ANNOTATED LEGAL BIBLIOGRAPHY

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ACCOUNTABILITY

Leo Yu, *Piercing the Procedural Veil of Qualified Immunity: From the Guardians of Civil Rights to the Guardians of States' Rights*, 81 WASH. & LEE L. REV. 775 (2024).

Federal courts have shifted qualified immunity from a defense raised by officials into a pleading hurdle, reshaping the structure of § 1983 litigation. Ambiguity left by earlier Supreme Court decisions allowed post–*al-Kidd* rulings to demand that complaints anticipate and negate immunity, which fractured the circuits and produced what has been termed the "elementary approach." This approach embeds the "clearly established" requirement into the cause of action itself, leading to early dismissals and limiting discovery. This doctrinal move distorts the Federal Rules of Civil Procedure, narrows the reach of the Civil Rights Act of 1871, and reduces opportunities for constitutional law to develop through decisions on the merits. By forcing plaintiffs to plead with extreme specificity before obtaining facts, the approach disadvantages civil rights enforcement and reflects a broader judicial tendency to protect state power and law enforcement interests. Judicial reform is unlikely because the Supreme Court has consistently reinforced immunity and avoided clarifying the procedural split. Meaningful change must come from legislative efforts, particularly through state laws that curtail or abolish qualified immunity in tandem with advocacy strategies that support robust civil rights litigation.

Annotated by: Benedetta Palese

Kevyn McConlogue, *Beyond Statutory Loopholes, Qualified Immunity, and Internal Investigations: A Comparative Analysis of Police Accountability in the United Kingdom*, 50 BROOK. J. INT'L L. 301 (2025).

The United States faces structural problems in policing, including ambiguous statutory language, high burdens of proof, and a lack of accountability, but these can be addressed by implementing concepts from the United Kingdom reforms. The United Kingdom has made strides in police reform by rolling back blanket immunity in negligence cases and by establishing a nonpartisan third-party investigative body to handle police misconduct complaints. One potential approach for the United States is to follow the United Kingdom's example by establishing its own third-party body. It can help address some of the UK's shortcomings by granting this body genuine penal powers, removing police discretion, and enhancing protections for whistleblowers. The ambiguities within the criminal police misconduct law of 18 U.S.C. §242 can be addressed by the United States through two steps: (1) lowering the mens rea standard from willfully to knowingly or recklessly, and (2) clarifying which actions are prohibited under the statute. Congress should also statutorily eliminate qualified immunity. Ultimately, the United States should look to the United Kingdom's recent policing reforms for guidance on implementing substantive structural reforms on its own soil.

Annotated by: Victor Cohen

DIVERSITY, EQUITY & INCLUSION

Philip Lee, *SFFA V. Harvard: Racial Triangulation and the Invidious Myth of Colorblindness*, 84 MD. L. REV. 249 (2025).

In *Students for Fair Admissions, Inc. (SFFA) v. President and Fellows of Harvard College*, the Supreme Court decision that dismantled race-conscious admissions in the name of "colorblindness," Asian Americans were used as a racial wedge between white people and people of color to reinforce systematic racial hierarchies rather than dismantling them. The race-conscious admission policies employed in higher education were designed with the intention to promote racial diversity in academia. However, they have been increasingly challenged by those who advocate for a "colorblind" legal approach. Viewed through the lens of racial triangulation—the elevation of Asian Americans as a "model minority" in contrast to other groups to preserve racial hierarchy—the *SFFA* decision can be understood as reinforcing the racial status quo by casting Asian Americans as the justification for dismantling affirmative action. This dynamic reflects a long-standing contradiction: Asian Americans are marginalized from the national identity while simultaneously portrayed as superior to other minorities deemed problematic, a narrative that entrenches existing racial hierarchies. The legal system should adopt a color-conscious framework that leverages multiracial alliances to confront systemic inequalities. Rejecting colorblind jurisprudence, fostering cross-racial solidarity, and educating people on racial triangulation would move doctrine and institutions toward more meaningful equity and justice.

Annotated by: Natalia Palacino Camargo

Caroline L. Ferguson, *Diversity Hiring in the Workplace: The Implications of Students for Fair Admissions on Title VII*, 57 TEX. TECH L. REV. 443 (2025).

Workplace diversity, equity, and inclusion ("DEI") initiatives will likely remain protected from liability for discrimination despite the Supreme Court's *Students for Fair Admissions* ("SFFA") ruling to overturn affirmative action in higher education. The Court's reliance on Title VI (regarding education), which closely parallels language in Title VII (regarding employment), has since caused employers to question the legality of affirmative action and DEI in the private sector. Caroline L. Ferguson analyzes the Court's treatment of discrimination claims under both Titles and examines its longstanding practice of interpreting them distinctly. Under Title VII, the Court has focused on remedying past inequalities and preventing future discrimination or exclusion, whereas under Title VI, it has required a narrowly tailored response to actual instances of discrimination rather than broad goals of diversity. This indicates that workplace DEI initiatives with corrective or remedial goals are less likely to be impacted by the Court's Title VI reasoning in the *SFFA* cases. Employers can maintain their DEI initiatives by ensuring they are remedial, temporary, and carefully tailored under EEOC guidance, while avoiding the use of diversity as a stand-alone rationale. Nonetheless, the divergent development of case law suggests that any changes to Title VI jurisprudence resulting from *SFFA* will not affect Title VII interpretation.

Annotated by: Darci W. Siegel

Brenda Gibson, *Affirmative Reaction: The Blueprint for Diversity and Inclusion in the Legal Profession After SFFA,* 104 B.U. L. REV. 123 (2024).

In the wake of the Supreme Court's end to affirmative action in higher education, the legal profession must advance diversity and inclusion by pairing cross-cultural relationships with institutional incentives. Despite decades of attempts to achieve diversity and inclusion, the legal profession remains much less diverse than the overall U.S. population, since rule-based approaches have failed to yield desired results concerning systemic racism and implicit bias. A proposed "blueprint" pairs relationship-building with institutional accountability, drawing on lessons from business and medicine professions where diversity initiatives are tied to organizational outcomes. It calls for measurable diversity goals for legal organizations, profession-wide accountability systems, formal mentorship and sponsorship programs, and incentives for cross-cultural relationship-building at all levels of the profession. Implementing these measures would push Big Law and other legal organizations to recognize that diversity and inclusion are essential to the legal profession, both economically and institutionally. Without leveraging the legal profession's missing ingredient—its "human capital"—rule-based approaches will continue to fail in achieving the diversity and inclusion necessary to serve an increasingly diverse clientele.

Annotated by: Rajiv Malhotra

Kimberly West-Faulcon, *Affirmative Action After SFFA v. Harvard: The Other Defenses*, 74 SYRACUSE L. REV. 1101 (2024).

The Supreme Court's majority opinion in *Students for Fair Admissions ("SFFA") v. Harvard* did not eliminate the "diversity defense" for race-conscious admissions; it sharply narrowed its permissible use. In *SFFA*, the Court held that Harvard's race-based admissions policies violated Title VI of the Civil Rights Act of 1964. Similarly, in *SFFA v. University of North Carolina ("UNC")*, the Court found that UNC's race-based admissions policy violated Title VI and the Equal Protection Clause of the Fourteenth Amendment. Historically, universities have relied on the diversity defense to defend race-conscious admissions policies. However, the Court rejected this justification in *SFFA* and *UNC*, reasoning that Harvard and UNC misused the diversity rationale by reinforcing racial stereotypes, rendering the defense constitutionally insufficient. In light of the Court's ruling, legal scholars have urged institutions to move beyond the traditional diversity rationale. Proposed alternatives include a fairness-in-admissions defense or the defense of preserving federal funding, but the most compelling substitute is the remedial defense. Under this approach, a university justifies race-conscious admissions by presenting evidence of its own history of racial discrimination and demonstrating that such policies are necessary to remedy the ongoing effects of that discrimination. By grounding their admissions practice in multiple defenses, universities may still consider race as one factor among many.

Annotated by: Shikha Patel

ETHICS OF TECHNOLOGY

Jenna L Kurtz., *Melodies and Algorithms: Copyright Challenges and Licensing Solutions for Generative AI in Music*, 17 DREXEL L. REV. 241 (2024).

AI-generated music poses a significant challenge to copyright law, as current copyright laws inadequately account for generative AI programs. Generative AI systems heavily rely on datasets of copyrighted material without consent, which raises substantial infringement concerns for artists in the industry. Lawmakers must consider immediate legislative reform in AI's expanding role in music creation. Kurtz criticizes the assumption that generative AI's use of creative work involves a notion of fair use, arguing that such an assumption undermines an artist's agency and threatens their ability to control and profit from their own work, ultimately favoring the interests of corporations over individuals. Thus, to better protect artists' rights while continuing to encourage innovation, the adoption of statutory licensing is necessary to ensure fair compensation for artists. This approach aims to safeguard artists' integrity and economic interests while maintaining the fundamental developments and functions of AI in the music industry. This type of licensing scheme is crucial to maintain balance between purpose of copyright law, which is to promote creativity, along with the realities of rapidly advancing AI technologies. By creating legislation that understands generative AI's impact, legislators can contribute to the challenges at the intersection of artistic labor protection and technological expansion.

Annotated by: Naomi Niv

Allison Christians, *Seventeen Ways to Regulate Big Tech with Tax*, 78 TAX L. 1 (2024).

The United States should leverage taxation that is consistent with Supreme Court principles set out in *South Dakota v. Wayfair, Inc*., to regulate Big Tech companies domestically and internationally. Although governments have pursued oversight through congressional hearings, antitrust lawsuits, and legislation—targeting companies like Apple and Meta—regulation remains difficult because Big Tech wields immense influence in several nations while simultaneously lacking a tangible physical presence in any one jurisdiction. One method to efficiently regulate Big Tech is through taxation. A survey of proposed international approaches identifies numerous tax models for targeting digital firms and evaluates which are most workable as regulatory tools. This approach also draws on *Wayfair*, where the Court held that states may regulate businesses through taxation when such businesses do not have a physical presence in the state, such as having buildings or employees, so long as they have sufficiently availed themselves of the state's economy. The United States remains opposed to adopting changes that would allow other nations to tax American companies, at times responding with retaliatory measures. The principle in *Wayfair*, however, can apply to regulating Big Tech both domestically and internationally. Thus, the United States should reject its current rigid approach and consider tax reforms and strategies that are consistent with *Wayfair* to regulate Big Tech.

Annotated by: Chloé Quinn Sotomayor

Renna Song, *Faking It: A Proposed Solution to Counter Nonconsensual Pornographic Deepfakes*, 31 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 157 (2025).

A deep fake is multimedia created by artificial intelligence through software programs, allowing users to create fake images or videos of a real person by using only a picture of said person. Renna Song examines the growing problem of nonconsensual pornographic deepfakes, pointing out the inadequacy of state laws, federal proposals, and platform self-regulation under Section 230 of the Communications Decency Act. Nonconsensual pornographic deepfakes disproportionately target women and children, and cause severe reputational, psychological, and economic harm. The current landscape of state and federal law is fragmented, inconsistent, and largely reactive, often addressing harm only after it has already occurred. A more proactive alternative solution would create public-private partnerships with deepfake software companies to require meaningful consent, helping combat the spread of harmful deepfakes. This solution would require software companies to vet content requests, mandate consent agreements, watermark outputs, and disclose violators' identities to victims and law enforcement in exchange for receiving government incentives. By shifting regulation to the creation stage of a deep fake, policymakers can better protect vulnerable individuals by preventing harmful content before it is released, rather than relying on the current, largely reactive approach of damage control after the fact.

Annotated by: Kevin Zaicek

Tao Huang, *Free Speech Capability*, 37 HARV. HUM. RTS. J. 1 (2024).

Existing free speech theories are overly value-specific, tend to treat free speech as a negative freedom, and fail to grapple with the internet's transfer of effective speech governance from constitutional law to private platforms operating through their terms of service. Tao Huang employs the Capabilities Approach ("CA") theory to formulate a more comprehensive and modern theory of free speech. CA theory defines capability as what an individual has the realistic ability to achieve and uses it to measure justice in society. Free speech capability theory justifies free speech as a fundamental freedom that enables a dialogue between individual and collective aspirations. A dialogue through which both pursue fulfillment. Under this theory, the rights and values the Constitution protects should be honored by all actors who wield meaningful power in society, implying a corresponding responsibility to respect constitutional norms even outside government. Legislators implement the free speech capability theory by drafting laws that positively empower individuals to exercise speech and by regulating social media and other communication-based industries in ways that shape and constrain their terms of service.

Annotated by: Alexandra Burke

EQUALITY

Kathryn Menefee & Amy Matsui, *"Welfaring" The Child Tax Credit: How Racial and Gender Stereotypes have Blocked Expansions to the CTC and Undermined its Ability to Reduce Poverty*, 22 PITT. TAX REV. 43 (2024).

Racist and sexist stereotypes have historically shaped welfare policy in the United States and continue to undermine the effectiveness of the Child Tax Credit ("CTC") as an anti-poverty tool. Women of color and immigrant women make up the majority of workers in many low-wage but essential sectors, yet racialized and gendered narratives—rooted in the "welfare queen" trope and reinforced by the 1996 welfare reforms—cast them as "lazy" or undeserving and help justify limiting their access to full tax benefits. The temporary expansion of the CTC under the American Rescue Plan Act of 2021 dramatically reduced poverty, particularly among women and children, but it expired amid opposition rooted in racialized and sexist rhetoric. Policymakers also leaned on flawed studies (including a University of Chicago paper) to support stigmatizing claims that expansion would disincentivize work, despite overwhelming evidence to the contrary. Ultimately, tax benefits must be understood within broader racial politics that have long shaped welfare policy, and recognizing and rejecting stigmatizing narratives that cast certain recipients as undeserving is essential to enacting equitable reforms that meaningfully reduce poverty.

Annotated by: Clara Sarfati

Joel Mendez & Ian D. Njuguna, *Towards Universal Access: Exploring the Role and Feasibility of Fare-Free Transit in the United States*, 34 KAN. J.L. & PUB. POL'Y 371 (2025).

Free public transit can play a significant role in remedying racial and economic inequality in the United States. Long-standing inequalities have become increasingly embedded as wealth and jobs leave inner cities, often leaving the minorities who populate them with fewer employment prospects and less access to quality health and human services. If state and local legislatures implement free public transit, people living in low-income urban areas with limited job prospects and fewer quality services would be better able to afford travel beyond their neighborhoods to reach employment opportunities and essential services. This could help narrow the inequality between these residents and wealthier suburban communities with greater access to jobs and resources. Because federal, state, and local governments already provide a substantial share of public transit funding, they could replace fare revenue by expanding dedicated funding streams, such as gas taxes and similar measures. Redirecting tax revenue to fund free public transit would require legislative reform, but effective lobbying and political benefits can convince legislatures to do so. Although cities and states will face many difficult hurdles in eliminating fares, free public transit is a transformative tool for advancing social equality.

Annotated by: Eitan Szteinbaum

GENDER RIGHTS

Jessica Tueller, *Sex/Gender Segregation: A Human Rights Violation, Not A Protection*, 35 YALE J.L. & FEMINISM 67 (2024).

The existing worldwide mechanisms that create rules, regulations, and policies as to gender and sex systematically and implicitly promote and enforce a pattern of sex/gender segregation built on sex/gender essentialism, stereotyping, and hierarchy. The European Court of Human Rights' ("ECtHR") decision to require gender verification testing for intersex, trans, and gender-diverse individuals is one of many international cases that underscore the existence of seemingly perpetual mechanisms that exclude individuals from spaces or activities on the basis of sex, gender, or both. These exclusions have materialized into legal, cultural, political, and social separations that often lack justification. Even in circumstances where there is justification, the exclusions often place greater limits on the human rights at stake than the situation warrants. To reorient the conversation around sex and gender to be one of inclusion and integration, there must be an international approach that is dedicated to the understanding of sex/gender segregation's multidisciplinary effects, including but not limited to the disproportionate impact it has on women and LGBTI persons. This author concludes that sex/gender segregation can be abolished through regionally consistent institutional initiatives that both acknowledge the shortcomings of existing and past frameworks and implement gradual, context-specific solutions.

Annotated by: Jacob Wall

Robyn M. Powell, *Disabled and Disenfranchised: The Fight for Reproductive Freedom and Democracy Post-Dobbs*, 46 CARDOZO L. REV. 1385 (2025).

To triumph in the post-*Dobbs* fight for reproductive justice and bring about effective change in the reproductive rights landscape, reproductive and disability rights advocates must work together. *Dobbs v. Jackson Women's Health Organization* reshaped abortion law and access in the United States and disproportionately restricted people with disabilities' ability to obtain the healthcare they require. In making access to abortions a question to be decided by state legislatures, *Dobbs* exacerbated harmful reproductive health risks, worsened access to comprehensive healthcare, amplified economic obstacles, and eroded the bodily autonomy of people with disabilities. Robyn M. Powell outlines the issues that *Dobbs* has created for individuals with disabilities and provides recommendations for how advocates can work to remedy these deficiencies. Reshaping public opinion, leveraging lobbying efforts, increasing turnout among voters with disabilities, ensuring access to voting processes, and expanding disability representation in elected office are all essential to harnessing the political reins and discourse in the post-*Dobbs* paradigm. It is imperative to the fight for reproductive justice that the rights and needs of marginalized blocs, particularly people with disabilities, are placed front and center.

Annotated by: Matthew Rovner