# ANNOTATED LEGAL BIBLIOGRAPHY

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# CHILD WELFARE

Lisa Kelly, *Abolition or Reform: Confronting the Symbiotic Relationship Between "Child Welfare" and the Carceral State*, 17 STAN. J. CIV. RTS. & CIV. LIBERTIES 255 (2021).

Black and Native-American children are removed from their homes and families at disproportionately high rates due to systemic racism in the child welfare system. This form of policing families is detrimentally counterproductive to the welfare of children the system is supposed to protect. Because the child welfare system punishes minor behavioral flaws, children are directed towards incarceration and introduced to higher degrees of mistreatment. Many children are moved into inadequate placement options, which sometimes include juvenile facilities, making them especially vulnerable to law enforcement. These feelings of neglect breed instability and a lack of identity. The author discusses two perspectives on how to improve the child welfare system: (1) the reformist perspective, which enacts reforms to improve the current system with the goal of public safety while also holding the perpetrators accountable; and (2) the abolitionist perspective, which argues that the project of child welfare requires us to reinvest the funds in social services and community-based systems. The complete eradication of the child welfare system is not feasible, and therefore both ideas must be integrated by following a set of guidelines to minimize harm done by the system. The first and most important step is checking if the system recognizes the harm it creates. Lastly, the author suggests abolishing the duty of mandatory reporters.

**Annotated by**: Jane Weiss

Melody R. Webb, *Building A Guaranteed Income to End the "Child Welfare" System*, 12 COLUM. J. RACE & L. 1 (2022).

Rather than promoting the welfare of children, the "Child Welfare" System ("CWS") perpetuates cycles of poverty and contributes to family instability, especially in families headed by single, Black mothers. For example, in Washington D.C. where Black children comprise fifty-two percent of children in the city, eighty-two percent of cases in the foster system pertain to Black children. Webb posits that the system, once designed to promote social welfare and alleviate poverty, has since been weaponized by the state to punish Black parents. The racialized state of the CWS is the consequence of decades of denying Black families equitable public aid, leaving Black mothers highly susceptible to poverty. An inherent consequence of poverty is that parents are forced to sacrifice some needs for more urgent ones, which can lead to reports made against parents who are trying their best to provide for their children. Furthermore, Black mothers are more likely to be scrutinized by caseworkers and judges who have the discretion to provide financial assistance or other benefits to achieve the program's overall goal of a child's well-being. Webb amplifies the proposal of a non-profit organization, Mother's Outreach Network ("MON"), suggesting the implementation of a permanent local guaranteed income program in D.C. to replace CWS. The proposed program, through racial economic justice for Black mothers, would bring Black families closer to liberation from state intrusion and decrease family separations.

**Annotated by**: Jessica Waldman

# CONSTITUTIONAL LAW

Steven Hess, *Presidents Trumping the Courts: Considering Alternatives to the President as Judicial Nominator*, 90 GEO. WASH. L. REV. 761 (2022).

When the Framers vested the power of judicial appointment in the Executive, they intended to maintain a separation of power and protect judicial independence. Since then, however, changes in the political system and the growing sentiment that the President is not accountable to the public have caused scholars to question whether the Executive is the correct branch to vest this power. Although the appointment power is supposed to be shared between the Executive and Legislative Branches, the Senate's response to an appointee is highly politicized. A sympathetic senate will concede to the President's nomination out of fear of risking Presidential approval on their legislative agenda. An antagonistic Senate, on the other hand, can oppose the nomination and create major disputes which delay appointment confirmations. The author suggests that the Speaker of the House should replace the President in appointing Supreme Court Justices to avoid a separation of powers conflict. Unlike the President who can win an election without a popular vote, the Speaker is more accountable to the public and better represents the people's democratic will. Considering the significant conflicts of interest between the branches of government and that the Executive is not an accountable figure, the Speaker of the House would better represent the interests of the country when nominating Supreme Court Justices.

**Annotated by**: Julia Maxman

Gabriela Vasquez, *American Exclusion Doctrine: A Response to Liberal Defenses of Stare Decisis,* 28 NAT'L BLACK L. J. 1 (2022).

In recent years, liberals have taken up support for the traditionally conservative principle of stare decisis with the goals of preserving prominent liberal precedents. However, Gabriela Vazquez discourages this liberal embrace of stare decisis by illustrating through a Critical Race Theory ("CRT") lens how precedents can have disastrous and exclusionary effects, even if they are overturned. Surveying Johnson v. M'Intosh, Dred Scott v. Sandford, the Chinese Exclusion Cases, and the Insular Cases, Vazquez shows that the Supreme Court's exclusionary citizenship decisions remain prevalent in American jurisprudence even after they were overturned. The author therefore argues that the Court's general hesitance to overturn cases, and willingness to distinguish them instead, has left common law filled with exclusionary and oppressive doctrines. With this practice, the Court further incorporates harmful precedents into American legal reasoning. Liberals should not embrace stare decisis, a legal tool that has repeatedly proven itself to operate in oppressive ways. Instead, liberals should use CRT to reimagine what it means to achieve progress through litigation and reexamine what the role of law ought to be in the context of citizenship.

**Annotated by**: Sean Dalton

# CRIMINAL JUSTICE

Bailey D. Barnes, *The Havoc Death Wreaks: Civil Rights Challenges to Capital Punishment*, 31 B.U. PUB. INT. L.J. 1 (2022).

Bailey D. Barnes explores the harmful effects of capital punishment on parties other than the sentenced defendants and proposes avenues for these parties to seek a permanent injunction that would halt the use of the death penalty. There are five categories of individuals who are wronged by capital punishment to the extent that they have justiciable claims: (1) families of the victims of capital crimes, who must reckon with the knowledge of, and guilt for, yet another death; (2) capital defendants' families, whose loved one is executed by the state; (3) judges in capital cases, who must impose the death penalty or risk losing their seat on the bench; (4) death row and executional correctional officers, who are forced to become killers themselves; and (5) state governors, who hold human lives in their hands and must bear the moral and political consequences of such a decision. The author considers potential claims each of these parties can bring and their relative viability, concluding that valid causes of action exist under the Eighth and Thirteenth Amendments. The Eighth Amendment's protection against cruel and unusual punishment is not limited to defendants, and thus all the parties could argue that capital punishment violates their Eighth Amendment rights. A historical rendering of the Thirteenth Amendment's protection against "badge[s] and incident[s] of slavery" could arguably include a prohibition on the death penalty as it relates to Black capital defendants. The author concludes by addressing and resolving other potential justiciability issues that may arise in connection with these claims.

**Annotated by**: Sarit Perl

Maisie Ide, *Behind Bars and Flames: Protecting the Occupational Health and Safety of California's Incarcerated Firefighters*, 42 BERKELEY J. EMP. & LAB. L. 237 (2021).

California's firefighting force is significantly comprised of incarcerated firefighters who, by virtue of their incarceration, are disproportionately Black and Latinx. They face dangerous situations that result in a greater likelihood of fatality or injury than non-incarcerated firefighters. Especially as climate change increases the frequency and severity of California wildfires, California must focus on developing regulatory labor protections for incarcerated firefighters or risk further perpetuating racial injustice within the criminal justice system. Maisie Ide suggests that California look to the United Nations Standard Minimum Rules for the Treatment of Prisoners to update CalOSHA and worker's compensation regulations that protect incarcerated firefighters. CalOSHA protections can better serve incarcerated firefighters by: (1) halting pre-inspection notifications for workplaces with incarcerated workers; (2) allowing incarcerated workers to participate in CalOSHA appeals hearings; (3) paying incarcerated firefighters during training to invoke CalOSHA's jurisdiction; and (4) extending restrictions on non-incarcerated minors' working hours to incarcerated minors. Worker's compensation should provide temporary disability benefits for incarcerated firefighters and compensate incarcerated workers as favorably as non-incarcerated workers. Lastly, California should extend worker's compensation to cover work done while working for sentencing reduction.

**Annotated by**: Noa Gutow-Ellis

Cissy Morgan, *The Fundamental Right to be Parented and the Implications for Children with Incarcerated Mothers*, 37 BERKELEY J. GENDER L. & JUST. 111 (2022).

In the last few decades, the number of incarcerated women in the United States has increased dramatically. This has, in turn, increased the population of children with incarcerated mothers. In most states, an incarcerated mother will be separated from her newborn within hours of birth. These newborns then enter the custody of family, friends, or the already overburdened foster care system. In this article, Cissy Morgan contends that these newborns possess a substantive due process right to be parented, which could be exercised through the implementation of prison nursery programs. Justice Stevens' dissent in *Troxel v. Granville* recognizes children as constitutionally protected actors who have a fundamental interest in preserving familial relationships. While maintaining that the implementation of prison nurseries would benefit incarcerated mothers and their young children, Morgan ends her article with a condemnation of mass incarceration and the American penitentiary system in general. A child's right to be parented cannot be exercised fully while the prison industry continues to grow exponentially and while people of color are disproportionately incarcerated.

**Annotated by**: Sarah Brody

Christina Payne-Tsoupros, *Removing Police from Schools Using State Law Heightened Scrutiny*, 17 Nw. J.L. & Soc. Policy 1 (2021).

There is a significant correlation between the elevation of police presence in schools and an increase in the school-to-prison pipeline for Black students, especially those with learning disabilities. This is due to the historical use of the "school resource officer" program—an initiative to have police officers in schools—which began in the 1980s with a mission to be "tough on crime" and enforce "zero tolerance" policies. Statistics demonstrate that the active involvement of "school resource officers" in schools causes a disproportionate number of suspensions and expulsions among Black students. This educational interruption is an impediment to their academic success, and therefore undermines students' right to a complete education as protected by their state constitutions. Ending the school-to-prison pipeline will require the abolition of the school resource officer program, as the program threatens a state's ability to meet its legal obligation to provide equal education to all students. The author stresses the power of utilizing the state legislative avenue, while also reserving hope that, eventually, there will exist federal fundamental protections against inadequacies in the public school system.

**Annotated by**: Hailey Dobin Reichel

# EMPLOYMENT

Linda S. Anderson, E*nding The War Against Sex Work: Why It's Time To Decriminalize Prostitution*, 21 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 72 (2021).

Linda S. Anderson advocates for the decriminalization of commercial sex work in the United States, arguing that there are imperative constitutional considerations raised by the criminalization of sex work. For example, while the Supreme Court has identified specific fundamental privacy rights, the limits of these rights are unclear, making it theoretically permissible for courts to propose protected forms of sexual activity that can fall within the zone of privacy. Despite this opportunity, however, lower courts have incorrectly restricted the zone's parameters. Anderson presents the state's interests in supporting criminalization but responds by explaining how decriminalization can reduce violence towards sex workers, promote public health, help identify and protect sex trafficking victims, reduce harmful police surveillance, and safeguard an individual's liberty to determine how they engage in sexual activity. Anderson proposes supporting the movement to decriminalize sex work through elevating sex workers' voices, targeting the decriminalization of online and indoor sex work, prohibiting discrimination against commercial sex workers, and legalizing online advertising of sex work, starting with repealing Stop Enabling Sex Traffickers Act ("SESTA") and the Fight Online Sex Trafficking Act ("FOSTA"). More importantly, Anderson emphasizes that it is crucial for society to recognize that sex workers have the right, liberty interest, and potentially the privacy interest to participate in commercial sex work.

**Annotated by**: Tabatha Cortes

Katherine A. Macfarlane, *Disability without Documentation,* 90 FORDHAM L. REV. 59 (2021).

People with disabilities must undergo extensive steps in order to secure accommodation in the workplace. This article examines the social model of disability accommodation and how it has been disregarded by the ADA in favor of the medical model. The medical model requires doctors to corroborate disabilities, whereas the social model does not. Some employees may not want to discuss their disability with a doctor or may not be able to afford such visits, and therefore cannot access documentation. They nonetheless deserve equal rights in the workplace. Employees with undocumented disabilities struggle to find stable employment because of the burdens imposed by the medical model. The author proposes the same hands-off approach used to accommodate employees' religious beliefs be applied to disability accommodation. Employers and courts do not extensively question employees' religious beliefs or practices, and instead trust their employees to honestly convey their necessary accommodations. Employees' assertions are by default accepted and are only questioned when they have asked for a similar accommodation for non-religious reasons and have been denied. Proponents of the medical model cite fear of fraudulent disability claims as the reason to require additional documentation. However, if an employer has a legitimate reason to believe a claim is fraudulent, she can request additional documentation just as she would to verify a religious accommodation. The author advocates for putting people with disabilities at the center of their own accommodations.

**Annotated by**: Madison Dougherty

Taylor Arluck, *How the National Labor Relations Board is Still Failing Marginalized Employees,* 87, BROOK. L. REV. 1007 (2022).

Section 7 of the National Labor Relations Act ("NLRA") outlines rights of employees, including the right to engage in protected "concerted activity." To protect employees who exercise these rights, Section 8(a)(3) of the NLRA bars employers from discriminating against employees exercising their rights, unless such employees simultaneously engage in abusive conduct. The author argues the NLRB should abandon its *Wright Line* burden-shifting causation test, because it fails to protect marginalized employees from coworkers who engage in bigoted abusive conduct and provides remedies such as reinstatement and backpay by the NLRB. The NLRB should instead adopt a *per se* standard, which would strip NLRA protection from any employee who also engages in bigoted abusive conduct during a labor dispute with their employer. Adopting a *per se* standard: (1) would address *Wright Line*'s flaws in employee bigotry cases; (2) is supported by NLRB precedent under Section 8(a)(3); (3) follows an employment law trend finding that a single bigoted act violates federal antidiscrimination law; (4) could receive bipartisan NLRB support; (5) aligns with contemporary social norms and movements; (6) does not erase the underlying contentiousness of labor disputes; and (7) would not become susceptible to employer abuse. Under a *per se* standard, bigotry or abuse by an employee would not be protected, regardless of the motivation behind an employer's action against the employee.

**Annotated by**: Maleah Bradley

# ENVIRONMENT

Ben Handy, *New York State and New York City Must Take Drastic Measures to Increase All New Yorkers' Access to Quality Greenspaces*, 35 J. OF C. R. ECON. DEV. 37 (2022).

Proximity and access to greenspaces—in the form of open gardens, parks, and urban green areas—is essential to the overall improvement of New York City's socioeconomic and environmental prosperity. Nonetheless, lower-income communities are often excluded from "high quality and quantity" greenspaces. This is a direct result of poorly distributed funding; heavy reliance on the public-private model, which fosters unequal access; and apathy from the Parks Department board members and New York City's government officials. The author discusses the environmental, social, economic, and psychological benefits of increasing the volume and proximity of "high quality" greenspaces for all inhabitants, regardless of their social status. To that aim, the Parks Department's top government officials should be democratically elected by New Yorkers, allowing for accountability and efficiency. Accountable elected officials—as opposed to appointed ones—more equitably fund "impactful projects" and better advocate for marginalized communities. Further, the City should pass legislation allocating at least fifty percent of discretionary funds from the Parks Department's budget to each city council member's plans and projects. Equitable representation and allocation of funds provides easy access and proximity to greenspaces for lower-income communities.

**Annotated by**: Isabel Ortega-Romero

# GENDER

Sonia K. Katyal & Jessica Y. Jung, *The Gender Panopticon: AI, Gender, and Design Justice*, 68 UCLA L. REV. 692 (2021).

The binary system of gender embedded in coding artificial intelligence results in data invisibility and the erasure of transgender and nonbinary individuals. Machine learning outcomes in surveillance technology, which create automated forms of misrecognition in gender identification, create a panoptic infrastructure of discrimination and self-censorship for transgender and nonbinary persons. The gender panopticon stems from philosopher Jeremy Bentham's concept of a prison disciplinary system marked by constant surveillance, which manifests today in artificial intelligence coded to monitor and target the LGBTQ+ community. The author advances the concept of design justice – a movement to curate an inclusive process of coding – as an avenue for recourse against the gender panopticon. Design justice may manifest in data protection with gender self-determination and the right to be forgotten, which shifts focus away from the interests of an organization and towards enabling people to exercise their right to object to the processing of their data. While artificial intelligence has produced a system of surveillance and erasure for transgender and nonbinary persons, meaningful changes in coding that center on self-determination and design justice present an opportunity to elevate these communities into a place of empowerment and reclaim control over their identities.

**Annotated by**: Arifa Abrahim

Eliza Chung, *Trans Adults Deserve a Right to Sue for Gender-Affirming Care Denied at Youth,* 24 CUNY L. REV. 145 (2021).

With the notable increase in the acknowledgement and acceptance of transgender and gender-diverse people, there has been a rise in the population of self-identifying trans youth. Although there has been significant progress in the social understanding of gender and an increased recognition of the validity of hormone replacement therapy for adolescents, many doctors still deny gender-affirming care to trans youths. New York State should lengthen or eliminate the statute of limitations for transgender adults. Doing this would grant trans people an extended opportunity to sue for negligent malpractice rooted in denial of transition-related health care in their youth. When medical professionals fail to support trans youth, they are often forced to delay their medical transitions, causing future problems such as an increase in expenses for transitioning and an increased risk of psychological trauma in adulthood. The author analogizes the trauma experienced by trans people who were denied gender-affirming care during their youth to the trauma experienced by victims of childhood abuse and recommends using legal framework from child abuse cases as a model in restructuring the statute of limitations for trans youth denied gender-affirming care. By extending the statute of limitations, the law would recognize that being cheated out of a childhood and ending up with a "disfigured body" that was forced to undergo an incongruent puberty is a harm warranting damages.

**Annotated by**: Emma Guggenheimer

# LGBTQIA+

Mark A. Leinauer, *The Moral Sex: How Policing the Moral Development of Daughters Harms Parents in Custody Disputes*, 36 BERKELEY J. OF GENDER, L., & JUST. 1 (2021).

Mark Leinauer examines the unique burden gay parents face in custody adjudications created by the judicial impulse to police the moral development of their young daughters as to ensure that these women do not grow up to challenge traditionally heterosexual domestic roles. This impulse makes courts adverse to placing daughters in the custody of gay parents because courts perceive such placement as a serious threat to society's traditional heteronormative norms. While scholars have dutifully examined the impact of gender bias on custody adjudications, Leinauer focuses on the unexplored intersection of gender and sexual orientation on custody cases involving gay parents. Leinauer's studies establish that historically, gay parents are denied custody at a seventy-four percent rate when daughters are at issue but are only denied custody at a forty-nine percent denial rate when sons were at issue. These studies also reveal that, when custody of daughters is at issue, courts are more concerned with the need to protect children from immoral exposure, societal morality, and the historic illegality of the same-sex intimacy. Although these results are not surprising given our nation's history of confining women to traditional domestic heterosexual roles, this data suggests that a full accounting of the gay experience requires the consideration of multiple regimes of bias and extensive intersectional research.

**Annotated by**: Rachell E. Henriquez

Kathleen Stoughton, *Toxic Therapy: Examining the Constitutionality of Conversion Therapy Bans in Light of* Otto, 30 AM. U. J. GENDER SOC. POL'Y & L. 81 (2022).

The American Psychological Association disavows sexual orientation conversion therapy, and ample evidence indicates that LGBTQ+ youth who have undergone conversion therapy are twice as likely to commit suicide as those who have not. Still, it is practiced by many mental health providers. The Third and Ninth Circuits have upheld the constitutionality of laws banning conversion therapy against freedom of speech challenges, reasoning that because these laws regulate "professional speech," they are not subject to the same strict scrutiny review as other regulations on speech. However, following those decisions, the Supreme Court held in *Becerra* that professional speech is afforded the same First Amendment protections as other forms of speech. Relying on *Becerra*, the Eleventh Circuit in *Otto* found a conversion therapy ban unconstitutional because it regulated professional speech and did not pass strict scrutiny. The free speech framing of this issue is confused: anti-conversion therapy laws only seek to prohibit professional *conduct*, which the Court in *Becerra* notes is within the States' purview, even if it incidentally regulates professional speech. Moreover, conversion therapy bans meet the standard for strict scrutiny review since the protection of minors is a compelling State interest and the laws are narrowly tailored to prohibit very specific medical practices.

**Annotated by**: Zachary Verbit

Courtney G. Joslin, *Nonmarriage: The Double Bind*, 90 GEO. WASH L. REV. 571 (2022).

The law fails to protect the interest of non-married couples because the bounds of family law do not extend to non-married couples and private law doctrines exclude transactions that are too similar to familial matters. Under family law, unmarried partners that have joined their households and then wish to separate are denied the financial benefits and protections provided to divorcing couples because unmarried partners are regarded as legal strangers. For lack of contract for legal recognition as romantic partners, they are denied protections afforded to normative families. Like a joint business endeavor, merging a household requires combining each partner's finances, labor, and skills. Upon entering into a joint business venture, the implied business partners will receive legal recognition and protection and remedies should their business dissolve. Romantic partners are denied the same benefits on the basis that their investment was is too "family-like." The author concludes by describing a minority approach taken by some courts, which hold that parties performing intentional acts that implicate a partnership need not have knowledge of the act's legal effect for it to create a partnership.

**Annotated by**: Lily Leib

Riley Palmer, *Trojan Unicorn: Exploiting Religious Exemptions to Advance LGBTQIA+ Law*, 2021 WIS L. REV. 1541 (2021).

The judicial system's inability to democratize judicial review forces people away from seeking solutions through the court system, but this can be countered by implementing a framework of Informed Comparative Scrutiny ("ICS") in super-statute conflict analysis. The author argues that, to advance LGBTQIA+ rights and reproductive rights, super-statutes can act in place of constitutional amendments since constitutional amendments are significantly more difficult to achieve. Super-statutes are new in their framework, have broad public recognition, and have effects beyond the statute. Super-statutes can streamline the process of communicating the public's views to the judiciary, but they must be analyzed in a manner that allows the court to further affirm its protections and expand on its constitutional meaning. Using Justice Marshall's sliding scale, the author proposes to implement the ICS framework which would limit subjective determinations by considering both the weight and nature of a guaranteed right or related interest. ICS would allow courts to make decisions on statutes in conflict based on comparative infringement and the importance of the rights infringed, allowing courts to consider Congress's intent and protect those outside the traditionally protected classes such as the LGBTQIA+ community.

**Annotated by**: Arisha Andha

# POVERTY

Carli Ross, *Constitutional Law–Penalizing the "Unsightly": An Argument for the Abolishment of Laws Criminalizing Life Sustaining Behaviors Among the Homeless*, 43 W. NEW ENG. L. REV. 219 (2022).

Localities that elect to criminalize homelessness rely on laws which criminalize sleeping or camping in public places, arguing that they are necessary to protect public health and safety. However, these laws are largely ineffective at reducing the long-term causes of homelessness. A more effective solution to the homelessness crisis would be housing these populations by investing in more affordable housing. As compared to the current system of incarcerating the indigent, the Housing First model is more cost-effective and better addresses the root causes of homelessness. More importantly, punishing individuals for "life-sustaining behaviors" that they are powerless to change is a violation of the Eighth Amendment's prohibition on status crimes following the Supreme Court case *Robinson v. California*. Despite this precedent, the Ninth Circuit in *Martin v. City of Boise* recently held that anti-sleeping and anti-camping statutes were enforceable as long as local shelters had available beds for the homeless. Here, the author argues that the Ninth Circuit failed to address the constitutional prohibition on status crimes and neglected to identify strict shelter rules which limit the availability of beds. Courts must declare ordinances that criminalize the unavoidable consequences of homelessness as unconstitutional. If these anti-sleeping and anti-camping laws were firmly rejected, governments would be encouraged to address homelessness through more comprehensive and just means.

**Annotated by**: William Fox

# RACE

Nicole Smith Futrell, *The Practice and Pedagogy of Carceral Abolition in a Criminal Defense Clinic*, 45 N.Y.U. REV. L. & SOC. CHANGE 159 (2021).

Carceral abolition ethics should be examined, taught, and practiced in criminal defense clinics, despite the presumed tension between upholding abolitionist ethos and choosing to work within the criminal justice system. The modern American carceral system is predicated upon a view that the system is a neutral actor working to make society safer and just. This system is often taught and discussed in a manner that is detached from its racist history and evolution, despite its function as a device that inherently upholds a system of white supremacy in America. Public defenders and clinical law students necessarily operate within that space and, thus, should consider their role thoughtfully. By educating law students working in criminal defense clinics on the ethics of carceral abolition and providing those students with alternative approaches to criminal justice, there is an opportunity to employ methods that further the goals of the abolition movement. Although abolitionist ethics and the current system of criminal justice and criminal defense may not easily reconcile, it is important to study, consider, and practice working within the criminal justice system in ways that align with abolitionist ethics.

**Annotated by**: Samantha L. Woods

Katilyn Alger, *More Than What Meets the Ear: Speech Transcription as a Barrier to Justice for African American Vernacular English Speakers*, 13 GEO. J. L. & MOD. CRITICAL RACE PERSP. 87 (2021).

African American Vernacular English ("AAVE"), or Black English, is a casually spoken dialect of English correlated with socioeconomic status, race, and education. Lack of thoughtful understanding of AAVE amongst court reporters, interpreters, and judges is a barrier to justice for Black people and other speakers of AAVE. Court reporters' or interpreters' attempts to standardize ("sanitize") AAVE to the goal of readability for a standard audience threatens Black Americans' guaranteed due process right to meaningful appellate review. Through attempts to make AAVE comply with standard English, testimony is misconstrued, omitted, or interpreted to the detriment of the speaker. However, a formal implementation of court interpreters fluent in AAVE is not a solution to the systemic problem of biases against speakers of non-standard English because of the stigma it creates. Instead, the author suggests the following: under mandatory training and testing programs, court interpreters should learn AAVE's grammatical rules and cultural and social aspects in areas it is widely used. Linguists should collaborate with courts to develop interdisciplinary research on language barriers to justice. Constitutional due process includes a defendant's right to accurate transcripts, since they are a key to meaningful appellate review. The deep lack of understanding and appreciation for AAVE is a great barrier to equal justice.

**Annotated by**: Grace Ouyang

Andrew Chandler, *Tearing Down "No Section 8" Signs: The Disparate Racial Impact of Source-Of Income Discrimination and the Validity of Louisville's New Law Against It*, 60 U. LOUISVILLE L. REV. 127 (2021).

The effects of government-imposed racial segregation have perpetuated into present day, and discrimination is deeply ingrained in Louisville, Kentucky's private housing market. Section 8 Housing Choice Voucher Program ("HCV") is a federally funded housing subsidy program that provides rent assistance vouchers to low-income individuals, the vast majority of whom are people of color and individuals with disabilities. Although the objective of the Fair Housing Act of 1968 ("FHA") is to create equal access to housing, segregation still persists as a result of private landlords engaging in disguised forms of racial discrimination, illustrated by their refusal to accept vouchers. Historically, the federal judiciary has done very little to extirpate source-of-income discrimination. This note examines Louisville's Amended Fair Housing Ordinance, which protects voucher holders by prohibiting source-of-income discrimination and requiring that landlords accept housing choice vouchers. The author looks to the challenges faced by similar successful jurisdictions for guidance and to further support his optimism that this law will withstand the inevitable legal challenges. Louisville's Amended Fair Housing Ordinance will promote integration and provide equality and housing mobility to Black families by eliminating a form of discrimination that serves as a subterfuge for unconstitutional race-based discrimination.

**Annotated by**: Alexandra DeBenedictis

Tonya M. Evans, *De-Gentrified Black Genius: Blockchain, Copyright, and the Disintermediation of Creativity*, 49 PEPP. L. REV. 649 (2022).

The current epidemic of misappropriation of the work of Black creators, inventors, and innovators has existed throughout American history. Because economic power in the United States is grounded in property ownership, this issue of misappropriation greatly contributes to the racial wealth gap. The 1976 Copyright Act (the "Act") was intended to address the issue of creators' expropriation by implementing a transfer termination right, which allows all copyright creators to terminate any lifetime transfer of copyright, even decades after its initial transfer. The objective was to give creators more control over their work and put them in a better bargaining position, but in practice, the Act fails to achieve its objective with respect to Black creators. Many copyright-holders from marginalized communities lack the education and resources to comply with the complex rules of notice and delivery required to terminate transfers of their work. In this article, the author proposes using blockchain's decentralized technology, smart contracts, and non-fungible token standards to better effectuate Congress's goal in passing the Act with respect to Black creators. Using smart contracts would give creators assured lifetime control over their work without undergoing the formalities the Act requires. Through this autonomous method of copyright termination, Black creators would be able to reap the benefits of their work after its initial transfer without being prevented by complex rules that are advantageous only to the most educated and wealthy creators.

**Annotated by**: Zoe Zingale

Norrinda Hayat, *A Critique of the Black Commons As Reparations*, 45 N.Y.U REV. OF L. & SOC. CHANGE 370, (2022).

Throughout their history, white capitalist actors have continually dispossessed Black Americans of their wealth-generating land, through both legal and illegal methods, which has resulted in the profound racial wealth-gap that exists today. To adequately address the economic inequality created by land dispossession, reparations proposals must prioritize returning wealth to individuals so that intergenerational wealth accumulation is possible. While proposals calling for collective land holding, often called "Black Commons," have certain anti-capitalistic appeal, this will not lead to the lasting community empowerment necessary to correct the wealth gap. History suggests that community land holding has proved to be economically unsustainable and precludes the possibility of future individual asset building—the very same opportunity taken from Black citizens at the time of land dispossession. To eradicate the wealth gap, reparation efforts must reproduce appreciating assets, which requires individually targeted wealth returns. The Black Farmers Act of 2020—seeking to return land to individual Black farmers—serves as a good example of a reparations program that allows for equity-generating asset building. While cooperative economic programs may have valuable potential in a post-reparations context, reparations aimed at debt payment for Black landowners must create an opportunity for individuals to accumulate wealth in the future.

**Annotated by**: Adeline Beattie

Silvia M. Radulescu, *Segregation, Racial Health Disparities, and Inadequate Food Access in Brooklyn*, 29 GEO. J. ON POVERTY L. & POL'Y 251 (2022).

Inadequate and disparate access to healthy food for racial minorities in Brooklyn, New York is the result of segregation policies and practices promulgated by the federal and local governments in the twentieth century. Federal loan programs in the housing market that denied crucial financial services based on race and ethnicity; redlining practices; and financing segregated subdivisions led to disinvestment in minority communities, resulting in economic deterioration. This article sheds light on how these policies create disparities in access to healthy food between white and minority communities due to the predatory business practices of supermarkets and fast-food restaurants, economic depression, and the overall difficulty of maintaining a healthy diet. Although there are current policies that seek to improve supply-side access to healthy food—through local zoning and tax incentives—achieving meaningful improvements requires policymakers to also focus on consumer-side policies. Consumer-side policies that the government should implement include increasing purchasing power, rent stabilization, and providing education aimed at teaching people how to maintain healthy diets and how to shop for and prepare healthy foods.

**Annotated by**: Nicholas Cinquina

# RACE AND GENDER

Margaret Hu & Shoba Sivaprasad Wadhia, *Decitizenizing Asian Pacific American Women*, 93 U. COLO. L. REV. 325 (2022).

Under the shadow of the 2021 Atlanta Massacre (the "Massacre"), the authors trace the recent and disproportionate increase in hate crimes targeting Asian Pacific American ("APA") women to discriminatory sentiments largely propagated by United States immigration law and enforcement policies. Dialogue surrounding the Massacre has at times neglected to acknowledge the racism and sexism that sparked this act of violence—a culmination of America's long history of "decitizenizing" Asian and APA women. Decitizenship moves beyond the formal loss of citizenship experienced in denaturalization by depriving individuals of the privileges associated with belonging, political access, and cultural power. Decitizenship is rooted in early anti-Asian legislation, most significantly the Page Act of 1875, which prohibited women from China, Japan, or Asian Pacific countries from entering the United States for lewd and immoral purposes. The Page Act was motivated by stereotypes hypersexualizing Chinese women and served to further frame the idea that the immigration of Chinese women posed a moral threat to the United States. Since the Page Act, many immigration laws have similarly promoted the negative depiction of Asian and APA women, decitizenizing them and excluding them on a socio-political level. The authors advocate for a greater understanding of discriminatory immigration laws and awareness of how these laws exclude APA women from full citizenship.

**Annotated by**: Marcy Pineda

William B. Heberling, *Stop Surveilling My Genre!: On The Biometric Surveillance of (Black Trans) People*, 20 SEATTLE J. FOR SOC. JUST. 861 (Spring 2022).

William B. Heberling offers a critical framework to analyze the experience of Black trans people as subjects of state surveillance, specifically with respect to the REAL ID Act (the "Act"). The author relies on the works of Sylvia Wynter, Simone Browne, and other Black feminist theorists to explain how white supremacist narratives, reproduced throughout humanity, arbitrarily define modern conceptions of race, gender, and identity. These strict boundaries deny Black trans people any opportunity for self-determination and expose them to high rates of violence, including state surveillance. The REAL ID Act exemplifies disproportionate surveillance of trans people, as it mandates that all state IDs include gender identity markers without any legitimate government purpose. Heberling proposes several different legal and political solutions to the Act, including amending the Act's minimal ID requirements, challenging the Act's gender requirement as a Tenth or Fourteenth Amendment violation, increasing the number of gender marker options available on IDs, and transitioning to municipal ID programs. However, Heberling ultimately deems every proposal insufficient as each re-legitimizes government surveillance and upholds the status quo. A societal shift towards restorative processes and away from status quo reforms is required to meaningfully decrease state violence against Black trans people.

**Annotated by**: Cassidy Moon

# VOTING

Emily Rong Zhang, *Voting Rights Lawyering in Crisis*, 24 CUNY L. REV. 123 (2021).

COVID-19 exacerbated the pre-existing voting rights litigation crisis. This author reviews electoral changes needed to promote social distancing and pandemic-era litigation spurred by these needs and analyzes three major doctrines that have influenced such litigation. The pandemic revealed the need for the public to social distance while casting ballots during the 2020 election cycle. While other major institutions such as schools and workplaces made unprecedented adjustments, proposed changes to voting regulations were far less disruptive. One positive change enacted by many jurisdictions was vote-by-mail, which is now considered a pandemic gold standard for limiting social contact while providing individuals an opportunity to participate in the democratic process. However, challenges to voting law during the pandemic illustrated the proliferation of obstructionist litigation and the comparative failure of reform litigation. Finally, the three doctrines most impactful to voting rights litigation revealed new challenges during the pandemic. The *Purcell* Principle, the rule that election laws cannot be changed close to an election, has been applied to obstruct changes in voting regulation that would make distanced voting easier. The Independent State Legislature Theory has allowed voting rights victories secured in state courts to be taken away in federal courts. The *Anderson-Burdick* standard—which weighs the burdens the challenged law imposes on voters against the state's interest in maintaining the challenged law—is a sound theory but has flawed applications leading to uneven evidentiary standards.

**Annotated by**: Gabriela Amaral