/docs/ssb/v25n3/v25n3p3.pdf.

permanent resident status.[527] On October 1, 1991, Congress' "Family Unity" provisions replaced the executive "Family Fairness" policy and have remained in place today.[528]

In more recent immigration debates lies Barack Obama's 2012 Deferred Action for Childhood Arrivals (DACA), an executive action to get rid of the threat of deportation for young people who came to the United States as undocumented immigrants. Due to current immigration law, most young people who meet the DACA criteria can not obtain legal residency despite having lived in the United States for most of their lives. DACA allows non-United States citizens who qualify to remain in the country for two years, which is then subject to renewal. It also provides eligibility for work authorization and ensures protection from deportation. As a result, DACA recipients have significantly improved their socioeconomic standing while contributing to the United States.[529] According to data from 2020, DACA recipients hold an estimated 24 billion dollars in spending power and pay 8.7 billion dollars in federal, state, and local taxes annually, demonstrating their contribution to a strong economy that supports the country.[530] Thus, DACA provides children the prospect of remaining with their families while enabling them to fully participate in society and contribute to the economic and cultural fabric of the United States.

Immigration programs that work for the betterment of the immigration population, however, are a common target and subject to change depending on the head of the executive branch. Donald Trump's presidency, for instance, is infamous for his consistent displeasure and prominent xenophobia toward the immigrant population. Beginning in 2015, at the launch of his campaign to the current day, Trump has taken advantage of a broken immigration system and ignorant views to pass policies encompassed by unexcusable xenophobic attacks on innocent families.

On May 7, 2018, the Trump administration perfected its implementation of anti-immigration policies through a "zero tolerance" policy. Its proposed purpose was to discourage illegal migration and to reduce the burden of processing asylum claims.[531] However, the prosperity of American citizens and government was a facade to the truth: anti-immigration policies are deep-rooted in the foundation of xenophobia. The zero-tolerance policy charged all immigrants seized crossing the border illegally, with no exception for asylum seekers or those with children. Once again, children were under the possession of the HHS. The policy, thus, subjected immigrants, including children, to inhumane treatment by forcibly separating them from their families and subjecting them to detention in often overcrowded and inadequate conditions. Furthermore, the zero-tolerance policy denied immigrants their right to due process, including access to legal representation, fair and timely hearings, and the opportunity to present their asylum claims. Instead, they were subjected to prosecution and deportation proceedings, undermining their right to a fair trial and legal protection. Advocates of the zero-tolerance policy stated that the policy was critical in stopping immigrants from coming to the United States and blocking immigration courts with requests for asylum. In

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[527] *See* 8 U.S.C. § 1152.
[528] *See* Reagan-Bush Family Fairness: A Chronological History, American Immigration Council (2014), https://www.americanimmigrationcouncil.org/research/reagan-bush-family-fairness-chronological-history.
[529] *See* Deferred Action for Childhood Arrivals (DACA): An Overview, American Immigration Council (2021), https://www.americanimmigrationcouncil.org/research/deferred-action-childhood-arrivals-daca-overview.
[530] *See* Claudia Flores & Nicole Prchal Svajlenka, *Why DACA Matters*, CAP 20 (2021), https://www.americanprogress.org/article/why-daca-matters/.
[531] *See* 8 U.S.C. §1325(a).

other words, they echoed the "purpose" of the policy without considering the ethical repercussions of creating innocent people as threats. In contrast, opposers of the policy argue that separating immigrant families who are seeking asylum is cruel.[532] The zero-tolerance policy violated multiple fundamental human rights principles, including the right to family unity, the protection of children's rights, the prohibition of cruel treatment, and the right to due process, rendering it unconstitutional. This breach of constitutional and human rights norms highlights the urgent need for legal intervention to correct its injustices.

President Joe Biden made several promises regarding immigration during his campaign and early presidency, maintaining beliefs of immigrant prosperity in the face of his predecessor. Shortly after taking office, President Biden signed several executive orders aimed at reversing fundamental immigration policies implemented by the previous administration. These orders ended the Muslim travel ban, halted border wall construction, and preserved and strengthened the DACA program. The Biden administration also extended the Temporary Protected Status (TPS) to several countries, allowing eligible nationals from those countries to live and work legally in the United States due to unsafe conditions in their home countries. However, in the face of these policies lies a lack of action towards several premises Biden made during his campaign to attract immigrant and minority voters. While Biden promised to work with Congress to pass comprehensive immigration reform legislation, such as the US Citizenship Act of 2021 that reforms the legal immigration system, Congress has yet to pass it. Congress has not acted in the face of the urgent need for reform to address long-standing problems with the immigration system.[533] The inability to enact such reform measures highlights the difficulties in navigating partisan differences and powerful interests in the legislative process, emphasizing the ongoing struggle to accomplish significant immigration reform in the United States. Furthermore, President Biden promised to end the practice of detaining immigrant children and families for extended durations. While the administration has made some effort, there is still continuous criticism and advocacy for more comprehensive reforms.[534] The matter at hand is that his actions do not meet the impact of his promises. This inaction, in turn, reinforces the anti-immigration mentality, as policy does not correspond with the beliefs of the executive in power.

IV. COURT CASES ON IMMIGRANT CHILDREN

As a consequence of the abundance of policies that separate families, immigrant children have been the focus of several court cases. *Plyler v. Doe* (1982), *Reno v. Flores* (1993), and *J.E.C.M. et al. v. Dunn Marcos et al.* (2023) are three landmark cases that depict the threats that immigration policies inflict on the constitutionality of the United States.

In 1977, Texas's Tyler Independent School District charged 1000 dollars per year to children registered in the district who failed to disclose their immigration status. Since free public education

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[532] *See* William A. Kandel, *The Trump Administration's "Zero Tolerance" Immigration Enforcement Policy*, Congressional Research Service (2021), https://crsreports.congress.gov/product/pdf/R/R45266/11.
[533] *See* Myah Ward, *Immigrant Advocates Feel Abandoned as They Stare at Biden's First-Term Checklist*, Politico (2022), https://www.politico.com/news/2022/10/20/immigrant-advocates-abandoned-biden-00062641.
[534] *See* Broken Promises on Immigration Will be Biden's Legacy | Immigrant Legal Resource Center | ILRC, https://www.ilrc.org/broken-promises-immigration-will-be-biden%E2%80%99s-legacy.

was only available to citizens and residents under the Texas legislature's section 21.031, which permitted public school districts to refuse admission and charge tuition to undocumented children, Tyler ISD felt it was justified in its decision. Consequently, Peter Roos and Vilma Martinez of the Mexican American Legal Defense and Educational Fund (MALDEF) brought a class action lawsuit where the district court ruled section 21.031 unconstitutional. The Fifth Circuit Court of Appeals heard an appeal from Tyler ISD, and after upholding the lower court's ruling, the school district filed an appeal with the United States Supreme Court.[535] On June 15, 1982, in *Plyler v. Doe* (1982), Justice Brennan wrote the majority decision that ruled against Texas' policy and remarked that Equal Protection under the Fourteenth Amendment is "universal in their application…without regard to any differences of race, color, or nationality."[536] The Fourteenth Amendment is a landmark piece of legislation that has been the backbone of several court cases dealing with racial prejudice. The Fourteenth Amendment, passed in 1866 and ratified in 1868, provided all citizens with "equal protection under the laws," expanding the requirements of the Bill of Rights to the states.[537] While the Fourteenth Amendment does not directly control immigration law, its principles of citizenship, equal protection, and due process are significant to implementing immigration laws and policies. Policies that disregard these principles can undermine the constitutional rights of immigrants and endanger the Fourteenth Amendment's stance on equality and justice for all persons.

In 1985, Jenny Lisette Flores, who was fifteen years old at the time, was detained by the Immigration and Naturalization Service. Flores remained in detention in the time leading up to her deportation hearing in correspondence to INS policy 8 CFR § 242.24 which allowed the clearance of juvenile immigrants only to parents, close relatives, or legal guardians. However, Flores' mother did not appear to accept custody of Flores fearing her personal deportation. Thus, Flores remained in detention despite other family members willing to take custody. On July 11, 1985, Flores and "all minors apprehended by the INS in the Western Region of the United States" were the focus of a class action lawsuit filed by the Center for Human Rights and Constitutional Law along with two other organizations. Resolutions were passed concerning the detention conditions when the C.D. Cal District Court "approved a consent decree, to which all the parties had agreed," towards the end of 1987. However, the establishment of the INS regulation policy contradicted the ruling.[538]

On March 23, 1993, in *Reno v. Flores* (1993), the Supreme Court ruled in favor of the government and held that unaccompanied immigrant children had no constitutional right to the releasement to someone other than a close relative, nor automatic review by an immigration judge and that the policy accorded with both Due Process Clause, which prohibits the government from depriving a person of their freedom or property without a fair trial, and Immigration and Nationality Act, which holds several provisions regarding immigration policy in the United States.[539] However, the case did not settle until January 28, 1997, when the CHRCL and the INS signed the Flores

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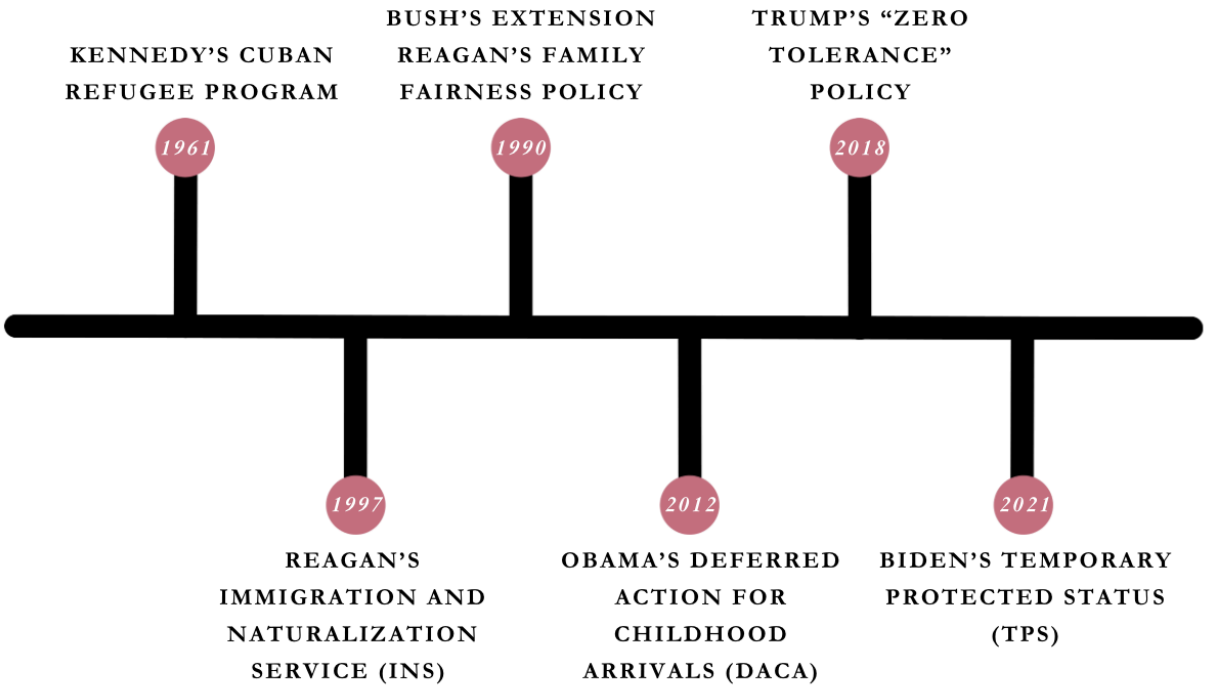
[535] *See* Dani Thurber, *Research Guides: A Latinx Resource Guide: Civil Rights Cases and Events in the United States: 1982: Plyler v. Doe*, https://guides.loc.gov/latinx-civil-rights/plyler-v-doe.
[536] *See Plyler* v. *Doe,* 457 U. S. 202 (1982).
[537] *See* U.S. Const. amend. XIV.
[538] *See* Flores v. Reno, CHILDREN'S RIGHTS, https://www.childrensrights.org/in-the-courts/federal-flores-v-reno.
[539] *See Reno* v. *Flores,* 507 U. S. 292 (1993).

settlement.[540] The Flores settlement administered the release of children from detention without delay to a parent, adult relative, or licensed juvenile program willing to accept custody. The settlement also provided an age-appropriate setting, the ability to contact family, and appropriate standards of care when temporary detention was deemed necessary. However, the process between the initial situation and the Flores settlement, which continued to be under provision, was too timely. Within the years that the government agreed upon how it should morally interact with immigrants, several people were the subject of the same inhumane treatment.[541] The government should prioritize immigration policies that stop further mistreatment, as the enduring struggle depicted in the former cases underlines the ongoing imperative to uphold the constitutional rights of immigrant children.

In 2018, young immigrants brought a civil action suit against the Office of Refugee Resettlement (ORR) to stop ORR from conveying information about family members to Immigration and Customs Enforcement (ICE). J.E.C.M., one of the young immigrants who was a thirteen-year-old at the time, entered ORR custody on February 27, 2018. Jose Enrique Jimenez Saravia, J.E.C.M.'s brother-in-law, applied to sponsor J.E.C.M. However, several members of his household refused to provide their fingerprints out of concern for immigration consequences. Since 2018, ORR's policy for investigating potential sponsors created delays that consequently held unaccompanied children for prolonged periods. Three courts had ruled previous cases of ORR's reunification policy as violating procedural due process.[542] On August 29, 2023, in *J.E.C.M. et al. v. Dunn Marcos et al.* (2023), the United States District Court for the Eastern District of Virginia ruled that immigrant families have a constitutional right under Title 8 of the US Code (8 U.S.C. § 1232(c)(2)(A)) to reunite with their children.[543] However, similar to *Reno v. Flores* (1993), the case was not prioritized, causing the repetition of the same problem. Furthermore, the case highlights the government's tendency to overlook the purposes of former policies. There has been no advancement in helping immigration populations prosper. There is a need to fix the system's approach to immigration cases to prevent future immigrants from reaping the consequences of unconstitutional laws and policies.

[540] *See* Reno v. Flores, 507 U.S. 292 (1993), Justia Law, https://supreme.justia.com/cases/federal/us/507/292/.
[541] See The Flores Settlement, Immigration History, https://immigrationhistory.org/item/the-flores-settlement/.

[542] *See* J.E.C.M. v. Marcos, 1:18-cv-903(LMB/IDD) | Casetext Search + Citator, https://casetext.com/case/jecm-v-marcos.
[543] *See J.E.C.M.* v. *Marcos*, 1:18-cv-903(LMB/IDD) (E.D. Va. Aug. 29, 2023).



V. THE LACK OF ACCOUNTABILITY: A CONTINUATION

Profound grievances concerning immigrant children persist, echoing from the shadows of American history to the modern day. Unfortunately, the injustices inflicted upon immigrant children endure with consistency. Central to the problem at hand in the majority of immigration issues is a stark absence of accountability and transparency. Throughout the ages, the United States has regrettably sanctioned acts of inhumanity in the supposed pursuit of justice and liberty. Yet, in those rare moments when moral justice became a priority, America has demonstrated a willingness to change its legal and policy frameworks. However, such changes are consistently accompanied by silence when it comes to accounting for the suffering inflicted upon numerous lives. This suffering is a stain upon the collective conscience of a nation that prides itself on its professed values of liberty, equality, and justice for all.

Detention centers, traditionally defined as places where people who have entered a country illegally are kept for some time, fail to capture the harsh reality experienced within their walls, particularly for innocent children. In 2018, the federal government's operation of a massive tent city in the Tornillo, Texas desert epitomized this failure, becoming a symbol of the government's lack of accountability in its treatment of immigrant children. Besides the challenges stemming from Donald Trump's presidency, the center itself proved to be a humanitarian tragedy, inflicting profound suffering on helpless, terrified children. The camp, consisting of tents devoid of natural light and insulation, relied on external units for cooling and heating, exacerbating discomfort and health risks. Moreover, the absence of a plumbing or sewage system forced children to endure unsanitary conditions, with waste hauled in and out of the camp. During storms, the dangerous lack of infrastructure compelled children to use standalone portable toilets to avoid the risk of

electrocution. Additionally, the camp's remote location exacerbated issues of access to legal services, social workers, medical care, and community support.[544] While the camp was eventually closed the following year, the trauma inflicted upon thousands of children would continue to haunt them as they struggled to overcome the enduring scars of their experience.

An additional pressing issue confronting immigrants is the lack of legal representation. The current system of legal assistance for immigrants in the United States encounters substantial obstacles, primarily arising from the absence of guaranteed access to legal counsel. While organizations such as Human Rights First and the American Immigration Lawyers Association offer pro bono services, their resources are frequently limited and geographically concentrated. As a result, numerous legal aid organizations grapple with meeting the growing demand for services, leading to stretched capacities and backlogs. Despite previous federal initiatives, like the National Qualified Representative Program, aimed at pairing detained migrants with attorneys, these endeavors have proven insufficient to address the problem's extensive magnitude. The need for legal representation for immigrants becomes evident through the disparities in outcomes between those with and without legal counsel. Data indicates that immigrants represented by attorneys are at least three times more likely to have their claims approved compared to those without legal representation.[545] The media has highlighted this issue through images of children appearing in courtrooms, attempting to defend themselves before a judge. By allocating federal funding for legal counsel, the United States can ensure that immigrants have equitable and just access to legal representation, protecting their rights and upholding principles of due process under the law.

Furthermore, the inadequacy of government reports within the immigration system poses a significant challenge to accountability and transparency. The lack of comprehensive and timely reporting on immigration enforcement activities and outcomes obstructs efforts to ensure government agencies are held accountable for their treatment of immigrant children. This issue is highlighted by the 2023 tragedy of Anadith Reyes Alvarez, an 8-year-old girl who died in Customs and Border Protection (CBP) detention due to medical neglect. Her death, deemed a "preventable tragedy" by a court monitor, emphasized the urgent need for enhanced medical oversight within CBP facilities. Moreover, Alvarez's case is indicative of a broader pattern of medical abuse and neglect within CBP, as evidenced by understaffing and the provision of medical services without appropriate licenses. CBP's request to destroy medical case files after 20 years elicited concern from advocacy groups as records serve as vital evidence of medical care received by individuals in CBP custody and are indispensable for holding the government accountable and supporting legal

[544] *See* Warehousing Immigrant Children in the Texas Desert | ACLU, American Civil Liberties Union (Nov. 1, 2018), https://www.aclu.org/news/immigrants-rights/warehousing-immigrant-children-texas-desert.
[545] *See* Niskanen Center, *Legal Representation for Asylum Seekers: An Overlooked Area of Reform for a System in Crisis - Niskanen Center*, Niskanen Center - Improving Policy, Advancing Moderation (2021), https://www.niskanencenter.org/legal-representation-for-asylum-seekers-an-overlooked-area-of-reform-for-a-system-in-crisis/.

claims.[546] Historically, such records have provided valuable insights into immigration policies and the delivery of medical care at the border. The proposed destruction of CBP's medical records threatens to impede efforts to address systemic medical neglect and promote accountability within the agency. Permitting the destruction of these records would obscure CBP's history of misconduct, corrupting accountability and denying justice to the vulnerable children under its care.

The grievances highlighted, including those concerning detention centers, legal representation, and government reporting, are merely broad examples of the systemic challenges pervasive within the current framework of the nation's immigration system. To honor the principles of fairness and justice, it is imperative to demand accountability and transparency from the government in its treatment of immigrant children.

VI. HOW LAW AND POLICY SHAPE THE FUTURE OF IMMIGRANT CHILDREN

The outcomes of immigration laws and policies have and continue to impact the lives of millions of children. Not only are children forcefully separated from their families, but they face the consequences of the aftermath. Whether the children are reunited with their families, forced back to the country they risked everything to escape, or grow up as the face of a "problem" America strives to fix, every factor around the word "immigrant " molds their futures.

In general, mental health is a topic often neglected by society. That neglect is heightened when regarding the minds of immigrant children. The laws and policies that separate children from their caretakers lead to a domino effect of long-term developmental consequences that affect mental health, including anxiety, depression, post-traumatic stress disorder, lower IQ, obesity, weakened immune systems, physical growth, and morbidity. Moreover, the prolonged periods of pending trials create a sense of loss of control and powerlessness, concepts that often increase the chances of falling victim to poor mental health. In consequence, children struggle with their sense of identity as they fight against accusations fueled by racial prejudice. Therefore, not only are children forced apart from the concept of stability, but they are forced to carry the burden of the label "immigrant." These factors lead to the "building block effect," in which exposure to trauma and violence is cumulative and feeds into post-traumatic stress disorder. Furthermore, multiple studies have proven the claim that there is a higher prevalence of depression and anxiety in immigrant children that lead to social and emotional difficulties than in native-born children who do not experience separation from their families and the environment of detention centers.[547] That only covers the range of problems immigrant children face when still in the United States. Therefore, immigration laws and policies should shift their narrative in not only adjusting their approach to family separation and detention centers but also in protecting immigrant children's mental health.

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[546] *See* Eunice Hyunhye Cho, *Government Agencies Shouldn't Be Allowed to Destroy Their Paper Trail of Medical Abuse and Neglect | ACLU*, American Civil Liberties Union (Jan. 12, 2024), https://www.aclu.org/news/immigrants-rights/government-agencies-shouldnt-be-allowed-to-destroy-their-paper-trail-of-medical-abuse-and-neglect.

[547] *See* Song, S.J., Mental Health of Unaccompanied Children: Effects of U.S. Immigration Policies, 7 BJPsych Open e200 (2021).

In addition, there is a correlation between the disregard for the mental well-being of immigrant children and the deficient medical attention within United States custody, commonly known as detention centers. Media portrayals of these centers have illustrated the inhumane conditions endured by innocent children, drawing parallels between their confinement and the cages housing animals in zoos and prompting a distressing image of borderline cruelty. The trajectory of a child's health development hinges upon the medical guidance provided by pediatric professionals. Doctors facilitate access to crucial vaccinations, medical evaluations, and medications. Unfortunately, the pediatric healthcare infrastructure within detention centers falls short of the standards upheld by nationwide clinics serving citizens. These facilities have a scarcity of staffing and oversight in clinical care, deficient screening protocols for malnutrition, negligent documentation practices, and a lack of post-care follow-ups. Along with these inadequacies is the heightened risk of disease transmission and outbreaks within the communal living environments prevalent in detention centers.[548] Given the myriad risk factors predisposing these minors to acute illnesses and injuries, timely access to appropriate medical interventions, including emergency care administered by pediatric healthcare providers, bears principal importance. Such interventions can potentially be life-saving and instrumental in protecting children's future health and well-being.

The educational adversity faced by immigrant children can stem from various factors, including language barriers, cultural differences, socio-economic disparities, and inadequate support systems. These challenges often manifest in several ways within the educational system, ultimately affecting their academic performance and long-term employment prospects. Educational attainment is associated with both financial stability and upward social mobility. One of the main issues limiting the prospects of immigrant children is low educational attainment among immigrants. Strong work ethics and family values are brought to the United States by immigrants; however, by the time they reach the second generation, their rates of employment drop. Furthermore, immigrant children face significant educational barriers, specifically when pursuing higher education. Undocumented students are usually ineligible for federal financial aid, scholarships, or loans, making the cost of college prohibitive. Fear of deportation and uncertainty about their future legal status also weigh heavily on undocumented students, adding emotional and psychological stressors to their academic pursuits.[549] These systemic barriers continue to limit their access to educational opportunities and hinder their ability to reach their full potential. Addressing these challenges requires a multi-faceted approach involving targeted support programs, culturally responsive teaching practices, resource allocation, and policies that promote inclusive school environments for immigrant children. Additionally, managing these barriers requires comprehensive policy reforms at the state and federal levels to ensure that all individuals, regardless of immigration status, have impartial access to quality

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[548] *See* Child Migrants In Family Immigration Detention In The US: An Examination Of Current Pediatric Care Standards And Practices, 64, https://fxb.harvard.edu/wp-content/uploads/sites/2464/2024/01/Child-Migrants-in-Family-Immigration-Detention-in-the-US.pdf.

[549] *See* Ron Haskins & Marta Tienda, *The Future of Immigrant Children*, https://futureofchildren.princeton.edu/sites/g/files/toruqf2411/files/media/immigrant_children_21_01_policybrief.pdf.

education and the opportunity to pursue their ambitions. By addressing the educational needs of immigrant children, society can halt its cycle of corruption that is the consequence of ignoring the immigration population in the nation.

VII. CONCLUSION

In conclusion, the United States government must begin seeing immigrants as humans rather than the focus of laws and policies that dehumanize them in their aim to protect American citizens. Considering innocent children continue to be deprived of their human right to legal protection, the immigration system needs to be reformed to comply with the Fifth Amendment's Due Process Clause. The constitutionality of the effects of immigration laws and policies is that everyone, native or foreign-born, has inalienable rights in the United States. Therefore, the justice system is in desperate need of reform regarding its law and policy on immigration as it affects innocent lives. First, as mentioned prior, a change of perspective is needed. Instead of seeing the material of borders and laws, the United States needs to recognize humanity. They need to acknowledge that a country does not determine the granting of specific rights. A country does not determine whether a child should be forced to grow up in the center of racial prejudice. A country does not determine humanity. Second, the justice system must take action as needed. To create an efficient law or policy, the legal system must consider all relevant factors rather than enacting laws and policies that may be contested in the future. Therefore, not only should they take the past and present into consideration, but they should acknowledge the future effects of the outcome of the law or policy on the immigrant population. The first step for the justice system to accomplish this is to remove politics and prejudice from immigration courts. The decisions should not be affected by current political greed nor the opinion of average American citizens who do not have the education nor experience to determine what should happen to an innocent life. Only through these changes will the United States prosper with the immigrant population rather than wasting money and resources on solving a "problem" that only exists due to deep-rooted xenophobia.

THANK YOU FOR READING!