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City of Grants Pass v. Johnson 4
A Failed Reckoning with the Country's Homeless Crisis
David Lee

The Death of the Chevron Deference 8
And it's Repercussions for the American Legal System
Michael Krensavage

Defending No-Fault Divorce 13
A Critical Protection for Women
Sophia Arruda

The Beginning of U.S. AI Regulation 17
Colorado's Senate Bill 204
Jake Ramsey

The Importance of Speedy Trials 21
Riker's Island and the Sixth Amendment
Leo Raykher

Shifting the Voice 25
How Emory's Identity Hinges on Adopting the Kalven Principles
Melissa Shane

The Affordable Care Act and Texas v. U.S. 29
How Loose Legal Challenges Threaten Healthcare Coverage
Jordan Antwi

United States v. Google LLC 33
The Implications of Antitrust Laws on the Modern Technology Market
Cate Bashore

City of Grants Pass v. Johnson: A Failed Reckoning with the Country's Homeless Crisis

By David Lee

The issue of homelessness elicits varying responses from the American public. In the traditional view of Americans, the source of homelessness lies solely in the individual experiencing it. They believe it is a product of deliberate choices that can be remedied by the same free will from which it spawned. The opposing view analyzes the issue in the context of broader social forces, which proponents believe more accurately determine the likelihood of someone experiencing homelessness. These forces include addictions, family breakdowns, mental illnesses, lack of affordable housing, and insufficient healthcare. This approach isolates the symptoms of homelessness from the individual, instead seeing the condition as involuntary, dynamic, and complex.[1]

City of Grants Pass v. Johnson is a Supreme Court case that further complicates the issue of homelessness, leaving policymakers and municipalities in tense disagreement. On June 28, 2024, the Court determined that provisions in the Grants Pass Municipal Code prohibiting individuals from sleeping on the streets were constitutional. This ruling overturned the Ninth Circuit's decision on the case; in the overturned decision, the lower court had held that homelessness is involuntary, making the city's enforcement of the ordinances cruel and unusual, and therefore unconstitutional.[2]

Human rights activists and proponents of affordable housing emphasize that this ruling effectively overturned *Martin v. Boise,* a 2018 decision barring cities from enforcing "anti-camping" ordinances if sufficient shelter beds were unavailable for their homeless population. In its *Grants Pass* opinion, the Supreme Court stated that determining who qualified as "involuntarily" homeless and what constitutes "adequate" shelter under *Martin* posed practical problems for cities. They claimed the standards set by *Martin* interfered with local efforts to address homelessness on their own. In oral arguments, the city went so far as to label the Ninth

[1] Mago, V. K., Morden, H. K., Fritz, C., Wu, T., Namazi, S., Geranmayeh, P., Chattopadhyay, R., & Dabbaghian, V. (2013). Analyzing the impact of social factors on homelessness: a Fuzzy Cognitive Map approach. *BMC Medical Informatics and Decision Making*, *13*(1). https://doi.org/10.1186/1472-6947-13-94

[2] City of Grants Pass v Johnson, 603 US (2024). https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf

Circuit's decision in *Grants Pass* "a failed experiment"[3] that fueled the spread of encampments while harming those it purported to protect.

Defining the term "involuntarily homeless" and determining who falls under that class is not complicated, and it is perplexing that six justices failed to appropriately grasp this term. The Ninth Circuit previously defined those who are involuntarily homeless as those who have no shelter available for them to sleep in. Indeed, they state, "A person is not involuntarily homeless if they have declined a specific offer of available shelter or otherwise have access to such shelter or the means to obtain it."[4]

The exact nature of involuntary homelessness aside, this case revolves around another fundamental concept: whether homelessness is considered a status or an act. *Robinson v. California* established precedent for this dispute. In 1962, according to California Health and Safety Code § 11721, it was a misdemeanor to "be addicted to the use of narcotics."[5] Robinson, who was stopped by a police officer after being spotted with "tracks" on his arms from heroin use, was arrested and convicted for violating this statute. Robinson's case reached the Supreme Court, which ultimately overturned the decision. The Court ruled that drug addiction is a disease and that it is unconstitutional to punish one for having a disease. Furthermore, one could not criminalize behavior lacking a guilty act, or *actus reus*, as that would constitute punishing a mere status or condition.[6]

In hearing arguments for *Grants Pass*, the Court considered whether homelessness can be equated to a status, such as drug addiction, as defined by the Court in *Robinson v. California*. In oral arguments, the city of Grants Pass claimed that the ordinances in question did not punish individuals based on their homeless status. Instead, the ordinances targeted the specific acts of camping or tenting outside, regardless of whether an individual was homeless. Justice Kagan appeared skeptical, saying that if the ordinances merely moderated people sleeping in certain

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[3] City of Grants Pass v Johnson, 603 US (2024). https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf

[4] Mills, R. (2023, September 26). San Francisco Prepares to Clear Homeless Camps after Court Clarifies Definition of 'Involuntarily Homeless.' *National Review*. https://www.nationalreview.com/news/san-francisco-prepares-to-clear-homeless-camps-after-court-clarifies-definitio n-of-involuntarily-homeless/

[5] McMorris, C. S. (1970, January 1). *Can we Punish Acts of Addiction*. United Nations Office on Drugs and Crime. https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1970-01-01_3_page007.html

[6] Robinson v. California, 370 U.S. 660 (1962). https://tile.loc.gov/storage-services/service/ll/usrep/usrep370/usrep370660/usrep370660.pdf

places or physically cropping up tents, that would be a different discussion. She states:

> "But your ordinance goes way beyond that. Your ordinance says to a person—and I understand that you think it's generally applicable, but we only come up with this problem for a person who is homeless, who has the status of homelessness, who has no other place to sleep, and your statue says that person cannot… take a blanket and sleep someplace without it being a crime… It seems like you're criminalizing a status."[7]

Justice Sotomayor added onto the objection, asking, "Where are they supposed to sleep? Are they supposed to kill themselves, not sleeping?" The petitioner for the city, Ms. Evangelis responded with the grand summation: "This is a complicated policy question."

Indeed, this *is* a complicated policy question, and the ruling in *Grants Pass* complicates it even further. By deflecting Justice Sotomayor's rudimentary question, the city refused to clarify the most obvious question in this case, where homeless people actually sleep in the face of these ordinances. Nationally, there are only enough beds to support about fifty-five percent of homeless adults on a given night–a shortage of around 188,000 beds.[8] The city didn't have the answer to this question, and that is exactly what is inherently confusing about this decision. Cities can now punish homeless people for fulfilling their basic human needs without offering them any viable alternative. As the Inner City Law Center's Director of Public Policy, Mahdi Manji, stated, "Only housing ends homelessness… Research has consistently found that criminalizing homeless folks does nothing to reduce homelessness."[9]

The implications of *Grants Pass* range from tame to alarming. On one hand, this ruling only allows the criminalization of homelessness rather than requiring that cities do so. Cities that previously had no such statutes can maintain that pattern. On the other hand, this discretion gives power to cities that seek to be tougher on homelessness moving forward. It would not be surprising to see cities use this ruling to effectuate massive sweeps and arrests of homeless

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[7] City of Grants Pass v Johnson, 603 US (2024). https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf
[8] Tanner, M. (2024, July 9). *The policy implications of Grants Pass v. Johnson*. FREOPP. https://freopp.org/oppblog/policy-implications-grants-pass/
[9] Burbank, J. (2024, June 28). *Inner City Law Center Condemns Supreme Court's Decision in Grants Pass v. Johnson, Allowing Criminalization of Homelessness*. Inner City Law. https://innercitylaw.org/inner-city-law-center-condemns-supreme-courts-decision-in-grants-pass-v-johnson-allowing-criminalization-of-homelessness/

individuals in light of upcoming surges in international tourism. In 1996, prior to the Olympic Games, the city of Atlanta changed its laws to arrest over 9,000 people experiencing homelessness, spending public money to transport unhoused people out of the city.[10] The ruling in *Grants Pass* gives cities the green light to enact similar measures again. As Atlanta prepares to host the FIFA World Cup in 2026, it would not be out of the question for the city to act on its propensity to round up the homeless. Another city that extensively struggles with its homeless population, Los Angeles, now has more power to clear encampments down the streets by issuing arrests. Given that Los Angeles is set to host the 2028 Olympics, the possibility of a citywide removal of its homeless population is more likely than ever. This Supreme Court decision is damaging to–and disconnected with–the current nature of homelessness in the United States, marking a step backwards in our country's pursuit of equal protection, fairness, and decency.

[10] Holly, E. (2024, August 6). *Hiding a City's Homelessness Crisis Through Displacement: What The Olympics Remind Us about Harmful Practices*. National Alliance to End Homelessness. https://endhomelessness.org/blog/hiding-a-citys-homelessness-crisis-through-displacement-what-the-olympics-remind-us-about-harmful-practices/

The Death of the Chevron Deference and its Repercussions for the American Legal System

By Michael Krensavage

This summer, the Supreme Court made a variety of rulings that attracted national attention, and in some cases outrage, due to their significant potential for repercussions. *Snyder v. United States* legalized forms of political corruption,[1] *Trump v. United States* empowered presidents against prosecution, and *City of Grants Pass v. Johnson* expanded the criminalization of homelessness.[2] Each ruling holds significant repercussions for the future of American law and society, but the case with the potential to impact the widest variety of areas is *Loper Bright Enterprises v. Raimondo*, which was decided on June 28th, 2024. The ruling—6-2 along partisan lines in favor of Loper Bright Enterprises—overturned the Chevron deference, a precedent that emerged from the Supreme Court's 1984 landmark ruling in *Chevron v. Natural Resources Defense Council*. The Chevron deference grants federal agencies the power to interpret and apply the law in ambiguous situations, essentially entrusting these federal agencies (not the courts) with the micromanagement of the laws that Congress creates. When determining the application of a law enforced and overseen by a federal agency, it is thus not the responsibility of any judge to provide their own interpretation of a statute; rather, they must defer to the interpretation of the agency as long as said interpretation is "reasonable."[3] Since its inception in 1984, the Chevron deference has become integral to American law, having been cited over 18,000 times by federal courts.[4]

While it stood, the Chevron deference provided the American legal system with several practical benefits. Firstly, it ensured that the enforcement of field-specific laws was entrusted to the experts of said fields. The U.S. Environmental Protection Agency (EPA), for example, is largely staffed by scientists and researchers that have spent years of their lives cultivating knowledge and developing opinions on how to best protect the environment and human health;

[1] Kanu, H. A. (2024, June 26). *The Supreme Court Blesses a Form of Bribery*. The American Prospect. https://prospect.org/justice/2024-06-26-supreme-court-blesses-form-bribery-snyder-v-us
[2]Liptak, A., VanSickle, A., & Parlapiano, A. (2024, May 9). The Major Supreme Court Cases of 2024. *The New York Times*. https://www.nytimes.com/interactive/2024/05/09/us/supreme-court-major-cases-2024.htm
[3] Turrentine, J. (2024, June 28). *The Supreme Court Ends Chevron Deference – What Now?* National Resources Defense Council. https://www.nrdc.org/stories/what-happens-if-supreme-court-ends-chevron-deference
[4] Howe, A. (2024, June 28). *Supreme Court strikes down Chevron, curtailing power of federal agencies*. SCOTUSblog. https://www.scotusblog.com/2024/06/supreme-court-strikes-down-chevron-curtailing-power-of-federal-agencies/

this superior knowledge often means they're better equipped to interpret environmental law than judges. This philosophy has also afforded policymakers in congress with wiggle room that makes writing law easier. As Jeff Turrentine of the Natural Resources Defense Council puts it, "Sometimes Congress is purposefully inexplicit in order to give the subject-area experts space to decide how best to implement a regulation. For example, an agency made up of occupational safety specialists should already be well equipped to decide how to handle the technical, nuts-and-bolts aspects of imposing workplace protections—rules about equipment usage, say, or the need for periodic employee rest breaks—without the meddling of judges."[5]

The Chevron deference has also helped preserve the balance of power between government institutions by curbing the power of the judicial branch to determine the practical effects of policy through interpretation, instead entrusting some of this responsibility to federal agencies. By overturning the Chevron deference, the Supreme Court has spoiled this balance. In her dissenting opinion, Justice Elena Kagan lamented this decision: "In one fell swoop, the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law. As if it did not have enough on its plate, the majority turns itself into the country's administrative czar."[6]

The Chevron deference guaranteed security and stability to the legal system that is unlikely to remain thanks to the judicial system's newfound trampling power. While active, the Chevron deference did not render the interpretations of federal agencies impenetrable—the Brennan Center found that "federal agencies prevail in only about 70 percent of legal challenges to their rules"—but it did entrust legislative responsibility to agencies that are accountable to the president and explicitly tasked with protecting the public.[7] Overturning this preference will likely make the legal process more susceptible to corporate influence, as lobbyists won't have to negotiate with federal agencies in order to meddle with American law. They will instead concentrate the majority of their focus on members of Congress and judges. The appointment process for both has become significantly more partisan in recent years,[8] meaning that if

[5] See footnote 3
[6] See footnote 3
[7] Kornberg, M., & Kinsella, M. (2023, May 30). *Whether the Supreme Court Rolls Back Agency Authority, Congress Needs More Expert Capabilities*. Brennan Center for Justice. https://www.brennancenter.org/our-work/analysis-opinion/whether-supreme-court-rolls-back-agency-authority-congress-needs-more
[8] See footnote 3

corporations can get their cases in front of the right judges, they will likely succeed in molding the law to their preferred interpretation. It's thus no surprise that massive lobbying groups, such as the National Federation of Independent Business and the U.S. Chamber of Commerce, favored the Supreme Court's decision to strike down the Chevron deference.[9]

The *Loper Bright* decision thus threatens nearly every sector of American law; this includes climate policy, labor laws, and food and drug standards, which are overseen by the EPA, Department of Labor, and the U.S. Food & Drug Administration respectively. However, any regulation's susceptibility to change will likely vary based on how contentious it is within partisan dispute. An advisory report by Arnold&Porter, a law firm that excels in pro bono work, estimates that "*Loper Bright's* practical impact for regulated industries may not be as significant as widely anticipated" in regards to EPA policy because the "EPA already has every reason to support its statutory interpretations in rulemaking as the 'best' interpretation of Congress' intent using the text, structure, and purpose of the statute, together with all other traditional tools of statutory construction and its own expertise and policy rationales."[10] Even without the Chevron deference, those looking to challenge federal enforcement of law will need to find a judge with a different interpretation of a statute that can be justified as more, or at least equally reasonable to that of a federal agency. Thus, it's likely that issues with the widest range of "reasonable" perspectives concerning them are the most vulnerable to change.

Arguably no issue causes more extreme polarization across partisan lines than transgender rights. In a 2022 report conducted by the Pew Center, researchers asked a pool of people whether American society has "gone too far," "not gone far enough," or "been about right" in regards to accepting transgender identities.[11] 66% of surveyed republicans answered that society had gone too far, 10% answered that society had not gone far enough, and 22% answered that society had been about right. Surveyed democrats unsurprisingly broke down differently, with 15% answering "gone too far," 59% answering "not gone far enough," and 24%

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[9] Ackley, K. (2024, June 28). *Lobbyists Brace for "Earth-Moving" Change After Chevron Ruling*. Bloomberg Law. https://news.bloomberglaw.com/antitrust/lobbyists-regroup-for-big-change-after-high-court-agency-ruling

[10] Elwood, J., Talber, J., Piper, B., Martel, J., Shenkman, E., Rumsey, A., & Halliday, S. (2024, July 2). *Chevron Overturned: Impacts on Environmental, Energy, and Natural Resources Regulation*. Arnold & Porter. https://www.arnoldporter.com/en/perspectives/advisories/2024/07/chevron-overturned-impacts-on-environmental

[11] Parker, K., Horowitz, J. M., & Brown, A. (2022, June 28). *Americans' Complex Views on Gender Identity and Transgender Issues*. Pew Research Center. https://www.pewresearch.org/social-trends/2022/06/28/americans-complex-views-on-gender-identity-and-transgender-issues/

answering "been about right" (the remaining 2% in each demographic did not answer). This variance in opinion is reflected in state policy: as of August, 2024, 26/50 states have passed bans on gender affirming care for citizens below the age of 18, and Oklahoma, Texas, and South Carolina have considered banning it up to age 26.[12] Before *Loper Bright*, transgender people living in these states could at least rely on federal protections afforded by the Department of Education and the Department of Health and Human Services. With the Chevron deference overturned, however, the right conservative judge could easily block regulations from either department by challenging their interpretations of existing legislation.

The idea that *Loper Bright* could enable increased judicial transphobia is scary; what's scarier is that this process has already started. On July 3rd, 2024, five days after the Chevron deference was overturned, Mississippi federal judge Louis Guirola cited the ruling as reason to file for a nation-wide block of the Biden administration's anti-discrimination protections for transgender Americans. The protections, which were set to go into effect two days later on July 5th, were meant to "bar health providers and insurers receiving federal funding from discriminating against those seeking care on the basis of gender identity or sexual orientation."[13] Guirola specifically cited language from *Loper Bright*, asserting that the Department of Health and Human Services (HHS) improperly interpreted Section 1557 of the Affordable Care Act, which prohibits treatment and coverage discrimination on the basis of race, ethnicity, age, disability or sex. The Biden administration argued that sex applies to both gender identity and sexual orientation in instances of anti-discrimination—*Bostock v. Clayton County*, a 2020 Supreme Court case that deemed employment discrimination based on both sexual orientation and gender identity to be illegal, served as precedent—but Guirola overruled this interpretation.[14] With the absence of the Chevron deference, Guirola surely will not be the only judge to take a meaningful swing at federally afforded transgender protections. Federal judges from Florida and Texas followed Guirola in citing *Loper Bright* to block the HHS' protections, and conservative judges will likely be further empowered to influence battles over The Education Department's

[12] *Attacks on Gender Affirming Care by State Map*. (2023, April 24). Human Rights Campaign. https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map

[13] Cole, D. (2024, July 3). *Judge cites new Supreme Court ruling in blocking health care anti-discrimination protections for transgender Americans*. CNN. https://www.cnn.com/2024/07/03/politics/transgender-anti-discrimination-protections-biden-chevron/index.html

[14] Vogel, S. (2024, July 9). *Federal judge blocks LGBTQ+ healthcare protections*. Healthcare Dive. https://www.healthcaredive.com/news/lgbtq-healthcare-protections-blocked/720833/

Title IX rule, which, among other things, "prohibits schools from barring transgender students from using bathrooms and other facilities that correspond with their gender identities."[15]

Only time will reveal the exact repercussions of *Loper Bright*, but it undoubtedly holds the power to transform the American legal landscape. If Donald Trump were to win the 2024 election, for example, the absence of the Chevron deference would likely make it easy—at least much easier than his first term—to roll back previously established democratic policy through the courts. The flipside is also true—Democratic judges could wield their increased power to resist the upheaval that would come with a Trump presidency—but the ability to aggressively reinterpret policy through buying individual judges will be a valuable tool to anyone looking to radically overhaul the government. The execution of Project 2025, for example, is undoubtedly more feasible without the Chevron deference. The courts are rapidly straying from their intended purpose of upholding and interpreting the law, and *Loper Bright* represents another increase in the capabilities of judges—and perhaps more importantly, the powerful figures who appoint and influence them—to exercise unchecked power over the law.

[15] Kalish, L. (2024, July 13). *The Supreme Court's Chevron Decision Is Already Hurting Transgender Rights*. HuffPost. https://www.huffpost.com/entry/the-supreme-courts-decision-overturning-chevron-is-already-hurting-transgender-rights_n_66919cfbe4b0fbdc3e04d219

Defending No-Fault Divorce: A Critical Protection for Women

By Sophia Arruda

Consider the position of a mother fighting to protect her child from an abusive father, only to find that the court, meant to serve justice, sides with the perpetrator. A study of 200 divorce cases found that state courts sided with mothers in only 15% of cases involving allegations of child sexual abuse by fathers.[1] This alarming statistic challenges the integrity of the legal frameworks governing family courts and underscores the pervasive discrimination against women within the system. Protecting and expanding no-fault divorce laws is essential for ensuring more equitable outcomes for women in such cases, yet some politicians and lawmakers have recently pushed to dismantle these vital structures.

No-fault divorce, first introduced in California in 1969, allows marriages to end on the grounds of "irreconcilable differences," removing the burden of proving fault from spouses. This framework, now adopted in some capacity by every state, has become the preferred path for separation.[2] In California, 90% of divorces are no-fault.[3] In South Dakota, 97.6% of divorces are no-fault.[4] A party can file for divorce without having to prove the other party of committing wrongdoing against them. Fifteen states are strictly no-fault, making it nearly impossible to file for an at-fault divorce. State legislatures recognize that this framework ensures that women in

[1] Klein, J. (2021, August 14). *"Women are routinely discredited": How courts fail mothers and children who have survived abuse.* The Guardian. https://www.theguardian.com/lifeandstyle/2021/aug/14/courts-fail-mothers-children-abuse#:~:text=In%202019%2C%20Meier%20looked%20at,claims%20in%20just%20517%20cases.

[2] *Divorce*. (2020, December 3). American Bar Association. https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/family_law/marriage_and_divorce/annulment_separation_divorce/ending_the_marriage/divorce/

[3] *California Divorce Statistics 2023*. (2023, July 14). Quinn Dworakowski Family Law Attorneys. https://www.orangecountyfamilylaw.com/blog/california-divorce-statistics/

[4] North, A. (2024, June 13). *The Christian right is coming for divorce next*. Vox. https://www.vox.com/today-explained-newsletter/354635/divorce-no-fault-states-marriage-republicans

abusive or subordinate relationships can pursue divorce safely and independently.

The impact of no-fault divorce laws is clear: States that have adopted them have seen an 8-16% decrease in female suicides, a 30% decrease in intimate partner violence, and a 10% drop in women murdered by their partners.[5] It raises the question, then, why some politicians are pushing to roll back no-fault divorce laws.

Conservative politicians and right-leaning institutions have criticized no-fault divorce for undermining the sanctity of marriage. Vice presidential candidate and Ohio Senator JD Vance remarked that no-fault divorce makes it "easier for people to shift spouses like they change their underwear"—a comparison as reductive as it is laughable.[6] Beyond the hyperbole, Vance's line of thinking raises a more fundamental question: Why should the government, or JD Vance, have any say in when or how people choose to end their marriages? The right to make personal decisions about one's relationships, especially when safety and well-being are at stake, should be paramount.

In January, Senator Dusty Deevers introduced a bill to ban no-fault divorce in Oklahoma. Meanwhile, initiatives like the Heritage Foundation's Project 2025 aim to re-privatize marriage. These are the next steps in a broader conservative agenda to revert to traditional social values—inhibiting access to abortion, attacking IVF, and limiting birth control. In the *Indiana Law Journal* article entitled "Reaffirming No-Fault Divorce," Erin Melnick writes, "Increased privatization of the marriage contract assumes that men and women have equal bargaining power going into a marriage and thus can negotiate for the terms most favorable to them–an

[5] Rubbo, S. (2024, July 12). *Threats to No-Fault Divorce and its Implications for Violence Against Women*. National Organization for Women. https://now.org/blog/threats-to-no-fault-divorce-and-its-implications-for-violence-against-women/
[6] See footnote 4

ideal of formal equality that for many women remains a fiction."[7] No-fault divorces *are* easier to obtain, but that's for good reason. Before the advent of no-fault divorce, women faced significant challenges in leaving abusive or dysfunctional marriages. Fault divorces left many women trapped in relationships that endanger them and their children. The requirement to prove fault can subject women in such relationships to further psychological harm when they are forced to relive their trauma in court. This process can involve intimidation from an abuser, who may use the legal system as means to control or manipulate them. Moreover, disadvantageous female stereotypes are often perpetuated in court. Women are often dismissed as "hysterical" or accused of "coaching" their children to provide biased accounts.[8]

Of course, the feasibility of no-fault divorce makes it more difficult to incur punishment on a party when deciding financial or custody matters. There are certainly cases where accusation of fault is justified. However, proving fault is time-consuming and expensive. Pursuing divorce through the courts can be prohibitively expensive, considering the cost of attorneys and legal fees. No-fault divorce levels the playing field, enabling women to escape dangerous marriages and secure a fair distribution of assets. It also protects both parties from false accusations of misconduct. An individual in a position of financial subordination to their spouse will face difficulty receiving equal partition of property and custody. Domestic contributions or maternal sacrifices to support a family typically do not advance the power of a woman against her husband. While bargaining power can be relinquished in the case of no-fault divorce, it has removed barriers that previously kept women from obtaining equal assets from the marriage. Additionally, parties are protected from false accusations of infidelity or misconduct in an attempt to gain the upper hand in bargaining.

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[7] Melnick, E. (2000). Reaffirming No-Fault Divorce: Supplementing Formal Equality with Substantive Change. *Indiana Law Journal Indiana Law Journal*, *75*(2), 22. https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2134&context=ilj

[8] See footnote 1

Conservative activists are not taking issue with the technical flaws in no-fault settlements. They are concerned with the rising divorce rates within the country. In the United States, the divorce rate rose from 2.4 per 1,000 people in 2000 to 4.0 per 1,000 in 2022.[9] This increase may signal a shift in attitudes towards marriage and evolving family structures, with divorce becoming more acceptable and accessible. At its best, marriage can be a source of support and partnership. At its worst, marriage confines one party to the other. Individuals in the latter situation should have the capacity to dissolve their marriage without undue hardship.

Nonetheless, improvements in no-fault divorce proceedings are necessary. This begins with a simple social truth: true recognition that, in many instances, women are still not seen as equal in marriage. Tearing down gender stereotypes and pursuing equity in households, communities, and society at large will begin tearing down gender stereotypes in the courtroom. At the end of the day, a judge with implicit bias is subjectively analyzing two separate sets of facts. Over time, societal progress will naturally permeate the courts, influencing the perspectives and judgments of those who preside over them. Additionally, no-fault laws should add further stipulations to the division of assets in marriage. Scholars like Deborah Rhode and Martha Minow suggest that states take a more proactive role in defining and distributing marital property.[10] Asset class definitions can be expanded to ensure that contributions like domestic labor are properly valued alongside higher-paying roles. The evidence is clear: no-fault divorce has been a crucial safeguard for women, and it must be preserved and refined. Electing leaders who recognize the importance of this framework is essential to protecting women's rights and promoting a just society.

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[9] Bieber, C., & Chatterjee, A. (2024, January 8). *Revealing Divorce Statistics In 2024*. Forbes. https://www.forbes.com/advisor/legal/divorce/divorce-statistics/

[10] See footnote 7

The Beginning of U.S. AI Regulation: Colorado's Senate Bill 205

By: Jake Ramsey

The average American is exceptionally unfit to predict the future of artificial intelligence. They likely cannot read or write any computer programming languages and don't have a firm grasp on the field of computer science. Perhaps they have used ChatGPT a few times to see if it really works, or maybe to write an email. Yet, elected officials – those tasked with regulating AI and its applications – are no more qualified to do so than the average American. In fact, many lawmakers are significantly older than the average American, and thus have even *less* experience with AI and its impacts. But lawmakers find themselves serving as a jack-of-all-trades, guiding the nation through new challenges while not being an expert in any of them. As the United States has begun regulating AI, this lack of knowledge has manifested itself in law.

On May 17th of this year, Colorado became the first U.S. state to attempt a legal framework for AI regulation. Governor Jared Polis signed Senate Bill 205 into law, which, unlike other current AI regulation, does not prohibit specific AI uses. Instead, the Colorado law emphasizes accountability and aims to prevent discrimination in certain high-risk AI applications while imposing transparency obligations on companies that create or use these technologies. The idea is to prevent differential treatment or impact based on protected characteristics such as race, age, or disability – essentially, Colorado does not want a racist or discriminatory AI system on its hands. The law targets high-risk AI systems, which the bill defines as systems that could make or influence consequential decisions with significant legal or material impacts in critical areas. Specifically, the bill outlines housing, insurance, healthcare, financial services, government services, employment, and education as critical areas to monitor[1].

The law applies to any company doing business in Colorado that either develops or deploys high-risk AI systems . Importantly, the bill's scope extends beyond state borders, meaning companies cannot avoid compliance by simply avoiding the sale or use of their AI systems within Colorado. The law also defines several key terms including "artificial intelligence

[1] *Senate Bill 24-205: Consumer protections for artificial intelligence*. (2024). Colorado General Assembly. https://leg.colorado.gov/bills/sb24-205

system," "high-risk AI systems," "consequential decision," and "algorithmic discrimination."[2] These definitions are crucial in determining which AI applications fall under the law's purview and clarifying what constitutes unlawful use. The law imposes distinct obligations on developers and deployers of AI systems, though both are required to exercise reasonable care to protect consumers from risks of algorithmic discrimination. Developers, for instance, must provide detailed information to deployers, including summaries of their training data and system limitations Developers are also required to publicly disclose the measures that they have taken to mitigate discrimination risks. Deployers, on the other hand, must establish and implement a risk management policy and conduct regular impact assessments on their use of high-risk AI systems. Their assessments must evaluate the system's purpose, potential risks of discrimination, data usage, performance metrics, transparency measures, and post-deployment oversight.

Senate Bill 205 represents a pioneering and thoughtful approach to regulating artificial intelligence, offering several key strengths that make it a valuable model for other jurisdictions. One of its primary strengths lies in its focus on protecting consumers without stifling innovation. Unlike the European Union's AI Act, which bans specific AI uses,[3] Senate Bill 205 instead emphasizes the importance of corporate transparency and responsible AI deployment. By requiring that developers and deployers exercise reasonable care in preventing algorithmic discrimination, the law ensures that AI systems are used ethically and with a clear understanding of potential risks. Furthermore, the law's delayed enforcement of until February 2026, coupled with strong safe harbors and exclusive enforcement by the Attorney General, protects innovation by providing companies with time to adapt.

Additionally, the law's emphasis on transparency and public disclosure fosters trust between companies and consumers. Requiring developers and deployers to publicly share information about their AI systems, including how they manage risks and ensure fairness, promotes a culture of openness and accountability. This transparency is especially crucial in an era where AI is increasingly involved in decisions that substantially impact people's lives. Today, most U.S. citizens are concerned that technological advancements in AI will wipe out their jobs,

[2] *Senate Bill 24-205: Consumer protections for artificial intelligence*. (2024). Colorado General Assembly. https://leg.colorado.gov/bills/sb24-205

[3] *Up-to-Date Developments and Analyses of the EU AI Act.* (n.d.). EU Artificial Intelligence Act. https://artificialintelligenceact.eu/

causing both social and economic harm to the world.[4] This bill represents a direct attempt by lawmakers to quell these concerns.

While novel in its approach to regulating artificial intelligence, Senate Bill 205 may inadvertently stifle AI advancement By imposing significant obligations on companies that develop or use high-risk AI systems, the law creates a complex regulatory environment that could deter innovation, particularly among smaller companies that lack the resources to navigate these new regulations.

One sign of possible over-regulation is the law's broad definition of "high-risk AI systems." This definition encompasses any AI system that could influence "consequential decisions;" The challenge is that the definition is so wide-ranging that it could include a vast array of AI applications, some of which should not be considered high-risk. This may lead to over-regulation, where companies are forced to comply with burdensome requirements for AI systems that pose minimal risk. The fear of violating these regulations might discourage companies from developing or deploying AI systems if they are unsure whether their technologies will fall under the law's purview.

The law's extensive documentation and transparency requirements further complicate matters. While these measures are intended to prevent algorithmic discrimination, they impose significant administrative and financial burdens on companies. For smaller businesses and startups, which are often at the forefront of AI innovation, these requirements could be particularly daunting. The need to allocate resources towards compliance efforts might divert attention away from research and development, slowing the pace of innovation. This disruption of innovation is not new; The EU's 2021 mandate for USB-C charging ports on mobile devices, while simplifying charging, risks stifling innovation by making it difficult to adopt new, improved technologies.[5] This regulation may disincentivize companies from developing faster or more efficient charging solutions due to amendment processes that would take, at a minimum, months, and more likely years. Moreover, transparency requirements could mandate the

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[4] Firth-Butterfield, K., & Rainie, L. (2022, March 17). *AI and Human Enhancement: Americans' Openness is Tempered by a Range of Concerns*. Pew Research Center. https://www.pewresearch.org/internet/2022/03/17/how-americans-think-about-artificial-intelligence/

[5] Šajn, N. (2023, February 1). *A common charger for electronic devices: Revision of the Radio Equipment Directive*. European Parliamentary Research Service. https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698819

disclosure of proprietary information, eroding a company's competitive advantages and discouraging them from pursuing new AI projects.

As AI continues to play an increased role in society, other states and jurisdictions may look to Colorado's approach as a model for their own regulatory frameworks. While the law may require some adjustments as it is implemented, it sets a positive precedent for the responsible and ethical use of AI. It should not be understated that the imperative to protect consumers and ensure fairness in AI-driven decision-making is the most prevalent concern with AI. That being said, the law also risks stifling AI advancement due to its broad definitions and stringent requirements. Despite its flaws, Senate Bill 205 stands as a commendable effort to address the complex challenges posed by the rapid advancement of artificial intelligence.

The Importance of Speedy Trials: Rikers Island and the Sixth Amendment

By Leo Raykher

Inconvenient truths are inherent to living in New York City. State-of-the-art subway cars glide on tracks nearly a century old. People walk past victims of the city's horrific fentanyl epidemic on their way to buy a $9 cappuccino. One of the city's biggest truths that many have the privilege to ignore is the massive, incarcerated population of Rikers Island, which is just north of LaGuardia Airport. While LaGuardia just benefited from an $8-billion makeover, the same cannot be said about Rikers. Opened in 1932, the prison is notorious for poor conditions, high rates of assaults and contraband, and extremely long wait times for trials. The COVID-19 epidemic further exacerbated the problems within the jail, as it led to prisoners receiving inadequate healthcare and hundreds of Department of Corrections employees failing to show up to work.[1]

With a daily average detainee population of over 6,000, the vast majority of people on Rikers Island have not faced a trial. Many detainees are remanded, meaning denied bail for a litany of reasons such as risk of committing another crime or not returning for trial. Many still are simply unable to pay the bail set by a judge. New York City's overburdened justice system is unable to keep up with the sheer volume of cases, meaning detainees often stay in Rikers for years without ever being convicted of a crime. As of August 2023, 87% of the population of the jail, or 5,403 detainees, are awaiting trial.[2] The Sixth Amendment, ratified in 1791, states that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."[3] This amendment's intention is to ensure those accused of a crime receive a fair and timely trial. In a nation that promises to hold a defendant innocent until proven guilty, allowing people to languish in pre-trial detention undermines this core sentiment of our justice system.

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[1] Lander, B. (2023, August 9). *Office of the New The State of New York City Jails One Year of Measuring Jail Operations and Management on the Comptroller's DOC Dashboard.* New York City Comptroller. https://comptroller.nyc.gov/wp-content/uploads/documents/The-State-of-New-York-City-Jails

[2] Lander, B. (2024, July). *Ensuring Timely Trials*. New York City Comptroller. https://comptroller.nyc.gov/wp-content/uploads/documents/Ensuring-Timely-Trials.pdf

[3] Bibas, S., & Fisher, J. L. (2022). *Interpretation: The Sixth Amendment.* The National Constitution Center. https://constitutioncenter.org/the-constitution/amendments/amendment-vi/interpretations/127

What constitutes "speedy" as defined in the Sixth Amendment is nebulous and differs from state to state; New York has its own laws that aim to ensure the defendant's right to an expedited trial. Criminal procedure law § 30.30 mandates that the prosecution must prepare their case against the accused in a certain amount of time. The amount of time given to the prosecution depends on the severity of the crime: as many as six months for a felony charge, and as few as thirty days for a violation (non-criminal offenses such as disorderly conduct).[4] However, CPL § 30.30 does not assign a time limit to the entire trial process; it instead refers specifically to the time it takes for the state to prepare its case against the defendant. The trial process is laborious and subject to many delays. Issues as major as trial procedure violations or as minor as scheduling errors between lawyers may mean an inmate spends extra months on Rikers Island.[5] The length of the trial process and the draining, excruciating nature of spending time on Rikers likely pushes some to accept a plea for a crime they did not commit to avoid languishing in the city's broken system.

The mental and physical strain of those in pretrial detention is immense. In 2010, Kalief Browder, a 16-year-old Black resident of the Bronx, was arrested on suspicion of stealing a backpack, despite no immediate eyewitness or photographic evidence. Charged with grand larceny, Browder was denied bail and would ultimately spend over three years on Rikers Island for a crime he did not commit. He recounted being assaulted by DOC employees and inmates alike during his thousand days of incarceration. Browder spent over two years in solitary confinement before his charges were dropped. After his release, Browder struggled with depression and would take his own life in 2015.[6]

Browder's story, an unacceptable miscarriage of justice, garnered much attention nationwide and has sparked some change in New York's justice system. The Rikers Island Prosecution Bureau was founded in 2016 to reduce violence and afford victims of crime on the Island the same protection as everyone else.[7] In the Bronx, where Browder was arrested, a

[4] New York Criminal Procedure § 30-30 (NY State Senate. 2020, January 10). https://www.nysenate.gov/legislation/laws/CPL/30.30
[5] Joseph, M. (2021, April 9). *NY's Speedy Trial Laws in the Age of Covid-19*. Law Office of Michael H. Joseph. https://www.newyorktriallawyers.org/blog/2021/04/09/ny-s-speedy-trial-laws-in-208733/
[6] Gonnerman, J. (2015, June 7). *Kalief Browder, 1993–2015*. The New Yorker. https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015
[7] McKinley, J. C. (2018, January 24). *Seeking to Curb Jail Violence, Bronx Prosecutors Set Up Shop on Rikers Island*. The New York Times. .https://www.nytimes.com/2018/01/24/nyregion/rikers-bronx-prosecutor-violence.html

community justice bureau has been formed to provide alternatives to incarceration for many defendants. These alternatives can include drug and mental health counseling or direct mediation with victims of crime.[8]

Despite attempts to remedy crime mediation, the problems that Kalief Browder faced are still widespread in New York City's justice system today. Conditions on Rikers Island are still dire, with incidences of fights and slashings reaching all-time highs after the pandemic.[9] Since Mayor Adams took office in 2022, over 33 people have died in the prison, although the number is likely higher due to a lack of data reported by DOC.[10] Time to process cases has increased; the volume of felony cases taking longer than three years to process has increased 179% between 2019 and 2023. Trial delays also put an immense strain on the city's budget: Comptroller Brad Lander estimates that delays could cost the city as much as $877 million annually. By reducing the time spent awaiting trial, the city could lower its incarcerated population by thousands.[11] The conditions of detainees in New York's jails absolutely must be addressed. However, the discussion around prison reform in New York City must also include an assessment of the right to a speedy trial. For those in Rikers Island, every day spent awaiting trial is a day of their life gone. For those who are innocent, each day lost is a day taken by the state. For those who have committed a crime, lengthy trial waiting times cannot be a punitive measure. The poor condition of New York city's jails effectively means thousands of people are punished without trial each year. In an overburdened system, there is no one solution to this problem. The city claims Rikers Island will be shut down by the late 2020s, but progress is far behind schedule.

While more humane and modern borough-based prisons are helpful, they do not address the strain on other parts of the justice system. There is little reason to believe issues that exist on Rikers Island will not simply be transferred to these newer jails, for the cost of billions of dollars. A holistic approach to New York City's trial and prosecution system must be taken to ensure

[8] *New York City Risk-Need-Responsibility [RNR] Gap Analysis Project Report*. (2019, July). Center for Advancing Correction Excellence. https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/10/MOCJ-NYC-RNR-Infographic-Report-2019.pdf

[9] See footnote 2

[10] *Shut Rikers Now.* (2024, September 12). Katal Center for Equity, Health, and Justice. https://katalcenter.org/cutshutinvestny/

[11] See footnote 2

Sixth Amendment rights for incarcerated New Yorkers, and alternatives to incarceration should be pursued whenever possible to minimize those in New York's carceral system.

Shifting the Voice: How Emory's Identity Hinges on Adopting the Kalven Principles

By Melissa Shane

Friends, professors, and campus clubs. Atlanta, Georgia, Dooley and Swoop, and Spanish tile roofs. When asked to define Emory University as an institution, these components are likely at the forefront of the college community's mind. Yet on June 24, 2022, Emory University President Greg Fenves issued an opinion on the overturning of *Roe v. Wade*, confidently and boldly signing it in his official presidential capacity.[1] On October 25, 2023, President Fenves yet again issued an opinion, but this time on the day's pro-Palestine protests, once again taking it upon himself to sign it in his official capacity, as President of Emory University [2]

Regardless of whether one agrees with his positions, the ease with which he is able to sign the University's name to an opinion crafted by a select few at the top of the Emory hierarchy is alarming. This flies in the face of Emory's commitment to both "open inquiry, open expression, and vigorous discussion and debate" and "diversity, inclusion, and community."[3] Open expression is not speaking for an entire population as though your perspective represents theirs–diversity is not highlighting merely one perspective on contentious issues. These values are instead, embodied by allowing various perspectives to thrive through encouraging debate and disagreement. On a personal blog or social media account is their right to expression, but in an official capacity, Emory administrators continue to speak for community members, reinforcing the notion that they, simply by virtue of their roles, are the University. Policy needs to meet reality: Emory is not a monolith, and it is not defined by the administration. To represent Emory as it truly is, a culmination of all of its students and faculty, and to truly commit to its educational goals, Emory should adopt the Kalven Principles.

[1] Fenves, G. L., (2022, June 24) *Supreme Court ruling on Dobbs v. Jackson Women's Health Organization*. Emory University Office of the President. https://president.emory.edu/communications/2022/06/scotus-opinion-6-24-22.html

[2] Fenves, G. L., (2023, October 25) *Today's Protest*. Emory University Office of the President. https://president.emory.edu/communications/2023/10/10-25-2023.html

[3] *Respect for Open Expression Policy* (2024, August 27) Emory University. https://emory.ellucid.com/documents/view/19648?security=c6f36f9de43a2cd25fc99614d09384f649a313cf

The Kalven Report is a product of the 1967 faculty committee at the University of Chicago, centered around the school's "role in political and social action."[4] Named after the committee chairman Harry Kalven of the University of Chicago Law School, the doctrine discusses the necessity of academic freedom at universities and concludes that institutional neutrality is central to preserving the open dissemination of knowledge universities seek to provide.[5] It determines that there must be constraints on when and where universities can speak on political matters and advocates that university administrators remain neutral on pressing political issues, establishing a set of principles known as the Kalven Principles or institutional neutrality. In action, this means administrators will refrain from releasing statements, giving speeches, or utilizing any other form of expression to take a position on political issues that don't directly pertain to university operations. When there is debate as to whether a political issue impacts university operations, they should give deference to community voices and refrain from releasing a statement. For example, while one could make an argument that *Dobbs v Jackson* (2022) affects university operations by virtue of the school's female population, it is not directly related to the functioning of the university, so they would not address this issue. The overturning of Affirmative Action, however, is relevant to university functions via admissions, and thus this would be in the limited exceptions to the Principles. Schools that have adopted this approach include but aren't limited to Claremont McKenna College, Columbia University, Vanderbilt University, Harvard University, and the North Carolina System.

In hearing "institutional neutrality," the gut reaction is to view this as a university cop-out–a way for the university to stay silent when severely divisive and pressing political issues are occurring. This perspective is well-intentioned, but it fundamentally misunderstands the definition of an institution. No one defines Emory as solely the administration; Emory's identity is shaped by a culmination of many factors. Attributes like its physical existence, academic offerings, campus clubs, and most notably its students and faculty (for which it could not exist without) all come together to form the university identity. While administrators often are and should be part of this list, they aren't *themselves* the list. In this way, the Kalven Principles only

[4] Kalven Committee: *Report on the University's Role in Political and Social Action.* (1967, November 1) University of Chicago Office of the Provost.
https://provost.uchicago.edu/sites/default/files/documents/reports/KalvenRprt_0.pdf
[5] *The University of Chicago Kalven Report*. (n.d.). The Foundation for Individual Rights and Expression.
https://www.thefire.org/research-learn/university-chicago-kalven-report

advocate for institutional neutrality if one believes that the institution is defined by and fundamentally is its administrators. The Principles do not advocate for a neutral administration in order to turn attention away from timely matters but instead to empower the voice of the greater campus community on relevant matters. How an institution feels about a pressing political issue can and should very well be determined by the mass varying opinions expressed by the students and faculty rather than dictated by the university administration. Thus, the Kalven Principles do not eliminate Emory University's voice but simply shift who maintains it.

Through restricting university administrators, the Kalven Principles recenter the university on student and faculty perspectives by supporting healthy campus dialogue, absent of external pressures. The Kalven Report is adopted as principles because that is fundamentally what it is, and how it should be reflected in action. It is not as simple as adopting the Report because it is about taking the next step to uphold the principles of the document, which value open dialogue and debate. The University and its administrators should truly become "the home and sponsor of critics…not itself the critic"[6] by using their many resources to uplift the voices in the community, without setting the terms of the conversation. Washington University (WashU), for example, routinely hosts a civic dialogue event called "The Longest Table," which promotes healthy dialogue and disagreement by allowing students to engage in conversation with one another about pressing issues.[7] Likewise, Brooklyn College hosted a conversation surrounding the Israel-Palestine conflict, highlighting student and faculty perspectives on all sides of the issue.[8] Events like these display administrative support for student voices and demonstrate how Emory administrators could work with Student Government Association (SGA) to host events that spark dialogue and inspire critical thinking. Underlying the Principles are administrative efforts like these that better support a community of open dialogue and educational advancement.

Fundamentally, it comes down to the university's purpose: to educate students and enable them to constructively evaluate the world. In Emory's own words, its objective is to spark "innovation through teaching, research, service, and creative expression" and to "graduate

[6] See footnote 4
[7] Keaggy, D. T. (2024, August 28). *WashU Community Invited to Civic Dialogue Event, Meal*. Washington University in St. Louis: The Source. https://source.washu.edu/2024/08/washu-community-invited-to-civic-dialogue-event-meal/
[8] Afanasyev, D. (2024, October 1). *Brooklyn College Hosts Israel-Palestine Discussion as Part of "We Stand Against Hate" Initiative*.The Brooklyn College Vanguard. https://vanguard.blog.brooklyn.edu/2024/10/01/brooklyn-college-hosts-israel-palestine-discussion-as-part-of-we-stand-against-hate-initiative/

critical thinkers and compassionate leaders."[9] This mission is hindered by opinionated statements that speak for a large community of people as a monolith or to take a side on the matters of the day. Where one could argue universities yield great power in promoting societal change, that societal change and innovation are found not through the expressive actions of administrators but from the graduating body they are able to produce and send into the world. Released statements are not effective at empowering or creating the desired change; President Fenves' email did not overturn *Dobbs v. Jackson Women's Health Organization,* nor did it make women on campus feel safer in their loss of rights. In fact, the statements often divert the conversation away from the actual issue and to the words spoken *about* the pressing issue, leaving the actual issue of importance unaddressed.[10] Universities exist to educate and enable their students and faculty to impact their communities. To treat administrators as the arbiters of societal change is to overstate the power of their speech and to divert the institution away from its true purpose at the cost of its community.

Emory University cannot be defined in one word or by a small body of people. What makes the University so prominent, impactful, and meaningful is the culmination of factors that curate its identity. Grounding itself in its purpose of fostering the advancement of knowledge and education, the University should uplift community voices and nurture an environment that is conducive to producing leaders. Adopting the Kalven Report would allow Emory to recenter its educational mission while giving students and faculty the tools to lead the conversation. Above all, shifting the voice to the community through the Kalven Report reclaims Emory's identity while strongly bolstering its support for the open expression that has bred such fruitful progress and ideals.

[9] *About Emory* (n.d.) Emory University. Retrieved August 18, 2024, from https://apply.emory.edu/discover/about.html

[10] Emory Whig. (2022, July 16). *Response to President Fenves' Statement on Dobbs v. Jackson.* Instagram. Retrieved August 18, 2024, from https://www.instagram.com/p/CgE_lFEulz7/

The Affordable Care Act and Texas v. United States: How Loose Legal Challenges Threaten Healthcare Coverage

By Jordan Antwi

The cost of healthcare in the United States is one of the highest in the world.[1] With costs rising faster than the rate of inflation, the U.S. far surpasses other wealthy nations in per capita health spending.[2] However, despite this high healthcare spending, the U.S. does not achieve favorable healthcare outcomes for all Americans. When compared to other high-income countries, the U.S. has the lowest life expectancy at birth and the highest death rates for treatable conditions.[3] Healthcare disparities within underserved communities contribute to this discrepancy by about 50% since the socioeconomic status of an individual or household defines their ability to access healthcare.[4] In total, an estimated 112 million (44%) of American adults are struggling to pay for healthcare in America. Due to their inability to pay, patients have been dropped from their hospital coverage, accounting for 44,789 deaths per year.[5] This discrepancy in care within the U.S. healthcare system demonstrates a clear need for expansive healthcare coverage for all.

To mediate rising healthcare costs, President Obama signed the Affordable Care Act (ACA) into law, the most pivotal piece of health legislation since Medicare and Medicaid. In official terms, the ACA is a comprehensive reform law enacted in 2010 to increase health insurance coverage for the uninsured.[6] It requires most insurers to cover 10 essential health

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[1] *How does the U.S. healthcare system compare to other countries?* (2024, August 15). Peter G. Peterson Foundation. https://www.pgpf.org/blog/2024/08/how-does-the-us-healthcare-system-compare-to-other-countries.

[2] Cox, C., Ortaliza, J., Wager, E., & Amin, K. (2024, May 28). *Health Care Costs and affordability*. Kaiser Family Foundation. https://www.kff.org/health-policy-101-health-care-costs-and-affordability.

[3] Blumenthal, D., Collins, S. R., & Fowler, E. (2020, February 26). *The Affordable Care Act at 10 years: What's the effect on health care coverage and access?* The Commonwealth Fund. https://www.commonwealthfund.org/publications/journal-article/2020/feb/aca-at-10-years-effect-health-care-coverage-access

[4] Whitman, A., De Lew, N., Chappel , A., Aysola, V., Zuckerman, R., & Sommers, B. (2022, April 1). *Addressing Social Determinants of Health: Examples of Successful Evidence-Based Strategies and Current Federal Efforts.* Assistant Secretary for Planning and Evaluation. https://aspe.hhs.gov/sites/default/files/documents/e2b650cd64cf84aae8ff0fae7474af82/SDOH-Evidence-Review.pdf

[5] *Lack of insurance to blame for almost 45,000 deaths: Study*. (2024, September 17). Physicians for a National Health Program. https://pnhp.org/news/lack-of-insurance-to-blame-for-almost-45000-deaths-study/

[6] Blake, V. (2012). The constitutionality of the Affordable Care Act: An update. *American Medical Association Journal of Ethics*, 14(11), 873-876. https://journalofethics.ama-assn.org/article/constitutionality-affordable-care-act-update/2012-11

benefits that include but are not limited to chronic disease management, emergency services, mental health treatment, and prescription drug coverage. The law also provides consumers with premium tax credits that lower costs for households with incomes between 100% and 400% of the federal poverty level. Using these tax credits, the ACA has helped to reduce the uninsured rate by providing a pathway to access affordable health insurance plans. To date, it has reduced the number of uninsured Americans from 45.2 million in 2013 to 26.5 million in 2022.[7]

Despite the positive outcomes achieved by the ACA, nearly half of Americans still oppose many features of the bill. More specifically, the law's individual mandate provision, Section 5000A, which requires individuals to purchase minimum essential coverage or face a penalty tax, has been called into question. In February of 2018, Texas, alongside 19 other states and two individual plaintiffs, filed a complaint in the U.S. District Court for the Northern District of Texas. They argued that Section 5000A of the law was unconstitutional, claiming that it exceeded Congress' power under the Commerce Clause by forcing individuals to purchase health insurance, essentially regulating economic inactivity. While the Commerce Clause grants Congress the power to regulate Commerce with foreign nations, among several states, and among Native American tribes, taxing people for not enrolling in a program is considered beyond the scope of their authority. They also stated that increased Medicaid enrollment would further burden state finances via payment of Medicaid with state tax dollars. Moreover, the plaintiff side claimed that the law was inseparable from the mandate provision, making the entire ACA unconstitutional. This argument was premised on the notion that you cannot achieve the mission of the ACA, healthcare coverage for all, without requiring people to enroll in Medicaid.[8]

What stands out about the plaintiff's approach is the Department of Justice's (DOJ) stance on the mandate. Traditionally, the DOJ defends Acts of Congress when they are challenged in court. However, during the Trump administration, the DOJ joined the plaintiffs in striking the validity of the mandate, arguing that the law should be invalidated. Agreeing with

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[7] Sullivan, J., Orris, A., & Lukens, G. (2024, March 25). *Entering their second decade, Affordable Care Act Coverage Expansions Have Helped Millions, Provide Basis for Further Progress*. Center on Budget and Policy Priorities. https://www.cbpp.org/research/health/entering-their-second-decade-affordable-care-act-coverage-expansions-have-helped

[8] Wydra, E. B., Gorod, B. J., & Frazelle, B. R. (2021, June 21). *Texas v. United States*. Constitutional Accountability Center. https://www.theusconstitution.org/litigation/texas-v-united-states/#:~:text=In%20Texas%20v.,Affordable%20Care%20Act's%20individual%20mandate.

the plaintiffs, a district court held that the individual mandate is unconstitutional and inseparable from the rest of the ACA, rendering the entirety of the ACA invalid. As the case proceeded to the Fifth Circuit, the House of Representatives moved to intervene by filing an opening brief on March 25, 2019. Three main points were presented. The House argued that the plaintiffs lacked standing to challenge Section 5000A because the mandate does not legally require a purchase of health insurance. They stated that the constitutionality of Section 5000A is valid as no factual evidence of it stripping away Ameircans' rights have been presented, and that linking Section 5000A to the rest of the ACA is unconstitutional. In a 2-1 decision, the Fifth Circuit ignored these points, concluding that the plaintiff states have standing to bring the case forward and that Section 5000A is unconstitutional. When the case was taken by the Supreme Court, the House filed another brief, both reinforcing their principal points and adding that a 2017 amendment, the Tax Cuts and Jobs Act, had already invalidated the mandate. The Tax Cuts and Jobs Act had eliminated the penalty for not abiding to the individual mandate, maintaining the freedom to opt out of the ACA and eliminating the government's ability to enforce the mandate. Furthermore, the amendment had existed for several years at the time of the case, illustrating that the ACA still provided effective coverage even without the individual mandate. This evidence destabilized the foundation of the plaintiff's case, illustrating that the individual mandate was not inseparable from the rest of the ACA. Ignoring the Tax Cuts and Jobs Act, the plaintiffs continued challenging the entire ACA and reiterated their argument that an increased enrollment in Medicaid and the Children's Health Insurance Program (CHIP) will further burden state finances, an argument that relied heavily on speculative inferences.

After reviewing the plaintiff's implausible claims, in June 2021, the Supreme Court held that the plaintiffs lacked the evidence or standing to challenge the ACA. In a 7-2 decision, the court dismissed the suit, marking a notable victory for all those who have since benefitted from the ACA. Notably, the Supreme Court's decision did not include an official opinion on whether or not the law was constitutional. Instead, their decision solely commented on the legal challenge's lack of factual examples of the mandate stripping Americans of their constitutional rights that would provide them standing to sue.

In examining this case, it is evident that there is a clear divide between the perceived value of the Affordable Care Act and its impact on U.S. healthcare. Texas believes that the United States should not have a role in federally regulating healthcare, as it can not

constitutionally require someone to buy health insurance. The defendant side believes that the individual mandate of the ACA is constitutional because, in practice, it does not alter anyone's legal rights. While the constitutionality of ACA was maintained, the challenge should not have made it to the level of the Supreme Court as the premise of the defendant's arguments were not legally sound. Arguments made in congressional briefs, including the existence of the Tax Cuts and Jobs Act which functionally invalidated Section 5000A, were entirely ignored by lower courts. The oversight of this evidence and continued insistence that the entirety of the ACA had to be removed due to a singular mandate raises questions as to what the true motives of the plaintiff were.

When examining the states' positions in *Texas v. United States (2018)*, there is a pattern of Republican party affiliation among Texas and the 19 other states challenging the ACA. The plaintiffs' political party's long standing opposition to the ACA's enactment suggests that the reliance on Section 5000A to strike down the entire law is motivated more by political objectives than legal precedent. To strike down an Act of Congress on the grounds of a singular mandate that can no longer be enforced demonstrates a disdain for the provisions of the act that are constitutionally sound and a disrespect for the non-partisan objectives of our legal system.

The details of this case stand out because of how far the plaintiff's arguments made it through the courts despite their lack of substantial evidence. Its advancement to the Supreme Court reflects how the post-2017 amendment to the mandate did not remedy the grievances towards the bill as a whole, rather than any genuine constitutional concerns. Had the Affordable Care Act been removed, then so too would have the coverage for more than 45 million low-income Americans, who would lose access to essential medical care and high-cost prescription drugs. The effects of *Texas v. United States (2018)* could have destroyed the health of many communities throughout the country. Moving forward, the Supreme Court must continue to examine the way in which legal verbiage is utilized to disguise the true face of a defendant's invalid political arguments. The fragility of the United States healthcare system and one's access to it is too important to be unjustly placed into unsubstantiated interrogation under false legal pretenses.

United States v. Google LLC: The Implications of Antitrust Laws on the Modern Technology Market

By Cate Bashore

The expansion of technological capabilities and the internet has been a highlight of the 21st century thus far. From Apple's smartphones, Google's growing search engines, and other "Big Tech" companies such as Amazon or Microsoft, economists have questioned the lack of regulation in the tech industry. Whether these companies could continue to grow in an unregulated way was answered in the 2023 Supreme Court case, *United States v. Google LLC*. The case concluded that Google had monopolized two markets: general search services and general text advertising. This landmark decision is the first time the Supreme Court has begun restricting the capabilities of large tech corporations. While not yet realized, the implications of this decision will change how Google and the technology market can operate.

The Supreme Court found Google liable on the U.S. Plaintiffs' Counts I and III, concluding that Google violated Section 2 of the Sherman Act, which prohibits the "[monopolization] or attempt to monopolize a market." The Sherman Act aims to increase market competition by promoting more "fair" economic practices and limiting the concentration of market power within only a few companies. The Sherman Antitrust Act was passed in 1890, allowing the government to break up monopolies during a period where monopolies dominated many different markets.[1] Furthermore, Section 2 of the Sherman Act only prohibits monopoly when there has been a conspiracy to monopolize by a particular company. In other words, if Google gained search engine dominance through market forces alone, a monopoly over the search engine market would not be considered illegal or violate the Sherman Antitrust Act.

In 2020, 90% of internet searches went through Google, and 95% of internet searches were done on smartphones. For comparison, the market concentration of the second-largest search engine company, Microsoft Bing, included only 6% of total search engine searches. The Plaintiff argued that this market power accumulated due to Google's distribution agreements, rather than simply being the browser that consumers prefer. In 2021 the company spent $26 billion on payments to not only be the default search engine on devices but also have their

[1] Chin-Rothmann, C. (2022, April 22). *Breaking Down the Arguments for and against U.S. Antitrust Legislation*. Center for Strategic and International Studies. https://www.csis.org/analysis/breaking-down-arguments-and-against-us-antitrust-legislation

partners agree to not preload another search engine, such as Bing, onto the device. Therefore, the Plaintiff argued that Google's distribution agreements have led to their search engine dominance.[2]

In addition, these distribution agreements have also cemented Google's second monopoly in online advertising. The increase in users caused by Google's search engine dominance means Google has an increase in advertisers across its platforms. Google's advertising revenue from its distribution agreements is significantly higher than its next closest competitor, Microsoft's Bing. In 2021, Google's revenue from advertising accumulated to $146 billion, whereas Bing's revenue accumulated to less than $22 billion.

Witnesses from advertising companies brought evidence that solidified the anticompetitive effects of Google's distribution agreements. Advertising companies correlate the amount spent on text ads to the appropriate market share. As a result, most advertising companies spend roughly 90% of their budget on advertising on Google's search engine, and 8-10% on Bing. Google's dominance means that as long as they can maintain a certain concentration, advertisers will advertise on Google's platform regardless of changes in the price or quality of the advertisements. This anti-competitive effect led to the court's ruling that Google's actions are monopolistic, designed to create and maintain a hegemony over the search engine and advertising markets.[3]

This case will set a precedent and affect the outcome of Apple and Amazon's pending lawsuits regarding the illegal maintenance of monopoly power within the smartphone and online retail markets. The court's decision to limit the power of Google raises questions about whether they will do the same in the Apple and Amazon cases. However, these newer antitrust cases are slightly different given that they violate other aspects of antitrust law. For example, Amazon's case alleges that the company violates the Sherman Antitrust Act's Section 1, "conspiracy in the restraint of commerce." The Federal Trade Commission (FTC) has argued that Amazon charges smaller businesses extra fees, knowing that they rely on Amazon to stay in business.[4]

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[2] United States v. Google LLC, 661 US (2023). https://casetext.com/case/united-states-v-google-llc

[3] Kang, C., & McCabe, D. (2024, May 3). *U.S. Antitrust Case Against Google Is Just the Start*. The New York Times. https://www.nytimes.com/2024/05/03/technology/google-apple-amazon-meta-antitrust.html

[4] Graham, V. (2023, September 26). *FTC sues Amazon for illegally maintaining monopoly power*. Federal Trade Commission. https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power

Furthermore, the FTC hopes to address Amazon's anti-discounting measures, raising prices and providing lower-quality service for consumers. If *United States v. Google LLC.* Establishes a precedent to continue limiting and regulating "Big Tech" companies, could lead to positive, pro-competitive effects that benefit independent businesses, producers, and consumers.[5]

Antitrust laws are passed to protect the free, competitive market and ensure fair business practices for consumers. By prohibiting actions such as tying agreements and predatory pricing, these laws aim to establish more fair, and often lower prices for consumers while ensuring that competition within these markets will promote innovation. However, when applied to technology markets, while consumers may benefit from lower prices from more competition, it can also be argued that technological innovation will slow down. Established corporations with larger revenues, while perhaps technology monopolies, also have furthered technological innovation at a pace that would be hard for emerging companies. An increase in competition within these markets may lead to more product options for consumers, however, it could also lead to a decrease in innovation overall. Therefore, it might be harder for startup companies to create and produce costly new technology than for larger companies.

Ultimately, *United States v. Google LLC* will lead to positive, pro-competitive effects within the technology markets. The decision will likely lead to further investigations and similar outcomes within other pending cases. While these decisions will be noteworthy in themselves, it is also important to consider how the court will decide to enact upon this case. Questions about whether to break up the companies will undoubtedly lead to new market structures and practices, including an opportunity for emerging companies to compete with developed companies. Furthermore, consumers will experience these pro-competitive effects through lower prices for the same goods. These effects could also open the market to local and independent companies that have newer products and technologies. Whether innovation or the quality of goods will be stifled, these effects will certainly contribute to a new era for the technology market.

[5] McCabe, D., & Grant, N. (2024, August 13). U.S. Said to Consider a Breakup of Google to Address Search Monopoly. *The New York Times*. https://www.nytimes.com/2024/08/13/technology/google-monopoly-antitrust-justice-department.html