ANNOTATED LEGAL BIBLIOGRAPHY

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ACCOUNTABILITY

Mackenzie Crabbe, *The Forgotten Victims: A Case for Children's Compensation Amidst Parental Wrongful Incarceration*, 40 TOURO L. REV. 1269 (2025).

Wrongful incarceration harms children as well as innocent parents, and courts should allow those children to seek damages under 42 U.S.C. § 1983 for violations of their substantive due process right to family integrity. Danny Burton's story and the Sixth Circuit's decision in *Chambers v. Sanders* show how current doctrine often denies children relief by treating a child's separation from a wrongfully imprisoned parent as merely an indirect effect of the state's conduct. Wrongful convictions tear apart thousands of families, disproportionately affect Black people, and leave children with emotional harm, stigma, school problems, and financial hardship. Because prisons often sit far from home and visitation rules can be harsh, many children lose meaningful contact with an innocent parent. Supreme Court cases protecting family life from unjustified state interference support the view that children have their own right to the parent-child relationship and suffer a direct constitutional injury when a parent is wrongfully imprisoned. Section 1983 already offers a flexible remedy and should extend to children when wrongful incarceration destroys their family relationships. Courts, therefore, should adopt the Ninth Circuit's broader view that government action can violate family integrity even without an express intent to break up the family. Children of wrongfully incarcerated parents should recover damages because wrongful imprisonment removes a parent from family life without any valid basis for imposing that loss on the family.

Annotated by: Benedetta Palese

Steven E. Raper, *A Role for Apology: Remedial Work by the Criminal Justice System*, 20 HARV. L. & POL'Y REV. 177 (2025).

Apologies should be fully available as a remedy in the criminal justice system to wrongfully incarcerated individuals. Apologies are one of the common responses humans make when they commit an act of transgression against another. For wrongly convicted individuals who were harmed by the criminal justice system and its actors, however, this response is largely absent. Statutory remedies for wrongly convicted individuals, such as compensation, do not include an apology. The author suggests that meaningful, genuine apologies should be provided as a statutory right. However, this raises several concerns, including potential First Amendment issues involving compelled speech, exposing prosecutors to future liability through their admissions, and delegitimizing the criminal justice system. To prevent undermining prosecutorial and qualified immunity, the author proposes a model statute requiring the claimants to waive all other causes of action and forms of relief in order to receive a public apology. To implement apologies as a standard remedy in cases of wrongful convictions, statutory protections must be in place.

Annotated by: Chloé Quinn Sotomayor

Alia Nahra, Note, *This Is What Transparency Looks Like: An Empirical Analysis of NYPD Misconduct After the Repeal of 50-A*, 125 COLUM. L. REV. 2035 (2025).

The repeal of New York Civil Rights Law § 50-A increased transparency in police disciplinary records but did not meaningfully reduce misconduct by NYPD officers. Its repeal was intended to reduce incidents of police misconduct by allowing easier access to records of misconduct by NYPD officers. In evaluating the effects of the repeal, multiple types of empirical studies are used to compare NYPD misconduct data from before and after the repeal. While the repeal resulted in increased transparency, these studies reveal that it has not significantly reduced incidents of police misconduct, in part because transparency operates after misconduct occurs, and the statute does not impose direct consequences, alter incentives, or address structural issues such as racism in policing. Nevertheless, there have been positive second-order effects of the repeal, such as increased journalistic coverage of NYPD misconduct due to the easier accessibility of documents and evidence related to potential misconduct. Strengthening the primary accountability mechanism, the Civilian Complaint Review Board, may help curb specific incidents of police misconduct, but a more significant overhaul and reform are vital. To combat racial targeting and the violence inherent in policing, actions such as instituting meaningful accountability measures and giving external oversight boards enforcement powers will be necessary to materially reduce police misconduct.

Annotated by: Eitan Szteinbaum

EQUALITY

Indiana Schnicer, *Dependency Law: The Punishment of Performance,* 72 UCLA L. REV. 618 (2025).

The American welfare system works in tandem with dependency law to police familial performativity and marginalizes queer, low-income, and minority family structures, casting nontraditional families as deviant, inadequate, and incapable of ensuring a child's well-being. Indeed, the performances of everyday life—the languages we speak, the families we nourish, the cultural traditions we honor, and the way we carry ourselves—powerfully shape our lived realities and societal norms. Yet the American legal system has historically resisted evolution and reinforced rigid expectations about how our identities should be performed, ostracizing those who depart from mainstream practices. Thus, our legal system promotes traditional notions of the "ideal" nuclear family, which is white, middle-class, and male-dominated. As a result, children are often separated from nontraditional parents, and family reunification is conditioned on the parents' ability to perform in accordance with the stereotype of such stable, permanent, and nuclear families. To address the multifaceted vulnerabilities of nontraditional families and children with diverse needs, the welfare system must be dismantled, and its resources reallocated to support all families, regardless of race, structure, or socioeconomic status. This much-needed shift will abolish the policing of familial performance, reduce punitive interventions and familial separation, and ensure that historically vulnerable families are given an equal opportunity to be safe, supported, healthy, and whole.

Annotated by: Darci W. Siegel

Melody Mostow, *How "Cooling Off" Periods Endanger the Vulnerable: A 50-State Study of Mandatory Separation Periods in No-Fault Divorce*, 21 NW J.L. & SOC. POL'Y 87 (2025).

States should repeal mandatory separation-period requirements for no-fault divorce. Mandatory separation periods in no-fault divorce do not further policy goals or align with contemporary societal dynamics. Furthermore, they do not reflect evidence-based understandings of family stability or domestic violence risk, and neglect the urgent need to protect vulnerable spouses and children. A no-fault divorce is a legal dissolution of marriage that does not require either spouse to prove the other's wrongdoing or fault. Many states require couples seeking a no-fault divorce to live separately for a "cooling off" period before being able to obtain a divorce. Melody Mostow conducts a study of how each of the fifty states approaches no-fault divorce and whether they require a mandatory separation period. Through this analysis, Mostow finds that mandatory separation policies do not meaningfully disincentivize divorce and often harm vulnerable spouses and children. The author finds that the implementation of mandatory separation policies does not directly correlate with lower divorce rates. Moreover, spouses in abusive relationships may be unable to quickly leave such relationships, which may negatively affect them and their children. Because of the potential harm to spouses and children, and the fact that separation periods do not disincentivize divorce, states should repeal these mandatory separation periods nationwide.

Annotated by: Matthew Rovner

Seline Wiedemer, *Unwanted Dollars, Unwanted Tenants: Source of Income Discrimination and a Proposed Federal Remedy*, 32 GEO. J. ON POVERTY L. & POL'Y 503 (2025).

Source of income ("SOI") discrimination against Section 8 Housing Choice Voucher recipients undermines federal housing policy and must be prohibited through a federal amendment to the Fair Housing Act. Although the voucher program is designed to expand access to economically diverse neighborhoods, landlords' ability to refuse voucher holders prevents recipients from securing higher-opportunity housing and perpetuates residential segregation. Existing state and local anti-SOI discrimination laws often fail to address this practice due to narrow statutory language that limits judicial interpretation. Landlords may also circumvent existing anti-SOI discrimination laws through facially-neutral, but in practice discriminatory, income and credit requirements. Addressing this circumvention requires specific language in anti-discrimination statutes. Taking these lessons into account, the Fair Housing Act should be amended to include source of income as a protected category, broadly defined to encompass housing vouchers and other forms of public assistance. Coupled with regulatory action from the Department of Housing and Urban Development, this reform would increase voucher utilization and further federal goals of housing stability, desegregation, and economic mobility.

Annotated by: Kevin J. Zaicek

Julia M. Baumel, *Beyond Affordability: Combating Systemic Housing Barriers for Formerly Incarcerated People*, 33 GEO. J. ON POVERTY L. & POL'Y 153 (2026).

Formerly incarcerated people and those with criminal records are often excluded from housing based on their criminal histories, which public housing authorities ("PHAs") can review at will, contributing to higher rates of homelessness than in the general population and perpetuating a cycle of criminalization and homelessness. PHAs and private landlords make automatic denials of those with criminal records, regardless of any rehabilitation or current risk, leading to housing instability and discrimination against people with criminal records. Julia Baumel draws on social science research, federal regulatory frameworks, and emerging Fair Housing Act ("FHA") litigation to analyze housing discrimination against people with criminal records and potential reforms through legal mechanisms. To eliminate criminal history-based discrimination in housing, policymakers and lawyers can revive the version of the Department of Housing and Urban Development's ("HUD") proposed rule that would require individualized assessments in public housing and voucher program admissions. Policymakers can also strengthen disparate impact and discriminatory-intent claims under the FHA to comprehensively challenge exclusionary private screening policies. These changes could help lower recidivism rates associated with housing insecurity by ensuring reduced housing discrimination against people with criminal records.

Annotated by: Jordan Pollack

Julie A. Nice, *The Irrationality of Punishing Homelessness*, 66 SANTA CLARA L. REV. 1 (2026).

The Supreme Court should have challenged the city law in *City of Grants Pass v. Johnson* by applying an Equal Protection analysis. In 2024, the Court upheld the local ordinance banning camping on public property, concluding that the ban did not constitute cruel and unusual punishment for unhoused people. While this local ordinance was neutral on its face, it was not neutral in its application. Julia Nice argues that this ordinance would fail even a rational basis review because the law failed to directly address or reduce homelessness and thus was not based on a legitimate or plausible rationale. In addition, by relying on the dictum that poverty is not considered a suspect or quasi-suspect class, the Court has not actually resolved whether unhoused people, as a group, constitute a protected class. For now, due to intervening actions by the Oregon legislature, local camping bans are required to be objectively reasonable and consider the totality of circumstances, including those of people experiencing homelessness, frustrating the city's goals. However, had the Supreme Court applied an Equal Protection analysis, it would have found that, under rational review, the city's law would fail because it is well established that criminalizing homelessness is ineffective and causes significant harm.

Annotated by: Nancy Larcher

GENDER FAIRNESS

Kathryn L. Moore, *Gender Disparity in Social Security*, 33 ELDER L.J. 1 (2025).

The U.S. Social Security program is rooted in historical gender assumptions that have contributed to the disparate treatment of women. Enacted in 1935 during a period shaped by traditional gender norms, Congress designed Social Security around the expectation that men would serve as the primary familial breadwinners and women would occupy a conservative caregiving role. Although these assumptions are outdated, the program's structure has not kept pace with modern gender roles: this is because the legislature's modifications to Social Security's eligibility requirements and benefit structures have been repeatedly based on assumptions about gender and spousal dependency. While Congress eliminated explicit gender differentials in the Social Security Act's 1977 amendments, structural inequities persist because the program's derivative benefits continue to reflect its original design. Scholars have proposed four primary reforms to address these disparities, including efforts to reform Social Security's surviving spouse and minimum benefits, to recognize caregiving, and to adopt an earnings-sharing framework. While the latter two proposals have the potential to address the biases that shape Social Security's gender-based disparities, they remain merely theoretical and have gained limited political traction. As a result, although Social Security is now facially gender-neutral, its underlying structure continues to produce unequal outcomes. Ultimately, Kathryn Moore concludes that without meaningful legislative reform, women will continue to be disproportionately disadvantaged by the Social Security system.

Annotated by: Jacob Wall

Bailey K. Sanders, *An Antitrust Approach to Sex Equality*, 45 COLUM. J. GENDER & L. 287 (2025).

Antitrust law can promote gender equality by improving consumer markets that affect women's labor force participation. Modern antitrust jurisprudence has largely focused on maximizing economic efficiency through the consumer welfare standard. Efforts to incorporate social goals such as equality are often dismissed because they are assumed to conflict with efficiency. Bailey Sanders challenges this assumption by showing that promoting women's labor market participation can also advance consumer welfare. The approach calls on antitrust enforcers to prioritize the competitive functioning of consumer markets that enable women to participate in the labor market. Although constitutional doctrine rejected laws that assigned women to unpaid caregiving roles, gender norms and institutional structures still pose obstacles. Women disproportionately bear caregiving responsibilities and must navigate workplaces designed around the ideal worker model. Pregnancy and childbirth impose biological burdens that workplaces historically designed for male workers do not fully accommodate. The proposed antitrust approach targets consumer markets where households outsource domestic labor like childcare, infant formula, reproductive healthcare, maternity care, and contraception. Many of these markets currently face high prices, limited supply, or market concentration. By boosting competition in consumer markets, antitrust law can improve economic efficiency and promote gender equality by supporting women's workforce participation.

Annotated by: Cynthia Li

Claire Carey, *Wisconsin's Birth Cost Recovery: A Gendered Policy That Polices Families and Weighs the Fiscal Interest of the Government Ahead of the Best Interests of the Child*, 40 WISCONSIN J. GENDER & SOC. 93 (2025).

Birth cost recovery ("BCR") is a harmful policy that should be eliminated and replaced by other economic and healthcare programs, such as the Child Tax Credit and Postpartum Medical Care. BCR is a policy that polices behavior and harms unmarried fathers who have children. Under BCR, the state recovers Medicaid costs associated with childbirth by requiring mothers to name the father in order to receive Medicaid support. The cost of birth is then collected directly from the father as part of child support. This policy has several negative outcomes. First, it has a racially disproportionate impact on Black parents, as 88% of Black mothers enrolled in Medicaid are unmarried. Second, the policy may deny Medicaid support to unmarried mothers who refuse to name the father out of fear of domestic violence. Finally, BCR drains funds from unmarried fathers, leaving them with less money to support their vulnerable children. BCR should therefore be eliminated and replaced with other economic and healthcare policies that better support parents and children.

Annotated by: Victor Cohen

Scott Lowder, *Revenge Porn and Antidiscrimination Law: A Traditional Solution for the Modern Age*, 43 YALE L. & POL'Y REV. 526 (2025).

Victims of revenge porn can best be protected through the creation of a protected class and anti-discrimination laws. Revenge porn is defined as the distribution of sexually graphic images or other media of individuals without their consent. While several states have criminal statutes and civil causes of action, seeking redress is often difficult because of the overlap between revenge porn and free speech. Anti-discrimination law may be the best way to help victims of revenge porn combat its aftereffects. Under existing anti-discrimination laws, victims of revenge porn could bring a Title VII suit on the basis that further marginalizing victims of revenge porn has a disparate impact on gender minorities. While anti-discrimination statutes should not displace civil or criminal remedies, their adoption would be a significant step forward for victims of revenge porn. Additionally, the definition of victims of revenge porn should include victims of media that was initially produced voluntarily but later becomes unauthorized, as well as digital forgery. As AI-generated pornography gains popularity, anti-discrimination legislation should be passed quickly to better protect victims of deepfake pornography.

Annotated by: Rachel Landis

Christina Jackson, *Gender Discrimination in the Workplace: A Retrospective Analysis of "Young v. United Parcel Service, Inc., 575 U.S. 206 (2015)" Through the Lens of Feminist Jurisprudence*, 46 MITCHELL HAMLINE L.J. PUB. POL'Y & PRAC. 193 (2025).

Courts should adopt a "reasonable pregnant woman standard" and apply strict judicial scrutiny to pregnancy discrimination claims to ensure that legal protections are grounded in the actual biological and social realities of pregnant workers. In a retrospective analysis of the *Young v. United Parcel Service, Inc.*, the author argues that the legal system erred by relying on the *McDonnell Douglas* framework to evaluate claims of disparate treatment. While the current framework establishes a multi-step "burden-shifting" process for employees to prove they were treated unfairly through indirect evidence, it is too rigid and is not designed for the unique nature of pregnancy. Specifically, forcing pregnant women to find "comparators"—other non-pregnant employees with similar limitations—is an obstacle that makes it very difficult for pregnant workers to successfully win their cases. Instead, courts should adopt a "reasonable pregnant woman standard" that would remove the requirement to identify comparators and focus on whether a reasonable person experiencing pregnancy would consider the denial of an accommodation a significant burden on their working conditions. Ultimately, courts should recognize the inherent uniqueness of pregnancy and craft protections under a strict scrutiny standard that reflects that reality by centering future legal standards on women's lived experiences.

Annotated by: Haley Friefeld

IMMIGRATION RIGHTS

Karla McKanders, *The Racialized Retaliatory State: Weaponizing Immigration Law to Criminalize Dissent*, 32 WM. & MARY J. RACE, GENDER & SOC. JUST. 63 (2025).

Despite the equal protection guaranteed by the Fourteenth Amendment, the United States has created a permanent class of people who live in a constant state of insecurity because immigrants are often treated as undocumented even when they have legal status. The problem and history of this issue stems from systemic racism embedded in immigration laws, which have long been used to retaliate against and criminalize immigrants who challenge dominant American ideologies. The executive branch has invoked the justification of "national security" and "foreign affairs" to label racialized migrants as criminals and deny them constitutional and human rights. Historically, this racial coding began with policies like the Chinese Exclusion Act, which labeled an entire race and nationality as dangerous, and continued through events such as the Black Lives Matter protests in 2020. Karla McKanders proposes that immigration law must be rebuilt from the ground up through radical reform designed to dismantle the existing structure and stop treating racialized migrants as inherently deportable and unprotected by the Constitution. To implement these reforms, policymakers should reject the current enforcement framework that relies on national security and foreign affairs powers to exclude migrants and instead create policies that respect constitutional and human rights protections.

Annotated by: Shikha Patel

Paul Wickham Schmidt, *Representation in the Age of Repression: America's Real Immigration Crisis Is the Lack of Representation in Immigration Court*, 48 U. ARK. LITTLE ROCK L. REV. 67 (2025).

The federal government's persistent failure to provide appointed counsel in immigration removal proceedings has created a constitutional crisis that demands a new, privately led institutional response. Congress has statutorily barred government-funded representation in removal proceedings under 8 U.S.C. § 1362, and courts have upheld this restriction even though the Fifth Amendment's Due Process Clause applies to all persons in the United States, regardless of citizenship. This "representation gap" is worsened by immigration courts located in inaccessible detention facilities and constant docket reshuffling, which impede pro bono efforts and contribute to high attorney burnout. By creating a National Representation Center, a privately funded, independent-of-government entity that would serve as a centralized clearinghouse for funding, recruiting, training, and deploying pro bono counsel nationwide, the representation gap can be reduced while avoiding the current unfavorable political climate. Individuals such as Judge Robert Katzmann have already launched local private initiatives that have achieved a 93% success rate in immigration courts, demonstrating how representation dramatically improves both outcomes and court efficiency. By building on the proven models of pro bono leadership and channeling them through a National Representation Center, the private sector can fulfill the constitutional promise of due process that all three branches of government have failed to deliver and provide immigrants facing removal with the constitutional guarantees that all persons in the U.S. should enjoy.

Annotated by: Bailey Mandell

Stacy Caplow, *Derailing Deportation Through State Legislation*, 59 U.S.F. L. REV. 35 (2025).

U.S. states and municipalities should influence federal immigration enforcement to prevent unlawful deportation. States and cities can disrupt or slow the deportation process through measures grounded in constitutional principles. These solutions occur within the context of a broader movement by states to protect lawful permanent residents and immigrants from unlawful deportation. In *Padilla v. Kentucky*, defense counsel was required to provide an accurate and complete immigration report to noncitizen criminal defendants and advise them of the negative immigration consequences of a conviction. *Padilla* was the first case to acknowledge deportation as a punishment and that continued efforts should be made to reduce deportation. Recently, states including California, Washington, Nevada, and New York have enacted new sentencing laws that shield individuals convicted of misdemeanors from deportation. Deportation has punitive effects on individuals that rise to the level of cruel and unusual punishment under the Eighth Amendment. Post-conviction relief should therefore be available under the Fifth, Sixth, and Eighth Amendments. As no federal relief is in sight for lawful immigrants at risk of unlawful deportation, state and local initiatives must take further steps to protect their community members.

Annotated by: Gwyneth Campbell

LGBTQ+ RIGHTS

Jeffrey A. Dodge, *The Unfulfilled Promise of Obergefell for Children of LGBTQ+ Parents: Advancing Nondiscrimination Laws for Familial Association*, 52 N. KY. L. REV. 141 (2025).

Since the 2015 U.S. Supreme Court decision in *Obergefell v. Hodges*, same-sex marriage and parenting have increased significantly in the United States, yet a concurrent rise in anti-LGBTQ+ legislation has rendered children of LGBTQ+ parents targets of conservative political forces. Growing homophobic and transphobic rhetoric fuels discriminatory conduct against these children through exclusions by private schools, medical providers, and religious institutions. Meanwhile, *Obergefell's* promise of dignity for the children of LGBTQ+ parents remains unfulfilled, with no federal, state, or local legal protections specifically addressing their needs. This gap demands a federal remedy. Supreme Court precedent has reinforced *Obergefell's* underlying principles and supports the idea that protecting children from discrimination based on their parents' identity is a well-recognized federal concern. Therefore, the most viable path forward is to amend and pass the Equality Act to include familial association alongside sexual orientation and gender identity in the definition of sex discrimination. Such an amendment could benefit other marginalized communities, broaden the coalition for equality, provide immediate legal protections for children of LGBTQ+ parents, fulfill the promises made in *Obergefell*, and introduce the concept of familial-association nondiscrimination more broadly.

Annotated by: Natalia Palacino Camargo

Matthew Oster, *Get Educated: Ask, Tell, and Say Gay*, 98 ST. JOHN'S L. REV. 795 (2025).

Florida's "Don't Say Gay" ("DSG") law is an unconstitutional form of government-sanctioned discrimination against LGBTQ+ individuals in public education. Despite its constitutional flaws, courts are unlikely to provide effective relief, leaving Congress as the necessary lever for meaningful protection. In the past, the "Don't Ask Don't Tell Law" ("DADT") similarly imposed sweeping discriminatory measures that silenced LGBTQ+ military personnel. The language and purpose of DSG and DADT are largely analogous, leading to the suppression of LGBTQ+ voices while making harassment more difficult to address. Both DADT and DSG silenced and terrorized LGBTQ+ people while analyzing the arguments for why DSG is unconstitutional under the First and Fourteenth Amendments. However, like its predecessor, Floridians challenging the DSG law will likely struggle because federal and state courts often afford significant deference to legislation involving the military and public education, limiting meaningful judicial remedies. As a result, Congress should enact legislation to protect Florida's LGBTQ+ students and faculty from discrimination, analogous to Congress's role in repealing DADT. Because Congress is best positioned to correct the constitutional harms inflicted by DSG, it should take the lead in preventing its constitutional harms.

Annotated By: Kian Shahabi

Heather L. Johnson, *How Can We Help LGBTQ+ Law Students Thrive in Law School?* 60 GONZ. L. REV. 31 (2024-25).

Reform of legal education is necessary to confront the rise in anti-LGBTQ+ legislation, hate crimes against LGBTQ+ individuals, and systemic inequalities against LGBTQ+ individuals. In 2024, the Biden Administration issued a new Department of Education rule regarding the enforcement of Title IX, protecting LGBTQ+ students from discrimination in education based on gender identity and sexual orientation. Using First Amendment arguments, such as freedom of religion, opponents have brought several cases seeking exemptions from Title IX. In the future, this rule may either reach the Supreme Court or be removed by the Trump Administration, leaving LGBTQ+ students unprotected. Due to executive orders and state-level legislation attacking Diversity, Equity, and Inclusion ("DEI"), DEI directors and professors who highlight these topics need increased support and resources. The anti-oppressive framework for legal education can be used to lessen the harm the law school environment imposes on LGBTQ+ students. This approach to addressing bias and fostering psychological safety includes professors treating each student as an individual, incorporating inclusivity into teaching and classroom exercises, and using students' preferred names and pronouns. Reforming legal education to make LGBTQ+ students feel safer in the classroom will strengthen legal education by encouraging discussion and fostering diverse viewpoints.

Annotated by: Alexandra Burke

RACIAL DISCRIMINATION

Dan Sweeney, *Advancing Race-Conscious Remedies by Addressing Past Government Discrimination in Homeownership*, 53 FORDHAM URB. L.J. 515 (2025).

Race-conscious housing remedies may survive strict scrutiny when governments tie them to specific, documented discrimination in homeownership and narrowly tailor them to address its continuing effects. Throughout the twentieth century, federal, state, and local governments excluded Black and other minority families from homeownership through exclusionary zoning, racially restrictive covenants, redlining, and discriminatory mortgage and subsidy programs, producing lasting disparities. Evanston's local reparations initiative and Washington State's Covenant Homeownership Program show how jurisdictions can use historical and statistical evidence to identify past discrimination in their own communities and connect it to present-day disparities. These examples also illustrate how governments can design limited remedies, such as down payment or homeownership assistance, with clear goals and endpoints. These programs are especially well-positioned to survive strict scrutiny, even after the Supreme Court curtailed race-conscious admissions in *Students for Fair Admissions,* because they pursue a compelling remedial interest, rest on identifiable past discrimination, and provide clearer limits than race-conscious admissions. Properly designed homeownership remedies, therefore, offer a constitutionally viable means of addressing enduring racial disparities created by past government discrimination.

Annotated by: Jungeun Yu (Evelyn)

Martin S. Mina, *Liberté or Égalité? Strictly Scrutinizing "Colorblind" Equality Jurisprudence in the United States and France*, 26 RUTGERS RACE & L. REV. 154 (2025).

Current American colorblind constitutionalism contains significant internal inconsistencies that become apparent when compared with the French approach to race-neutral equality. France and the United States have developed a distinct approach to race, with France prohibiting all racial classifications and the U.S. subjecting governmental uses of race to strict scrutiny. Martin Mima compares these two systems to trace how the Supreme Court has adopted a liberty-centered skepticism toward governmental uses of race, culminating in *Students for Fair Admissions v. President of Harvard College*, which struck down race-conscious university admissions. This comparison reveals three inconsistencies: French colorblindness stems from a broad prohibition of all arbitrary social distinctions, while the U.S. reserves its highest scrutiny almost exclusively for race; France accepts restrictions on self-expression to achieve conformity, while such restrictions conflict with American individual liberty; and France rejects group factionalism, while America embraces it. Race-neutral processes are themselves a form of racialization that burdens minorities, privileging whiteness as the default through the "Transparency Phenomenon," in which actions are viewed separately from race, encoding racial hierarchy into a system they claim to transcend it. As such, constitutional colorblindness remains a race-based policy that perpetuates the dignitary harms it seeks to remedy.

Annotated by: Rajiv K. Malhotra

Lacy Johnson, *Giving Birth Should Never Be a Death Sentence: Chapter 621 and the Path to Material Equity*, 56 U. PAC. L. REV. 273 (2025).

Systemic racism is deeply embedded in women's healthcare and contributes to higher maternal mortality rates among Black women than women of other races. Black women in the nineteenth century were used as experimental subjects to advance medicine, and their lack of autonomy as enslaved people denied them protection from exploitation. This history perpetuates distrust, mistreatment, and exploitation, as well as false notions about Black women that continue to influence modern medicine. Disproportionate treatment and implicit bias against Black mothers in medical institutions, and the harmful effects of this discrimination, must be addressed. California has emerged as a leading state in implementing progressive statutes and regulations aimed at achieving birth equality. Bills and Acts such as SB 464, Momnibus, and Chapter 621 address the health outcomes of Black mothers in California and aim to reduce maternal mortality through measures such as implicit bias training in medical institutions. Although these bills are a step in the right direction, disparities continue to persist. While implicit bias training is an effective initial step towards educating healthcare professionals, it may not drive long-term institutional change on its own. Instead, implicit bias training must be implemented alongside efforts to combat the larger structural factors that perpetuate racial inequalities.

Annotated by: Clara Sarfati

Janel A. George, *Place, Power, and School Pushout: Defensive Localism and the Limits of Education Law*, 125 COLUM. L. REV. 2145 (2025).

Exclusionary and punitive disciplinary measures, such as suspensions and expulsions, disproportionately impact Black students and encourage "school pushout," removing students from educational environments. Historically, exclusionary discipline grew in response to desegregation after *Brown v. Board of Education*, and the Supreme Court allowed this practice to persist under local control in *Goss v. Lopez*. This local control, or "localism," allows communities significant authority over school governance. Despite past praise, localism has enabled racial and economic segregation as wealthier, predominately white communities protect resources and exclude marginalized students, while under-resourced, majority-Black districts have often adopted harsher disciplinary systems. Marginalized school districts may rely on punitive discipline to remove students perceived as difficult to manage, reflecting "defense localism," where schools use discipline to maintain control in under-resourced settings. By contrast, majority-white suburban schools, shaped by notions of "white innocence," discipline their students more leniently. This form of defense localism causes detrimental "citizenship harms," such as lower graduation rates, lost instructional time, increased contact with the criminal justice system, and further racialized perceptions. Jamel A. George proposes reimagining discipline to support students through services that foster community and participation while confronting structural inequalities created by local governance.

Annotated by: Gabi Dube