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Parental Liability in Mass Shootings: A Dangerous Precedent

By Jane Sanderson

On December 3, 2021, the parents of convicted Oxford High School shooter Ethan Crumbley were charged with four counts of involuntary manslaughter in connection with their son's mass shooting that killed four and injured seven more. The charges came after investigators identified that James and Jennifer Crumbley displayed "multiple failures to act on Ethan Crumbley's increasingly troubling behavior" and because they allegedly bought the semiautomatic handgun he used in the mass shooting as a "gift for their son."[1] Despite the Crumbley parents being tried separately, each case delivered the same result. *In People of the State of Michigan v. Crumbley's*, the Oakland Circuit Court concluded that there was sufficient evidence to say that "the deaths of the victims were a direct and natural result of the Defendants' gross negligence."[2] Jennifer Crumbley was sentenced to 10-15 years on four counts of involuntary manslaughter, marking the first time that a parent of a child who committed a mass shooting has been found criminally responsible for manslaughter. This historic turning point in the legal landscape set a defining precedent for parental accountability in cases of gun violence by minors.[3]

By September 5, 2024, the father of the accused Apalachee High School shooter, Colt Gray, became the third parent to receive involuntary manslaughter charges among others (including two counts of second-degree murder) in connection to the deadly mass shooting in Winder, Georgia. Indictment documents allege that Colin Gray committed "criminal negligence" and allowed his son "access to a firearm and ammunition after receiving sufficient warning that Colt Gray would harm and endanger the bodily safety of another."[4] While Colin Gray has not yet been officially indicted, his charges represent the growing acknowledgment of parental liability in mass shootings.

[1] Brulliard, K., Bellware, K., Firozi, P., & Kornfield, M. (2021, December 3). *Parents of Michigan high school shooting suspect charged with four counts of involuntary manslaughter*. The Washington Post. https://go.gale.com/ps/anonymous?id=GALE%7CA684795490
[2] Michigan Court of Appeals. (2023, March 23). *People of the State of Michigan v. James Robert Crumbley and Jennifer Lynn Crumbley*, No. 362210. https://www.courts.michigan.gov/4b05f0/siteassets/case-documents/uploads/opinions/final/coa/20230323_c362 210_69_362210.opn.pdf
[3] Klinefelter, Q. (2024, April 10). James and Jennifer Crumbley, a school shooter's parents, are sentenced to 10-15 years. npr.
[4] Kallingal, M., & Sayers, D. M. (2024, October 17). *Georgia school shooter and his father indicted on new counts in Apalachee High School killings*. CNN. https://www.cnn.com/2024/10/17/us/colt-colin-gray-apalachee-school-shooting/index.html

Involuntary manslaughter charges represent a lower designation of homicide where the killer lacks intent, yet negligence or recklessness leads to the death of the victim. In cases of extreme recklessness, a murder charge may be more appropriate. Criminal negligence offers culpability for the fatal outcomes of a disregard for the safety and well-being of others.[5] The gross negligence on the part of the Crumbleys and Colin Gray is what gave their teenage sons direct access to the weapons they used to murder four people each. Colin Gray gifted his son an automatic rifle months after an FBI investigation into alleged threats he made online about carrying out a school shooting. In the case of the Crumbleys, the parents ignored signs and concerns from school counselors that Ethan Crumbley's mental health was deteriorating, as argued by the prosecution. Thus, in this case, the State of Michigan argued that "the deaths of the victims were a direct and natural result of the Defendants' gross negligence."[6] Had Ethan Crumbley and Colin Gray been given access to support systems to address signs of distress instead of firearms, both school shootings could have been prevented entirely.

As of January 2025, the Crumbleys and Colin Gray are the only parents in the United States who have been charged in connection with a deadly mass school shooting committed by their children; however, increasing parental accountability for gun ownership and safety is a trend that is likely to continue. Robert Crimo Jr., the father of the suspected 2022 Fourth of July parade shooter in Highland Park, Illinois, pleaded guilty to seven counts of misdemeanor recklessness for signing his son's Illinois Firearm Owners Identification card sponsorship form despite several previous police reports detailing his son's interest in committing suicide and taking the lives of others.[7] Additionally, Deja Taylor, the mother of the six-year-old boy who shot his teacher in Virginia, is serving two years in prison on a federal gun charge after her son was able to access her firearm and bring it to school.[8] Despite support from victims and gun control advocates alike, the shift toward the prosecution of parents in cases of gun violence is inherently reactive and does little to address the root issue. Although it is easy to assign blame after the fact, preventing these tragedies begins well before a parent is held criminally liable.

[5] *Involuntary Manslaughter Laws*. (n.d.). Justia.https://www.justia.com/criminal/offenses/homicide/involuntary-manslaughter/
[6] Michigan Court of Appeals. (2023, March 23). *People of the State of Michigan v. James Robert Crumbley and Jennifer Lynn Crumbley*, No. 362210. https://www.courts.michigan.gov/4b05f0/siteassets/case-documents/uploads/opinions/final/coa/20230323_c362 210_69_362210.opn.pdf
[7] Mascarenhas, L., Boyette, C., & Langmaid, V. (2023, November 6). *Father of Highland Park shooting suspect pleads guilty to misdemeanor reckless conduct charges in deal with prosecutors*. CNN. https://www.cnn.com/2023/11/06/us/robert-crimo-highland-park-shooting/index.html
[8] *Deja Taylor, mother of 6-year-old who shot Virginia teacher Abby Zwerner, gets 2 years in prison for child neglect*. (2023, December 15). CBS News. https://www.cbsnews.com/news/deja-taylor-sentenced-mother-6-year-old-shot-virginia-teacher-abby-zwerner-chil d-neglect/

Many school shootings, including the cases touched on in this article, may never have happened in the first place if the child didn't have access to a firearm at home. A 2019 report by the Secret Service, which looked at 41 instances of school violence, found that more than 75% of school shooters obtained a firearm from the home of a parent or close relative.[9] Limiting the number of guns in U.S. households and setting clear legal safety standards are imperative to ensure that firearms are not falling into the hands of children and unauthorized adults. While gun control reforms continue to divide the nation, the severity and responsibilities of ownership cannot be understated.

Twenty-six states across the U.S. have some variation of safe storage/child access laws that require gun owners to keep firearms secured.[10] In many of those states, a failure to comply carries legal penalties from fines to criminal charges. Safe storage laws boast support on both sides of the aisle and have been linked to significantly lower rates of gun-related injuries and deaths, especially among adolescents.[11] A study by Everytown found that safe storage laws "incentivize better practices" and have been linked to an 85% reduction in unintentional injuries.[12] The statistics are clear. While parental liability laws have never been proven to deter gun violence, gun control reforms have done it across the board.

On the other hand, it's important to consider the potential unintended consequences of holding parents liable for their children's delinquencies and the precedent that is being established by cases like the Crumbleys' and Colin Gray's. A common failure of the American legal system is its disproportionate impact on specific communities. This manifests itself in several ways, including over-policing in predominantly Black neighborhoods, harsher sentencing for crimes committed by individuals from marginalized backgrounds, and systemic barriers to adequate legal representation.[13] When it comes to parental responsibility, previous family-oriented laws have a history of disproportionately targeting immigrant, Black, and low-income families. In the 1970s, many major metropolitan areas, such as Atlanta and Chicago, saw an uptick in curfew laws, which led to increased police presence and punishments in these

[9] Staff of the U.S. Secret Service National Threat Assessment Center (NTAC). (2019). *Protecting America's Schools: A U.S. Secret Service Analysis of Targeted School Violence*. https://www.secretservice.gov/sites/default/files/2020-04/Protecting_Americas_Schools.pdf
[10] *Which states have child-access and/or secure storage laws?* (2025, January 15). Everytown. https://everytownresearch.org/rankings/law/secure-storage-or-child-access-prevention-required/
[11] *Ibid*
[12] *Ibid*
[13] Erisman, K. L. (2024, June 4). *Inequality in the Criminal Justice System and Accountability*. American Military University. https://www.amu.apus.edu/area-of-study/legal-studies/resources/inequality-in-the-criminal-justice-system-and-accountability/

communities.[14] Curfew legislation is just one example of the systemic policies that unfairly impact households with working parents in over-policed areas. The precedent being set by cases like the Crumbleys' and Colin Gray emphasizes a dangerous aspect of the criminal justice system.

Additionally, many parents across the U.S. already struggle to find the time and resources to occupy their children and address their challenges. Today, nearly one-quarter of U.S. children live in single-parent households,[15] 67% of households have two working parents,[16] and seven million families live below the poverty line.[17] Absence from the home coupled with financial limitations leave vulnerable parents with a lot to keep track of, potentially making them more likely to be considered negligent. Financial penalties for low-income parents can exacerbate inequality and fail to address the root causes of delinquencies. Punitive measures for parents may lead to further instability in the home and take parents and resources away from children who need them more than ever. Finding ways to address inequities within the legal system so that punishment is not unfairly imposed on marginalized groups is crucial when it comes to criminal parental liability.

As the U.S. continues to lead the world in school and mass shootings, addressing the root causes of gun violence trumps retrospective assignment of blame. While setting a precedent that penalizes parental criminal negligence reinforces the responsibility of gun ownership and the need to address alarming behaviors in children, hiding behind the shortcomings of individual parents will not change the status quo. Policies that focus on the availability of mental health/counseling services and keeping guns out of the hands and homes of children create societal safety nets. Now more than ever, it is vital that policymakers are held accountable for their role in passing and enforcing preventative legislation.

[14] Ugwu, N. (2022). Chicago is not a Sundown Town: A Closer Look at Youth Curfews Chicago is not a Sundown Town: A Closer Look at Youth Curfews. *Public Interest Law Reporter Public Interest Law Reporter*, *28*(1).
[15] Kramer, S. (2019, December 12). *U.S. has world's highest rate of children living in single-parent households*. Pew Research Center. https://www.pewresearch.org/short-reads/2019/12/12/u-s-children-more-likely-than-children-in-other-countries-to-live-with-just-one-parent/
[16] United States Department of Labor Bureau of Labor Statistics. (2024, April 24). *Employment Characteristics of Families — 2023* (Report No. USDL-24-0743). Government Publishing Office. https://www.bls.gov/news.release/pdf/famee.pdf
[17] *U.S. number of families in poverty 1990-2023*. (2024, September). Statista. https://www.statista.com/statistics/204743/number-of-poor-families-in-the-us/.

Truth in Sentencing: For Peace or For Profit?

By Colin Senat

The War on Drugs, initially declared in 1971 by President Richard Nixon, was supposed to be a public safety initiative aimed at reducing drug use and drug-related crimes in the United States.[1] However, the War on Drugs created a complex system of laws and policies that resulted in the disproportionate incarceration of people, mainly those of Black and Brown communities, for (usually minor) drug offenses.[2] Although the War on Drugs appeared to be driven by public safety, private corporations and prisons influenced legislation dictating prisoner sentencing, thus both gaining an economic interest and contributing to disproportionate incarceration rates.

While the public believed the War on Drugs was a campaign for public safety, it was actually a campaign to weaken opposing political parties' voting bodies. In order to advance his personal agenda, President Nixon promoted tough-on-crime legislation like obligatory minimum sentences, three-strikes laws, and the main focus of this essay, truth-in-sentencing laws.[3] Together, these policies sought to strengthen the Republican Party's political capital by disenfranchising communities less likely to vote Republican. In 1992, 84% of Black people were leaning left, about 13% of the nation's total population.[4][5] John Ehrlichman, the Assistant to the President for Domestic Affairs under President Richard Nixon, explains in a confessional the true intent of Nixon's War on Drugs: "You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and then vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."[6] Unfortunately, the adverse effects of tough-on-crime legislation were swept under the rug by the Nixon Administration and the following Presidents, Ronald Reagan, George Bush and Bill Clinton, as they continued to pass tough-on-crime legislation. Part of

[1] Drug Policy Alliance. (2016, September 15). *What is the Drug War? With Jay-Z & Molly Crabapple* [Video]. YouTube. https://www.youtube.com/watch?v=HSozqaVcOU8
[2] Ibid.
[3] Drug Policy Alliance. (n.d.). *Drug War History*. Retrieved August 16, 2025, from https://drugpolicy.org/issues/brief-history-drug-war.
[4] Pew Research Center. (2016, September 13). *The Parties on the Eve of the 2016 Election: Two Coalitions, Moving Further Apart*. https://www.pewresearch.org/politics/2016/09/13/2-party-affiliation-among-voters-1992-2016/.
[5] U.S. Census Bureau. (1994, May). *Statistical brief: Blacks in America — 1992*. https://www2.census.gov/library/publications/1994/demographics/sb94-12.pdf.
[6] Vera Institute of Justice. (n.d.). *Drug War Confessional*. Retrieved August 16, 2025, from https://www.vera.org/reimagining-prison-webumentary/the-past-is-never-dead/drug-war-confessional.

what enabled the Republican Party to pass tough-on-crime legislation was the public perception of crime. There was a growing concern among the American public about the level of crime and drug abuse in the country.[7] In the 1980s and 1990s, the media played a significant role in shaping public opinion about crime. News programs and crime shows depicted violent criminals, leading to a public perception that crime was rampant in the country and that something needed to be done to address it.[8] Despite the tough-on-crime approach, the overall admission of violent offenders to state prisons from 1993 to 1997 barely changed, even as the number of convicted violent offenders in states with truth-in-sentencing laws requiring an 85% minimum sentence increased tenfold.[9]

From the 1970s to the 1990s, a variety of approaches to sentencing emerged in the United States. These included indeterminate sentencing, which was common in the early 1970s and enabled parole boards to have the authority to release offenders from prison; determinate sentencing, in which states introduced fixed prison terms that could be reduced by good-time or earned-time credits; mandatory minimum sentences, in which states enacted statutes requiring offenders to be sentenced to a specified amount of prison time; and sentencing guidelines, in which states established sentencing commissions and created ranges of sentences for given offenses and offender characteristics. Ultimately, these culminated with truth-in-sentencing laws taking prominence.[10]

Truth-in-Sentencing (TIS) laws were the major steps announced by the federal authorities, resulting in the increase of the prison population and removal of suitable offenders with longer sentences for violent perpetrators. The enactment of TIS was created to improve public safety after several years of jail overcrowding problems associated with ineffective incarceration policy. Truth-in-Sentencing is a term used to describe laws that seek to reduce the disparity "between court-imposed sentences and the time a person actually serve[s] in prison."[11] Prior to the Violent Crime Control and Law Enforcement Act of 1994, most TIS laws were handled at the state level because most prisons are state prisons. "Seven states made slight changes to the percentage of sentences to be served by those convicted of violent offenses (for example, from 75 to 85 percent)," and "nine states that had no TIS laws before 1994 passed sentencing reforms that included TIS provisions." There is reason to believe that they did so because in the Violent Crime Control and Law Enforcement Act of 1994, in order for states to receive

[7] See footnote 2
[8] Deggans, E. (2021, June 18). *How TV Dramas Informed And Misinformed Perceptions Of The War On Drugs*. NPR. https://www.npr.org/2021/06/18/1004476457/war-on-drugs-the-wire-miami-vice-orange-is-the-new-black-dragnet-law-and-order.
[9] Ditton, P. & James W. (1999). *Truth in Sentencing in State Prisons*. U.S. Department of Justice. https://bjs.ojp.gov/content/pub/pdf/tssp.pdf.
[10] Ibid.
[11] Ibid.

federal grants, they must utilize TIS laws that include a requirement that prisoners serve a minimum of 85% of their sentence. Before the 1994 Crime Act, only five states had TIS laws. In the same year the federal law was enacted, five more states adopted TIS legislation, followed by 11 additional states the following year.[12]

This change can provide a monetary motivation for judges to sentence more prisoners with violent offenses, as money often tends to be a compelling force. The sheer growth in states' prison populations attests to this. In 1990, the total number of sentenced prisoners under state jurisdiction was 689,577 (315,900 under violent offense charges). By 1996, the total number of sentenced prisoners under state jurisdiction grew by 7% annually, nearly doubling the total state prison population to 1,048,004 (495,400 under violent offense charges).[13] The amount available to carry out this section for any fiscal year under subsection (a) shall be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993."[14] Not only does this imply that states will receive more money if they sentence more people under violent offense charges, but also that states are competing with each other in order to receive more grant money. This created a dangerous environment where prisoners may not accurately be judged for their crimes, and as a result, may receive longer sentences. Along with the surge of TIS laws, many states began weakening or outright removing parole eligibility or good-time credits. By 1999, 14 states had abolished early release at the discretion of a parole board, and eight of these states passed this alongside their own TIS law.[15] This change disincentivized inmates from behaving well, as they were already unlikely to lose a substantial amount of their sentence.

The American Legislative Exchange Council (ALEC) played a vital role in molding legislation at both federal and state levels. ALEC, originally the Conservative Caucus of State Legislators, was a non-profit organization founded in 1973 by Mark Rhoads, an Illinois state house staffer.[16] Rhoads created this group because he wanted to counteract liberal policies passing in states.[17] Over time, the

[12] National Institute of Justice. (n.d.). *Truth in Sentencing and State Sentencing Practices*. Retrieved August 16th https://nij.ojp.gov/topics/articles/truth-sentencing-and-state-sentencing-practices.
[13] See footnote 8
[14] U.S. Congress. (n.d.). *H.R. 3355 - Violent Crime Control and Law Enforcement Act of 1994*. Congress.Gov. Retrieved August 16, 2025, from https://www.congress.gov/bill/103rd-congress/house-bill/3355/text
[15] Congressional Record House. (1994, April 21). *House of Representatives*. https://www.govinfo.gov/content/pkg/GPO-CRECB-1994-pt6/pdf/GPO-CRECB-1994-pt6-6-1.pdf
[16] Bishop, B. (2008, May) *The Big Sort: Why the Clustering of like-Minded America Is Tearing Us Apart* (p. 203). Houghton Mifflin.
[17] Ibid.

organization grew and defined itself as supporting "individual liberty, limited government, free markets, and free enterprise."[18] The main function of ALEC was to generate a "dynamic public-private partnership, proving that when state legislators and the private sector work as allies rather than adversaries, the result is public policies that are beneficial to all Americans."[19] ALEC does this by generating mock legislation with its members, which includes legislators, politicians, and corporations. Just as the War on Drugs was not truly about drugs, the Truth in Sentencing Act was never about justice, but it was about generating profit for a private prison system whose membership in ALEC empowered them to create model legislation to be passed at both federal and state levels.

The Truth in Sentencing Grants provision in H.R. 3355, the Violent Crime Control and Law Enforcement Act of 1994, was influenced by the fundraising organization ALEC, as attested to by Republican House Representative Bill McCollum's statement acknowledging ALEC's guidance and support, as well as the alignment between the model legislation drafted by ALEC and the requirements of the eventual TIS laws. H.R. 3355, also known as the Violent Crime Control and Law Enforcement Act of 1994, Title II's Truth in Sentencing Grants statute was influenced by ALEC. In the Congressional Record of Thursday, April 21, 1994, Republican House Representative Bill McCollum tried to pass revisions to Title IX of the crime bill of the law's predecessor, H.R. 4092. In his speech, he states:

> "I want to thank the individuals and organizations that worked so diligently to provide guidance to Members of the House of Representatives during consideration of these important titles. Also, I would like to submit one letter in particular, the American Legislative Exchange Council [ALEC] to the Record. I would also like to add that not only did I receive correspondence from ALEC on behalf of my truth in sentencing prison amendment which I offered in substitute for title VI of the crime bill, I also drew letters of support from: the National Troopers Coalition, Governor Allen, and John Walsh of America's most wanted.[20]"

Although McCollum's request to amend the law failed the vote, his speech directly admits to his association with and influence from ALEC regarding the truth in sentencing laws that made it into the final version. To further demonstrate ALEC's influence on the TIS section of the 1994 Crimes Act, look no further than the bills ALEC writes themselves. In 1994, ALEC created a collection of the mock bills

[18] American Legislative Exchange Council. (1995). *The Sourcebook of American State Legislation* (p. 1).
[19] Ibid.
[20] The Congressional Record Online. (1994, April 21). *Violent Crime Control and Law Enforcement Act of 1994*. Congressional Record. https://www.govinfo.gov/content/pkg/CREC-1994-05-03/html/CREC-1994-05-03-pt1-PgE32.htm

and legislation they drafted with their members, including corporations and legislators, called *The Sourcebook of American State Legislation, 1995*. Within it is a mock bill called "Truth in Sentencing Act." The summary of the text reads, "This act would require any person convicted of a crime to serve no less than 85% of the sentence imposed." Although there is no direct mention of it, the parts of the truth in sentencing legislation that McCollum included in the 1994 Crimes Act reflect the model legislation ALEC drafted that same year, signifying that in his discussions with ALEC, they more than likely influenced the TIS legislation that was worked on by corporation members of ALEC. This revelation introduces the core problem with the 1994 Crime Act's truth in the sentencing statute: the very corporate members involved in developing the policy also financially benefit from it.[21]

Private prison companies such as CoreCivic were major contributors to crafting the Violent Crimes Act of 1995, resulting in their financial gain due to increased stock prices. This also exposed the conflict of interest due to the private prison business model that pushes for profit over rehabilitation and reasonable sentencing. They were key authors of a bill that would directly profit them, and they did profit from it, as evident by the rise in their stock prices. Corecivic (CCA), which received its first major contract in 1984, was a major and politically active private prison corporation in the country during the 90s. From 1995 onwards, the value of CXW stock exponentially rose. On Jan 31, 1995, the price per share was $13.44. One year later, on Jan 31, 1996, the price per share grew to a whopping $71.69.[22] Coincidentally, this is at the same time the Violent Crimes Act passed in 1995. Furthermore, the CCA was an active member of ALEC, sponsoring its 1994 annual meeting. This suggests that the CCA directly profited from legislation they helped write through ALEC. As a publicly traded company, they have a fiduciary responsibility to work in the best interest of their shareholders. This often means maximizing profits, often at the expense of other parties. In this case, private prison systems have no incentive to rehabilitate prisoners, and as a result, they do not do the primary function of a prison, which is arguably to rehabilitate prisoners. According to an editorial on FindLaw:

> "One of the most perverse incentives in a privately run prison system is that the more prisoners a company houses, the more it gets paid. This leads to a conflict of interest on the part of privately run prisons where they, in theory, are incentivized to not rehabilitate prisoners. If private prisons worked to reduce the number of repeat offenders, they would be in effect reducing the supply of

[21] See footnote 14
[22] Webull. (n.d.). *Graph of Corecivic Historic Stock Prices*. Retrieved August 16, 2025, from https://www.webull.com/quote/nyse-cxw.

profit-producing inmates."[23]

Defenders of the private prison system cite lower costs for the federal government as a reason to continue the private prison system. For example, according to the Prison Policy Initiative, the U.S. government spends $80.7 billion on public prisons and jails and $3.9 billion on private prisons and jails.[24] However, as Oklahoma Democrat Kenneth Corn explained, "We are neglecting our state prison facilities by taking budget funds from them so we can pour money into private prisons." He added that in Oklahoma, "The average cost is $37 per day for each inmate in a state-operated facility, compared with $44 per day for those in private prisons."[25] While the argument for lower cost due to competition for contracts is valid, it does not take into account the inevitability of mergers and acquisitions, which would increase a single corporation's market share, thus reducing competition and in turn the chances of lowered contract cost. This has all been driven by corporations in a corporatocracy sacrificing people in the name of profit, robbing people of their 8th Amendment rights against excessively long sentences, and denying them a fair sentencing system.

The defense of corporate engagement commonly employs the concept of corporate personhood as a legal vindication for the part of businesses in today's society. Corporate personhood is the legal notion that corporations share the same rights as people.[26] The argument over the level of corporate rights and participation in the modern world continues to remain a sophisticated and prolonged question. In a US context, the legality of corporate personhood began in 1819 with the Supreme Court case *Trustees of Dartmouth College v. Woodward*, where the Supreme Court ruled that states should not alter corporate charters, reinforcing the Contract Clause's protection of private and public corporations. [27] This landmark trial demonstrated that states could not have control over corporations, setting the grounds for another Supreme Court case in 1886, *Santa Clara County v. Southern Pacific Railroad Company*. In this case, the court ruled against improper taxation by Santa Clara County. [28] Although Chief Justice Waite's statement on the 14th Amendment's Equal Protection Clause was not part of the formal ruling, it was widely interpreted as extending constitutional protections to corporations despite them not being "people."[29] Together with *Trustees of Dartmouth College v. Woodward*, these two cases

[23] Find Law. (2017, July 28). *Private Jails in the United States*. https://www.findlaw.com/civilrights/other-constitutional-rights/private-jails-in-the-united-states.html.
[24] Prison Policy Initiative. (2024). *Economics of Incarceration*. https://www.prisonpolicy.org/research/economics_of_incarceration/.
[25] Rivera, V. (2016, December). *Private Prisons: Change in Policy and Practice.* https://cops.usdoj.gov/html/dispatch/12-2016/private_prisons.asp.
[26] See footnote 8
[27] Oyez. (n.d.). *Trustees of Dartmouth College v. Woodward*. Retrieved August 16, 2025, from https://www.oyez.org/cases/1789-1850/17us518
[28] Santa Clara County v. Southern Pacific Railroad Co*,* 118 U.S. 394 (1886).
[29] Manning, R. (1984, February) *Corporate Responsibility and Corporate Personhood*. Journal of Business Ethics*,* 1(3), p. 79.

provided the groundwork for corporate rights.

The prospect that corporations were protected under the 14th Amendment and could legally be defined as people sparked discussion on whether corporations are moral entities. Although corporations are a metaphysical entity, since they are not a moral agent or person, they cannot be considered "people."[30] From the late 19th century to throughout the 20th century, states passed several antitrust and anti-corporation laws in order to weaken the legal power of corporations. This was done particularly to prevent monopolies and corporate power in politics. The problem arises when an organization like ALEC enables corporations, who should be unable to directly influence legislation, to be able to do exactly that. By working with ALEC, corporations that are normally restricted by antitrust and anti-corporation laws are able to circumvent these restrictive laws and help pass legislation like the 1994 Crime Act that not only benefit the corporations of ALEC but also do so at the detriment of thousands of citizens, as corporations only have to serve in the best interest of their investors and not that of the country.

The profound issue of whether corporations should be deemed moral entities arises from the claim that they possess rights equivalent to those held by human individuals, despite their distinctive lack of ethical capacity. As organizations like ALEC enable firms to elude antitrust and anti-corporation policies, allowing them to impact legislation in measures such as the 1994 Crime Act, this access will normally favor corporate interests and shareholders, frequently disregarding the welfare of everyday citizens. Although corporations are a metaphysical entity, since they are not a moral agent or person, they cannot be considered "people." From the late 19th century to the 20th century, states passed several antitrust and anti-corporation laws in order to weaken the legal power of corporations. This was done particularly to prevent monopolies and corporate power in politics. The problem arises when an organization like ALEC enables corporations, who should be unable to directly influence legislation, to be able to do exactly that. By working with ALEC, corporations that are normally restricted by antitrust and anti-corporation laws are able to circumvent these restrictive laws and help pass legislation like the 1994 Crime Act, which not only benefits the corporations of ALEC but also does so at the detriment of thousands of citizens, as corporations only have to serve in the best interest of their investors and not that of the country. In addition, ALEC helps corporations bypass standard entries into influencing politics. Usually, corporations would donate money to legislators or to a particular party in order to

[30] Ibid.

indirectly influence legislation; however, by using ALEC, corporations can directly influence laws, like the Crimes Act of 1994.

So why do legislators end up using ALEC legislation to begin with? Many legislators in conservative states aren't paid much, so often they'll work more than one job. As a result, with less time on their hands, they're more likely to pass legislation that's already been written, like ALEC legislation, to make their work manageable.

> A 1985 interview with ALEC's executive director, Kathy Teague, also confirms this recognition. Teague highlighted the resources the group provided to legislators who would otherwise lack such capabilities: 'For the great majority of state legislators, being a lawmaker is their second career…. And so, the need for information is acute. Also, in the majority of states the state legislator has no or very little staff support. In most of the states there is a majority and a minority legislative research office, and that research office has to provide research background information for all of the state legislators in that state.' For these undersupported legislators, ALEC offered clear benefits that included the model bills–but went beyond those proposals. 'We will help them develop it, tailor it for their state. We will put them in touch with legislators in other states who have been the sponsors of similar bills, who can discuss with them the legislative intricacies of the bill, the strategy, the witnesses who were brought in to testify in favor of it, et cetera,' Teague summed up.[31]

In addition, ALEC offers favorable bonuses to legislators that join them, such as prepaid vacations and discounts. This is problematic because state legislators are no longer passing laws that represent the interests of their voters but those of ALEC. At what point are voters no longer the constituency of politicians? In the case where corporations hold more control over the political, economic, and judicial systems, we will live in a corporatocracy rather than a democracy. This is not only harmful to citizens by removing their civic power but also enables corporations to profit over human suffering.

[31] Hertel-Fernandez, A. (2019, February 4). *State Capture: how Conservative Activists, Big Businesses and Wealthy Donors Reshaped the American States* (p. 82). Oxford University Press.

How Close We Were to Bare Life: Examining *Buck v. Bell* Through Agamben's Framework

By Stephanie Ma

In his book *Homo Sacer*, Giorgio Agamben coined the phrase "bare life" to refer to human lives that are deprived of any political significance and legal protection, reduced solely to their biological existence. Using an illustrative analogy, one who is degraded to the state of bare life is akin to a corporeal body devoid of political and legal personhood, directly subjugated to external violence without the buffer of rights. Agamben describes this paradox of bare life as being "included [in the realm of law] by means of an exclusion"[1] a condition in which individuals remain subject to sovereign power but are denied its protections.

Is it truly possible for bare life to exist in a modern country where laws are based on the guarantee of natural human rights? Wouldn't such a condition contradict the very foundation of legal systems? However, a closer examination reveals the tension inherent in the relationship between human rights and law. Taken literally, "human rights" would be the rights of someone simply by virtue of being human. Nevertheless, whether one is human is not determined by law – humanness is unbounded by and precedes the law. Following this logic, law cannot grant or guarantee human rights since it comes after the reality of humanness. As a result, human rights are left unprotected, existing only as a utopian concept constructed to ensure "rights" remain conceivable. What the law truly grants are the political rights of citizens – rights codified in legislation and enforceable within a legal framework. Citizenship, however, can be stripped away, and so too can these rights. One becomes bare life under such circumstances, a condition witnessed repeatedly throughout history and remains possible today.

Buck v. Bell

The 1927 Supreme Court decision in Buck v. Bell stands as one of the most infamous rulings in American legal history. The case validated the forced sterilization of individuals deemed unfit to procreate under the guise of public health policies. The plaintiff in this case, Carrie Buck, was a young woman institutionalized at the Virginia State Colony for Epileptics and Feebleminded. Under the Virginia Sterilization Act of 1924, Buck was slated for forced sterilization based on the claim that she had hereditary defects, specifically imbecility, which authorities of the institution argued she shared with

[1] Agamben, G. (1998). *Homo Sacer: Sovereign Power and Bare Life* (p. 7). Stanford University Press.

her mother and daughter. The state justified this measure as necessary to prevent the propagation of her undesirable traits. Buck, however, contended that the act violated her Fourteenth Amendment rights, particularly the due process and equal protection clauses. The Supreme Court ruled against her in an 8-1 decision, upholding the sterilization and finding no constitutional violation.

In the majority opinion, Justice Oliver Wendell Holmes justified the sterilization law on the grounds of societal welfare and public health. Holmes argued that the Virginia law did not violate procedural due process because it included safeguards such as a required hearing before a board of experts, judicial review of sterilization decisions, and the opportunity for the patient or their guardian to appeal. Thus, Holmes concluded that "the attack is not upon the procedure, but upon the substantive [due process] law,"[2] which protects fundamental liberties from infringement – regardless of how much procedure is involved – unless the government provides a compelling justification. Holmes rejected the claim that substantive due process was violated by arguing that sterilization could be justified in this case as a means of serving the greater good by preventing society from being "swamped by incompetence."[3]

Holmes' reasoning may be difficult to understand without considering his endorsement of eugenics, which led him to disregard the profound conflict between forced sterilization and the foundational principles of the Constitution. Eugenics strips away the political and legal recognition of individuals as bearers of rights and reduces them to bare life. The Declaration of Independence proclaims that all individuals are endowed with "unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[4] However, eugenics denies part or all of these rights, dividing lives into categories of value – those deemed worthy of human rights – and those deemed valueless, and thus stripped of rights altogether. In the case of Buck, her right of procreation is denied – she is regarded as undeserving of having offspring due to her feeblemindedness. Consequently, she was excluded from full citizenship under the law and stripped of the legal and political recognition of her status as a rights-bearing individual. Rather, she was seen as nothing more than a bodily existence. The forced removal of her fallopian tubes was not considered an infringement on her rights to procreation or bodily integrity, as those rights did not exist for her. Eugenics, therefore, corrupts the very core of the modern American

[2] Buck v. Bell, 274 U.S. 200, 207 (1927).
[3] Ibid.
[4] Jefferson T., et al. (1776, July 4). *Declaration of Independence: A Transcription*. National Archives. https://www.archives.gov/founding-docs/declaration-transcript.

legal system, which is ostensibly built upon the inviolable individual rights. Just as Robert Cynkar pointed out in his paper on Buck, "[the] American tradition of civil liberties, which originated in the principles of natural rights, was dismissed by eugenicists as a mere economic rationalization."[5]

The ruling reveals a disturbing dynamic of the "exclusive inclusion"[6] imposed on bare life: Buck was incorporated into the legal framework through her subjection to the sterilization statute, yet simultaneously excluded from it as a full citizen – more precisely, it is because she was excluded from recognition as a rights-holder that she was exposed to the legal violence of the coercive sterilization. While she was not entirely reduced to bare life – only her right to procreation was revoked – the implications are deeply unsettling. This case demonstrates how easily and arbitrarily individuals can be deprived of their rights. As discussed in the introduction, natural human rights are inherently abstract and gain significance only when transformed into political rights safeguarded by law. The fundamental issue, however, lies in the malleability of the law itself, which remains subject to the interpretations and will of those in positions of power.

The Willed State of Exception

The main reason that Holmes gave for upholding the Virginia Sterilization Act was the danger of society being "swamped with incompetence"[7] – but was this danger real? With the benefit of knowledge today, the answer is clearly no. However, "[even] at the high point of the eugenics movement, most eugenicists knew that sterilization was unlikely to have much impact on the gene pool;"[8] and in *Buck* specifically, there was also scant evidence to support claims about the threat posed by the so-called feebleminded or degenerate people and their potential offspring.

In the petition for rehearing, Buck's lawyer, Irving Whitehead – despite his inadequate representation – accurately pointed out there was an "absence of real necessity for this statute,"[9] noting that such necessity would require evidence of a tangible danger threatening the welfare of Virginia's citizens or that the state was incapable of bearing the burden of caring for its mentally impaired population.[10] Nonetheless, this supposed danger was not proven beyond a reasonable doubt; in fact, it

[5] Cynkar, R. (1981). Buck v. Bell: Felt Necessities v. Fundamental Values (p. 1426). *Columbia Law Review,* 81(7), pp. 1418-1461. https://doi.org/10.2307/1122204.
[6] Agamben, G. (1998). *Homo Sacer: Sovereign Power and Bare Life* (p. 21). Stanford University Press.
[7] See footnote 2
[8] Lombardo, P. (2008). *Three Generations, No Imbeciles: Eugenics, the Supreme Court, and Buck v. Bell* (p. 247). Johns Hopkins University Press.
[9] Whitehead, I. (1927). *Petition for Rehearing and Argument* (p. 2). Buck v. Bell, 274 U. S. 200.
[10] Whitehead, I. (1927). *Petition for Rehearing and Argument* (p. 3). Buck v. Bell, 274 U. S. 200.

was scarcely proven at all. Instead, the Supreme Court adopted the assumption of danger arbitrarily, as reflected in Holmes's majority opinion:

"It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind."[11]

The confident tone and language – especially the use of words such as "manifestly unfit" – of Holmes suggest he accepted this assumption as an established truth without making any genuine effort to substantiate it. Yet, as Whitehead pointed out, the statute only stated that sterilization "may" promote the health of the individual and the welfare of society "in certain cases." [12] Thus, there was no real foundation for the claim that society was in danger of being overwhelmed by inadequacy, the very justification for forced sterilization.

This situation does not represent a genuine state of emergency under which extraordinary measures were required; rather, it illustrates a state of emergency being "willed" into existence. That is, the will to create such a state precedes the supposed emergency itself. The future scenario of society being "swamped by incompetence" was neither imminent nor likely but became accepted as truth once articulated by Holmes and validated by the Court. As Agamben observes, "[insofar] as the state of exception is 'willed,' it inaugurates a new juridico-political paradigm in which the norm becomes indistinguishable from the exception."[13] In this framework, Buck's condition – existing as a partially transformed form of bare life – was not exactly a true exception but a willed one, reflecting how the suspension of law becomes normalized.

Conclusion

The coercive sterilization upheld in *Buck v. Bell* exemplifies the fragility of human rights and how easily they can be undermined by power, even under laws purported to guarantee and protect them. This case demonstrates that people were – and likely still are – perilously close to a state of rightlessness. It is no secret that compulsory sterilization was later adopted by Nazi Germany to target individuals deemed genetically undesirable, and it represents only the mildest of the many horrific

[11] See footnote 2
[12] See footnote 10
[13] Agamben, G. (1998). *Homo Sacer: Sovereign Power and Bare Life* (p. 170). Stanford University Press.

techniques used to control and regulate lives, including human experimentation and extermination camps. Though unsettling, it is essential to confront the reality that legal principles, often perceived as stable and immutable, can be dangerously malleable under the influence of power. The legacy of *Buck* serves as a stark and enduring reminder of the delicate boundary separating right-bearing citizens from bare life.

Integrating *Bostock v. Clayton County*: Protections for LGBTQ+ Individuals on College Campuses and the Challenges of Reciprocity

By Avery Neuer

A 2019 study by the Gay, Lesbian, and Straight Education Network (GLSEN) reports a staggering 86% of LGBTQ college students faced identity-based harassment or assault, with over half enduring sexual harassment.[1] College campuses continuously struggle to create environments where LGBTQ+ students feel safe, supported, and free from discrimination.[2] *Bostock v. Clayton County* 2020 marked progress in this effort, with the 2019 6-3 Supreme Court decision ruling that "An employer who fires an individual merely for being gay or transgender violates Title VII."[3] The Civil Rights Act of 1964 includes protections against workplace discrimination in Title VII and "[protection] from sexual harassment in educational programs or activities operated by recipients of federal funding" in Title IX.[4] These powerful legal frameworks are difficult to navigate, but students must understand their rights to ensure they can advocate for themselves during times of harrowing discrimination. Recognizing the ruling of *Bostock* and its preservations for LGBTQ+ students contributes to a safer and more inclusive campus environment. *Bostock* strengthened workplace protection for LGBTQ+ individuals and offered the landmark decision that affirmed the precedent for broader civil rights advancements through combatting discrimination in higher education. That said, the expansion of legal protections presents both opportunities and challenges. College campuses must adapt to these evolving legal frameworks while navigating social, cultural, and institutional tensions to create a truly inclusive environment for LGBTQ+ students.

Bostock stands to strengthen various protections against discrimination in addition to employment protections. The Justice Department states that Title VII precedent serves as a key guide for interpreting Title IX, as both statutes establish a contractual obligation toward prohibiting discrimination in exchange for federal funding.[5] The precedent affirms that LGBTQ+ students are protected from discrimination in academic settings. Title IX's protections against sexual harassment, when combined with the extended protections under Title VII, thus ensure that discrimination based on sexual

[1] GLSEN. (n.d.). *The 2019 National School Climate Survey*. Retrieved February 23, 2025 from https://www.glsen.org/research/2019-national-school-climate-survey.
[2] Tillewein, H., et al. (2023). Silencing the Rainbow: Prevalence of LGBTQ+ Students Who Do Not Report Sexual Violence. *International Journal of Environmental Research and Public Health*, 20(3), 2020. https://doi.org/10.3390/ijerph20032020
[3] Bostock v. Clayton County, 590 U.S. ___ (2020) https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf
[4] U.S. Department of Justice. (2015, August 6). *Title IX.* https://www.justice.gov/crt/title-ix#Bostock.
[5] Ibid.

orientation or gender identity is not only illegal but can be challenged within academic environments through a threat of revoking federal funding and grants. A contractual obligation on universities allows LGBTQ+ students and staff to expect a higher level of legal support regarding their right to freely exist without worry of prejudice or impartiality. The ruling affirms that discrimination against LGBTQ+ individuals in areas such as admissions, housing, sports, and employment is unlawful, giving students an effective platform to stand against unjust practices from their university.

Beyond merely legal protections, the *Bostock* ruling encourages increased inclusivity throughout academic institutions. Anti-harassment safeguards are the bare minimum; as college students navigate their identities and social networks, *Bostock* sets a strong legal precedent for integrating LGBTQ+ students into all aspects of campus life. This legal shift from preventing exclusion to actively promoting inclusion is essential to promoting environments where LGBTQ+ individuals are seen, heard, and supported. This allows for LGBTQ+ students to thrive academically and socially.

While the *Bostock* decision has undoubtedly advanced LGBTQ+ rights, its integration into heated campus environments poses a new set of challenges. Though expectations are defined through Article VII and Article IX, the difficulty in continuing this growth is prevalent. Addressing these challenges while maintaining an inclusive atmosphere requires unwavering accountability and careful attention toward social dynamics, institutional responsibility, and supportive resources. The challenges faced include likely resistance from both students and faculty who may feel uncomfortable or express hostility towards increased protection and advocacy for LGBTQ+ students. Due to the contrary nature of inclusivity efforts with conservatism and some religious views, LGBTQ+ students are at risk of experiencing targeted discrimination within academic spaces despite the expectations of Article VII and Article IX. Universities must assess the delicate balance between securing additional legal protections for LGBTQ+ students and respecting the freedom of dissent in individuals who oppose inclusive policies.

Resistance from students can occur through protests, the formation of student organizations that oppose LGBTQ+ inclusion, or vocal campaigning. The *Bostock* ruling provides a strong legal precedent, but it does not automatically resolve the persistent cultural and social tensions both within and outside of university settings. Cultural pushback through housing, sports, clubs, and social events can create polarizing environments where LGBTQ+ students feel marginalized or outcasted despite existing legal provisions. In some cases, the legal statutes designed to protect LGBTQ+ students only augment

tensions and spark backlash threatening the guidance of Article VII within the campus climate.

Furthermore, even faculty members who may not overtly oppose LGBTQ+ rights may inadvertently perpetuate discrimination through biased teaching and grading practices. Take the study from UCLA's School of Law, which found that "LGBTQ people were more than twice as likely to report unfair treatment by faculty, staff, or school administrators, compared to non-LGBTQ people (33.8% and 14.8%, respectively)."[6] This data presents the necessity for training on LGBTQ+ issues and approaches. Faculty and staff must recognize both the legal impact of *Bostock* and Title IX and their responsibility to create an inclusive, unbiased classroom. Faculty training is crucial to help facilitate discussion on sensitive subjects and promote a more supportive environment. Many LGBTQ+ students seek active allyship; proper training programs encourage faculty to publicly advocate for LGBTQ+ students by reporting discrimination, supporting policy changes, and promoting inclusivity. Ongoing training allows faculty to stay informed and remain committed to an institutional leadership that enforces inclusive policies and accountability. These efforts will curate a safe and empowered environment where LGBTQ+ students can thrive free from bias throughout their academic journey.

As universities integrate the protections from *Bostock*, they must also navigate future implications. *Bostock* establishes both a clearer legal framework and specific expectations for both workplace and academic environments, but resistance to these policies is inevitable. Conservative or religious groups, for instance, may feel that these protections infringe on their freedoms or personal beliefs. This may lead to litigation or public protest, drawing negative attention to a university's social standing. Such disagreements make it increasingly more difficult for universities to foster inclusive environments and avoid hostile behavior toward LGBTQ+ students. Moreover, universities must weigh the risk of integrating inclusive policies at the expense of support from generous donors, alumni, and other students who might oppose LGBTQ+ protections. This creates an ethical dilemma where the implementation of protective practices initiated by the Justice Department risks funding. This dilemma will be influenced by the political environments surrounding college campuses, alumni demographics, and the desire for potential diversity within student bodies. This risk of backlash discourages universities from integrating the protections established by *Bostock*, increasing the risk of a dangerous environment for LGBTQ+ students where their protections are dismissed and resources are depleted in exchange for

[6] Conron, K., et al. (2022, May). *Experiences of LGBTQ People in Four-Year Colleges and Graduate Programs*. UCLA School of Law Williams Institute. https://williamsinstitute.law.ucla.edu/publications/lgbtq-colleges-grad-school/

the preservation of financial support and social harmony.

The integration of the legal precedent established in *Bostock v. Clayton County* on college campuses presents significant opportunities for both unity and conflict. Though the ruling posits clear protection against discrimination, universities must acknowledge potential implications and broader tensions surrounding LGBTQ+ inclusion. Despite these challenges, universities must be held accountable, as they have a responsibility to implement and preserve *Bostock's* protections and ensure that LGBTQ+ students are safe, supported, and able to thrive without fear of discrimination. Integrating the principles of *Bostock* and Article VII is not merely a legal obligation but an ethical duty to foster inclusive environments that promote diversity, equality, and safety for all students.

Presidential Immunity and Donald Trump: A Threat to Rule of Law

By Kaity Llerena

The re-election campaign of former President Donald J. Trump has reignited several longstanding controversies surrounding his presidency, many of which began even before his first term in 2016. Among these is the debate over the accountability of a sitting U.S. president, particularly in light of the numerous lawsuits alleging criminal activity against Trump. Though not explicitly stated in the Constitution, the Supreme Court has found in previous cases that presidential immunity exists for criminal and civil actions. This doctrine has been scrutinized as courts grapple with cases involving Trump's conduct both during and after his presidency. However, the recent Supreme Court decision in *Trump v. United States* (2024)[1] granting Trump broad immunity for official acts during his presidency threatens to undermine the fundamental principle that no one is above the law.

Because presidential immunity is rooted in common law as opposed to an explicit inscription in the Constitution, the courts have held significant control over the extent of its powers as well as its limitations. The principle stems from the constitutional separation of powers, which seeks to ensure that the president can perform their duties without interference from the judiciary or legislative branches. SCOTUS held in *Nixon v. Fitzgerald (1982)*[2] that the President has absolute immunity from liability for civil damages arising from any official action taken during their time in office. The Court argued that given the President's "unique office," it is imperative that he have "the maximum ability to deal fearlessly and impartially with the duties of his office." The court uses this rationale to assert that presidential immunity is not necessarily about providing a personal benefit to the President but is instead designed to protect the functionality of the office itself.

However, immunity is not without limits. In *Clinton v. Jones (1997)*[3], the Court clarified that the incumbent president is not immune from civil litigation for actions taken outside the scope of their official duties, particularly for conduct that occurred prior to assuming office. This landmark decision highlighted that the rule of law applies to all individuals, including the president, and that

[1] *Trump v. United States*, 603 U.S. ___ (2024)
[2] *Nixon v. Fitzgerald*, 457 U.S. 731 (1982)
[3] *Clinton v. Jones,* 520 U.S. 681 (1997)

immunity must be narrowly construed to avoid shielding misconduct.

The Supreme Court's recent decision to grant Trump broad immunity for his official acts in *Trump v. United States (2024)*[4] during his presidency represents a stark departure from established principles of accountability. The case arose from lawsuits alleging Trump's role in the January 6th, 2021, attack on the U.S. Capitol, where his inflammatory rhetoric, including urging supporters to "fight like hell,"[5] disrupted the certification of the Electoral College results. Cases such as Thompson v. Trump[6] and Blassingame v. Trump[7] questioned whether such actions, rooted in efforts to overturn a legitimate election, could be classified as official conduct. By extending immunity to these acts, the Court has set a dangerous precedent, shielding Trump from accountability for actions widely regarded as self-serving and unlawful. This blurs the line between legitimate presidential duties and personal political endeavors, signaling that destabilizing actions are beyond legal scrutiny.

Moreover, the decision undermines public trust in the judiciary and reinforces the perception that powerful figures can evade legal accountability. Historically, the threat of civil and criminal liability has served as a critical check on presidential misconduct, discouraging leaders from overstepping their authority. Without this constraint, critics warn that an expansive interpretation of immunity—such as the one established in *Trump v. United States*[8]—risks creating a precedent of a "President above the law," fundamentally eroding the rule of law by suggesting that the nation's most powerful officeholder is beyond legal scrutiny. This erosion of checks and balances is especially alarming as it weakens the balance of power by concentrating unchecked authority in the executive branch, diminishing the accountability mechanisms that are vital to a functioning democratic society.

Such an erosion highlights the importance of examining how legal accountability interacts with political accountability in a democracy. While impeachment is the primary constitutional mechanism for addressing presidential misconduct, its inherently political nature limits its effectiveness. The impeachment process requires a high threshold of political will and consensus, which can be difficult to achieve in a polarized political climate. This limitation has been evident in both of Trump's impeachment trials, where he was impeached twice by the House of Representatives—once for

[4] See footnote 1
[5] Naylor, B. (2021). *Read Trump's Jan. 6 Speech, a Key Part of Impeachment Trial*. NPR. https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial.
[6] *Trump v. Thompson*, 595 U.S. ___ (2022)
[7] *Blassingame v. Trump*, No. 1:21-cv-00858 (D.D.C. Feb. 18, 2022)
[8] See footnote 1

abuse of power in connection with Ukraine and again for incitement of insurrection following January 6th.[9] However, partisan dynamics in the Senate led to acquittals in both trials, overshadowing substantive evaluations of the charges and reflecting the broader challenges of holding presidents accountable simply through impeachment. The sole reliance on impeachment highlights the limitations of a political mechanism that is subject to partisanship and gridlock, oftentimes leaving substantive legal questions unresolved and fostering the perception that powerful actors can escape legal scrutiny.

The judiciary, as a coequal branch of government, plays a pivotal role in safeguarding democratic norms by checking executive power. However, by broadening the scope of presidential immunity in this case, the Court has abdicated part of this responsibility. The decision diminishes the judiciary's role as a protector of constitutional principles and disrupts the separation of powers, leaving the presidency with fewer constraints. This judicial deference not only concentrates unchecked authority in the executive branch but also undermines the public's faith in the judiciary as an impartial arbiter of justice. This faith is essential for the legitimacy of any legal system, and the lack of such faith risks destabilizing the very institutions designed to uphold democratic values. By failing to adequately scrutinize actions that arguably transcend the bounds of legitimate governance, the judiciary has enabled an environment where the misuse of power can flourish without significant legal consequences.

Decisions like the one in *Trump* illustrate the significance of courts properly interpreting the balance between shielding the president from undue interference and ensuring accountability for actions outside legitimate governance. In this instance, judicial interpretation reflects the broader struggle to define the boundaries of power in a polarized political climate. The implications of this decision reveal a judiciary struggling between preserving executive independence and addressing misconduct that threatens democratic stability. By granting such expansive immunity, the Court risks normalizing the misuse of presidential power and weakening the institutional safeguards the Founders designed to uphold the rule of law. Furthermore, the decision sets a precedent that complicates future efforts to delineate the scope of immunity, leaving an ambiguous framework for addressing executive misconduct in future administrations.

[9] U.S. Congress. (2019, December 18). *Articles of Impeachment against Donald John Trump, House Resolution 755, One Hundred Sixteenth Congress, First Session*. https://www.congress.gov/116/bills/hres755/BILLS-116hres755enr.pdf.

These implications extend beyond the immediate case of Donald Trump. They raise fundamental questions about the nature of accountability in a democratic society and the extent to which the law applies equally to all individuals, regardless of their position. If the presidency is allowed to become a shield for unlawful actions, it risks undermining the foundational principles upon which the United States was built. The perception that certain individuals are above the law undermines public trust in democratic institutions, weakens the social contract, and fosters cynicism about the fairness of the legal system. This erosion is not merely symbolic but has tangible effects on the willingness of citizens to engage with and support democratic processes. By creating an environment where executive power is seen as unchecked, the Court's decision risks exacerbating existing divisions and fostering greater disillusionment with the legal and political systems.

Therefore, restoring public confidence in the rule of law requires a concerted effort to reaffirm that no individual, including the president, is above scrutiny. The judiciary must take a more assertive stance in enforcing constitutional principles, even when doing so involves challenging the executive branch's actions. By recalibrating the balance between protecting the presidency as an institution and holding its incumbent accountable, courts can help restore the integrity of democratic governance. Addressing the implications of this decision head-on offers an opportunity to strengthen democratic institutions and reinforce the commitment to justice and equality that underpins the American legal system. Without such critical engagement, the risk remains that presidential immunity will continue to evolve into a doctrine that prioritizes executive autonomy at the expense of the rule of law, dismantling the very essence of American democracy.

Balancing Rights and Risks: Analyzing United States v. Rahimi

By Audrey Zhang

The Second Amendment remains one of the most widely disputed constitutional amendments in the United States: protecting the right to keep and bear arms. The battle to protect individual rights while ensuring public safety has only intensified in recent years as courts attempt to apply centuries-old constitutional principles to modern challenges. One legal byproduct of the Second Amendment is *United States v. Rahimi*, a case that decides the constitutionality of Title 18 U.S.C. § 922 (g)(8), which restricts firearm possession for individuals under qualifying domestic violence restraining orders.[1] This case began after Zackey Rahimi was indicted for possession of firearms, violating his domestic violence restraining order.[2] Despite federal law's intent to minimize gun violence, Rahimi's defense argued that the federal law was a violation of Rahimi's Second Amendment rights. Rahimi's defense utilized the Court's 2022 decision in *New York State Rifle & Pistol Association (NYSRPA) v. Bruen*, which introduced a new framework for evaluating the constitutionality of gun regulations based on historical traditions. The Fifth Circuit initially upheld Rahimi's conviction but then later reversed their decision after the Supreme Court's ruling in *NYSRPA v. Bruen*, finding that the federal law was inconsistent with the nation's historical tradition of firearm regulation. This ruling effectively allowed individuals under domestic violence restraining orders to possess firearms. However, when the case reached the Supreme Court, the justices ruled that the federal law was constitutional, emphasizing that historical firearm regulations have long restricted access for those who pose a credible threat to others. This decision overturned the Fifth Circuit's ruling and reaffirmed the government's authority to disarm individuals deemed dangerous.

In *NYSRPA v. Bruen*, the Supreme Court adopted a new standard for evaluating the constitutionality of gun regulations. This new test, the *Bruen* test, explicitly states that courts applying Bruen only need to determine "whether the challenged regulation is consistent with the principles that underpin our regulatory tradition."[3] Used by the Fifth Circuit to justify their ruling, this changed the focus from modern public safety concerns to a historical analysis of gun laws, significantly narrowing the scope for acceptable firearm regulations. The Fifth Circuit decision illustrated an inherent flaw in the

[1] U.S. Department of Justice. (2015, February 19). *1116. Prosecutions Under 18 U.S.C. § 922(g)(8)*. https://www.justice.gov/archives/jm/criminal-resource-manual-1116-prosecutions-under-18-usc-922g8
[2] Oyez. (n.d.). *United States v. Rahimi*. Retrieved August 16, 2025, from https://www.oyez.org/cases/2023/22-915
[3] Everytown for Gun Safety. (n.d.). *United States v. Rahimi*. Retrieved August 16, 2025, from https://www.everytown.org/rahimi-scotus/

Bruen tests, as it prioritizes historical analogs over modern policy considerations, requiring judges to look to the late 18th and 19th centuries for precedent. In this specific scenario, the absence of historical laws addressing domestic violence doesn't mean such regulations are inconsistent with constitutional principles; it simply reflects that domestic violence was not legally recognized in the 18th and 19th centuries. Additionally, while the Second Amendment guarantees the right to bear arms, it was ratified in 1791, an era that could not have anticipated today's firearm developments. Comparing today's assault rifle to the single-shot musket popular in 1791, the assault rifle's firing rate is ten times faster, muzzle velocity is more than three times faster, and the maximum accuracy range is more than ten times greater.[4] Yet under the *Bruen* framework, courts are unable to fully account for these technological differences, even though they fundamentally alter the dangers posed by firearms today. The idea that a law designed to prevent violence should be dismissed because it lacks historical analogs is, frankly, absurd. If courts rely strictly on historical precedent without accounting for society's evolution, then they begin pushing outdated values that fail to protect the vulnerable.

After the Fifth Circuit withdrew their initial ruling and reheard the case following the Supreme Court's decision in *Bruen*, Judge Wilson of the district court stated that while Rahimi was not a "model citizen," he was still entitled to the protections of the Second Amendment.[5] The primary intent of 18 U.S.C. § 922 (g)(8) is to protect victims of domestic violence by temporarily disarming individuals who are deemed a threat. However, Wilson's interpretation prioritizes the rights of gun owners over the safety of domestic violence victims. By reversing the initial ruling and siding with Rahimi, the court effectively dismisses the protective function of the law, privileging Rahimi's right to bear arms. Constitutional rights are not, and have never been, absolute; they must be interpreted in a way that both reflects how society evolves and protects the public from clear dangers. Freedom of speech, for instance, does not protect incitement to violence, and the right to privacy can be limited when public health is at risk. Similarly, the right to bear arms has historically been subject to restrictions. However, Wilson's application of the *Bruen* framework fails to achieve this balance. Additionally, according to the Johns Hopkins School of Public Health, women are five times more likely to be killed when their abuser has access to a gun.[6] Ignoring the facts in favor of an uncompromising view of the Second Amendment

[4] Purkey, J. (2018, February 21). *Guns Have Changed since 2nd Amendment written: Letters*. Knoxville News Sentinel. https://www.knoxnews.com/story/opinion/readers/2018/02/21/guns-have-changed-since-2nd-amendment-written-letters-feb-21-2018/355232002/.

[5] Constitution Annotated. (2023, October). *United States v. Rahimi: Does a law prohibiting a person subject to a domestic-violence restraining order from possessing a firearm violate the Second Amendment?* Library of Congress. https://constitution.congress.gov/browse/essay/intro.9-2-27/ALDE_00000095/

[6] Johns Hopkins Bloomberg School of Public Health. (2023, July). *Firearm Violence in the United States | Center for Gun Violence Solutions*.

sends the message to victims of domestic violence. It suggests that the legal system prioritizes the rights of abusers over their safety and that courts are bound by an outdated understanding of constitutional rights.

The Supreme Court ruled in an 8-1 decision that federal law Title 18 U.S.C. § 922 (g)(8) is constitutional, overruling the district court's decision. Justice Thomas, the lone dissenter, argued that "not a single historical regulation justifies the statute at issue," emphasizing his desire for strict adherence to historical analogs when evaluating Second Amendment cases.[7] Justice Roberts, writing for the majority, highlighted that "firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms," justifying the constitutionality of such laws.[8] The Court's ruling not only overturned the Fifth Circuit's decision but also signaled that strict historical tests must be adapted to address modern issues that could not be predicted by the framers of the Constitution. The Court's decision means that while *Bruen* provides a framework for evaluating Second Amendment cases, its application must allow for interpretation, particularly when public safety is at stake. The majority opinion of the Supreme Court acknowledges that historical context alone is insufficient to address evolving societal threats.

Looking ahead, this case demonstrates that the judiciary's responsibility is not merely to enforce and stick to rigid historical interpretations but to find the balance between upholding constitutional rights and ensuring public safety. This case highlights the important fact that constitutional interpretation has to grow and adapt with society. While history gives us a starting point, it shouldn't limit how we address the challenges we face today. After all, justice is not static.

https://publichealth.jhu.edu/center-for-gun-violence-solutions/research-reports/firearm-violence-in-the-united-states

[7] *UNITED STATES v. RAHIMI*. (n.d.). LII / Legal Information Institute.

[8] Legal Information Institute. (n.d.). *UNITED STATES v. RAHIMI*. Retrieved August 16, 2025, from https://www.law.cornell.edu/supremecourt/text/22-915

Banning TikTok: A National Security or Freedom of Speech Issue

By Cate Bashore

TikTok has transformed American culture since its introduction in 2018. 170 million Americans currently use the platform, roughly half the nation's population. Between 2020 and 2022, TikTok was the most downloaded app in the United States and the world. TikTok's influence on American culture has spanned from promoting conspiracy theories to promoting shopping trends, becoming a critical cultural and marketing influence.[1]

In 2024, Congress passed the Protecting Americans from Foreign Adversary Controlled Applications Act (PAFACA). Primarily aimed at TikTok and its parent company, ByteDance, Ltd., the bill prohibits providing internet hosting services for "foreign adversary controlled applications."[2] The Act prevents companies like TikTok from surveilling or targeting Americans through popular applications. On December 16, TikTok, Inc. filed a complaint to challenge the constitutionality of the law, claiming the law violates the First Amendment. The Supreme Court's decision will ultimately determine whether TikTok can be constitutionally banned in the United States and whether the government can force ByteDance, Ltd. to sell the application to an American company. While there is evidence to support the U.S. government's claim that ByteDance's relationship with American data poses a national security risk, it does not address the cultural effects associated with banning a platform 170 million Americans use to communicate daily.

Congress passed the PAFACA after alleging that TikTok posed a national security threat to Americans. Rep. Cathy McMorris Rodgers, Chair of the House Energy and Commerce Committee, claimed that the Chinese Communist Party (CCP) weaponizes applications such as TikTok to exploit and weaponize American data.[3] While TikTok is a privately owned company, separate from the Chinese government, the CCP holds a seat on the board of TikTok's parent company, ByteDance. Furthermore, Chinese national security regulations require Chinese companies to comply with CCP requests for data and other information.[4] The Act emphasizes that it cannot be used to ban any app, but only when a

[1] Maheshwari, S. (2024, April 19). *Love, Hate or Fear It: TikTok Has Changed America*. The New York Times. https://www.nytimes.com/interactive/2024/04/18/business/media/tiktok-ban-american-culture.html
[2] U.S. Congress. (2023) *H.R.7521 - 118th Congress (2023-2024): Protecting Americans from Foreign Adversary Controlled Applications Act*. https://www.congress.gov/bill/118th-congress/house-bill/7521
[3] House Committee on Energy and Commerce. (2024, March 7). *Chair Rodgers: "We Have Given TikTok a Choice: Divest or Face a Ban."* https://energycommerce.house.gov/posts/chair-rodgers-we-have-given-tik-tok-a-choice-divest-or-face-a-ban
[4] Bermudez, K. (2024, March 18). *It's not just a theory. TikTok's ties to Chinese government are dangerous.* FDD.

"social media company is controlled by a foreign adversary and has been determined by the President to present a significant threat to national security." Congress has additionally emphasized that the new act is not an outright ban on the application, giving TikTok the option to divest from its parent company in favor of an American company to operate in the United States.

TikTok, Inc., and Merrick Garland, the Attorney General of the United States, filed Supreme Court briefs before their oral arguments, demonstrating stark differences between how TikTok and the US government interpreted the Constitution, particularly the First Amendment. The petitioner's brief argues that the act does not uphold the First Amendment because the act aims to protect Americans from a "disagreeable mix of ideas," upholding the foreign interests of the government.[5] Furthermore, the petitioners argue that TikTok's ownership by a foreign adversary is irrelevant, as the Act violates the First Amendment rights of American creators on the platform. *Sorrell v. IMS Health, Inc.* establishes that a statute implicates the First Amendment when it either directly infringes on speech or infringes upon the practical application of speech.[6] TikTok argues the PAFACA violates both.

Moreover, the United States government argues that the Act does not violate the First Amendment because instead of regulating the freedom of speech directly, it regulates foreign adversary control. The government defends that the Act does not intend to limit unfavorable speech but solely protects national security interests by limiting foreign adversary communications within the United States. While TikTok highlights the 170 million Americans whose First Amendment right will be violated, the government frames the issue as a security risk to those same users, labeling the company a "unique threat."[7] Furthermore, the government emphasizes that the Act is tailored specifically to address the need to protect against the collection, manipulation, and exploitation of data collected. The government argues that restricting "communication channels" of foreign adversaries has been frequent throughout US history and is established as a legal precedent. Therefore, rather than representing an issue of freedom of speech, the statute presents an issue of national security.

If the Supreme Court decides in favor of the respondent, or the United States government, the TikTok ban will undoubtedly have widespread implications on American culture and livelihoods. Small

https://www.fdd.org/analysis/2024/03/18/its-not-just-a-theory-tiktoks-ties-to-chinese-government-are-dangerous/
[5] Firebaugh, B., et al. (2025). *Reply brief for petitioners: Firebaugh v. Garland*. Supreme Court of the United States.
[6] Sorrell v. IMS Health Inc. (n.d.). *Oyez*. Retrieved January 7, 2025, from https://www.oyez.org/cases/2010/10-779
[7] Prelogar, E. B. (2025). *Reply brief for the respondent: TikTok Inc. & ByteDance Ltd. v. Merrick B. Garland; Firebaugh v. Merrick B. Garland*. Supreme Court of the United States.

business owners, content creators, and artists depend on TikTok for their income. If the Supreme Court decides according to the lower court ruling, the government can force TikTok to shut down its US platform by January 19. This leaves individuals who depend on TikTok for their incomes with little time to plan accordingly. In addition to artists, online communities based on TikTok provide outlets for individuals to communicate. If restricted, these communities would be damaged. Additionally, a complete TikTok shutdown would also have economic consequences. According to a report from Goldman Sachs, the "creator-economy," fueled largely by TikTok, could exceed $480 billion by 2027.[8]

The Protecting Americans from Foreign Adversary Controlled Applications Act undoubtedly restricts the speech of users, content creators, and communities who use the app to communicate. However, the popularity of TikTok imposes a data security risk if the parent company of TikTok, ByteDance, shares users' information with the Chinese government. While the government cites precedent for restricting speech channels of foreign adversaries, the TikTok case differs in that it restricts the speech of Americans. While the app may have been developed and is controlled by a foreign adversary to the government, its platform is not used for those same foreign adversaries to communicate; it is used by the American people. The government's claim that the vast number of TikTok users on the app is entirely a national security issue ignores the unique economic and cultural effects the app has on the country. Communities, artists, and livelihoods would be disrupted by banning communication through the app. While the court may still decide favorably for the government, the case cannot ignore its implications on communication channels for Americans and consider the adverse economic effects in the resulting fallout.

[8] Landrum, J., & Hadero, H. (2025, January 5). *As potential TikTok ban looms, content creators who rely on the platform wait in limbo*. PBS News. https://www.pbs.org/newshour/politics/as-potential-tiktok-ban-looms-content-creators-who-rely-on-the-platform-wait-in-limbo