ANNOTATED LEGAL BIBLIOGRAPHY

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EMPLOYMENT DISCRIMINATION

Michelle Bilsky, *Stop Woke Acts: How the Legislative Attack on CRT Harms Equality in Employment*, 18 FLA. A&M U. L. REV. 25 (2024).

By expanding workplace training programs about discrimination, employers can avoid penalties from adhering to anti-woke laws like Florida's "Stop WOKE Act" that conflict with Title VII of the Civil Rights Act of 1964. Title VII (and the field of employment discrimination law more broadly) developed out of the 1960s civil rights movement with the goal of correcting racial inequalities in the workplace. Today, Florida's "Stop WOKE Act" undermines this aim by prohibiting employers from requiring employee training on concepts that constitute discrimination. The Act's supporters claim that it defends against the harms of teaching critical race theory—specifically the promotion of white guilt—and does allow training on these concepts, if conducted objectively. Yet, the Act's overly vague language makes it difficult for employers to determine what constitutes objectivity. Employers acting in unlawful and discriminatory ways in an attempt to adhere to the Act—such as failing to train employees on anti-discrimination policies or respond to harassment complaints—may also face fines from the EEOC or get sued by employees. Instead, employers should expand training programs to raise awareness about topics such as implicit bias and stereotyping, which reduce workplace hostility and promote greater inclusivity. These programs enable employers to raise an affirmative defense against Title VII claims using their good-faith efforts to actively combat and educate employees about discriminatory workplace conduct.

Annotated by: Arrianne Bautista

Craig R. Senn, *Ending Political Discrimination in the Workplace*, 87 MO. L. REV. 365 (2022).

Currently, a significant disparity in workplace legal protections exists between public sector employees and private sector employees regarding discrimination based on political affiliation. These protections determine whether an employer can lawfully terminate an employee due to political affiliation. Public sector employees enjoy greater protection when it comes to political discrimination; they are generally protected by the First Amendment and 42 U.S.C § 1938. Additionally, federal government civil service employees are protected by the Civil Service Reform Act of 1978 (CRSA). In contrast, private sector employees have much less protection. Neither the First Amendment nor CRSA protection applies to private sector employees. Rather, they must rely on state law that is often inadequate, as about half of states lack protections—and those that do offer limited protections. While 42 U.S.C § 1985 offers some potential safeguards, caselaw greatly limited this. To address this significant disparity in workplace legal protections, Senn suggests that "political affiliation" be made a characteristic under federal employment discrimination law in Title VII of the Civil Rights Act of 1964. As political tension grows, it becomes easier than ever to identify a person's political views and subject them to potential political discrimination. The time has come for Congress to act and include political affiliation as a protected characteristic under Title VII to protect all employees.

Annotated by: Daisy Elliot

AGE DISCRIMINATION & ELDER RIGHTS

Gabrielle Siroonian, *Whose District Line Is It Anyways? How Partisan Gerrymandering Impacts Elderly Americans' Access to Health Care*, 32 ELDER L.J. 189 (2024).

The United States cannot implement real healthcare reform for its elderly without addressing its partisan gerrymandering issues. Every ten years the United States redraw its voting maps to ensure that the electoral districts accurately represent the will of the American people. This redistricting process has a substantial effect on the average citizen, as these maps greatly influence who will be elected into office, and elected officials bear the responsibility for proposing, sponsoring, and voting on legislation. Despite its importance, the redistricting process remains plagued by partisan gerrymandering that dilutes the political will of the majority and allows political parties to redraw districts to retain power. For instance, even though fifty-nine percent of voters residing in states that have not expanded Medicaid have voiced support for the expansion of healthcare coverage, this change has yet to occur. For elderly Americans—who are already vulnerable from age-related health issues and high healthcare costs—this has a substantial impact, as the majority of them rely on publicly funded programs to meet their healthcare needs. To solve this problem, Gabrielle Siroonian suggests the need for widespread reform. She recommends that individual states amend their constitutions to require that redistricting be done by an independent, bipartisan commission, rather than the state legislature alone. It is crucial for voters to understand the substantial effects redistricting has on their lives so that they, too, can advocate for reforms like those needed for elderly healthcare.

Annotated by: Chase Cohen

David Ray Papke, *Good Intentions Are Not Enough: A Critique of Elderabuse Law*, 31 ELDER L.J. 279 (2024).

States should make procedural changes to accommodate the needs of elder abuse victims and impose criminal liability so that victims can viably turn to the courts with civil actions or criminal prosecutions. Physical and emotional elder abuse has been on the rise since 2002, and the COVID-19 pandemic exacerbated many of these issues, making them continuously misunderstood by Americans and lawmakers alike. Socio-economic and demographic factors—such as a person's living situation, social life, race, sex, and ethnicity—can factor into an individual's susceptibility. Elder abuse is underreported in part because of the way state statutes are drafted and structured, and states with thorough definitions of elder abuse see increased effectiveness. Legislatures have historically modeled elder abuse statutes off child abuse statutes, but Papke posits that this imprudently fails to recognize the different social contexts involved, which results in ineffective statutes. Elder abuse cases that are investigated must contend with additional barriers, including concerns about losing the caregiver's support and practical problems like limited resources and remedies. Convicted abusers facing punishment often take plea bargains that reduce the penalties they face. But if elder abuse is classified as a hate crime, convicted abusers may be subjected to sentencing enhancements. The changes to elder abuse laws have good intentions, but more effective laws regarding the reporting, prosecution, and punishment of elder abuse are needed to protect this vulnerable population.

Annotated by: Jianling (Jay) Hu

FIRST AMENDMENT RIGHTS

Caroline Mala Corbin, *Free Speech Originalism: Unconstraining in Theory and Opportunistic in Practice*, 92 GEO. WASH. L. REV. 633 (2024).

The Supreme Court's increasing reliance on originalism in First Amendment cases highlights its limitations, particularly concerning freedom of expression. While originalists claim that this approach constrains judicial discretion, it often enables judges to entrench existing power structures by selectively interpreting history to align with their views. The Roberts Court exemplifies this by using originalism to block hate speech bans but avoiding the interpretive theory in deregulatory "free speech Lochnerism" cases. This selective application legitimizes outcomes that favor the powerful and marginalize the less privileged, underscoring originalism's limitations in providing meaningful judicial restraint. Corbin argues that applying originalism in freedom of expression cases can be particularly problematic due to the inherent uncertainty in determining the original meaning of the First Amendment. This uncertainty allows judges to justify outcomes that align with their preexisting views under the guise of constitutional necessity. Furthermore, historical context suggests that a true originalist approach would likely narrow free speech protections significantly, which may explain why it is often sidestepped. The author concludes that originalism should be resisted in freedom of expression cases because, as demonstrated in the context of the First Amendment, the theory serves to entrench privilege rather than offer objective judicial restraint.

Annotated by: Hannah Cohen

Stephanie Johnson, *Legal Limbo: The Fifth Circuit's Decision in Turner v. Driver Fails to Clarify the Contours of the Public's First Amendment Right to Record the Police*, 57 B.C. L. REV. 245 (2018).

The Fifth Circuit of the United States needs to create an applicable standard for recording police. The overwhelming majority of Americans now own smartphones and use social media, allowing footage to disseminate to a broad audience in a short time, which situates private citizens as creators of news in equal proportion to professional journalists. In a political climate where the public is acutely concerned about police misconduct, and where advocacy organizations such as the ACLU implore citizens to film police interactions, filming the police contributes to the public's capacity to hold law enforcement accountable, curtails abuses of power, and informs decisions about policing policy. In *Turner v. Driver*, the Fifth Circuit provided redress to a plaintiff alleging violations of his First and Fourth Amendment rights by the police in retaliation for his filming them. The court merely held that recording the police is a protected First Amendment right subject to reasonable parameters (time, manner, and place), but declined to specify how these limitations must be interpreted. In failing to particularize the law, the Fifth circuit abdicates its judicial duty to delineate the right to record police's zone of conduct. The author looks to legislation enacted in Colorado, Oregon, and California, but maintains that it is the judiciary's role to strengthen the authority of its decision and provide guidance to future claimants. Creating an applicable standard would give the public a clear path forward which it currently lacks.

Annotated by: Dan Krack

Benjamin T. Suslavich, *Nonconsensual Deepfakes: A "Deep Problem" for Victims*, 33 ALB. L.J. SCI. & TECH. 161 (2022-2023).

The rise of deepfakes—a technology which uses machine learning to alter an existing video—has led to a multitude of issues for those whose image has been maliciously or even humorously appropriated. While there has been some implementation of legislation at the state level and overseas, there are still glaring holes that allow creators and publishers of deepfakes to go without retribution, even when the faked content is pornographic in nature. Multiple areas of law are equipped to address the dangers of deepfakes, including right of publicity, defamation, and their associated statutory hurdles. There are many possible solutions that aim to expand anti-deepfake legislation beyond the nonconsensual pornography statutes that exist, such as enhanced criminal statutes, copyright protections in non-commercial use scenarios, and reduction of the immunity given to internet service providers. These solutions must be balanced with the First Amendment and the fact that greater levels of censorship can be harmful in other ways; information should not be taken down solely because it is unflattering or negative. The rise of deepfakes is analogous to the rise of the printed word in the 1700s, which highlights the need for protections against the spread of harmful and false information as society slowly moves towards the mindset that the videos we see are not always reflective of reality.

Annotated by: Andrew Greenberg

LGBTQ+ RIGHTS

Tom Butcher, *Human Rights, Trans Rights, Prisoners' Rights: An International Comparison*, 18 NW. J.OF L. & SOC. POL'Y 43 (2023).

Trans prisoner rights have been associated with both trans rights and human rights as a method to protect trans prisoners, but this perspective may be damaging to ensuring the rights of these prisoners and another framework to promote these rights should be considered. Examining the benefits and drawbacks to utilizing the human rights framework and other perspectives to protect transgender prisoners in the United States, Canada, the United Kingdom, Australia, India, Argentina, and Costa Rica, Tom Butcher compares the differing approaches each country takes to trans prisoner rights, along with the efficacy of these methods. factors such the status of LGBTQ+ rights, commitment to uphold a framework of human rights, and utilizing historical recognition of non-binary gender identities that have led these countries to adopt their unique methods to address this topic are also discussed. When countries champion human rights or have large public support for trans rights in general, they should utilize the framework of human rights to protect trans prisoner rights. Advocates in countries that do not share these conditions should instead adopt alternative methods such as appealing to cultural traditions, as in India, for example, to achieve the shared goal of protecting trans prisoners. The author concludes that, despite trans rights being included as part of the human rights protections for trans prisoners, when a county wants support for international human rights or trans rights generally, other methods should be utilized to promote these rights.

Annotated by: Jeremy Coppola

Kyle C. Velte, *Childress Lecture: Debunking the Narrowness Narrative in LGBTQ Religious Exemption Claims*, 68 ST. LOUIS U. L.J. 885 (2024).

In responding to recent United States Supreme Court rulings that grant religious exemptions from anti-discrimination laws, many LGBTQ rights organizations have adopted a "Narrowness Narrative" approach to interpret these rulings. Kyle Velte identifies it as a framework to downplay the broader implications of these decisions. By framing these opinions as having case-specific impacts, organizations obscure the significant and harmful precedent they set for future discrimination against marginalized communities. Empirical research shows that rulings like *Masterpiece Cakeshop* grant narrow exemptions and contribute to an environment that normalizes discrimination. These decisions are part of a larger judicial trend toward favoring the interests of conservative Christian claimants, often at the expense of LGBTQ rights, under the guise of First Amendment protections. Such framing creates a false sense of security within the community and detracts from the broader legal strategy necessary to counter conservative attacks. Focusing too narrowly on LGBTQ-specific issues leads to fewer opportunities to build coalitions with other civil rights movements to achieve broader progressive goals. A broader, more intersectional approach that highlights the Court's radical reworking of First Amendment jurisprudence is necessary in order to galvanize a stronger, more unified response to the growing legal and political challenges faced by marginalized communities.

Annotated by: Yuwen Huyan

Ernst Hunter, *What's Good for the Gays is Good for the Gander: Making Homeless Youth Housing Safer for Lesbian, Gay, Bisexual, and Transgender Youth*, 46 FAM. CT. REV. 543 (2008).

In order to protect unhoused youths, states need to be more involved in regulating housing programs for LGBT youth. In the United States, LGBT youth face a higher risk of violence in unhoused youth housing programs. LGBT youth make up a disproportionate number of the unhoused youth population primarily because these individuals are often forced to leave their homes or run away when their families discover their sexual orientation or gender identity. Hunter argues that, in order for these youths not to be subjected to further hate and violence, agencies regulating unhoused youth housing programs as well as state legislatures need to be more involved in regulation. This can be accomplished by requiring licensure and implementing more intensive program monitoring. Through such measures, regulatory authorities would reduce violence not only against LGBT youth but all youth in housing facilities. The author suggests reform measures such as: requiring showering facilities to be made private, placing a low cap on the number of occupants in the programs, prohibiting youth housing facilities from discriminating based on sexual orientation or gender identity, training and educating staff on sensitivity and non-discrimination policies, and creating more LGBT-specific housing programs. Making a space safe for LGBT youth makes it safer for everyone.

Annotated by: Molly McGuinness

Kimberly Adams, *Tightrope Walking: Balancing Theatre Teachers' Academic Freedom of Expression with the Implementation of Florida's Stop Woke Act and Don't Say Gay Bill*, 29 BARRY L. REV. 102 (2024).

The passage of Florida's Individual Freedom Act and Educational Equity Act (better known as the "Stop Woke Act" and the "Don't Say Gay" bill) forces teachers to balance their academic freedom with vague restrictions on discussions of race, sexual orientation, and gender identity, and in doing so endangers free-thinking society. Teachers' right to academic freedom is not explicitly protected by the First Amendment; rather, courts employ the *Pickering-Connick* test and the *Garcetti* doctrine to balance the State's interest in regulating public employees' speech against those employees' rights to express themselves. Adams proposes combining these tests with tests from *Parducci v. Rutland* and *Tinker v. Des Moines Independent Community School District*, wherein a teacher's expression is protected if: (1) it relates to classroom instruction; (2) it does not significantly disrupt educational process; (3) it proves significant to an employer's adverse employment decision; and (4) adverse employment action would not have been taken in the absence of that expression. Finding theater teachers in a unique position to develop students' abilities to discover and express themselves freely, the author uses them as a case study to recommend—at least while challenges to Florida's laws are pending—that teachers maintain open communication about serious class topics but stay equipped with alternatives for students or parents who conscientiously object.

Annotated by: Alyx McKinnon

RACIAL DISCRIMINATION

Chaz Arnett, *Black Lives Monitored*, 69 UCLA L. REV. 1384 (2023).

Modern surveillance technologies need reform; they are being exploited as a tool for the disproportionate targeting of Black communities and thus continuing historical trends of racial control and oppression. The longstanding use of surveillance technologies traces back to practices of monitoring and regulating Black bodies during an era of slavery to contemporary law enforcement procedures and policing. Arnett explores the selective methods in which surveillance technologies such as aerial surveillance, facial recognition systems, and social media monitoring are used in response to public gatherings against police violence—which negatively target Black bodies. Advocates against police surveillance encounter significant challenges when attempting to use First and Fourth Amendment protections to promote resistance and reform. Advocates are subjected to colorblind reasoning in both technology standards and legal frameworks, which prevents impactful change. Arnett proposes reforms like increased oversight of law enforcement and tech companies, an enactment of the legislature on digital privacy, and new transformative legal doctrines as crucial measures necessary to ensure that surveillance practices do not perpetuate racial discrimination but uphold civil liberties. The disproportionate targeting of Black communities through modern surveillance technologies exacerbates racial inequalities and criminalization, but reform could lead to a racial reckoning that ends these unjust practices in policing, prisons, and legal jurisprudence.

Annotated by: Ushna Khan

Alexa A. Panganiban, *Addressing the Root Cause of COVID-19 Hate Crimes Against the AAPI Community: Shifting from Reactive Policies to Preventative Solutions*, 32 J. L. & POL'Y, 160 (2024).

To properly address the influx of anti-Asian racism against the Asian American and Pacific Islander (AAPI) community, the United States must proactively address the root of hatred. Asian Americans have faced discrimination and xenophobia in the United States for centuries, and instances of hatred escalated dramatically during the Covid-19 pandemic, with over 9,000 hate crime reports against AAPI community reported within a year of the pandemic's onset. According to Alexa Panganiban, the Covid-19 Hate Crimes Act (Act) enacted in response to these influx of hate crimes was largely a reactionary measure which focuses on enhancing reporting and facilitating prosecution rather than addressing the root of motivating hatred and bias. The Act further treats the AAPI community as a single monolith and attempts a 'one-size-fits-all' solution to hatred against the diverse AAPI community. The author claims that by emphasizing punishment after the fact, the Act fails to provide proactive measures that could prevent hate crimes from occurring in the first place. Instead, the author recommends a two-pronged approach: improve access to diversity, equity, and inclusion education, and clarify vague definitions of 'hate crime' in the legal system, making reporting of such mandatory for law enforcement. Until legislative focus shifts from punishing hate crime after the fact to preventing hate before it begins, hate crimes against the AAPI community will likely persist.

Annotated by: Seon Kim

Vinay Harpalani, *Racial Triangulation, Interest-Convergence, and the Double-Consciousness of Asian Americans*, 37 GA. ST. U.L. REV. 1361 (2021).

Asian Americans' position in the racial makeup of the United States must be acknowledged as racially triangulated and viewed through a double consciousness to illuminate and overcome the racial divide created by such positionings among people of color. Racial triangulation explains the positioning of racial groups in relation to each other, as well as to white Americans, positing this ranking is maintained by enforcing competing stereotypes that divide people of color ("POC"). Interest convergence theorizes racial equality will only advance if it also benefits white Americans. White Americans have historically benefited from pitting Asian Americans against other POC through use of stereotypes, propping the group up as model minorities while simultaneously employing xenophobia to shun Asian Americans. Stereotyping benefits white Americans because it reinforces a social hierarchy with white Americans atop. Recently, in several cases concerning the college admissions process—including *Students for Fair Admissions, Inc. v. President of Harvard College*—Asian Americans have again been pitted against other POC, where their interests have appeared to concur with white conservatives. Overcoming this divide requires acknowledging the shared quality of double consciousness, the ability to see oneself through other perspectives, as exemplified by POC's navigation of the political process by engaging with racial stereotypes. This acknowledgment mends divides created by racial triangulation.

Annotated by: Emily Prendergast

VOTER RIGHTS

Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, 121 HARV. L. REV. 1737 (2008).

The jurisprudence surrounding vote fraud needs to be supported by proven and tested means, not merely public perception. In *Purcell v. Gonzalez,* the Supreme Court centers public confidence as the driving participatory force; vote fraud damages public trust in the integrity of elections which minimizes voter participation. Proponents assert that strong photo identification requirements will prevent the appearance of corruption in voting, restoring public assurance and involvement in elections. Ansolabehere and Persily assess whether (1) the strength of people's beliefs in vote fraud correlates to voter participation rates, and (2) more stringent photo ID requirements correlate to the strength of people's beliefs in vote fraud. In the first analysis, there seems to be no relationship between believing in the occurrence of vote fraud and lower rates of voting. Rather, people who are unsure if vote fraud occurs have the lowest amount of voter participation. In the next analysis, no relationship exists between the strength of a state's voter ID requirements and the strength of a citizen's belief in vote fraud. Ultimately, then, the authors propose an approach to improving public perception that relies on tested means, as the public's view of election integrity is not a sufficient reason to support stringent voter ID laws.

Annotated by: Rob Loeser

Michael T. Morley, *Bush v. Gore's Uniformity Principle and the 2020 Election*, 58 WAKE FOREST L. REV. 179 (2023).

If courts are to handle the unequal treatment of votes created by election policies and exacerbated by the COVID-19 Pandemic during the 2020 election, they must grapple with the "Uniformity Principle." The Uniformity Principle, established in *Bush v. Gore*, uses the Equal Protection Clause to prohibit arbitrary and disparate treatment of votes during an election. It ensures that different voting policies do not substantially affect the likelihood of votes getting counted. To apply the Uniformity Principle, a plaintiff must show officials legally and intentionally applied different policies to various voters and thus created a substantial likelihood of disparity amongst eligible voters. At the time of *Bush v. Gore*, this principle was narrow. Now, courts do not distinguish the Uniformity Principle from the Anderson Burdick test (which seeks to identify unduly burdensome election related rules) and fail to determine a singular scope of the Principle, likely given the impracticalities of demanding equal policies amidst the different geographical layouts and economic resources of counties. Reflecting on *Katzenbach v. Morgan*—which allowed for Puerto-Rican voters who were unable to speak English to bypass English literacy exams—Morley asserts that the Anderson Burdick test could be used as a constitutional limitation on the Uniformity Principle in the remedial stage of litigation. That approach, nonetheless, has its own complicated ramifications which courts need to hammer out.

Annotated by: Drew Svensson

JUDICIAL ETHICS

Peter Salib & Guha Krishnamurthi, *Justices on Yachts: A Value-Over-Replacement Theory*, 97 S. CAL. L. REV. POSTSCRIPT 26 (2024).

A red flag must be raised over the pampering of Supreme Court Justices by wealthy individuals, and the implications this has on the Court's ideological stance. Recent reports have exposed the lavish gifts bestowed upon the Justices, ranging anywhere from private jets to generous book deals. While various commentators have attempted to link these gifts to direct influence over voting decisions, these claims have largely fallen flat, and concerns over diminishing public legitimacy have not been enough to challenge the practice's ethical shortcomings. However, the "value over replacement" theory suggests that this lavish treatment may incentivize Justices to stay on the bench longer, foregoing opportunities for significantly higher pay, such as six-figure speaking engagements. Wealthy, private actors have a clear incentive to maintain a Justice's luxurious lifestyle, particularly when that Justice's ideological leanings align with their own interests. This becomes increasingly true when an idiosyncratic Justice is destined to be replaced by an overtly average member of any given party. This strategy mirrors traditional political lobbying, but of a kind only afforded to the ultra-wealthy. While this is not per se illegal, there is a clear advantage radical interest groups can monopolize on in their quest for cases resting on ideological outliers to be granted certiorari. Ultimately, only those with the means to indulge the Justices with luxury are positioned to influence the Court's direction effectively by extending the tenure of outliers on the bench.

Annotated by: Serena Roche

GENDER DISCRIMINATION

Shruti Rana, *Promoting Women's Advancement in the Judiciary in the Midst of Backlash: A Comparative Analysis of Representation and Jurisprudence in Key Domestic and International Fora*, 127 DICK. L. REV. 693 (2023).

Gender parity in the judiciary constitutes a fundamental legal obligation under international law and is crucial for achieving true gender equality. Yet, the United States' inconsistent progress contrasts sharply with global advancements, highlighting the critical role of women judges in promoting equality and upholding the rule of law. Rana argues that redefining gender parity is essential for preserving democracy and human rights is necessary, especially in the face of increasing resistance to gender equality. Appointing women to the judiciary alone is not enough; sustained commitment and comprehensive legal frameworks are required for substantive equality. The COVID-19 pandemic exacerbated declines in gender equality and human rights while rising authoritarianism and populism continue to threaten democratic governance. The rollback of reproductive rights, gender-based protections, and judicial diversity indicates a broader democratic decline in the United States, and a threat to the global rules-based order. Achieving gender parity in the judiciary is crucial for advancing equality and protecting legal systems worldwide. Women judges play a transformative role, but their presence must be supported. Strong legal frameworks make gender parity a legal obligation for ensuring sustainable equality in the United States and globally.

Annotated by: Katie Rubin

PRISON REFORM

Tommi Mandell, *Comparative Corrections: How Adopting European Policies Can Improve the United States Corrections System*, 19 L.J. SOC. JUST. 77 (2024).

The United States should incorporate correctional policies and practices from other countries, building upon and further developing its own system. State and local facilities are responsible for most incarcerated people in the United States, not the federal government. Financial motives dominate United States corrections, and public and private prisons seek to monetize the correction system which lessens the incentive to reduce recidivism rates. Contrary to the retributivist prison system in the United States, international frameworks center around rehabilitation and reintegration. Correctional systems in Scotland, Finland, Denmark, Germany, and the Netherlands closely mimic life beyond incarceration and facilitate societal reentry. Rather than prioritizing punishment, the United States could transition toward a correctional environment which gives individuals the tools they need to change, grow, rehabilitate, and become successful in life after incarceration. Mandell proposes the use of a Federal Grant Program to incentivize states to incorporate European practices into the United States correctional system. Grants should award states funding to create facilities that are modeled on open prison plans, include nursery or family units, provide vocational opportunities, and—most importantly—prioritize normalization. Some states have previously attempted to incorporate these models and there is no reason the United States cannot implement these changes on a federal scale through the use of a grant program.

Annotated by: Emily Sultan

REPRODUCTIVE RIGHTS

Elizabeth Kreager, *The Right to Procreate by Nontraditional Methods*, 55 ST. MARY'S L.J. 311 (2024).

The United States government should continue honoring the right to procreate. Historically, privacy laws and the Equal Protection Clause of the Fourteenth Amendment protected the right to procreate. When the government has intervened in these individual rights, it has asserted a variety of ethical and moral interests, including the health of the baby and mother, the commodification of babies, and the potential harm procreation may have on society. Based on such considerations, the author predicts the ethical and moral concerns that the government may use to restrict artificial reproductive technologies ("ART") and artificial insemination ("AI") in the future. State interests are the connecting factor between these issues which the Supreme Court has used to restrict reproductive rights in the past, allowing the government to overcome the issue of infringing on substantive Due Process issues. Whether parents or embryos are granted civil liberties rests largely on whether conception through ART and AI takes place at the point of either implantation or fertilization. Embryos and pre-embryos have been treated as personal property (protecting parents' right to Due Process), while they have also been granted liberties of personhood at the time of conception (removing parental ability to decide what is in the best interest of the embryo or pre-embryo). Still, since AI and ART facilitate procreation, a historically protected interest, the Supreme Court will likely protect ART and AI as a fundamental right.

Annotated by: Leah Susman

PUBLIC DEFENSE

Meagan R. Hurley, *Solving a Sixth Amendment Crisis: The Case for Resource Parity in Georgia's Indigent Defense System*, 75 MERCER L. REV. 925 (2024).

To best address the numerous underlying issues contributing to the lack of public defenders, Georgia must increase parity between prosecutor and public defender resources. Georgia's statewide public defender system is unable to adequately accommodate the high volume of indigent defendants. This crisis forces indigent defendants to take months or even years to be assigned counsel and disincentivizes assigned attorneys from providing comparable service in the adversarial system. Hurley addresses the three models used by states for the purposes of assigning public defenders to indigent defendants following the ruling of *Gideon v. Wainright* in 1963. In Georgia specifically, the dedicated public defender's office has been used statewide since 2003, when the Indigent Defense Act centralized the system. Hurley points to three areas that have exacerbated the problem: (1) a lack of resources to public defenders, (2) cripplingly high caseloads, and (3) cultural unappreciation of public defenders. She argues that these areas can be addressed by increasing pay parity with prosecutors, who receive more access to resources to better argue their case. While costs appear equivalent on the surface, the discrepancy is created by affordable prosecutorial support from law enforcement agencies and county funding for prosecutors. Efforts to make this balance more equitable—like caseload caps—would not only increase resources, but also lighten caseloads and reduce the social perception that public defenders are overworked.

Annotated by: Sarah Weiner