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MISSION STATEMENT

The University of Southern California Journal of Law and Society is a student-run, interdisciplinary Journal that promotes outstanding undergraduate scholarship. The Journal provides a print and online forum to publish exceptional undergraduate papers by students at the University of Southern California and around the world. The Journal seeks to publish papers from a wide range of disciplines that reflect diverse viewpoints. Guided by top faculty members at the University of Southern California, papers selected for publication undergo a rigorous editing process by undergraduate students at USC to ensure that each paper is of the highest quality. The USC Journal of Law and Society strives to promote greater awareness and understanding of the legal field and aims to become the preeminent journal of its kind.

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Letter From The Editor

Vanessa Nguyen
Editor-in-Chief

The USC Journal of Law and Society is pleased to continue its tradition of publishing outstanding undergraduate papers with the Spring 2023 Edition of the Journal.

We have been so fortunate to be able to continue our operations for the fifteenth volume and I would like to thank all the authors and Associate Editors for their patience and support as we experienced various hurdles in our schedule.

This publication would not have been possible without the leadership demonstrated by our Lead Editors: Karina Aguirre, Elias Abadi, Eric Bui, and Jane Lee, who were paramount in the successful execution of this publication. I would also like to thank our Associate Editors for all of their hard work and dedication preparing these papers for publication. Lastly, I would like to extend my thanks towards our faculty advisor, Professor Alison Renteln, for her invaluable support and counsel.

We were fortunate to receive more qualified submissions than we were capable of publishing. The following papers were carefully selected on the basis of their quality, content, and subject matter. Volume XV features the work of students from all around the country, including our own University of Southern California. The topics discussed range from the legalization of cannabis and its effects on mental health to the contentious debate on reproductive health.

Additionally, I would like to thank the authors of the papers for their contribution to this publication. It has been wonderful working with these talented writers throughout the editing process. We thank all authors and staff for their participation in the Journal this year.

Finally, I would like to share my appreciation for the Journal and my gratitude to serve as its editor-in-chief for its fifteenth volume. I joined the Journal my freshman year and I will forever cherish these past four years with the Journal and its members. Thank you for allowing me to be your editor-in-chief, it has been an honor! I am so excited to continue following along with the Journal after I graduate!

Enjoy!

APACHE STRONGHOLD V. UNITED STATES: MISINTERPRETING "SUBSTANTIAL BURDEN" ON RELIGIOUS EXERCISE

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Class of 2025

Many indigenous people possess a strong spiritual and religious connection to their sacred sites. However, federal courts often do not support indigenous people's claims to religious freedom under the Religious Freedom Restoration Act (RFRA) in response to government projects that destroy their sacred land. The Ninth Circuit's recent ruling in the case of *Apache Stronghold v. United States* is a prime example of this. This article uses traditional statutory construction methods to demonstrate why the Ninth Circuit erred in its decision. The *Apache* decision highlights the American court system's hostile attitude towards indigenous claimants and reinforces the country's long-standing disregard for indigenous people and their faith.

Despite the variety of beliefs and practices in the indigenous community, many tribal members consider themselves people of a particular place. For indigenous peoples, their identities and faith inextricably link to their homeland and the ethical relationships with the landscape thereof. These ethical relationships are rooted in the idea that the land is not just a physical space, but also a living being that must be respected and cared for. As indigenous scholars opine, "[m]eaningful access to sacred sites is among the most important principles to the religious exercise of Indigenous peoples."[1] However, the American legal system frequently disregards indigenous piety's focus on nature and views such religious practices as mere spiritual enjoyment, despite them being the core of many indigenous peoples' faith.[2] More specifically, federal courts have often been hostile towards challenges against the obstruction or destruction of indigenous sacred land, even when those lands are of central importance to the religious exercise of indigenous communities.

Most recently this year, the Ninth Circuit ruled against the Western Apache tribe in the case of *Apache Stronghold v. United States*, which challenged a federal government land exchange that would destroy their sacred site.[3] This ruling not only is wrong, but also highlights the American legal system's failure to adequately protect the religious beliefs of indigenous peoples as guaranteed by the Religious Freedom Restoration Act (RFRA).[4] Throughout this paper, I argue that federal court

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[1] Stephanie H. Barclay and Michalyn Steele, "Rethinking Protections For Indigenous Sacred Sites," *Harvard Law Review* 134, no. 4 (February 2021): 1304.

[2] See, e.g., *Navajo Nation et al. v. U.S. Forest Service*, 535 F.3d 1058, 1063 (9th Cir. 2008): "That is, the presence of the artificial snow on the Peaks is offensive to the Plaintiffs' feelings about their religion and will decrease the *spiritual fulfillment* Plaintiffs get from practicing their religion on the mountain. Nevertheless, a government action that decreases the *spirituality*, the *fervor*, or the *satisfaction* with which a believer practices his religion is not what Congress has labeled a 'substantial burden'—a term of art chosen by Congress to be defined by reference to Supreme Court precedent—on the free exercise of religion" (emphasis added).

[3] 38 F.4th 742 (9th Cir. 2022).

[4] 42 U.S.C.A. § 2000bb.

rulings like this against indigenous sacred site claims reflect a larger issue of the legal system's failure to address native claims adequately and equitably, a problem that is overlooked, understudied, and perpetuates the second-class status of indigenous people in the United States.

I. *Apache Stronghold v. United States*

A. Facts of the Case

In 2014, as part of a land exchange program, the federal government transferred some of its lands in Arizona to a copper mining company. The land in question, known as Chi'chil Bildagoteel or Oak Flat, has been a sacred site for Western Apaches and other tribes since before recorded history. Unfortunately, the transfer of this land to a private company means the tribe will lose all access to their sacred site. To make matters worse, the mining company plans to build a copper mine on this land, which, as noted by the Secretary of Agriculture, will lead to the destruction of the sacred site, including the permanent burial of many cultural artifacts, human burials, and other historic and prehistoric remains. Because their non-replaceable, century-old ceremonial site will be destroyed, the Native people would experience "indescribable hardship" and lose an integral component of their religious practice.

Apache Stronghold, a non-profit organization affiliated with the Western Apache tribe, filed a suit asking to enjoin the land exchange. Apache Stronghold alleged that the land exchange violates the RFRA. RFRA is a federal law passed in response to the Supreme Court's decision in *Employment Division v. Smith*, seeking to offer greater protections for religious practices than those afforded by the First and Fourteenth Amendments. It prohibits the government from substantially burdening a person's exercise of religion unless the burden is the least restrictive means of furthering a

compelling government interest, otherwise known as the "strict scrutiny" standard.[5] RFRA claims proceed in two parts: first, the plaintiff must prove that the government substantially burdens their religious practices; if the plaintiff prevails in establishing such a burden, the burden of proof then shifts to the government to satisfy strict scrutiny.

In this case, the district court denied Apache Stronghold's motion, reasoning that no "substantial burden" under RFRA exists and the government thus need not satisfy strict scrutiny. The Ninth Circuit, ruling 2–1, affirmed the district court's decision. The majority based its decision on its 2008 precedent, *Navajo Nation v. U.S. Forest Service*.[6] Finding no denial of governmental benefits or imposition of criminal sanction, the majority concludes that no substantial burden exists in the case. In addition to its doctrinal analysis under *Navajo Nation*, the majority furthers with a practical justification for their ruling. They argue that ruling in favor of the Western Apaches in this case would amount to "giving one religious sect a veto over the use of public park land," which "would deprive others of the right to use what is, by definition, land that belongs to everyone."

B. The Ninth Circuit's Narrow, Erroneous Reading of "Substantial Burden"

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[5] Congress enacted the RFRA in response to the Supreme Court's decision in *Employment Division v. Smith*. *Smith* held that under the First Amendment's free exercise clause, government actions that are neutral and generally applicable do not burden religious practices. RFRA was passed with the goal of restoring the level of protection for religious freedom to strict scrutiny that was in place before the Court's decision in *Smith*. In *City of Boerne v. Flores*, the Court held that RFRA could apply only to the federal government, and not to state and local governments.

[6] 535 F.3d 1058 (9th Cir. 2008). In *Navajo Nation*, the court rejected the Navajo Nation's challenge against a proposed ski resort on sacred land under RFRA. The court there narrowly read the term "substantial burden" under the RFRA in only two circumstances: one, when the government denies benefits on account of religion, and two, when the government imposes criminal sanction on account of religion. Reckoning that neither one of these circumstances applied, the court concluded that the proposed ski resort did not substantially burden Navajo Nation's religious exercise.

Under RFRA, the term "substantial burden" refers to any burden on a person's ability to exercise their religion freely. Congress did not elaborate on what kinds of government actions constitute a "substantial burden." It did point out its statutory purpose, however, of "restor[ing] the compelling interest test as set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder* and to guarantee [that test's] application in all cases where free exercise of religion is substantially burdened." In *Navajo Nation* and *Apache Stronghold*, the Ninth Circuit derived the meaning of "substantial burden" from these two pre-*Smith* cases. In *Sherbert*, the Supreme Court ruled that the government imposed a substantial burden and thus violated the Free Exercise Clause, when it denied unemployment benefits to individuals who were fired for refusing to work on Saturdays, in conflict with their religious beliefs.[7] The Court applied the strict scrutiny standard in evaluating the government's actions. In *Yoder*, the Court also applied this standard by holding that a Wisconsin state law violated the Amish's religious beliefs by requiring parents to send their children to public school until the age of 16.[8]

The Ninth Circuit limited the definition of "substantial burden" to instances where the government imposed similar restrictions on religious practices as in *Sherbert* and *Yoder*. Specifically, this refers to situations only where individuals must choose between adhering to their religion and receiving a government benefit, or where individuals are compelled to act against their religious beliefs as a result of the threat of civil or criminal penalties. Unfortunately, this narrow interpretation of the RFRA runs afoul of RFRA's text, history, and purpose, which emphasizes the need to protect religious freedom in all instances. By limiting the scope of the law to only those situations similar to

[7] *Sherbert v. Verner*, 374 U.S. 398, 403 (1963).
[8] *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972).

Sherbert and *Yoder*, the Ninth Circuit does not apply RFRA as written or intended, and undermines RFRA's central goal of protecting individuals' religious beliefs and practices.

First, the court's interpretation of the RFRA strays from textualist principles. Textual analysis, as Justice Antonin Scalia guides, "begins and ends with what the text says and fairly implies."[9] In the text of the RFRA, Congress declared that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b)."[10] The statute's stated purpose, as aforementioned, is to "restore the compelling interest test" as articulated in *Sherbert* and *Yoder*.

Despite this clear language, Congress did not provide a specific definition of what constitutes a "substantial burden" on religious practice under the RFRA. As the Supreme Court instructs, in the absence of a statutory meaning, courts should give the term "its ordinary or natural meaning."[11] Furthermore, "Congress's failure to speak directly to a specific case that falls within a more general statutory rule" does not create a tacit exception; instead, "when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule."[12] In *San Jose Christian Coll. v. City of Morgan Hill*, the Ninth Circuit defined "substantial burden" as a "'significantly great' restriction or onus on 'any exercise of religion.'"[13]

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[9] Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Text* (St. Paul, MN: Thomson/West Group, 2012), 16.
[10] 42 U.S. Code § 2000bb–1 (a).
[11] *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172, 2176 (2021). See also, *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227 (2014), quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979) ("It is a 'fundamental canon of statutory construction' that, 'unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning'").
[12] *Bostock v. Clayton Cnty., Georgia,* 140 S. Ct. 1731, 1747 (2020).
[13] 360 F.3d 1024, 1035 (9th Cir. 2004).

Therefore, the natural interpretation of the statute requires the compelling state interest standard to apply to *any* "significantly great restriction or onus on *any* exercise of religion." The text clearly does not support, as the Ninth Circuit read, the idea that the statute *only* applies to two instances of government restriction on religion, where the government denies benefits or imposes a penalty. Yet it does support and emphasize that the "[g]overnment shall not substantially burden a person's exercise of religion," period. The statute itself thus expressly states that it restores the judicial test to scrutinize *all* governmental burdens on *all* religious exercise, not only those similar to the ones in *Sherbert* and *Yoder*.

Apart from the statute's text, the RFRA's legislative history also does not suggest that Congress constricted the government's "substantial burden" only to those similar to the ones in *Sherbert* and *Yoder*. The House report states, "in order to violate the statute, government activity need not coerce individuals into violating their religious beliefs nor penalize religious activity,' but need only 'have a substantial external impact on the practice of religion.'"[14] It is thus clear that Congress intended to codify the standard of strict scrutiny to safeguard religious freedom against *all* forms of government burdens, including those directly obstructing or even destructing access to sacred sites, not just the ones in *Sherbert* or *Yoder*.

Furthermore, the intent of Congress in enacting RFRA was to provide greater protection for the free exercise of religion by establishing a higher standard for when the government could burden religious exercise. The Ninth Circuit's interpretation of RFRA read Congress's intent to be the

[14] Jonathan Knapp, "Making Snow in the Desert: Defining a Substantial Burden under RFRA," *Ecology Law Quarterly* 36, no. 2 (2009), quoting House Committee on the Judiciary, *Religious Freedom Restoration Act of 1993*, H.R. Rep. No. 88, 103rd Cong., 1st Sess., 6-7 (1993).

opposite: to narrow religious freedom protections to those already recognized in *Sherbert* and *Yoder*. In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court rejected this very reading of RFRA that the RFRA merely codified pre-*Smith* free-exercise cases, as adopted by the Ninth Circuit. There, the Court declared that "nothing in the text of RFRA as originally enacted suggested that the statutory phrase 'exercise of religion under the First Amendment' was meant to be tied to this Court's pre-*Smith* interpretation of that Amendment."[15] RFRA's purpose was instead, as the Court described, a "very broad" statute that applied against government actions not necessarily addressed in *Sherbert* or *Yoder*.

The Court's parallel jurisprudence on the Religious Land Use and Institutionalized Persons Act (RLUIPA) confirms that "substantial burden" in RFRA refers also to the denial of access to religious locations and resources, such as sacred sites. Though governing different settings, RFRA and RLUIPA share similar text and purpose: Both statutes contain the same "substantial burden" language and aim to provide greater protection for religious practices than what is afforded by the First Amendment. As such, courts have consistently interpreted "substantial burden" under the RLUIPA to include circumstances when the government denies access to religious resources, just as Congress did in denying access to and even destroying religious sites. Just last term, the Court held that Texas imposed a substantial burden on a to-be-executed prisoner when it denied the prisoner's request to have his religious advisor pray with him during his execution.[16] This burden did not involve any form of denial of potential benefits, nor imposing a criminal sanction on the prisoner's religious practice—the State of Texas simply denied him the opportunity to pray with his pastor

[15] *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 714 (2014).
[16] *Ramirez v. Collier*, 142 S. Ct. 1264, 1277 (2022)

during his execution. It defies logic for the Ninth Circuit to hold that the government imposes substantial burden on an individual or group when it *indirectly* influences one's ability to practice their religion (through denying them benefits or threatens criminal liability), but not when it *directly* prevents access to religious sites and other resources. If anything, the latter form of burden, which directly impacts an individual's ability to practice their religion, would be *more* substantial and should be justified by a *more* compelling state interest than the indirect burdens that courts already recognized as substantial. The federal government's land exchange program made the Western Apache's religious worship at their sacred site not just more difficult or less rewarding, but entirely impossible.

The Ninth Circuit's reading of RFRA is unfounded by the statute's text, history, purpose, precedent, and logic; it is thus incorrect. Fortunately, the whole court recently voted to rehear the case *en banc*,[17] which presents an opportunity to rectify the three-judge panel's erroneous interpretation of the RFRA. It is crucial that the Ninth Circuit clarifies that strict scrutiny must apply to *all* state actions that directly burdens an individual's religious practice, including the obstruction or complete destruction of religious sites that completely denies access to places integral to religious beliefs. By doing so, the court can ensure that the RFRA is applied as intended and that individual's religious beliefs and practices are given the utmost protection under the law.

II. A Continuation of Callous Disregard toward Native People and Their Faith

The previous section describes why the Ninth Circuit read the RFRA wrong, which should apply to all religious claimants. Nonetheless, native plaintiffs challenging governmental actions that

[17] 56 F.4th 636 (9th Cir. 2022).

burden their access to sacred sites encounter unique challenges. *Apache Stronghold* represents not only the court's callous disregard of the protections for religious freedom enshrined in the RFRA, but also a continuation of this nation's blatant dismissal for indigenous beliefs in and reverence for sacred sites.

A. The United States' History of Disregard for Native People and Their Faith

This history of disregard for indigenous beliefs and sacred sites in this country dates back to the colonial period. As early as the 14th century, Catholic monarchs drew upon Christian doctrine and papal law to assert that the religious practices of the Native Americans were "heathenry" or "infidelity," thus providing a legal pretext that both validated and compelled their military invasions and territorial seizures.[18] And this disregard European colonizers brought for indigenous cultures, religions, and spiritual practices continued for centuries, including the destruction of sacred sites. Many of these sites were either exploited for resources or destroyed for westward expansion and development. Following the founding of the country in the nineteenth and twentieth centuries, as indigenous communities were forced to relocate, and in many instances massacred, while they also lost access to their ancestral sites.

Today, one can fairly assert that the federal courts' dismissal and belittlement of indigenous religious petitions to sacred sites finds precedent in this country's long-standing history. In *Navajo Nation*, the Ninth Circuit court described the highly-sophisticated, century-old Native reverence for their sacred sites as mere "spiritual fulfillment," distinguishing it from the forms of religious exercise

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[18] Michael P. Guéno, "Native Americans, Law, and Religion in America," Oxford Research Encyclopedias, last modified November 20, 2017, https://oxfordre.com/religion/display/10.1093/acrefore/9780199340378.001.0001/acrefore-9780199340378-e-140;jsessionid=05754BAC41515A709737DD7846BA5C94.

that the RFRA aims to protect. The court stated, "[f]or all the rich complexity that describes the profound integration of man and mountain into one, the burden of the recycled wastewater can only be expressed by the Plaintiffs as damaged spiritual feelings. Under Supreme Court precedent, government action that diminishes subjective spiritual fulfillment does not substantially burden religion."[19]

That is not what courts said, nevertheless, when it comes to evaluating the legitimacy of religious claims for other faiths. As per the Court, a judge's subjective value and perspective on a particular religious practice should not determine whether the religious group is entitled to protection, regardless of how a judge, or another beholder, perceives such practices. Religious protections, as codified by the RFRA and reflected in the parallel First Amendment jurisprudence, have long avoided allowing judges to determine the value of a specific religious group when assessing the degree of protection. In a case assessing the City of Hialeah's ordinance burdening Santeria followers' practice of animal sacrifice, the Court said, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."[20] Consequently, it stands to reason that the RFRA, which offers even greater protection than the First Amendment it aims to supplement, should not grant judges the authority to make such evaluations either. And when judges subjectively classify indigenous reverence for their sacred sites, which predates any recognized religious practices by other religions by thousands of years, as mere spiritual fulfillments not entitled to religious protection, they effectively relegate indigenous faith to a second-class status in this country, even though the RFRA protects all religions equally.

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[19] *Navajo Nation*, 535 F.3d at 1070, n12.

[20] *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993), quoting *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714 (1981).

B. Unique but Mostly Overlooked Nature of Native Faith

The legal system's failure to recognize indigenous religious relationship with their sacred lands stems primarily from the judges' unfamiliarity with the indigenous faith. The lack of representation of indigenous people on the bench, coupled with the inadequate education of indigenous culture and tradition within the American population, results in a lack of respect for the unique cultural and spiritual practices of indigenous people in the legal system. Many judges simply cannot grapple with the unique nature of indigenous faith, which differs from more popular religions that emphasize communal, cultural, and spiritual practices that are deeply interconnected with the natural world. Unlike other religious beliefs, Native American spiritual practices often center on shared experiences, rituals, and ceremonies that are performed on sacred sites and other locations in nature.[21] These rituals can include keeping long hair, using tobacco as a form of prayer, or dancing in rain, and those who are unfamiliar with the practices often deride them as a primitive, superstitious attempt to influence nature through mojo.[22]

Native plaintiffs face a peculiar challenge in the legal system unfamiliar to their faith. Unlike most other religious claims that invoke individual rights and burdens, indigenous peoples' relationship to their land is of a collective nature. They often reflect their connection to the land through worshiping sacred sites that are sources of spiritual energy and are central to many Native American ceremonies and practices. Judges who lack knowledge or understanding of native spirituality may not recognize the importance of lands for a group's spiritual practice. Conversely,

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[21] Alex T. Skibine, "Towards a Balanced Approach for the Protection of Native American Sacred Sites," Michigan Journal of Race and Law, no. 17 (2012): 269-70.

[22] Michael D. McNally, *Defend the Sacred: Native American Religious Freedom beyond the First Amendment* (Princeton, NJ: Princeton University Press, 2020), 6-8.

judges, most of whom are familiar with Christianity, may find it easier to appreciate and respect claims that involve individual beliefs and practices.[23] Therefore, courts have often acknowledged religious burdens for Christians, even when the government affirmatively provides alternatives as accommodation.[24] But they have been reluctant to recognize substantial burdens, as in *Apache Stronghold* and *Navajo Nation* cases, where the government did not provide any alternatives or compensation to the indigenous communities and pursued a land exchange project (or a ski resort) for mere financial gains.

C. Path Forward: Raising Awareness on Native Faith

The legal system's failure to properly respect the spiritual beliefs and practices of indigenous people bespeaks the country's still-ongoing violation of Native people's rights and dignity, both as individuals and as a community. By condoning the needless destruction of culturally and religiously significant sites such as Chi'chil Bildagoteel solely for financial gain, the federal government reinforces its long-standing pattern of expropriating indigenous lands for its economic benefit, while simultaneously undermining the ability of indigenous people to observe their religious beliefs. The courts' rubber stamp may embolden the government to take actions that restrict or eliminate access to other religious sites and resources, leading to further marginalization and discrimination against Native people and their highly complex, sentimentalized, and long-standing faith. These actions

[23] See, e.g., *Holy Trinity Church v. United States*, 143 U.S. 457, 471 (1892) (declaring the U.S. is a "Christian nation"); David Barton, "Is America a Christian Nation?," Wallbuilders, accessed April 22, 2023, https://wallbuilders.com/america-christian-nation/ (arguing that Christianity has shaped the U.S. cultural and legal system in ways that favor individual rights over collective rights).

[24] See, e.g., *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407 (2022) (holding, *inter alia*, that the school district's restriction on the football coach's ability to pray on the field after games violates his right to freely exercise his religion under the First Amendment, even though the school offered him alternative private locations to perform the prayer).

suggest that this country still treats indigenous beliefs as inferior to other faiths and indigenous people as second-class citizens. The legal system, and the country at large, must strive to gain a deeper understanding of Native culture and religion. Only by doing so can we ensure that the rights of indigenous people are safeguarded with the same level of commitment as the rights of all other citizens, as required by the RFRA, and uphold the principles of equality and respect for diversity that are essential to a just and inclusive society.

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The Deceitful Lens of the Paparazzi in the Fight for Privacy Rights

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The purpose of this research paper is to investigate privacy rights as it relates to the relationship between paparazzi and celebrities. I argue that paparazzi hide behind a false notion of being full journalists thus incurring first amendment protections when it should not be fully afforded to them. I analyze various cases that demonstrate two legal tests to determine the newsworthiness of content and demonstrate the line between first amendment protections and privacy rights.

Acknowledgements

I would like to express my deepest gratitude to Professor Stephen Mack for prompting my research into this fascinating topic through his instruction in class. Also, thanks should go to the editorial staff at the USC Journal of Law and Society for taking the time and care to read my paper and help me improve it through multiple drafts. Finally, I would be remiss in not thanking my family for their avid support and everlasting strength that pushed me to pursue this endeavor to the very end.

As early as the nineteenth century, Samuel Warren and Louis Brandeis, the "inventors" of privacy law in the United States of America, commented that, "Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house-tops.'"[1] These words, written one hundred and thirty-two years ago, remain powerful today. With tremendous foresight, American attorney Samuel Warren and Former Associate Justice of the Supreme Court Louis Brandeis aided in defining the right to privacy and protection of individuals from the methods of intrusive media "which nineteenth centuries courts, on the whole, did not recognize."[2] However, it is hard to imagine that Warren and Brandeis, when publishing their law review in 1890, could have anticipated the drastic shift from society's curiosity in public retellings of private stories in the newspaper to their seemingly vast appetite for gossip through celebrity paparazzi photos.[3] A huge market now exists for these photos shot by paparazzi as exhibited through the countless amounts of available content in gossip magazines and websites such as TMZ.com, eonline.com, and pagesix.com.

From the outset, the privacy of individuals and the rights of the media lie in direct opposition, yet it seems the rights of the press, specifically the paparazzi, presently outweigh those of privacy. As modernity increasingly wreaks havoc on the sacred sphere of private life, it becomes vital

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[1] Samuel D Warren and Louis D Brandeis, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (December 15, 1890): 195, https://heinonline-org.libproxy1.usc.edu/HOL/Page?collection=journals&handle=hein.journals/hlr4&id=205&men_tab=srchresults.

[2] Robert O'Neil, "Privacy and Press Freedom: Paparazzi and Other Intruders," *University of Illinois Law Review*, no. 2 (1999): 704, https://heinonline-org.libproxy1.usc.edu/HOL/Page?handle=hein.journals/unilllr1999&id=713&collection=journals&index=.

[3] Joshua Azriel, "Restrictions against Press and Paparazzi in California: Analysis of Sections 1708.8 and 1708.7 of the California Civil Code," *UCLA Entertainment Law Review* 24, no. 1 (2017): 5, https://heinonline-org.libproxy1.usc.edu/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/uclaetrlr24&men_hide=false&men_tab=toc&kind=&page=1#.

the scales tip back in favor of privacy laws or, at the very least to, some sense of equality. This paper will argue that, to achieve this endeavor, the paparazzi must be delegitimized as traditional news-gathering media under the protections of the First Amendment, thereby allowing for industry restrictions that curb cunning paparazzi tactics.

The Merriam-Webster Dictionary defines paparazzi, derived from the Italian word paparazzo, as a "photographer who aggressively pursues celebrities for the purpose of taking candid photographs," yet there is a richer etymology behind the word.[4] In fact, the word paparazzo is derived from a derogatory term in Italian meaning a large mosquito.[5] The connotation of the word "paparazzi" is that of bothersome and persistent photographers who watch every move of their celebrity subjects and go to extreme measures to capture a dramatic shot.[6]

The deplorable newsgathering techniques of the paparazzi make more sense when one considers that these photographers are motivated by money. "The paparazzi are a million-dollar industry."[7] The financial rewards incurred from their photos, especially "candid and revealing photos capturing celebrities in their most 'unguarded moments' [can] bring" in a substantial sum.[8] By targeting celebrities who garner public intrigue, a paparazzo can sell a single photo anywhere from $6,000 to $100,000 with an estimate that an aggressive paparazzo can earn one million a year.[9] In

[4] "Paparazzo," Merriam-Webster, accessed April 4, 2023, https://www.merriam-webster.com/dictionary/paparazzo.
[5] Gaby Wood, "Camera, Movie Star, Vespa ... It All Vegan on the Via Veneto," The Guardian, last modified September 23, 2006, https://www.theguardian.com/media/2006/sep/24/pressandpublishing1.
[6] Jamie Nordhaus, "Celebrities' Rights to Privacy: How Far Should the Paparazzi Be Allowed to Go?," *The Review of Litigation* 18, no. 2 (1999): 286, https://heinonline-org.libproxy2.usc.edu/HOL/Page?handle=hein.journals/rol18&id=291&collection=journals&index=.
[7] Azriel, "Restrictions against Press," 2.
[8] Keith Willis, "Paparazzi, Tabloids, and the New Hollywood Press: Can Celebrities Claim a Defensible Publicity Right in Order to Prevent the Media from Following Their Every Move?," *Texas Review of Entertainment and Sports Law* 9, no. 1 (2007): 177, https://heinonline-org.libproxy2.usc.edu/HOL/Page?handle=hein.journals/tresl9&id=1&collection=journals&index=.
[9] Willis, "Paparazzi, Tabloids, and the New Hollywood," 177.

fact, "websites such as *TMZ.com* [even] pay informants around Hollywood to keep them apprised of celebrity whereabouts."[10] One example of the monetary rewards of this industry is Angelina Jolie and Brad Pitt's wedding, in which Scott Cosman, owner of photo agency Fame/Flynet Inc. speaking to E! News, predicted that magazines and gossip sites would pay '$10 million-plus' for a photograph of their illustrious union.[11] "Armed with cameras," these paparazzi "stalk the streets in hopes of getting the 'money shot' of the celebrity du jour."[12] Therefore, these large financial incentives often result in "increased cases of harassment, stalking and breach of privacy" by the paparazzi in hopes of capturing these coveted celebrity photos. Once published, the paparazzi menace is only encouraged by a photo-hungry public.

A question that begs to be asked is why the paparazzi continue to flourish despite several instances where they have crossed the boundaries of propriety. One entertainment news reporter theorizes that "'[a]s long as readers are willing to pay to see…their favorite celebrities in all their lesser glory, there will be editors willing to pay paparazzi whatever it takes to get the story.'"[13] In this manner, public demand has created the supply. "For proof, one needs to look no further than the significant number of tabloids, reality shows, and gossip sites."[14] The public's obsession with fame encourages the paparazzi in their pursuit of celebrities and endorses their invasive techniques as an

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[10] Azriel, "Restrictions against Press," 2.
[11] Dylan Mombach, "Paparazzi and the Right to Privacy: Intrusion Upon Seclusion," Chicago-Kent College of Law, accessed April 4, 2023, http://www.kentlaw.edu/perritt/courses/seminar/Entertainment%20Law%20Seminar%20Paper-%20Mombach.pdf.
[12] Christina M. Locke, "Does Anti-Paparazzi Mean Anti-Press: First Amendment Implications of Privacy Legislation for the Newsroom," *Seton Hall Journal of Sports and Entertainment Law* 20, no. 2 (2010): 227, https://heinonline-org.libproxy2.usc.edu/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/shjsl20&men_hide=false&men_tab=toc&kind=&page=227.
[13] Willis, "Paparazzi, Tabloids, and the New Hollywood," 177.
[14] Chang Liu, "Why Paparazzi Cannot Be Fully Banned," in *3rd International Workshop on Education Reform and Social Sciences*, Advances in Social Science, Education, and Humanities Research Volume (2020): 132, http://download.bcpub.org/proceedings/2020/ERSS2020/ERSS018.pdf.

acceptable practice. An "overly aggressive and often dangerous population of paparazzi," has developed due to this increase in demand for tabloid news.[15] Consequently, the public partly shoulders some responsibility for enabling paparazzi to hound celebrities through their acceptance of the existing legal landscape. "Therefore, this wrong culture continues to thrive, despite the many dangers" it poses.[16] Citizens should actively advocate for stronger privacy rights through legislation on the state level to weaken the protections of the paparazzi, especially as they can pose a grave risk to public safety. Without this intervention by American citizens, this predatory news culture could become a tremendous obstacle to handle in the future. However, there is an inherent tension between increasing privacy rights for an individual and the First Amendment, which protects the freedom of the press. The First Amendment prohibits Congress and the courts from fully abridging the freedom of the press.[17]

Although the United States Constitution contains no explicit right to privacy, the courts have come to recognize privacy as a constitutional right.[18] The constitutionality of this right lies embedded in an interpretation of the First, Third, Fourth, Fifth, and Fourteenth Amendments. These amendments underlie the right to privacy as they protect different aspects of the notion such as privacy of belief, privacy against an invasion of the home, the privacy of possessions from illegal seizure, and privacy of personal information through self-incrimination. In perhaps the most renowned and cited law article entitled "The Right to Privacy," Justice Warren and Brandeis "set out to establish a common law protection for the right to privacy" detailing the idea as the right to be

[15] Liu, "Why Paparazzi Cannot Be Fully Banned," 132.
[16] Liu, "Why Paparazzi Cannot Be Fully Banned," 132.
[17] Andrew Morton, "Much Ado About Newsgathering: Personal Privacy, Law Enforcement, and the Law of Unintended Consequences for Anti-Paparazzi Legislation," *University of Pennsylvania Law Review* 147, no. 6 (1999): 1447, https://heinonline-org.libproxy1.usc.edu/HOL/Page?handle=hein.journals/pnlr147&id=1471&collection=journals&index=.
[18] Morton, "Much Ado About Newsgathering," 1447; Nordhaus, "Celebrities' Rights to Privacy," 287.

left alone.[19] In their review, they state that "of the desirability–indeed of the necessity–of some such protection, [of privacy] there can, it is believed, be no doubt."[20] Brandeis and Warren outline the right of privacy in their article "furnished by the legal analogies already developed in the law of slander and libel, and in the law of literary and artistic property." The most important of their ideas being that the right to privacy does not prohibit any publication of matter which is of public or general interest.

In the 1970s, a new form of privacy rights occurred through the amendment of state constitutions to include privacy rights. Currently, there are ten state constitutions that explicitly recognize the right to personal privacy. These states include Alaska, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Kentucky, Montana, and Washington. For example, California's constitution secures the "inalienable rights [of all people]. Among these are enjoying and defending life and liberty… and pursuing and obtaining safety, happiness, and privacy."[21] The Supreme Court holds that states are free to add to federally guaranteed minimums of privacy protections enumerated in the Bill of Rights.[22] The Court also ruled that it will not review the decision of state courts regarding cases decided on privacy grounds, ergo "constitutional privacy rights appear to have found a 'safe harbor' in the domain of the states."[23] Thus, it became prevalent that states explicated their privacy laws. In the mid to late 1990s, many states augmented privacy protections against media again due to the cataclysmic death of Princess Diana in 1997. Jurors ruled she was "unlawfully killed" by both the reckless driving of the chauffeur and the paparazzi who were chasing her.[24]

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[19] Morton, "Much Ado About Newsgathering," 1438.
[20] Warren and Brandeis, "The Right to Privacy," 196.
[21] Calif. Const. art. I, §1
[22] Morton, "Much Ado About Newsgathering," 1443.
[23] Morton, "Much Ado About Newsgathering," 1443.
[24] Kate Samuelson, "How Princess Diana's Death Changed the British Media," Time, last modified August 27, 2017, https://time.com/4914324/princess-diana-anniversary-paparazzi-tabloid-media/.

The shocking death of Princess Diana alongside subsequent horrific encounters between paparazzi and celebrities such as the "perceived intrusive nature of the coverage of the Clinton-Lewinsky mattermattermattermattermatter" prompted renewed attention to the media and its newsgathering techniques.[25] This scrutiny of the media led to legal reforms intended to restrict the media's offensive and intrusive newsgathering. Federal and state legislatures established personal privacy protections by bolstering civil and criminal liability against anyone engaging in improper surveillance activities, particularly the media.

The legal protections of privacy through the common law have developed to protect four main types of invasions through torts. These torts are intrusion upon the seclusion or solitude of another, public disclosure of private facts, depiction in a false light, and commercial exploitation of a person's name or likeness, also called appropriation.[26] The tort of intrusion, often the one violated the most by paparazzi, provides celebrities a limited degree of protection against intrusive photographs such as where there is an attempt to take a picture within the confines of the individual's home. More recently, the tort of intrusion extended to include microphones and recording devices. The three elements of an intrusion cause of action involve the following: "(1),), the plaintiff had a reasonable expectation of privacy; (2) the defendant intentionally intruded on the plaintiff's private place, conversation, or matter; (3) the 'intrusion would be highly offensive to a reasonable person.'"[27] The publication of private facts relates to the press as "column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle"; they

[25] Morton, "Much Ado About Newsgathering," 1449.
[26] Morton, "Much Ado About Newsgathering," 1444; Nordhaus, "Celebrities' Rights to Privacy," 287.
[27] Tara Sattler, "Plagued by the Paparazzi: How California Should Sharpen the Focus on Its Not-So-Picture Perfect Paparazzi Laws," *Southwestern Law Review* 40, no. 2 (2010): 408–9, https://heinonline-org.libproxy2.usc.edu/HOL/Page?collection=journals&handle=hein.journals/swulr40&id=427&men_tab=srchresults.

have "overstepp[ed] in every direction the obvious bounds of propriety and decency."[28] The elements of a tort claim are as follows: "(1) a public disclosure about the plaintiff; (2) of private and true information; (3) that would be highly offensive to a reasonable person; and (4) such information is not of legitimate concern to the public."[29] The privacy tort of false light provides "protection in the form of compensation for the emotional distress caused by the publication of false information."[30]. As a consequence, courts rarely use this tort as they claim "[that celebrity] fame seems inconsistent with the injury to solitude or personal feeling implicitly required for such a claim."'[31] The tort of appropriation is used by courts "when a person's characteristics, features, identity, and the like are exploited without their permission" for commercial gain or profit.[32] The elements of the appropriation tort "are as follows: (1) use of the plaintiff's identity for the defendant's commercial advantage or otherwise; (2) lack of consent; and (3) a resulting injury."[33]

All in all, tort laws prove to be lackluster in their protections because they support the notion that an individual in public implicitly has consented to be photographed, and they offer little protection through legal remedies towards intrusive acts of photography, videotaping, or surveillance of subjects in public places.[34]Alternative forms of protection are provided through stalking or shadowing laws though these traditionally apply in cases of surveillance activities of private investigators.[35] In addition, the press can be liable for false imprisonment if they physically prohibit the subject of their photograph from carrying out their intended actions through their

[28] Warren and Brandeis, "The Right to Privacy," 196.
[29] Sattler, "Plagued by the Paparazzi," 409.
[30] Sattler, "Plagued by the Paparazzi," 410.
[31] Willis, "Paparazzi, Tabloids, and the New Hollywood," 180.
[32] Sattler, "Plagued by the Paparazzi," 410.
[33] Sattler, "Plagued by the Paparazzi," 410.
[34] Morton, "Much Ado About Newsgathering," 1444.
[35] Morton, "Much Ado About Newsgathering," 1445.

newsgathering activity. Cases in violation of this notion are frequent, therefore it is necessary that "paparazzi be restricted to protect celebrities and their loved ones from harassment."[36]

In a prominent case in 1998, two paparazzi in pursuit of the first pictures of Arnold Schwarzenegger following his release from a hospital after elective heart surgery swarmed his car leading to his family being driven off the road. The photographers were convicted of false imprisonment and sentenced to sixty and ninety days in prison, respectively.[37]

The aforementioned tort statutes target the persistent nature of the paparazzi in terms of the subject's overall safety and privacy of property but fail to address the intrusive photography and recording activities of the paparazzi in public spaces. Theoretically, the right to privacy applies equally to public and private figures. In practice, "celebrities as public figures tend to have a much harder time recovering from an invasion of privacy than private individuals" as there is a narrow definition of affairs considered private in the life of a celebrity.[38] Constitutional limitations also regulate judges to favor the protection of the First Amendment and err on the side of the media in cases rather than celebrities whom they perceive as choosing life in the public eye. In general, the torts serve as the first laws to protect public figures, yet further legislation is required.

Celebrities remain unprotected against desperate media outlets seeking the next big payday. Privacy rights and restrictions of the paparazzi must evolve again as technological advancements, like the Internet, resulted in the widespread creation of celebrity websites that publish candid celebrity photographs almost immediately in the digital age. The Internet, especially the accounts of tabloids on social media platforms such as Twitter, Snapchat, and Instagram enable celebrity pictures to become public in a matter of seconds. Currently, the techno-savvy paparazzi have honed multiple

[36] Liu, "Why Paparazzi Cannot Be Fully Banned,"132.
[37] Morton, "Much Ado About Newsgathering," 1446.
[38] Nordhaus, "Celebrities' Rights to Privacy," 288.

ways to infringe on celebrities' privacy that the "American constitution is unable to fathom."[39] The rapid delivery of celebrity photographs in conjunction with a paparazzo's financial incentive has resulted in the continuous bombardment and stalking by paparazzi.[40] Nothing in current privacy law discourages paparazzi from tailing celebrities and capturing photos of them on the streets, at parks, or in any other public spaces.. Therefore, to bolster the privacy rights of celebrities, there needs to be a fundamental paradigm shift in the categorization of paparazzi so they will no longer be fully considered newsgathering media sources and consequently no longer incur the full protections under the First Amendment. If these changes are not made, "privacy laws will continue to be porous," and lacking fortification.[41]

Celebrities are entitled to the same fundamental right to privacy as other individuals, yet "the degree to which that right is protected is much narrower for public figures."[42] They should be able to lead private, dignified lives, but the paparazzi "fail to observe any bounds."[43] When a private event occurs in a celebrity's life, and the paparazzi get informed, "they usually go to great lengths to dig all the dirt even if it means terrorizing the lives of children or other family members, all in the name of 'informative' journalism."[44]

Various rationales exist to explain this smaller threshold of protection for famous individuals, but they are hardly flawless. The first rationale is that most public persons, such as those in positions of governmental authority like politicians, seek and consent to publicity to increase their name exposure and recognition. The modern era has seen a growth in celebrities who embrace, yet exploit,

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[39] Liu, "Why Paparazzi Cannot Be Fully Banned,"132.
[40] Willis, "Paparazzi, Tabloids, and the New Hollywood," 177.
[41] Liu, "Why Paparazzi Cannot Be Fully Banned,"132.
[42] Nordhaus, "Celebrities' Rights to Privacy," 289.
[43] Liu, "Why Paparazzi Cannot Be Fully Banned,"132.
[44] Liu, "Why Paparazzi Cannot Be Fully Banned,"132.

the paparazzi. For example, the Kardashian-Jenner family reflects this unique notion as, cognizant that the paparazzi avidly follow their every movement, they have built a symbiotic relationship with paparazzi over the years to retain their fame and notoriety. Nevertheless, the Kardashian-Jenner family remains more of an anomaly rather than the norm in this aspect. Although celebrities consent to a certain degree of public disclosure through paparazzi intervention, that does not equate to an all-access pass for paparazzi to intrude in their private spheres.

The second rationale behind the narrow spectrum of privacy held by celebrities is that the constant exposure they receive conjoined with their expectation of paparazzi's abrasive tactics render them more "'psychologically tolerant' of press behavior than they might otherwise be."[45] The tolerance of celebrities to the heinous acts of paparazzi poses a danger as it "leads to the abuse of many as the press begins to expect a license to behave in certain ways."[46] As long as unacceptable press practices are permitted, arguing that press tactics are outlandish becomes more difficult. Although, it is noteworthy that the press does indeed have the right to publicize matters of public interest, "absent a significant state interest to the contrary."[47] As celebrities tend to fluctuate in the spotlight, the public begins to feel they "know" the celebrity. This comfort leads to a false sense of entitlement of the public to be "privy to [celebrity] private lives," but this public interest is mere curiosity that deserves no rights.[48] Paparazzi Ron Galella employed this rationale when obsessively chasing after the Onassis family.

In the 1960s and 1970s, Paparazzi Ron Galella, using a simple film camera, built his career "around his obsessive photos of Jacqueline Kennedy Onassis and her family."[49] Examples of

[45] Nordhaus, "Celebrities' Rights to Privacy," 290.
[46] Nordhaus, "Celebrities' Rights to Privacy," 290.
[47] Nordhaus, "Celebrities' Rights to Privacy," 290.
[48] Nordhaus, "Celebrities' Rights to Privacy," 290.
[49] Azriel, "Restrictions against Press," 1.

Galella's intrusive acts include "jumping in front of John Kennedy [Jr.] while he was riding his bicycle in the park; coming uncomfortably close in a power boat while Mrs. Onassis was swimming; [and] bribing doormen at her apartment, restaurant and nightclub to keep him advised of the movements of the family."[50] These ruthless tactics used by Galella were not, by any means, within the reasonable bounds of newsgathering as he belligerently inserted himself into Mrs. Onassis's life. If his blatant disregard for privacy was not enough in the case of *Galella v. Onassis*, he later published a book in 2012 that would bring him more undue fame entitled, "Jackie: My Obsession." Galella even mentioned how he dated the Onassis family maid to gain information into their whereabouts at all times and once stated that "I had no girlfriend; [Jackie Kennedy] was my girlfriend in a way."[51] His invasive tactics were not limited to the Kennedy family. For example, in 2015, he told *Vanity Fair* that he spent a weekend "camped out in an empty warehouse on the river's banks" to snap pictures of Elizabeth Taylor and Richard Burton together on a boat floating in the Thames. Galella's controversial style "in many ways… anticipated the relentlessness of the photographers who came after him, from the paparazzi who stalked Princess Diana and Britney Spears to those who have more recently been hounding the young stars of Tik Tok."[52] Additionally, in a truly terrifying manner, Galella's photographs became a blueprint for modern paparazzi publications such as *TMZ.com*, *Us Weekly*, and many more. The case of *Galella v. Onassis* serves as only a taste of the intrusive acts employed by paparazzi to get their money shots.

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[50] Pyk Larysa, "Putting the Brakes on Paparazzi: State and Federal Legislators Propose Privacy Protection Bills," *DePaul Journal of Art, Technology, and Intellectual Property Law* 9, no. 1 (1998): 191, https://via.library.depaul.edu/cgi/viewcontent.cgi?article=1313&context=jatip.
[51] Michael Carlson, "Ron Galella Obituary," The Guardian, last modified June 1, 2022, https://www.theguardian.com/artanddesign/2022/jun/01/ron-galella-obituary.
[52] Naomi Fry, "Ron Galella's Relentless Gaze," The New Yorker, May 11, 2022, https://www.newyorker.com/culture/photo-booth/ron-galellas-relentless-gaze.

The case of *Galella v. Onassis* in 1982 was a preeminent case involving the subject matter of paparazzi and privacy. Former First Lady Jacqueline Kennedy Onassis brought a civil action against Ron Galella for his overbearing surveillance of her life and that of her children "after he physically placed himself in front of… [Ms. Onassis] and her children to photograph them."[53] "Jackie testified that Galella made her life 'intolerable, almost unlivable," and that she had 'no peace, no peace of mind.'"[54] The court, in its opinion, recognized "a general 'right to be left alone,' and to define one's circle of intimacy to shield intimate and personal characteristics and activities from public gaze; to have moments of freedom from the unremitted assault of the world and unfettered will of others to achieve some measure of tranquility for contemplation or other purposes, without which life loses its sweetness."[55] The court clarified that while the plaintiff could not stop photographs of her family, she did have the right to protection against some of the tactics used in pursuit of her photographs. . "This was a legal victory for Onassis in an earlier era, well before our current, online celebrity-obsessed culture."[56] Despite this significant precedent and great legal triumph in the 1980s, few celebrities thereafter take advantage of Galella to protect themselves against the paparazzi. The main reason for this disuse being paparazzi use "newsgathering and newsworthiness defenses to protect their actions," which courts typically allow and accept.[57]

Entertainment websites and magazines hide behind newsgathering defenses in relation to privacy concerns brought against them by celebrities, even though they should fail to qualify as authentic news outlets. It is through this deceitful lens that the paparazzi protect themselves and

[53] Azriel, "Restrictions against Press," 1.
[54] Carlson, "Ron Galella Obituary."
[55] Nordhaus, "Celebrities' Rights to Privacy," 288.
[56] Azriel, "Restrictions against Press," 2.
[57] Nordhaus, "Celebrities' Rights to Privacy," 289.

currently explains why American law protects paparazzi extensively.[58] Armed with First Amendment protections, the paparazzi normally align themselves with the news media, hence earning "the associated freedom of press gathering."[59] The paparazzi exploit this blatant loophole in the U.S. Constitution to act without bounds. However, precise limits must be established "thus, it is necessary to show the distinction between privacy rights and the First Amendment."[60]

As Warren and Brandeis noted, privacy cases often become about subject matter "in which the reasonableness or unreasonableness of an act is made the test of liability. The design of the law must be to protect those persons with whose affairs the community has no legitimate concern, from being dragged into an undesirable and undesired publicity…from having matters which they may properly prefer to keep private, made public against their will."[61] Courts take a broad stance towards material they consider newsworthy and protected by the First Amendment, thereby denying celebrities the ability to exercise their privacy rights when their name or image are not used in the context of bona fide news reports. Currently, "as it stands, the government [considers] any news that attracts the attention of large masses to be newsworthy."[62]

Nonetheless, simply because courts favor an expansive freedom of the press, it does not mean that they presently should in all cases. The Supreme Court has upheld that "while the 'dissemination of information and opinion on questions of public concern is ordinarily a legitimate, protected and indeed cherished activity, [this] does not mean… that one may in all respects carry on that activity exempt from sanction designed to safeguard the legitimate interests of others.'"[63]

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[58] Liu, "Why Paparazzi Cannot Be Fully Banned,"132.
[59] Liu, "Why Paparazzi Cannot Be Fully Banned,"132.
[60] Liu, "Why Paparazzi Cannot Be Fully Banned,"132.
[61] Warren and Brandeis, "The Right to Privacy," 214-215.
[62] Liu, "Why Paparazzi Cannot Be Fully Banned,"135.
[63] Willis, "Paparazzi, Tabloids, and the New Hollywood," 187.

Granted, courts have taken a more liberal approach to what qualifies as newsworthy, but this does not equate to universality; courts have found that certain information does not constitute public interest. Though there is no direct universal method for determining the newsworthiness of information, two main theories have been put forth to guide court decisions derived from *Virgil v. Time, Inc.* and *Galella v. Onassis*.

The first of these theories used by some courts uphold that newsworthiness should be decided by engaging with the "reasonable member of the public standard."[64] Some courts enforce the definition adopted by the Ninth Circuit in *Virgil v. Time, Inc.*, which states that "the line to be drawn when the publicity ceases to be the giving information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say he had no concern."[65] The *Virgil* court braved to define the line between appropriate and inappropriate news with the court clarifying that "[t]he fact that [people] engage in an activity in which the public can be said to have a general interest does not render every aspect of their lives subject to public disclosure."[66] Thus, while determining newsworthiness might require a jury to define community standards, *Virgil* allows more room for courts to declare the content of the paparazzi to be unnewsworthy and not protected under the First Amendment.

One can argue that the paparazzi, by following celebrities throughout the day, effectively offend community standards as well as morbidly and sensationally pry into the lives of others. This argument is not limited to speculation of how a reasonable person would act as there is evidence that paparazzi actions currently violate community standards of decency. People have "started…

[64] Willis, "Paparazzi, Tabloids, and the New Hollywood," 187.
[65] Willis, "Paparazzi, Tabloids, and the New Hollywood," 187.
[66] Willis, "Paparazzi, Tabloids, and the New Hollywood," 188.

websites questioning the paparazzi's legitimacy and calling for other members of the public to refuse to purchase magazines that buy the paparazzi's photographs."[67] Any decent, reasonable person would be offended to know that paparazzi invade celebrities' private lives at their children's soccer games or playful afternoons in the park with their friends to then sell these photos to tabloids. Some members of Congress have advocated for celebrities through legislation or by forming exploratory committees to investigate solutions to the issue of increasingly intrusive photographers. Jennifer Aniston, a prominent celebrity, even raised the less popular argument that paparazzi tactics have often put unlucky pedestrians nearby at risk when snapping their photos.[68] Aniston brought up this argument in 2016 in a Huffington Post article about her daily interactions with "dozens of aggressive photographers" and their intrusive actions to get a picture of her and her husband. She stressed that since paparazzi often waited outside her home, they posed a danger to not only her family but a hazard to public safety as well.[69] As more of the populace begins to admonish paparazzi for crossing the line from legitimate to inappropriate reporting, "the *Virgil* test may be used to assert that many candid celebrity photographs are not newsworthy."[70]

The second theory upheld that information that serves to satiate "mere curiosity" is not newsworthy material.[71] While the public has some legitimate claim to certain information regarding public figures, this claim is not all-encompassing. The term "mere curiosity" was primarily embraced in *Galella v. Onassis*. The court had emphasized that "in this case, photographs of the defendant walking in Central Park, riding in automobiles, eating in a restaurant… are of minuscule importance

[67] Willis, "Paparazzi, Tabloids, and the New Hollywood," 188.
[68] Azriel, "Restrictions against Press," 3.
[69] Azriel, "Restrictions against Press," 2-3.
[70] Willis, "Paparazzi, Tabloids, and the New Hollywood," 188.
[71] Willis, "Paparazzi, Tabloids, and the New Hollywood," 187.

to the public."[72] The rule established by the court, in this case, held that interference by the press in the private life of the individual "can 'be no greater than necessary to protect the overriding public interest.'"[73] Furthermore, this rule can be broken down into a three-part balancing test. "First, the court should consider the legitimate public interest in the information sought."[74] In *Galella*, the court found that while there might be a public curiosity about the daily activities of the Onassis family, the mundane details of a celebrity's personal life were not sufficiently newsworthy and protected under the First Amendment. Second, the court should consider the individual's right to privacy, as by the time the suit was decided, Galella had become a significant intrusion into the life of Ms. Onassis and her children. Lastly, the "court should consider the likelihood of continued surveillance absent court intervention" as Galella made it abundantly clear that he intended to continue in his obsessive pursuit of Ms. Onassis.[75]

The court then elucidated how its ruling aligned with Supreme Court decisions supporting First Amendment freedoms. The court referenced *Time v. Hill* in 1967 which held that the plaintiff's rights were not violated by a magazine company when it reported that a theatrical production had been based upon familial experiences. Therefore, the court in *Galella v. Onassis* invoked the quote by the Supreme Court in *Time v. Hill*, which said that the First Amendment applies to all facts which are "needed or appropriate to enable members of society to cope with the exigencies" of life and explained that Galella's paparazzi reporting did not fall within this notion.[76]The court highlighted that although "Mrs. Onassis [was] a public figure…it cannot be said that her comings and goings…bear significantly upon public questions or otherwise 'enable members of society to cope

[72] Willis, "Paparazzi, Tabloids, and the New Hollywood," 189.
[73] Nordhaus, "Celebrities' Rights to Privacy," 310.
[74] Nordhaus, "Celebrities' Rights to Privacy," 310.
[75] Nordhaus, "Celebrities' Rights to Privacy," 311.
[76] Willis, "Paparazzi, Tabloids, and the New Hollywood," 189.

with the exigencies of their period.' It merely satisfies curiosity."[77] This test of "mere curiosity" has been marked in *American Jurisprudence* as a widely recognized method for determining newsworthiness.

It is worth mentioning that other countries have integrated the test of "mere curiosity" to restrict the ability of media outlets from publishing certain photographs. The concept of a "newsworthiness" test is consistent with the "European model of privacy rights, in which the focus is not on physical zones of privacy, but rather, is tied to the subject matter of the activities taking place in the photographs."[78] Two cases involving privacy from the European Union included Princess Caroline of Monaco and supermodel Naomi Campbell. In the Princess of Monaco's case, the European Court of Human Rights allowed her the right to prevent the publication of German paparazzi photos of her engaged in her daily activities. The European Court of Human Rights held that photographs of the Princess at restaurants or walking around town served only to "satisfy the curiosity of a particular readership." Hence, the photos were not sufficiently newsworthy and not protected under the freedom of expression. In the case of international star Naomi Campbell, she sued a European newspaper that published pictures of her exiting a Narcotics Anonymous meeting. "The court held that the newspaper unjustifiably infringed on Miss Campbell's right to privacy and breached a duty of confidence because the newspaper knew, or should have known, that the information, would be highly offensive to a reasonable person of ordinary sensibilities."[79] In

[77] Willis, "Paparazzi, Tabloids, and the New Hollywood," 190.
[78] Gary Wax, "Popping Britney's Personal Safety Bubble: Why Proposed Anti-Paparazzi Ordinances in Los Angeles Cannot Withstand First Amendment Scrutiny," *Loyola of Los Angeles Entertainment Law Review* 30, no. 1 (2010): 157, https://heinonline-org.libproxy1.usc.edu/HOL/Page?handle=hein.journals/laent30&id=1&collection=journals&index=.
[79] Wax, "Popping Britney's Personal Safety Bubble," 158.

European law, privacy and freedom of expression have maintained a relative equilibrium, whereas in the United States privacy remains subordinate to the First Amendment.[80]

However, it is important to emphasize that the newsworthiness test must not be over-abused as it could allow public figures, especially those in positions of authority, to operate behind a veil of secrecy and total control over their public image. This would have a "potential chilling effect on free expression."[81] Just like the rights of the press, the right to privacy is not absolute. But when this newsworthiness test of mere curiosity is used properly, it will effectively create respites for celebrities from paparazzi harassment.

Coupled together, the tests of reasonableness and "mere curiosity" illustrate the distinction between privacy rights and deserved First Amendment protections for true news media. These tests demonstrate that the publication of photos taken by paparazzi of celebrities engaged in insignificant daily activities should be barred. Sanctions should be instituted that bar publications of these photographs under a more narrowly tailored test of newsworthiness. When pursuing celebrities for these types of mundane photographs, paparazzi do not serve as journalists at that moment and act in a fashion closer to their alternate name of stalkerazzi. With these sanctions in place, paparazzi will be discouraged from photographing celebrities as they go about their regular lives and thereby decrease their unsolicited presence in the lives of prominent people. In this manner, the aggressive tactics of ruthless and cunning paparazzi, who often compromise public and personal safety to capture celebrity photographs, will be constrained. Moreover, the concept of newsworthiness will be better defined for courts instead of the broad legal definition we have now that rarely limits the scope of invasive media. If the legislative change is not made, "the existing privacy laws will continue

[80] Wax, "Popping Britney's Personal Safety Bubble," 158.
[81] O'Neil, "Privacy and Press Freedom," 705.

to be porous, and celebrities will continue to suffer."[82] Without their deceptive lens of the First Amendment loophole, paparazzi cannot continue to act without bound therefore safeguarding the privacy rights of the individual.

Critics of press regulation assert that it "'would be unnecessary, unwise, and unconstitutional' and could produce 'a deleterious effect… on the newsgathering process.'"[83] In their perception, First Amendment free press rights trump personal privacy expectations if the media want to serve public interest. These critics fail to recognize that they are part of the ever-growing problem of conflation between news and entertainment outlets. News and entertainment have become indistinguishable in today's society, with the judiciary passively promoting this inappropriate trend by their unwillingness to distinguish between 'public interest' and mere 'public curiosity.' Brandeis and Warren once again determined this as far back as 1890 in their law review, stating that "when personal gossip attains the dignity of print, and crowds the space available for matters of real interest to the community, what wonder that the ignorant and thoughtless mistake its relative importance." So long as courts are unwilling to impose standards on paparazzi categorized falsely under the hood of newsgathering sources, they are protected. An interesting and debilitating side effect of the sensationalism of gossip magazines and websites in today's news in conjunction with paparazzi's behavior has resulted in a decline in the press's credibility. Thus, ironically, instead of fortifying news outlets by being under their umbrella of protection, paparazzi sources damage the legitimacy of real news outlets whose purpose is to serve the public interest rather than curiosity.

Celebrities have very few enforceable causes of action available to them to protect their privacy rights against invasions from the paparazzi. This tension between the privacy of the

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[82] Liu, "Why Paparazzi Cannot Be Fully Banned,"133.
[83] Morton, "Much Ado About Newsgathering," 1453.

individual and the paparazzi has only snowballed, from the article written by Brandeis and Warren to the case of *Galella v. Onassis* until it hit a crescendo with the death of Princess Diana. Princess Diana's death acted as a catalyst that prompted international debate on the question of the prudence of paparazzi techniques and the extent to which they can and should be regulated. In response to this horrific event, reforms were established on both the federal and state level alongside tort laws in the United States, but these statutes and laws still prove insufficient in safeguarding the privacy rights of celebrities. These laws acted as a temporary fix to a gaping wound that will only grow as more technological advancements are made and the world becomes increasingly celebrity obsessed.

A larger solution is needed in which the identification of paparazzi as newsgathering sources is removed, when necessary, thereby diminishing the protections accorded to them by the First Amendment. Utilizing the legal reasoning of being "a reasonable member of society" and "mere curiosity" from *Galella*, American case law demonstrates that some material, such as certain candid paparazzi photos, should not be considered newsworthy within entertainment websites and magazines. It would be constructive for dynamic legislation to attempt to create a threshold between news and mere entertainment which invades the privacy of the individual. This elimination of the daily activities of celebrities under the categorization of newsworthy would help to curb intrusive paparazzi methods. Courts should no longer cautiously shield the paparazzi in fear of restricting legitimate news outlets as the First Amendment does not apply in these instances. Judges can then tailor judicial opinions that broaden the scope of privacy and narrow the abilities of the paparazzi, flushing out the fine lines between paparazzi and legitimate newsgathering. In this manner, legislators can begin to effectively and constitutionally block intrusive paparazzi and their devastating

techniques to better protect the privacy rights of celebrities.

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UP IN SMOKE?: A CRITICAL ANALYSIS OF MENTAL HEALTH RESEARCH AND ILLINOIS CANNABIS LEGALIZATION

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Scholars have explored a variety of aspects of cannabis legalization, including how this legislation interacts with other laws and is impacted by societal factors. Scholars have also examined cannabis' relationship with mental health. This paper combines these two topics by studying Illinois legislative records to determine how mental health research contributed to the cannabis legalization debate and argues that there are three distinct waves of discourse. Legislators (1) did not reference mental health research when discussing the initial legalization of medical cannabis, (2) referenced mental health research very frequently when discussing the amendment of medical cannabis laws, and (3) referenced mental health research somewhat when discussing the legalization of recreational cannabis.

Introduction

The Illinois legislature, also known as the General Assembly, passed the Compassionate Use of Medical Cannabis Pilot Program Act in 2013, which legalized medical cannabis for a small subset of the state's population.[1] In 2016, these legislators voted to amend the law to include post-traumatic stress disorder as a qualifying condition for medical cannabis.[2] All Illinois residents over the age of 21 gained access to recreational cannabis at the beginning of 2020, after the Cannabis Regulation and Tax Act went into effect.[3] The introduction of each of these bills in the Illinois House and Senate resulted in intense legislative debates that included varying levels of mental health research.

This paper demonstrates that legislators (1) did not reference mental health research when discussing the initial legalization of medical cannabis, (2) referenced it very frequently when discussing the amendment of medical cannabis laws, and (3) referenced it somewhat when discussing the legalization of recreational cannabis, alongside social justice and youth-related considerations. This paper also reveals that lawmakers for and against cannabis legalization cited mental health research roughly the same amount of times, which is significant as the repeated references to this research caused it to have a large influence on the direction of the legislative discussions. My research provides new insights into the societal factors that influence the ways legislatures behave, in turn contributing to the scholarly discussion on how society affects law.

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[1] Cannabis is also commonly referred to as marijuana. However, "cannabis" is the wording used in the titles of the legalization bills, so I will refer to it as such in this paper; 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 45-92 (2013).

[2] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 46 (2016).

[3] "Illinois Weed Legalization Guide," ABC7 Chicago, accessed February 28, 2022, https://abc7chicago.com/illinois-weed-legal-in-marijuana/5337346/.

Literature Review

This literature review provides an overview of what scholars have already published about how society has impacted cannabis laws, the effects of general cannabis legislation, the progressive history of the Illinois legislature, how Illinois legalization laws compare to other laws, and the relationship between cannabis and mental health. However, there has not been any work done in linking together all these topics, which is the gap that my research will fill.

Scholars have investigated what societal factors lawmakers take into account when passing cannabis laws.[4] Survey data from government officials in Colorado reveals that policy diffusion, economics, public opinion data, and federal law all played a large role in convincing local lawmakers to impose additional regulations on recreational cannabis after legalization.[5] Chambers-Baltz argues that the Illinois law that legalizes recreational cannabis includes several social justice provisions because many legislators believed that legalization should only occur with an attempt to repair the harm done to Illinois communities of color during the War on Drugs.[6] Cork finds that the normalization of cannabis has led to a lack of enforcement of smoke-free laws, which exemplifies

[4] Stephanie Chambers-Baltz, "The Effects of Legalization of Recreational Cannabis in Illinois," *The Simon Review* 40 (2021); Kerry Cork, "Recreational Marijuana, Tobacco, & the Shifting Prerogatives of Use," *Southern Illinois University Law Journal* 45, no. 1 (Fall 2020): 45–68; Ed Finkel, "Medical Marijuana Comes to Illinois Health Care Law/Employment Law," *Illinois Bar Journal* 102, no. 4 (2014): 172–208; Tracy L. Johns, "Managing a Policy Experiment: Adopting and Implementing Recreational Marijuana Policies in Colorado," *State & Local Government Review* 47, no. 3 (2015): 193–204; Denise D. Payán, Paul Brown, and Anna V. Song, "County-Level Recreational Marijuana Policies and Local Policy Changes in Colorado and Washington State (2012-2019)," *Milbank Quarterly* 4, no. 99 (2021), accessed October 31, 2021, https://doi.org/10.1111/1468-0009.12535; Magdalena Szaflarski and Joseph Sirven, "Social Factors in Marijuana Use for Medical and Recreational Purposes - ClinicalKey," *Epilepsy & Behavior*, no. 70 (2017): 280-287, accessed November 1, 2021, https://www-clinicalkey-com.turing.library.northwestern.edu/#!/content/playContent/1-s2.0-S1525505016306187?scrollTo=%23hl0000310.

[5] Johns, "Managing a Policy Experiment;" Payán, Brown, and Song, "County-Level Recreational Marijuana Policies and Local Policy Changes in Colorado and Washington State (2012-2019)."

[6] Chambers-Baltz, "The Effects of Legalization of Recreational Cannabis in Illinois."

Szaflarski and Sirven's argument that the public's perception of cannabis is socially constructed, as it has changed over time.[7]

Scholars concur that strict cannabis legislation is not effective.[8] Hills claims that harsh consequences for cannabis-related crimes do not dissuade people from using the drug.[9] Similarly, Bonnie argues that continuing to have sanctions on these behaviors is financially inefficient and does not act as a deterrent.[10] Although smoke-free laws, zero tolerance policies, and employment laws have become more lenient towards cannabis as it becomes legal in more states, Cork hypothesizes that cannabis consumption laws may evolve to become more similar to present-day tobacco policies to counteract this ineffectiveness as more data about the long-term effects of the substance is published.[11]

Illinois Legislation

Scholars have investigated how Illinois' Compassionate Use of Medical Cannabis Pilot Program Act (2013), which legalized medical cannabis, compares to other laws.[12] Hanna identifies the Compassionate Use Act as one of the strictest medical cannabis laws in the country and predicts that it will serve as a model for other states who want to legalize but tightly regulate medical

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[7] Cork, "Recreational Marijuana, Tobacco, & the Shifting Prerogatives of Use;" Szaflarski and Sirven, "Social Factors in Marijuana Use for Medical and Recreational Purposes - ClinicalKey."
[8] Richard J. Bonnie, "Decriminalizing the Marijuana User: A Drafter's Guide," *University of Michigan Journal of Law Reform* 11, no. 1 (1977): 3–50; Cork, "Recreational Marijuana, Tobacco, & the Shifting Prerogatives of Use;" Stuart L. Hills, "Marijuana, Morality, and the Law Part I: The Crime Problem," *Crime Law and Justice Annual* 1 (1972): 1–14.
[9] Hills, "Marijuana, Morality, and the Law Part I."
[10] Bonnie, "Decriminalizing the Marijuana User."
[11] Cork, "Recreational Marijuana, Tobacco, & the Shifting Prerogatives of Use."
[12] Dylan Boyd, "Illinois Cannabis: Lost in the Weeds without Access to Insurance and Banking Services Notes," *Southern Illinois University Law Journal* 45, no. 1 (Fall 2020): 115–38; Finkel, "Medical Marijuana Comes to Illinois Health Care Law/Employment Law;" Janan Hanna, "LawPulse Practice News," *Illinois Bar Journal* 102, no. 8 (2014): 366–71; S. Lancione et al., "Non-Medical Cannabis in North America: An Overview of Regulatory Approaches," *Public Health* 178 (January 1, 2020): 7–14, https://doi.org/10.1016/j.puhe.2019.08.018; James J. Oh and Kathleen Barrett, "Preparing for Legal Recreational Marijuana: The Illinois Example," *Employee Relations Law Journal* 45, no. 3 (Winter 2019): 67–72; Rhys Saunders, "A Doobious Dilemma," *Illinois Bar Journal* 107, no. 1 (2019): 10–15; Winston C. Throgmorton, "Broadening the Definition of Cannabis: An Argument for Speciation Including Indica and Sativa," *Southern Illinois University Law Journal* 42, no. 4 (Summer 2018): 669–82.

cannabis.[13] This rigidity is illustrated by Finkel, who describes how the law prohibits medical cannabis users from owning firearms and stipulates that patients may not transport cannabis by car unless they follow very specific instructions.[14]

Academics have examined how Illinois' Cannabis Regulation and Tax Act (2019), which legalized recreational cannabis, conflicts with other laws.[15] Oh and Barrett argue that the Cannabis Act, which grants extensive workplace protections to employers and allows them to fire employees because of their cannabis consumption, should override certain clauses in the Illinois Right to Privacy in the Workplace Act, which contradicts the newer legalization law by preventing employees from being fired for cannabis use.[16] Boyd asserts that the Cannabis Act also conflicts with the Controlled Substances Act, which outlaws cannabis at the federal level, dissuading insurance and banking services from becoming involved in the cannabis industry.[17]

Mental Health Research

While some scholars have conducted studies on the ways that restrictive cannabis laws work, others have published mental health-related research that can be used to support arguments of why cannabis should be legalized. Anderson argues that medical cannabis, which is currently not approved to treat mental illnesses, can benefit mental health as it is a much better alternative to treat depression, anxiety, and bipolar disorder than traditional medications such as selective serotonin reuptake inhibitors (SSRIs) and serotonin-norepinephrine reuptake inhibitors (SNRIs).[18] Walsh et al.

[13] Hanna, "LawPulse Practice News."
[14] Finkel, "Medical Marijuana Comes to Illinois Health Care Law/Employment Law."
[15] Oh and Barrett, "Preparing for Legal Recreational Marijuana;" Boyd, "Illinois Cannabis."
[16] Oh and Barrett, "Preparing for Legal Recreational Marijuana."
[17] Boyd, "Illinois Cannabis."
[18] Stephanie E. Anderson, "Using Marijuana as My Antidepressant and Now I Feel Better: A Call for More Research into the Viability of Marijuana as Treatment for Depression, Anxiety, and Bipolar Disorder Notes," *Oklahoma City University Law Review* 42, no. 3 (2017): 335–66; Zach Walsh et al., "Medical Cannabis and Mental Health: A Guided Systematic Review," *Clinical Psychology Review* 51 (February 1, 2017): 15–29, https://doi.org/10.1016/j.cpr.2016.10.002.

analyzes 60 other studies that gathered data on the relationship between therapeutic cannabis use and mental illness and finds that the drug has the potential to treat patients suffering from post-traumatic stress disorder.[19]

However, many academics disagree with this assertion and instead argue that cannabis is harmful to mental health.[20] Lowe et al. finds that cannabis use has a negative relationship with depression and BPD and is associated with a high risk of developing schizophrenia.[21] Although Walsh et al. agrees, they contend that more research is necessary to determine the implications of cannabis use on those with mood disorders.[22] However, Hutchinson et. al uses data harmonization work as evidence that higher cannabis use is related to more symptoms of depression.[23] Zablocki et al. refutes the idea that cannabis affects all users the same, and instead argues that highly introspective users tend to have poorer psychological outcomes than those with low levels of introspectiveness.[24] Because long-term cannabis use is linked to these mental disorders and cognitive

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[19] Walsh et al., "Medical Cannabis and Mental Health."
[20] Ali M. Yurasek and Wendy Hadley, "Commentary: Adolescent Marijuana Use and Mental Health Amidst a Changing Legal Climate," *Journal of Pediatric Psychology* 41, no. 3 (April 1, 2016): 287–89, https://doi.org/10.1093/jpepsy/jsw005; Samuel T. Wilkinson et al., "Marijuana Legalization: Impact on Physicians and Public Health," *Annual Review of Medicine* 67 (2016): 453–66, https://doi.org/10.1146/annurev-med-050214-013454; Governor John W. Hickenlooper, "Experimenting with Pot: The State of Colorado's Legalization of Marijuana," *Milbank Quarterly* 92, no. 2 (June 2014): 243–49, https://doi.org/10.1111/1468-0009.12056; Lauren E. Wisk, Sharon Levy, and Elissa R. Weitzman, "Parental Views on State Cannabis Laws and Marijuana Use for Their Medically Vulnerable Children," *Drug and Alcohol Dependence* 199 (June 1, 2019): 59–67, https://doi.org/10.1016/j.drugalcdep.2018.12.027; Giles Newton‐Howes, "The Challenges of 'Medical Cannabis' and Mental Health: A Clinical Perspective," *British Journal of Clinical Pharmacology* 84, no. 11 (November 2018): 2499–2501, https://doi.org/10.1111/bcp.13687; Darby J. E. Lowe et al., "Cannabis and Mental Illness: A Review," *European Archives of Psychiatry and Clinical Neuroscience* 269, no. 1 (February 2019): 107–20, https://doi.org/10.1007/s00406-018-0970-7; Walsh et al., "Medical Cannabis and Mental Health;" Delyse M. Hutchinson et al., "How Can Data Harmonisation Benefit Mental Health Research? An Example of The Cannabis Cohorts Research Consortium.," *The Australian and New Zealand Journal of Psychiatry* 49, no. 4 (2015): 317–23, http://dx.doi.org/10.1177/0004867415571169; Wilson M. Compton, Nora D. Volkow, and Marsha F. Lopez, "Medical Marijuana Laws and Cannabis Use: Intersections of Health and Policy," *JAMA Psychiatry* 74, no. 6 (June 1, 2017): 559–60, https://doi.org/10.1001/jamapsychiatry.2017.0723.
[21] Lowe et al., "Cannabis and Mental Illness."
[22] Walsh et al., "Medical Cannabis and Mental Health."
[23] Hutchinson et al., "How Can Data Harmonisation Benefit Mental Health Research?"
[24] Benjamin Zablocki et al., "Marijuana Use, Introspectiveness, and Mental Health," *Journal of Health and Social Behavior* 32, no. 1 (1991): 65–79, https://doi.org/10.2307/2136800.

issues, Newton-Howes claims that more research on medical cannabis needs to be done. This is necessary so that patients and prescribers alike can make informed choices and be certain that the benefits outweigh the risk of harm, which is particularly important to consider when prescribing the substance to children.[25]

Scholars have also explored mental health's influence on cannabis use levels.[26] Sarvet et al. uses data from the National Epidemiological Survey to argue that those with anxiety and other mood-related mental illnesses self-medicate with cannabis at a higher rate in states where medical cannabis is legalized.[27] Likewise, Lev-Ran et al. uses results from the same survey to conclude that individuals who experience mental illness symptoms for 12 months or longer are 2.5 times more likely to be cannabis users than individuals without any mental illnesses.[28] Similarly, Lowe et al. claims that while some individuals with anxiety and PTSD use cannabis frequently to self-medicate, most research cautions against it.[29]

Although there have been numerous independent studies on cannabis legalization and mental health, little research has been done investigating what role these mental health studies have played in the decision to legalize the substance. I connect these two areas by studying how the current mental health research is discussed by the Illinois General Assembly when considering the ramifications of cannabis legalization.

Research Methodology

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[25] Newton-Howes, "The Challenges of 'Medical Cannabis' and Mental Health."
[26] Shaul Lev-Ran et al., "Cannabis Use and Cannabis Use Disorders among Individuals with Mental Illness," *Comprehensive Psychiatry* 54, no. 6 (August 2013): 589–98, https://doi.org/10.1016/j.comppsych.2012.12.021; Lowe et al., "Cannabis and Mental Illness;" Aaron L. Sarvet et al., "Self-Medication of Mood and Anxiety Disorders with Marijuana: Higher in States with Medical Marijuana Laws," *Drug and Alcohol Dependence* 186 (May 1, 2018): 10–15, https://doi.org/10.1016/j.drugalcdep.2018.01.009.
[27] Sarvet et al., "Self-Medication of Mood and Anxiety Disorders with Marijuana."
[28] Lev-Ran et al., "Cannabis Use and Cannabis Use Disorders among Individuals with Mental Illness."
[29] Lowe et al., "Cannabis and Mental Illness."

I conducted my research on Illinois as the state has legalized both medical and recreational cannabis and publishes its legislative transcripts on the General Assembly website, making them easily accessible. I utilized the Illinois General Assembly website to search for state House and Senate session transcripts starting with the 97th General Assembly in 2011 and 2012, which were the years directly preceding medical cannabis' 2013 legalization. Using the keyword "cannabis," I found hearings from 2011 to present-day in which lawmakers discussed changing the legal status of the drug or amending related laws in order to get a complete understanding of the different aspects of cannabis legalization.

As I read through each relevant hearing, I took note of the way that mental health or mental illness was used to argue for or against legalization. Additionally, I compared senators and representatives' statements about mental illness and cannabis to the information that I had found via my secondary sources to determine if politicians tend to misinterpret or misrepresent mental health research regarding cannabis. Analyzing the level of truth behind legislators' mental health claims also revealed other patterns about how this research is used during legislative sessions when discussing cannabis legalization.

Based on my research, I divided my notes into the categories of (1) arguments for and against initial medical legalization, (2) arguments for and against amending medical cannabis laws, and (3) arguments for and against recreational legalization. Coding for these topics allowed me to identify patterns in the way that mental health is being talked about and helped me begin to structure my argument chronologically. Legally, the term mental illness is defined as a diagnosable mental, emotional, or behavioral disorder that satisfies the diagnostic criteria of the American Psychiatric

Association.[30] Because this is the definition that guided lawmakers during their debates, I also referred to it when deciding what qualified as a mental illness during my research. I found that PTSD, schizophrenia, and psychosis, all mental illnesses under the legal definition, were frequently discussed by legislators. In addition, I highlighted several other common arguments that legislators used when arguing their positions on cannabis-related bills in order to paint a more complete picture of the cannabis legalization debate. Because my research question specifically dealt with the cannabis legalization debate at the state level, I analyzed Illinois legislative hearing transcripts as my primary sources to get a firsthand perspective of how mental health is discussed by state lawmakers in relation to this issue. However, my methodology was not able to capture any more informal discussions that legislators had with one another outside of the official hearings.

Analysis

Introductory Context

Mental health research was used in almost equal amounts to argue for and against legalization laws, as legislators in favor of medical and recreational legalization utilized mental health research six times while their colleagues against the passage of these laws referenced it five times. Three representatives employed mental health research to support the expansion of medical cannabis laws, while two representatives and one senator referenced mental health research when arguing for recreational cannabis legalization.[31] On the opposing side, one senator and three

[30] "34 U.S. Code § 10472 - Definitions," Legal Information Institute, last modified 2016, https://www.law.cornell.edu/uscode/text/34/10472.

[31] Representatives Lou Lang (D), Ed Sullivan Jr. (R), and Michael Tryon (R), Representatives Kelly Cassidy (D) and Karina Villa (D), and Senator Michael Hastings (D); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 48 (2016) (Statement of Lou Lang); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 48-50 (2016) (Statement of Ed Sullivan Jr. and Michael Tryon); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Kelly Cassidy); 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 68 (2019) (Statement of Michael Hastings); 62nd Legislative Day, 101st

representatives took a strong stance against recreational legalization using the justification of mental health research.[32] Another representative also used mental health research to justify her position, which was against broadening medical legalization.[33]

Mental health research was also used neutrally by lawmakers to counter or correct points made by their colleagues.[34] This occurred four times over the course of the legislative sessions that discussed cannabis legalization and contributed significantly to the conversation.[35] Two representatives wielded PTSD-related research to rebut a claim made by another representative.[36] Similarly, Sen. Heather Steans (D), who introduced House Bill 1438, which would legalize recreational cannabis, used research on the relationship between cannabis and psychosis to correct a

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General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 75 (2019) (Statement of Karina Villa).

[32] Senator Dale Righter (R) and Representatives Patrick Windhorst (R), Thomas Bennett (R), and Chris Miller (R); 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 59 (2019) (Statement of Dale Righter); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Patrick Windhorst); 62nd Legislative Day, 101st General Assembly: House Bill 1438, Hearing Before the Illinois House of Representatives, 101 Cong. 59 (2019) (Statement of Chris Miller); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Thomas Bennett).

[33] Representative Jeanne Ives (R); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 55 (2016) (Statement of Jeanne Ives).

[34] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 57 (2016) (Statement of Linda Chapa LaVia); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 59 (2016) (Statement of Lou Lang); 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 71 (2019) (Statement of Heather Steans); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Kelly Cassidy).

[35] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 57-59 (2016); 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 71 (2019); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019).

[36] Representatives Lou Lang (D) and Linda Chapa LaVia (D); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 57 (2016) (Statement of Linda Chapa LaVia); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 59 (2016) (Statement of Lou Lang).

point made by another senator, while Rep. Kelly Cassidy (D), who introduced the bill in the House, used mental health research to clarify the nature of this relationship.[37]

Although mental health research did not play a role at all in the initial legalization debate for medical cannabis, it was an important factor in amending the bill several years later, when PTSD was added as a qualifying condition.[38] Lawmakers who advocated for the inclusion of PTSD gave credibility to their argument by citing studies suggesting that cannabis would be a suitable treatment for this mental illness.[39] The legislator against the bill also utilized mental health research, as she highlighted studies that casted doubt on cannabis' effectiveness and conflicted with the information presented by the pro-amendment group.[40] However, this attempt to sway undecided lawmakers to vote 'no' ultimately failed, as the provision passed.[41]

In the debates surrounding *recreational* cannabis legalization, mental health research made up a major part of the conversation. However, unlike with the expansion of medical cannabis laws, it was not the main factor discussed. The impact of legalization on youth and the bill's social justice provisions also took center stage, as legalizing cannabis recreationally makes the substance available to a much larger and diverse group of people than legalizing it medically, leading to a much more

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[37] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 71 (2019) (Statement of Heather Steans); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Kelly Cassidy).

[38] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 55 (2016) (Statement of Jeanne Ives); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 59 (2016) (Statement of Lou Lang); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 57 (2016) (Statement of Linda Chapa LaVia).

[39] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 59 (2016) (Statement of Lou Lang); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 57 (2016) (Statement of Linda Chapa LaVia); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 48-50 (2016) (Statement of Ed Sullivan Jr. and Michael Tryon).

[40] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 55 (2016) (Statement of Jeanne Ives).

[41] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 71 (2016).

varied conversation.[42] Mental health research on psychosis and schizophrenia was primarily used to caution against recreational legalization, as most research suggested that cannabis is correlated with these mental health problems.[43] However, mental health research on PTSD was presented in support of legalization.[44]

Overall, there was much more of a dialogue involving mental health research when discussing recreational legalization than there was when debating the expansion of medical legalization. Lawmakers' casual discussion of this research, without sensationalizing it or judging those who suffer from mental illness, also served to normalize considering mental health as a factor in legislation. Ultimately, favorable mental health research on PTSD, combined with the arguments that youth would be protected and that social justice causes would be advanced under this bill, proved more persuasive than the logic presented by the opposition, as legislators voted to legalize recreational cannabis.[45]

2011 - 2013: Perspectives on Physical Health and Federal Criminality

The Illinois cannabis legalization debate consisted of three main waves of discourse. The first wave of discourse occurred from 2011 until 2013, when the Illinois House of Representatives

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[42] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 51-74 (2019); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 4-119 (2019).

[43] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Patrick Windhorst); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Chris Miller and Patrick Windhorst); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Thomas Bennett).

[44] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 68 (2019) (Statement of Michael Hastings); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 75 (2019) (Statement of Karina Villa).

[45] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 74 (2019); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 119 (2019).

and Senate met to discuss the Compassionate Use of Medical Cannabis Act.[46] This bill would legalize medical cannabis for constituents who passed a background check, went through an ID verification process, and only consumed the substance on private property.[47] While some aspects of the debate did center around physical health, legislators excluded mental health from the conversation when discussing the bill, which ultimately passed.

Legislators in favor of the Act highlighted how it provided pain relief to severely or terminally ill patients.[48] Reps. Lou Lang (D), Tom Cross (R), Michael Tryon (R), Sara Feigenholtz (D) and JoAnn Osmond (R) and Sens. Linda Holmes (D) and William Haine (D) mentioned Multiple Sclerosis, terminal pancreatic and colon cancer, ALS, and post-amputation phantom pain as conditions that could benefit from the pain alleviating properties of medical cannabis.[49] In these legislative sessions, cannabis was portrayed *solely* as a remedy for physical health problems. Those with terminal illnesses are unlikely to live long enough to experience any long-term mental health

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[46] 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. (2013); 50th Legislative Day, 97th General Assembly: *House Bill 30, Hearing Before the Illinois House of Representatives*, 97 Cong. (2011).
[47] 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 45 (2013).
[48] 50th Legislative Day, 97th General Assembly: *House Bill 30, Hearing Before the Illinois House of Representatives*, 97 Cong. 9-10 (2011) (Statement of Lou Lang); 50th Legislative Day, 97th General Assembly: *House Bill 30, Hearing Before the Illinois House of Representatives*, 97 Cong. 22 (2011) (Statement of Tom Cross); 50th Legislative Day, 97th General Assembly: *House Bill 30, Hearing Before the Illinois House of Representatives*, 97 Cong. 18 (2011) (Statement of Sara Feigenholtz); 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 47 (2013) (Statement of William Haine); 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 88 (2013) (Statement of Linda Holmes); 2nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois House of Representatives*, 98 Cong. 114 (2013) (Statement of JoAnn Osmond); 2nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois House of Representatives*, 98 Cong. 115 (2013) (Statement of Michael Tryon).
[49] "Representative Lou Lang," Illinois General Assembly, accessed January 17, 2022, https://www.ilga.gov/house/Rep.asp?MemberID=2298&GA=100; "Representative Tom Cross," Illinois General Assembly, accessed January 25, 2022, https://www.ilga.gov/house/rep.asp?GA=98&MemberID=1827; "Representative Michael Tryon," Illinois General Assembly, accessed January 17, 2022, https://www.ilga.gov/house/rep.asp?GA=99&MemberID=2137; "Representative JoAnn Osmond," Illinois General Assembly, accessed January 25, 2022, https://www.ilga.gov/house/rep.asp?GA=96&MemberID=1461; "Senator Linda Holmes," Illinois General Assembly, accessed January 25, 2022, https://www.ilga.gov/senate/Senator.asp?MemberID=2353&GA=100; "Senator William Haine," Illinois General Assembly, accessed January 25, 2022, https://www.ilga.gov/senate/Senator.asp?MemberID=2333 "Representative Sara Feigenholtz," Illinois General Assembly, accessed January 25, 2022, https://ilga.gov/senate/Senator.asp?MemberID=2778.

effects of cannabis use. This could partially be why lawmakers in favor of the bill did not acknowledge mental health concerns.[50]

Similarly, Rep. Lang (D) and Sens. Haine (D) and Eva Dina Delgado (D), who were also in favor of the Medical Cannabis Act, take a harm reductionist approach. They repeatedly presented cannabis as a less harmful alternative to Oxycontin, Vicodin, Xanax, and morphine, which are commonly prescribed addictive medications for the physical conditions listed above.[51] Drawing a direct contrast between cannabis and these widely known prescription medications painted medical cannabis as the lesser of two evils - this argument was especially compelling during the opioid epidemic. This comparison also strategically reframed cannabis as a useful prescription medication instead of a recreational drug. Neither side discussed the negative mental health impacts of cannabis. Since prescription drugs are simply taken to treat certain symptoms, it is relatively uncommon to question their mental side effects.

Opponents of the Medical Cannabis Act voiced concerns regarding cannabis' federal legality. [52] Rep. Patricia Bellock (R) expressed her point of view that any change in cannabis' legality should occur on a federal level first. Rep. Jim Sacia (R) and Sen. Jason Barickman (R) echoed her belief,

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[50] Sei Lee and Alexander Smith, "Survival Estimates in Advanced Terminal Cancer," UpToDate, November 21, 2022, https://www.uptodate.com/contents/survival-estimates-in-advanced-terminal-cancer/print; "What Are Marijuana's Long-Term Effects on the Brain?," National Institutes of Health, April 13, 2021, https://nida.nih.gov/publications/research-reports/marijuana/what-are-marijuanas-long-term-effects-brain.

[51] Drug and alcohol addiction is widely categorized as a mental health issue. However, for the purpose of the brevity and the specificity of this paper, I am not including mentions of addiction and substance abuse as mentions of mental health research; "Representative Eva Dina Delgado," Illinois General Assembly, accessed January 25, 2022, https://ilga.gov/house/Rep.asp?MemberID=2974; "Representative Lou Lang;" "Senator William Haine;" 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois House of Representatives*, 98 Cong. 110 (2013) (Statement of Lou Lang); 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 47 (2013) (Statement of William Haine); 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 84-86 (2013) (Statement of Eva Dina Delgado).

[52] 50th Legislative Day, 97th General Assembly: *House Bill 30, Hearing Before the Illinois House of Representatives*, 97 Cong. 13-15 (2011) (Statement of Patricia Bellock); 50th Legislative Day, 97th General Assembly: *House Bill 30, Hearing Before the Illinois House of Representatives*, 97 Cong. 16-17 (2011) (Statement of Jim Sacia); 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 69 (2013) (Statement of Jason Barickman).

especially in light of the fact that cannabis has been classified as a Schedule I controlled substance since 1937.[53] This classification meant that the federal government deemed cannabis to be highly addictive and ruled that it had no medical value.[54] Bellock also stated that, because of this classification, she felt as if she would violate her sworn duty to abide by the United States Constitution if she voted to legalize the substance for medical use.[55] For this group of legislators, cannabis' undeniable illegality on the federal level was the most important factor in determining their vote.

2016: Mental Health Perspectives Enter the Conversation

The second wave of discourse on cannabis legalization transpired in May 2016, when the state Senate and House of Representatives passed Senate Bill 10.[56] This bill amended the Medical Cannabis Pilot program to include PTSD as a qualifying condition for receiving medical cannabis.[57] Mental health research played a central role in legislative conversations about this change.[58] Multiple representatives in favor of this change to the bill shared the view that increased access to cannabis could specifically benefit veterans, an underserved population that has high rates of PTSD. Rep. Lou Lang (D), who introduced the bill, expressed concern that veterans with PTSD often are prescribed

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[53] "Representative Patricia Bellock," Illinois General Assembly, accessed January 28, 2022, https://www.ilga.gov/house/Rep.asp?MemberID=2290&GA=100; "Representative Jim Sacia," Illinois General Assembly, accessed January 28, 2022, https://www.ilga.gov/house/Rep.asp?MemberID=1890&GA=98; "Senator Jason Barickman," Illinois General Assembly, accessed January 28, 2022, https://www.ilga.gov/senate/Senator.asp?MemberID=2846; 50th Legislative Day, 97th General Assembly: *House Bill 30, Hearing Before the Illinois House of Representatives*, 97 Cong. 13-15 (2011) (Statement of Patricia Bellock); 50th Legislative Day, 97th General Assembly: *House Bill 30, Hearing Before the Illinois House of Representatives*, 97 Cong. 16-17 (2011) (Statement of Jim Sacia); 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 69 (2013) (Statement of Jason Barickman).

[54] "Drug Scheduling," United States Drug Enforcement Administration, accessed February 22, 2022, https://www.dea.gov/drug-information/drug-scheduling.

[55] 50th Legislative Day, 97th General Assembly: *House Bill 30, Hearing Before the Illinois House of Representatives,* 97 Cong. 13-15 (2011) (Statement of Patricia Bellock).

[56] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 46 (2016).

[57] *SB 10.*

[58] *SB 10.*

or seek out opioids to cope with symptoms of this mental illness.[59] This claim has merit, as scholars have found that veterans with PTSD have a high chance of having a substance use disorder and engaging in high-risk opioid use.[60] Lang argued that cannabis is a far less deadly alternative.[61] Reps. Ed Sullivan Jr. (R) and Michael Tryon (R) echoed Lang's points, emphasizing that Senate Bill 10 would greatly benefit the veteran community specifically, as a large number suffer from PTSD.[62]

In contrast, one legislator employed research stating that cannabis was ineffective in treating PTSD to argue against the bill.[63] Rep. Jeanne Ives (R) cited the positions of the Illinois Psychiatric Society and the American Psychiatric Association as reasons why lawmakers should vote 'no,' as both groups do not endorse cannabis as a treatment for PTSD due to a lack of credible studies proving its effectiveness.[64] This may have been due to the timing of the legislative session, as one notable study that found cannabis to be a suitable treatment for PTSD was not published until several months after the bill was discussed by Ives and other legislators.[65]

Lang countered Ives' argument by saying that even with the lack of backing by these organizations, there is absolutely no evidence that cannabis is detrimental to the health of people

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[59] "Representative Lou Lang."
[60] Lowe et al., "Cannabis and Mental Illness."
[61] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 48 (2016) (Statement of Lou Lang).
[62] "Ed Sullivan Jr.," Illinois General Assembly, accessed January 17, 2022, https://www.ilga.gov/house/rep.asp?GA=97&MemberID=1675; "Representative Michael Tryon," Illinois General Assembly, accessed January 17, 2022, https://www.ilga.gov/house/rep.asp?GA=99&MemberID=2137; 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 48-50 (2016) (Statement of Ed Sullivan Jr. and Michael Tryon); "Treatment of Co-Occurring PTSD and Substance Use Disorder in VA," National Center for PTSD, accessed January 17, 2022, https://www.ptsd.va.gov/professional/treat/cooccurring/tx_sud_va.asp.
[63] "Representative Jeanne Ives," Illinois General Assembly, accessed January 18, 2022, https://www.ilga.gov/house/rep.asp?MemberID=2425; 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 55 (2016) (Statement of Jeanne Ives).
[64] *SB 10* (Statement of Jeanna Ives).
[65] Walsh et al., "Medical Cannabis and Mental Health."

with PTSD.[66] This statement was true at the time, as studies hinting that cannabis may hinder PTSD treatment were also not published until after the bill was voted on. Rep. Linda Chapa LaVia (D) also pushed back against Ives' reasoning by noting that 19 out of the 22 medications prescribed to treat PTSD were not FDA approved due to lack of definitive proof that they worked but were still offered as options to those with the mental illness.[67] For legislators on both sides of the issue, mental health research was used to rebut the arguments of the opposition.

2019: Further Perspectives on Mental Health, Recreation, and Marginalized Communities

The third wave of legalization discourse occurred during debates over House Bill 1438, the Cannabis Regulation and Tax Act, which allowed the legal sale of recreational cannabis to Illinois adults over 21.[68] Sen. Heather Steans (D) first introduced House Bill 1438 in May 2019.[69] After the bill passed in the Senate, it was presented several days later to the House of Representatives by Rep. Kelly Cassidy (D).[70] In both houses of the state legislature, mental health considerations played an important role, with both sides citing mental health research to support their position.[71] However, it was not the only factor discussed, as the bill's impact on youth and advancement of social justice also dominated the debate.[72]

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[66] 140th Legislative Day, 99th General Assembly: Senate Bill 10, Hearing Before the Illinois House of Representatives, 99 Cong. 59 (2016) (Statement of Lou Lang).
[67] "Representative Linda Chapa LaVia," Illinois General Assembly, accessed January 18, 2022, https://www.ilga.gov/house/rep.asp?GA=100&MemberID=2319; 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 57 (2016) (Statement of Linda Chapa LaVia).
[68] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 51 (2019).
[69] 53rd Legislative Day, 101st General Assembly: House Bill 1438, Hearing Before the Illinois Senate, 101 Cong. 54 (2019) (Statement of Heather Steans); "Senator Heather Steans," Illinois General Assembly, accessed November 20, 2021, https://www.ilga.gov/senate/Senator.asp?MemberID=1947.
[70] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 74 (2019) (Statement of Kelly Cassidy); "Representative Kelly Cassidy," Illinois General Assembly, accessed January 10, 2022, https://www.ilga.gov/house/Rep.asp?MemberID=2601&GA=101.
[71] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 51 (2019).
[72] *HB 1438*.

Legislators against House Bill 1438 also expressed concerns about its impact on youth. Sens. Righter (R) and Dan McConchie (R) were especially troubled by the prospect of a pattern of addiction occurring among adolescents.[73] In the House of Representatives discussion, Rep. Anthony DeLuca (D) cited similar reasoning when explaining his opposition to the bill, as he believed that cannabis legalization would lead to cannabis normalization, thus increasing youth use of the substance.[74] Rep. Kelly Cassidy (D) countered DeLuca's point, stating that the legalization bill would include a strong drug education component, which in turn would allow youth to make educated decisions when it came to cannabis products.[75] However, this statement did little to dissuade the fears of Rep. Deanne Mazzochi (R), who was anxious about teens consuming high potency products, and Rep. Patrick Windhorst (R), who was worried that, under the bill, authorities would not be required to notify the parents of minors ticketed for cannabis possession.[76]

In contrast, several legislators in favor of House Bill 1438 seemed certain that the bill's passage would not be detrimental to Illinois youth. Sen. Laura Murphy (D) voiced her opinion that the bill would actually benefit individuals of this age group, who have a tendency to experiment with

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[73] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 58-59 (2019) (Statement of Dale Righter); 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 62-64 (2019) (Statement of Dan McConchie); "Senator Dale Righter," Illinois General Assembly, accessed November 20, 2021, https://www.ilga.gov/senate/Senator.asp?MemberID=1483&GA=96; "Senator Dan McConchie," Illinois General Assembly, accessed February 2, 2022, https://www.ilga.gov/senate/senator.asp?GA=101&MemberID=2672.

[74] "Representative Anthony DeLuca," Illinois General Assembly, accessed February 2, 2022, https://www.ilga.gov/house/rep.asp?GA=101&MemberID=2581; 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 43 (2019) (Statement of Anthony DeLuca).

[75] "Representative Kelly Cassidy;" 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 44-45 (2019) (Statement of Kelly Cassidy).

[76] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 69 (2019) (Statement of Deanne Mazzochi); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 30 (2019) (Statement of Patrick Windhorst); "Representative Deanne Mazzochi," Illinois General Assembly, accessed February 2, 2022, https://www.ilga.gov/house/Rep.asp?MemberID=2512&GA=100; "Representative Patrick Windhorst," Illinois General Assembly, accessed January 10, 2022, https://www.ilga.gov/house/rep.asp?GA=101&MemberID=2760.

substances.[77] Murphy applied a harm reductionist lens to the debate and explained that she believed cannabis to be a less addictive and deadly alternative to alcohol.[78] Thus, legalizing the drug could ultimately keep youth who would otherwise turn to alcohol safer. Sen. Jason Barickman (R) agreed with many of his colleagues that protecting youth should be a priority but supported House Bill 1483 because he was confident that the safeguards already written into the piece of legislation were enough to protect this population.[79]

In addition to discussing the bill's impact on youth, many legislators in favor of House Bill 1438 also highlighted its clauses addressing social justice issues. When introducing House Bill 1438 to the Senate, Sen. Heather Steans (D) acknowledged that the War on Drugs disproportionately impacted certain communities within the state, and, because of this, it was essential that the bill attempted to remedy the harm done.[80] Following Steans' statement, Sen. Toi Hutchinson (D) outlined the social-equity-focused provisions of the bill, which included helping individuals of these communities enter the cannabis industry via the establishment of a low-interest loan program, creation of a "social equity applicant" category for license applications, and reduction of up-front dispensary costs.[81] Additionally, House Bill 1438 would expunge minor cannabis-related arrests and convictions, as well as create a grant program to invest in communities harmed by the War on

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[77] "Senator Laura Murphy," Illinois General Assembly, accessed February 2, 2022, https://www.ilga.gov/senate/Senator.asp?MemberID=2279&GA=99; 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 69 (2019) (Statement of Laura Murphy).
[78] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 69 (2019) (Statement of Laura Murphy).
[79] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 65-66 (2019) (Statement of Jason Barickman); "Senator Jason Barickman," Illinois General Assembly, accessed January 28, 2022, https://www.ilga.gov/senate/Senator.asp?MemberID=2846.
[80] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 54 (2019) (Statement of Heather Steans); "Senator Heather Steans."
[81] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 55-57 (2019) (Statement of Toi Hutchinson); "Senator Toi Hutchinson," Illinois General Assembly, accessed November 22, 2021, https://www.ilga.gov/senate/senator.asp?GA=98&MemberID=1961.

Drugs.[82] Both Sen. Hutchinson and Rep. Jehan Gordon-Booth (D), who explained these provisions in the House of Representatives, expressed their commitment to social justice reform and belief that this bill would make good on its promise to repair the damage that the war on drugs has inflicted on marginalized communities.[83] Reps. Marcus Evans (D), Bob Morgan (D), and Emanual Chris Welch (D) concurred, stating that they supported the bill for similar reasons.[84] All legislators spoke extensively and exclusively about the social equity provisions of House Bill 1438, playing a crucial role in gaining support for the bill.

In contrast, Reps. Thaddeus Jones (D) and Curtis Tarver (D) strongly criticized the social equity provisions of House Bill 1438.[85] During his allotted speaking time, Rep. Jones repeatedly questioned Rep. Cassidy on the contents of the bill and bemoaned the lack of specificity used when defining the economically disadvantaged groups that would receive access to these benefits.[86]

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[82] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 55-57 (2019); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 6-8 (2019).

[83] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 55-57 (2019) (Statement of Toi Hutchinson); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 6-8 (2019) (Statement of Jehan Gordon-Booth); "Representative Jehan Gordon-Booth," Illinois General Assembly, accessed February 2, 2022, https://www.ilga.gov/house/Rep.asp?MemberID=2576&GA=101.

[84] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 39-43 (2019) (Statement of Marcus Evans); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 48 (2019) (Statement of Bob Morgan); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 74 (2019) (Statement of Emanuel Chris Welch); "Representative Marcus Evans," Illinois General Assembly, accessed February 2, 2022, https://www.ilga.gov/house/Rep.asp?MemberID=2399&GA=100; "Representative Bob Morgan," Illinois General Assembly, accessed February 2, 2022, https://www.ilga.gov/house/rep.asp?MemberID=2745; "Representative Emanuel Chris Welch," Illinois General Assembly, accessed February 2, 2022, https://www.ilga.gov/house/Rep.asp?MemberID=2859.

[85] 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 49-54 (2019) (Statement of Thaddeus Jones); 62nd Legislative Day, 101st General Assembly: House Bill 1438, Hearing Before the Illinois House of Representatives, 101 Cong. 83-84 (2019) (Statement of Curtis Tarver II); "Representative Thaddeus Jones," Illinois General Assembly, accessed February 2, 2022, https://ilga.gov/house/Rep.asp?MemberID=2591; "Representative Curtis Tarver II," Illinois General Assembly, accessed February 2, 2022, https://www.ilga.gov/house/rep.asp?MemberID=2748.

[86] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 49-54 (2019) (Statement of Thaddeus Jones).

Because House Bill 1438 did not explicitly state that Black business owners would be the ones to benefit from the social equity clauses, Jones announced that he was not sure whether the bill would do enough for his community, Ford Heights, which was greatly harmed by the War on Drugs.[87]

Rep. Tarver took a stronger stance against the social equity provisions, claiming they should not even be considered criminal justice reforms, as true reform would not have revenue tied to it.[88] Indeed, law enforcement, which decimated Black communities through racially biased policing, stood to receive millions in additional funding if House Bill 1438 was passed.[89] Tarver called this "absolutely offensive," and made it clear that he believed that those championing the social justice portion of the bill did not truly care about reforming the broken legal system.[90] Instead, he surmised that they were simply using the social equity clause as a prop to outwardly justify supporting a bill which advanced their own interests.

Lawmakers who were against the bill frequently weaponized research on the relationship between schizophrenia, psychosis, and cannabis to justify their position and encourage others to oppose it as well. Sen. Dale Righter (R) spoke up against the bill, asserting that cannabis use leads to an increased chance of developing psychosis and schizophrenia.[91] He also claimed that long term cannabis use causes mental illness.[92] While Righter's first claim is supported by multiple studies that examine previously collected data on cannabis use and schizophrenia, causal links have yet to be determined for other types of mental illness.[93] In the House of Representatives, Rep. Patrick

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[87] *HB 1438* (Statement of Thaddeus Jones); Salena Zito "A Fragile Hope in Ford Heights," Washington Examiner, last modified April 16, 2017, https://www.washingtonexaminer.com/a-fragile-hope-in-ford-heights.
[88] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 83-84 (2019) (Statement of Curtis Tarver II).
[89] HB 1438 (Statement of Curtis Tarver II).
[90] HB 1438 (Statement of Curtis Tarver II).
[91] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 59 (2019) (Statement of Dale Righter); "Senator Dale Righter."
[92] *HB 1438* (Statement of Dale Righter).
[93] Lowe et al., "Cannabis and Mental Illness;" Yurasek and Hadley, "Commentary."

Windhorst (R) opposed the bill for similar reasons, citing a National Academy of Medicine report that found that cannabis use is linked to schizophrenia, psychosis, and a loss of reality.[94] He also stated that frequent users are at the highest risk for experiencing these conditions, which is a point that Rep. Chris Miller (R) reiterated.[95] Rep. Thomas Bennett (R) mentioned the link between cannabis and psychosis several times in his statement opposing the bill and emphasized that THC potency also plays a role in the development of psychotic symptoms.[96]

Sen. Righter received pushback for his statements from Sen. Steans, who correctly believed that some of the claims Righter made had no merit. Steans stated that medical research reveals that familial and genetic factors create a predisposition to psychosis, not cannabis use, as Righter claims.[97] Steans also pointed out that one study cited by Righter presents only a correlation between cannabis use and psychosis, not the causal relationship that he claims exists.[98] The study in question, by Forti et al., found that while cannabis use is associated with a higher risk of developing psychosis later on, it is unclear whether it increases the occurrence of the disorder.[99] So, while this specific study does not support Righter's assertion that there is a causal relationship between cannabis use and all mental illnesses, it does back his more specific claim that cannabis users appear to have an increased risk of psychosis.

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[94] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Patrick Windhorst); "Representative Patrick Windhorst."
[95] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Chris Miller and Patrick Windhorst); "Representative Chris Miller," Illinois General Assembly, accessed January 10, 2022, https://www.ilga.gov/house/rep.asp?GA=101&MemberID=2758.
[96] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Thomas Bennett); "Representative Thomas Bennett," Illinois General Assembly, accessed January 10, 2022, https://ilga.gov/house/rep.asp?MemberID=2654.
[97] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 71 (2019) (Statement of Heather Steans).
[98] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 72 (2019) (Statement of Heather Steans).
[99] Forti et al., "The Contribution of Cannabis Use to Variation in the Incidence of Psychotic Disorder across Europe (EU-GEI)," *The Lancet Psychiatry* 6, No. 5 (May 2019), https://doi.org/10.1016/S2215-0366(19)30048-3.

This issue did not come up in the House of Representatives, as Windhorst himself made it clear that the strong correlation between cannabis and psychosis is not the same as causation.[100] However, he did note that many alternative explanations for the association, such as self-medication for psychosis and other drug use, have been disproved.[101] When questioned by another senator, Cassidy also stressed that there is no evidence that cannabis directly causes schizophrenia or psychosis.[102] While Windhorst likely made the clarification to prevent any attempts to discredit the other scientifically-backed points that he had made, Cassidy presumably did so to reassure those in favor of House Bill 1438 who may have become concerned after hearing the mental health research referenced by their fellow senators.[103]

There is clear evidence that cannabis, schizophrenia, and psychosis are related.[104] This is likely why opponents of House Bill 1438 chose to focus so much on these specific mental health conditions instead of others when making their case for why the bill should not pass. Overall, most of the claims made regarding schizophrenia and psychosis' relationship to cannabis were correct, and almost all mentions of mental health research in this field were made to discourage support for House Bill 1438.

Unlike the relationship between cannabis, schizophrenia, and psychosis, the research on PTSD and cannabis at the time the bill was discussed was promising and mostly positive in relation to mental health. This was reflected in the legislative debates, as no one expressed worry that the

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[100] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Patrick Windhorst).
[101] *HB 1438* (Statement of Patrick Windhorst).
[102] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Kelly Cassidy).
[103] *HB 1438* (Statement of Kelly Cassidy); 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 59 (2019) (Statement of Patrick Windhorst).
[104] Compton, Volkow, and Lopez, "Medical Marijuana Laws and Cannabis Use;" Lowe et al., "Cannabis and Mental Illness;" Walsh et al., "Medical Cannabis and Mental Health;" Wilkinson et al., "Marijuana Legalization."

drug would have a negative impact on PTSD - only that it may be ineffectual. This indicates that lawmakers have a solid grasp on the science surrounding cannabis and PTSD treatment and did not intentionally or unintentionally twist the related facts to support their political positions, the way that some did when discussing cannabis, schizophrenia, and psychosis.

In a striking contrast to the way that psychosis and schizophrenia research was weaponized to oppose cannabis-related legislation, Sen. Michael Hastings (D) referenced accurate research on cannabis' potential to treat PTSD as reasoning for why House Bill 1438 should pass. Hastings argued in favor of the bill, as he expressed that cannabis may provide some relief to veterans suffering from PTSD and is overall less harmful than alcohol, a substance that many veterans turn to to ease PTSD symptoms.[105] Indeed, an analysis of 60 previously conducted studies on the relationship between mental illness and cannabis use shows that the substance has the potential to treat PTSD.[106]

Likewise, members of the House of Representatives also utilized research on the relationship between cannabis and PTSD in an attempt to garner support for House Bill 1438. Rep. Karina Villa (D) questioned Rep. Kelly Cassidy (D) on whether medical cannabis was prescribed to treat PTSD.[107] Upon Cassidy's confirmation that it was, Villa implored the other members of the House to stop criminalizing constituents who do not have a medical card but still use cannabis to self-medicate for PTSD.[108] Low socioeconomic status and physician hesitation to prescribe cannabis are two factors

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[105] 53rd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois Senate*, 101 Cong. 68 (2019) (Statement of Michael Hastings); "Illinois State Senator Michael Hastings," Illinois Senate Democratic Caucus, accessed November 20, 2021, https://www.senatorhastings.com/.
[106] Walsh et al., "Medical Cannabis and Mental Health."
[107] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 75 (2019) (Statement of Karina Villa); "Representative Kelly Cassidy;" "Representative Karina Villa," Illinois General Assembly, accessed January 17, 2022, https://www.ilga.gov/senate/Senator.asp?MemberID=2987.
[108] 62nd Legislative Day, 101st General Assembly: *House Bill 1438, Hearing Before the Illinois House of Representatives*, 101 Cong. 75 (2019) (Statement of Karina Villa).

that can prevent prospective patients from obtaining a medical card.[109] Passing House Bill 1438 would allow this group of people to purchase the substance legally without having to apply for a card, preventing them from being prosecuted for using cannabis to treat mental illness.

Although any individual who suffers from this mental illness may benefit from using cannabis, legislators chose to only talk about how veterans could benefit when debating legalizing the substance medically and focused on this group once again when discussing whether or not to legalize it recreationally due to their positive public perception.[110] Rep. Ed Sullivan Jr. (D) drew upon the general public's favorable view of veterans to garner support for cannabis legalization by stating that amending the medical cannabis bill would "honor [veterans] and the sacrifices that they made for us."[111] Framing legalization as a way to give back to this well-respected group aimed to make other legislators more likely to vote in favor of the measure. Identifying veterans as a group that would benefit greatly from cannabis legalization also served to combat the negative stereotype that cannabis users do not contribute to the good of society, as Sullivan's statement communicates that they have made "sacrifices" for the American people.[112]

Legislators also argued that cannabis is a safer alternative to opioids and alcohol, and strategically identified veterans as a group especially susceptible to abusing these substances as a

[109] Celina I. Valencia et al., "Structural Barriers in Access to Medical Marijuana in the USA—a Systematic Review Protocol," *Systematic Reviews* 6 (August 7, 2017): 154, https://doi.org/10.1186/s13643-017-0541-4.
[110] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 48 (2016) (Statement of Lou Lang); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 50 (2016) (Statement of Ed Sullivan Jr.); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 48-49 (2016) (Statement of Michael Tryon).
[111] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 49 (2016) (Statement of Ed Sullivan Jr.); "Representative Ed Sullivan Jr.," Illinois General Assembly, accessed January 17, 2022, https://www.ilga.gov/house/rep.asp?GA=97&MemberID=1675.
[112] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives,* 99 Cong. 49 (2016) (Statement of Ed Sullivan Jr.).

result of trauma-induced PTSD from their time in the military.[113] While the reasoning that cannabis should be legalized because it is safer than other types of drugs may be easily dismissed by those who do not believe in harm reduction, bringing veterans into the conversation once again lowers the chances of this happening. Because veterans are typically thought of as patriotic, upstanding citizens, people are inclined to feel compassion towards them and as a result be more receptive to the legalization arguments involving them.[114] This approach also works because values, emotions, and morality all play a key role in deciding beliefs, which is why the harm reduction movement, which relies heavily on these characteristics, has become increasingly popular in recent years.[115]

Conclusion

By weighing the favorable research and testimony on mental health, youth, and social justice more heavily than the negative information presented on these subjects and ultimately legalizing both medical and recreational cannabis, legislators revealed that they prioritize the possible advantages that legalization could bring to Illinois over the possible damage that it could cause. The societal factors listed above directly influenced legislators' decision to legalize cannabis.

Future Considerations

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[113] 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 48 (2016) (Statement of Lou Lang); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 50 (2016) (Statement of Ed Sullivan Jr.); 140th Legislative Day, 99th General Assembly: *Senate Bill 10, Hearing Before the Illinois House of Representatives*, 99 Cong. 48-49 (2016) (Statement of Michael Tryon); 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois House of Representatives*, 98 Cong. 110 (2013) (Statement of Lou Lang); 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 47 (2013) (Statement of William Haine); 52nd Legislative Day, 98th General Assembly: *House Bill 1, Hearing Before the Illinois Senate*, 98 Cong. 84-86 (2013) (Statement of Eva Dina Delgado).

[114] Kim Parker, Ruth Igielnik, Amanda Barroso, and Anthony Cilluffo. "The American Veteran Experience and the Post-9/11 Generation." Pew Research Center's Social & Demographic Trends Project, October 1, 2021, https://www.pewresearch.org/social-trends/2019/09/10/how-veterans-and-the-public-see-each-other-and-themselves.

[115] Giulia Federica Zampini, "Evidence and Morality in Harm-Reduction Debates: Can We Use Value-Neutral Arguments to Achieve Value-Driven Goals?," *Palgrave Communication* 4, no. 62 (2018) https://www.nature.com/articles/s41599-018-0119-3.

Scholars interested in expanding upon my work could apply my method of examining legislative transcripts and framework of highlighting mental health research to the cannabis legalization debates occurring in other states and on the federal level. Additionally, it would be interesting to see how many of the concerns brought up regarding cannabis legalization would be the same in the discussions about legalizing other historically banned substances, such as psychedelic mushrooms and LSD, for both medical and recreational use.

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"Representative Bob Morgan." Illinois General Assembly. Accessed February 2, 2022. https://www.ilga.gov/house/rep.asp?MemberID=2745.

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Gatekeeping Public Space: Constitutionality of Anti-Homeless Legislation and the Silent War Waged Against the Unhoused in Los Angeles

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This paper begins with a general background of the history of homelessness and anti-homeless statutes in the United States. The paper discusses the U.S. Supreme Court's establishment of the "status crimes" doctrine in the 1960s, which provides that the Eighth Amendment prohibits criminalization of persons on the basis of status to analyze the degree to which anti-homeless laws constitute a form of cruel and unusual punishment. Additionally, it addresses procedural concerns that have affected unhoused plaintiffs challenging bans on camping and sleeping.

The paper then examines anti-homeless ordinances and the usurpation of public spaces in the city of Los Angeles, arguing that such practices are an effect of the city's government and upper class promoting the Los Angeles urban landscape at the expense of public space in an attempt to shape the city as a forefront of global capital.

Note: The terms "unhoused," "unsheltered," and "homeless" are used interchangeably throughout this article.

Part I: Introduction

Satisfying one's basic human needs necessary for survival– such as food, water, somewhere to live and sleep, and security– come with high stakes for people who are unhoused: most of the time, it requires breaking the law. Nationwide, cities are responding to the current homelessness crisis and responding with an increase of punitive local regulations– namely "anti-homeless" and "quality of life" ordinances. These regulations often prohibit behaviors that are inherent to being unhoused: panhandling, sidewalk-sitting, and public sleeping. Across the country, 48 states have at least one law that restricts or prohibits conduct of people experiencing homelessness.[1]

In the United States, an estimated 3.5 million people experience homelessness annually.[2] On a single night in 2022, there were roughly 582,500 people experiencing homelessness; about 40% were sleeping on the streets or other unsheltered locations and the rest in shelters.[3] The current homelessness crisis can be traced back to decades ago with former President Nixon's 1974 moratorium on housing spending. This marked the complete destruction of most subsidized housing assistance, which eliminated funding for the construction of public housing and other forms of subsidized housing. This resulted from the Nixon Administration's efforts to decentralize urban development funds through block grants, while shifting federal social spending to an income-support model, as opposed to a government program model. Years later, steady underfunding and austerity cuts under President Reagan's administration led to a declining quality of public housing. Through the HOPE VI program–which was publicized as an "urban renewal" effort– tens of thousands of public housing renters were displaced and the public housing stock

[1] National Homelessness Law Center, "Housing Not Handcuffs 2021: State Law Supplement," (First National Study of State Laws Criminalizing Homelessness Released, 2021).
[2] National Law Center on Homelessness and Poverty, "Homelessness in America: Overview of Data and Causes," (National Homelessness Law Center, 2018).
[3] Tanya de Sousa et al., "The 2022 Annual Homelessness Assessment Report (AHAR to Congress) Part 1: Point-In-Time Estimates of Homelessness, December 2022," (The U.S. Department of Housing and Urban Development, 2022).

drastically decreased.[4] The number of affordable rental units in most metropolitan areas is far surpassed by the approximately seven million extremely low-income renters who cannot get affordable housing, and this number far surpasses the number of affordable rental units in most metropolitan areas.[5] Most of the unhoused population in the United States can more accurately be described as the working poor. Most have been displaced by the rising costs of living, which was further exacerbated by the COVID-19 pandemic, as seen through rises in the number of evictions.[6] Homelessness is much more visible than it was in the past due to an increase in the number of unhoused individuals who are forced to sleep in public due to lack of options for shelter. This is seen most acutely in the state of California, where the state has reacted to these changes with over 800 anti-homeless ordinances in place.[7] This article addresses this dichotomy between regulation and awareness of homelessness in California, where about 70% of the homeless population is unsheltered– more than any other state.[8] The distinction between "unhoused" or "homeless" and "unsheltered"rests upon the kind of homelessness one is experiencing. People can experience "homelessness," but are "sheltered" if they are able to stay in transitional housing or homeless shelters. Meanwhile, "unsheltered" people are those living on the street, generally more visible to the public eye. In 2022, California accounted for 30% of the country's homeless population, despite making up only 12% of the total population of the United States.[9]

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[4] National Low Income Housing Coalition, "Public Housing History, National Low Income Housing Coalition," (National Low Income Housing Coalition, 2019).
[5] National Low Income Housing Coalition, "The Gap: A Shortage of Affordable Rental Homes," (National Low Income Housing Coalition, 2022).
[6] United Way of the National Capital Area, "The Effect of COVID-19 on Homelessness in the US," (United Way of the National Capital Area, 2021).
[7] Western Regional Advocacy Project, "Count of Anti-Homeless Laws by California Cities (All 82 Cities)," (Western Regional Advocacy Project, 2018).
[8] Jialu Streeter, "Homelessness in California: Causes and Policy Considerations," (Stanford Institute for Economic Policy Research, 2022).
[9] The U.S. Department of Housing and Urban Development, *The 2022 Annual Homelessness Assessment Report (AHAR to Congress*, (The U.S. Department of Housing and Urban Development, 2022).

As coined by the *New York Times,* cities are engaging in "civic soul-searching," regarding the efficacy of regulations created as a response to an increasingly more visible unsheltered population.[10] This "soul-searching" is often forced into the public sphere by the judicial system through addressessing the constitutionality of anti-homeless ordinances. The constitutionality of an anti-homeless ordinance can come before court in two main ways. First, a homeless plaintiff may bring forth an affirmative civil challenge, arguing that an ordinance is unconstitutional, seeking retrospective and prospective relief. Second, a homeless defendant may argue that an ordinance is unconstitutional as defense in a criminal prosecution under such ordinance.

Part II of this article will articulate the U.S. Supreme Court's "status crimes" doctrine, which was established by the Supreme Court's decision in *Robinson v. California,*[11] in Eighth Amendment challenges to anti-homeless ordinances and regulations. This foundation will be used to argue that localities' criminalization of conduct inherent to being unhoused is in violation of the Eighth Amendment. Part III then addresses *Jones v. Los Angeles*[12] and statutes in the city of Los Angeles that criminalize the conduct of the unhoused, demonstrating that the degree to which targeting involuntary behavior of unhoused individuals by localities is unconstitutional. Part IV explores the role that Business Improvement Districts ("BIDs") play in managing public spaces in California cities and argues that anti-homeless ordinances are an effect of the city's government and upper class promoting the expansion of the Los Angeles urban landscape at the expense of urban public space in an attempt to shape the city as a forefront of global capital.

Part II: Anti-Homeless Ordinances and the Eighth Amendment's Substantive Limit

[10]Jack Healy, "Rights Battles Emerge in Cities Where Homelessness Can Be a Crime," *The New York Times*, January 9, 2017. https://www.nytimes.com/2017/01/09/us/rights-battles-emerge-in-cities-where-homelessness-can-be-a-crime.html.
[11] Robinson v. California, 370 U.S. 660 (1962).
[12] Jones v. Los Angeles, 444 F. 3d 1118 (9th Cir. 2006).

The laws that target unhoused conduct today originate from vagrancy and loitering laws, which criminalized wandering and loitering in public spaces without visible means of support.[13] The U.S. Supreme Court struck down these laws as unconstitutionally vague and in violation of the Fourteenth Amendment's Due Process Clause, leading cities to change the ways in which they would control unhoused people. Advocates for unhoused people argue that the criminalization of life-sustaining behaviors in cities lacking adequate or sufficient shelter to accommodate its unhoused population criminalizes the status of being unhoused, violating the Eighth Amendment.[14]

The Eighth Amendment not only limits "the kinds of punishment that can be imposed on those convicted of crimes," and the proportionality of punishments to crimes, but also "imposes a substantive limit on what can be made criminal and punished as such." [15] The Supreme Court set forth the scope of that substantive limit in 1962, in *Robinson v. California,* striking down a California law that made it a misdemeanor punishable for someone to suffer from a narcotics addiction.[16] In his majority opinion, Justice Stewart demonstrated that targeting the "status" of narcotics addiction would be similar in nature to making it "a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venerable disease." [17] A criminalization of illness, as Justice Stewart reasoned, would "be universally thought to be an infliction of cruel and unusual punishment," as illness, similarly to addiction, is contracted "innocently or involuntarily."[18]

Unhoused people lack a private sphere, meaning they must alleviate their needs in the public sphere. In criminalizing homelessness, punishments undermine the very lack of access to housing that unhoused people face, and they will continue to exist in the public sphere after such

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[13] Ortiz, Javier; Dick, Matthew; and Rankin, Sara, "The Wrong Side of History: A Comparison of Modern and Historical Criminalization Laws" (2015), Homeless Rights Advocacy Project. 7, https://digitalcommons.law.seattleu.edu/hrap/7.
[14] *Outside the law: The Legal War Against Unhoused People,* ACLU of Southern California, October 26, 2021. https://www.aclusocal.org/en/publications/outside-law.
[15] Ingraham v. Wright, 430 U.S. 651, 667 (1977).
[16] *Robinson,* 370 U.S. at 666.
[17] *Robinson,* 370 U.S. at 666.
[18] *Robinson,* 370 U.S. at 666-7.

punishments are given. Criminalization empowers the most immediate, temporary removals of unhoused people from public view to create a short-lived illusion that the problem has been mitigated. On the contrary, it is often proven to be expensive, counterproductive, and ineffective.[19] Given that unhoused people have no safe, permanent, and legal place to go, criminalization merely moves them from one place to another in a futile, endless cycle.

Six years later, in *Powell v. Alabama*, the Court issued a divided decision that left the substantive limit on status crimes ambiguous, which raises questions on whether *Robinson* can be applied to anti-homeless statutes. Leroy Powell was convicted for appearing in public while intoxicated, and he argued that his public intoxication was the involuntary, inevitable result of being a chronic alcoholic.[20] In this manner, criminalizing such behavior he could not avoid– being drunk– was criminalization of his status as an alcoholic, in violation of the Eighth Amendment. The four-Justice plurality upheld Powell's conviction and narrowly interpreted *Robinson* to prohibit criminalizing status alone. Justice Marshall, writing for the plurality, concluded that Texas has "not sought to punish a mere status" but instead "has imposed upon [Powell] a criminal sanction for public behavior." [21] The plurality did not clarify the extent to which *Robinson* would apply in identifying which involuntary actions would receive constitutional protection without a clear limiting principle. If "Powell cannot be convicted of public intoxication, it is difficult to see how a State can convict an individual for murder, if that individual… suffers from a 'compulsion' to kill."[22] The plurality feared using a *Robinson* defense because of the potential it had to extend to offenses such as drunk driving and murder, and that the Court would become an arbiter of criminal responsibility standards that are usually set by localities and states.[23]

[19] Rankin, S. K., Hiding Homelessness: The Transcarceration of Homelessness. *California Law Review*, *109*(2), 559, July 30, 2021. https://doi.org/10.15779/Z38VT1GQ76.
[20] Powell v. Texas, 392 U.S. 514, 517 (1968).
[21] *Powell*, 392 U.S. at 532.
[22] *Powell*, 392 U.S. at 534.
[23] *Powell*, 392 U.S. at 537.

Justice Fortas, writing in dissent, rejected the plurality's emphasis on pure status and embraced the status-one-cannot-change rationale for *Robinson:* "Criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change." [24] Responding to the plurality's fear that a *Robinson* defense for Powell would extend to offenses such as drunk driving or murder, Justice Fortas stated,"Such offenses require independent acts or conduct and do not typically flow from and are not part of the syndrome of the disease of chronic alcoholism."[25] Under this logic, states would still be able to punish chronic alcoholics for drunk driving because driving is not "a characteristic and involuntary part of the pattern" of alcoholism.[26] In applying this understanding of the characteristics and involuntary aspects of being unsheltered, it demonstrates that localities' statutes are forbidden by the Eighth Amendment.

Justice White concurred in the judgment on the factual grounds that Powell failed to offer sufficient evidence that he could not avoid appearing in public while intoxicated. However, Justice White suggested that for chronic alcoholics who were *homeless*, "[f]or all practical purposes the public streets may be home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place else to go and no place else to be when they are drinking." [27] Beyond the text of a particular ordinance to its practical effect, Justice White concluded that "[a]s applied to them this statute is in effect a law which bans a single act for which they may not be convicted under the Eighth Amendment– the act of getting drunk." [28]Advocates for unhoused people have used this language to argue that when an unhoused person has nowhere else to go, the Eighth Amendment ultimately forbids a locality from punishing individuals for conduct they simply cannot avoid.

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[24] *Powell*, 392 U.S. at 567.
[25] *Powell*, 392 U.S. at 559.
[26] *Powell*, 392 U.S. at 559.
[27] *Powell*, 392 U.S. at 551.
[28] *Powell*, 392 U.S. at 551.

Due to the lack of majority agreement on the pure status theory following *Powell*, courts disagree about whether *Robinson* applies to anti-homeless ordinances. In the past five decades since *Powell*, there have been decisions from at least seven federal courts and some state courts that recognize that *Robinson* should be extended to some involuntary conduct related to the protected status of homelessness.[29] Conversely, four federal courts and some state courts have concluded that *Robinson* is limited to status and does not apply to conduct. Fundamentally, judiciaries struggle with the determination of whether a municipality's decision criminalizes the status of being unhoused or the conduct of being unhoused. The next section will examine the strength of the holding in *Jones v. City of Los Angeles* in tandem with anti-homeless statutes in the city of Los Angeles to demonstrate the degree to which localities target involuntary behavior and criminalize conduct inherent to being unhoused.

Part III: The Strength of *Jones v. Los Angeles*

The City of Los Angeles's ordinance L.A., Cal., Mun. Code § 41.18(d) (2005) prohibited sitting, lying, or sleeping on public sidewalks at any time of day and was among the most restrictive of anti-homeless ordinances in the nation. Appellant unhoused individuals who lived on the streets of Los Angeles's Skid row filed a civil suit alleging that enforcement of the ordinance violated their Eighth Amendment rights. More specifically, appellants alleged that the city's enforcement of L.A., Cal., Mun. Code § 41.18(d) (2005) was unconstitutional on the grounds that they were unable to obtain shelter on the nights in question.[30] Appellants' descriptions of their lives revealed the multitude of ways in which a person can become unsheltered, such as limited mobility and being unable to stay employed due to their own or their spouse's mental or physical limitations. [31] In

[29] Kieschnick, H., A Cruel and Unusual Way to Regulate the Homeless: Extending the Status Crimes Doctrine to Anti-homeless Ordinances. *Stanford Law Review*, *70*(5), 1569+, 2018, https://link.gale.com/apps/doc/A546960004/AONE?u=anon~aeda6d0e&sid=googleScholar&xid=7fcc15f3.
[30] *Jones*, 444 F.3d at 1118.
[31] *Jones*, 444 F.3d at 1124-5.

considering these circumstantial factors, the United States Court of Appeals concluded that appellants "are not on the streets of Skid Row by informed choice." [32]

The Court reviewed the availability of housing units in Los Angeles and found that there was insufficient space in hotels, shelters, and other forms of housing– leaving more than 1,000 people in Skid Row without shelter each night. Moreover, there were around 50,000 more unhoused individuals than available shelter beds in all of Los Angeles County.[33] Following the establishment of Appellants' standing, the Court then examined their claims that the enforcement of § 41.18(d) violated the Eighth Amendment prohibition of cruel and unusual punishment. The Court observed that "five Justices … understood *Robinson* to stand for the proposition that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being."[34] The Court articulated a two-part analysis for determining the limits of the Eighth Amendment on the state's power to criminalize unhoused conduct and that: the targeted behavior be assessed as either 1) pure status or pure conduct or 2) an involuntary act or condition or a voluntary one.[35]

The Court concluded that "enforcement of section 41.18(d) at all times and in all places against homeless individuals who are sitting, lying or sleeping in Los Angeles's Skid Row because they cannot obtain shelter violates the Cruel and Unusual Punishment Clause."[36] The behaviors targeted were involuntary because they are "universal and unavoidable consequences of being human."[37] Unhoused people have no private place in which they can satisfy their biological needs when they are compelled to rest or sleep, demonstrating that such behavior was also

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[32] *Jones*, 444 F.3d at 1123.
[33] *Jones*, 444 F.3d at 1123.
[34] *Jones*, 444 F.3d at 1135.
[35] *Jones*, 444 F.3d at 1136.
[36] *Jones*, 444 F.3d at 1136.
[37] *Jones*, 444 F.3d at 1136.

indistinguishable from status.[38] Appellants had no choice but to be on public sidewalks, and the Court stated, "so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds, the City may not enforce section 41.18(d) at all times and places throughout the City against homeless individuals for involuntarily sitting, lying, and sleeping in public."[39]

The majority in *Jones* provided an insightful reading of precedent on the status issue, as well as the standing issue. However, the decision could impact future challenges to anti-homeless statutes in several ways. The majority limited its holdings to situations in which petitioners could provide strong evidence that there was no other option other than to be on the streets– or i.e. that there were no shelter beds available. Such a decision implies that demonstration of an unavailability of shelter is that cities could then force unhoused people into shelters if they provide enough beds and make sleeping in public a crime. While the Court did not make such a conclusion, forced use of shelters can still create serious problems for unhoused people. The decision to be in a shelter depends on multiple factors, such as the rate of theft and assault, and the personal comforts that are available.[40] Although the result was positive for these appellants, future applications of such tests may present significant hurdles.

The next section explores Los Angeles more in depth, specifically in regard to new municipal codes and ordinances adopted as a form to address the city's homeless encampments. It argues that the perpetuation of similar laws that are unconstitutional in nature is an annihilation of public space in general in an attempt to shape the city as a forefront of global capital.

Part IV: Anti-Homeless Ordinances in Los Angeles and its Usurpation of Public Space

[38] *Jones*, 444 F.3d at 1136.
[39] *Jones*, 444 F.3d at 1138.
[40] Joyce v. City of San Francisco, 846 F. Supp 843, 849 (N.D. Cal. 1994).

In general, cities move quickly to criminalize activities associated with being unhoused. In 2016, around 10 years following *Jones,* the Los Angeles City Council adopted LAMC 56.11 to address the city's homeless encampments.[41] The statute's purpose is to balance the needs of residents to access clean public areas with the unhoused population's property interests, and it prohibits storing any form of tangible property in public areas.[42] LAMC 56.11 permits the city to confiscate and destroy individuals' property if it is in violation of the law's size, placement, or personal attendance requirements after written notice. This act, known more commonly now as "sweeps," or "sanitation cleanings," has drawn backlash from human rights groups and advocates for unhoused residents. They accuse authorities of forcing people out of sight without attempting to provide housing or other services. Critics believe that such efforts prioritize aesthetics and neighborhood complaints over the livelihoods of those who are unsheltered, resulting in those living in tent communities to be spread out into more dangerous living conditions.[43] While homeless encampments are often blamed for crime or that an increase in homelessness increases crime, researchers have found that an increase in the number of tents and structures in an area is not associated with any increases in property crime– very close to zero.[44] Researchers in Vancouver who studied the effect of emergency winter homeless shelters in nearby communities found that the presence of a shelter appears to cause property crime to increase by 56% within 100 meters of that shelter, with thefts from vehicles, other thefts, and vandalism as causes of the increase. Crime might

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[41] Holland, "L.A. Limits Property of Homeless to What Can Fit in Trash Bin", *The Seattle Times*, March 30, 2016. https://www.seattletimes.com/nation-world/la-limits-property-of-homeless-to-what-can-fit-in-trash-bin/.

[42] L.A. Mun. Code §§ 56.11.1, 56.11.2(j).

[43]Levin, S., "'Trying to disappear the poor': California clears homeless camp near Super Bowl*" The Guardian*, January 27, 2022. https://www.theguardian.com/us-news/2022/jan/26/homeless-los-angeles-super-bowl.

[44] Kaste, M., "Homeless camps are often blamed for crime but experts say it's not so simple", *NPR*, January 24, 2022. https://www.npr.org/2022/01/24/1074577305/homeless-crime-experts.

increase after a shelter opening due to the convergence of motivated offenders, suitable targets, and the notion of an increase in social disorder signaled by the existence of a shelter.[45]

The critiques of sweeps are not so far-fetched. Homeless Exclusion Districts are ever present throughout the state of California, derived from California Business Improvement Districts. California Business Improvement Districts use policy advocacy and policing practices to exclude unhoused people from public spaces. Business Improvement Districts ("BIDs") are private entities that are funded by local property assessments that play an extremely large role in managing public space in California. They are typically located in downtown areas where businesses are concentrated. Moreover, these downtown areas tend to have a high concentration of unhoused people.[46] California BIDs utilize property assessment revenue, including data from public properties, to advocate for the enactment and enforcement of local and state laws that punish unhoused people for engaging in life sustaining activities they have no choice but to undertake in the public sphere. The proliferation of anti-homeless ordinances correlates strongly with the increase in the number and authority of BIDs since 1994. Similar to the aforementioned L.A. municipal code 56.11, the Downtown Industrial BID advocated for L.A. officials to amend the municipal code so that the city's ability to confiscate unhoused people's property was preserved.[47]

Additionally, BIDs directly enforce anti-homeless ordinances. When employees of the Los Angeles Downtown Industrial BID ("DIBID")'s Clean and Safe Program attempted to enforce the LA Municipal Code by confiscating unhoused people's property on Skid Row, four Skid Row residents sued DIBID and the City for violating their constitutional right of due process by

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[45] Faraji, SL., Ridgeway, G. & Wu, Y. "Effect of emergency winter homeless shelters on property crime", *J Exp Criminol* 14, 129–140 (2018), https://doi.org/10.1007/s11292-017-9320-4.

[46] UC Berkeley School of Law Policy Advocacy Clinic, Homeless Exclusion Districts: How California Business Improvement Districts Use Policy Advocacy and Policing Practices to Exclude Homeless People from Public Space, 52, September 2022. https://wraphome.org/wp-content/uploads/2018/09/PAC-BID-Report-2018-web-rev.pdf.

[47] Selbin, Jeffrey, Stephanie Campos-Bui, Joshua Epstein, Laura Lim, Shelby Nacino, Paula Wilhlem, and Hannah Stommel. "Homeless exclusion districts: How California business improvement districts use policy advocacy and policing practices to exclude homeless people from public space." *UC Berkeley Public Law Research Paper* (2018).

removing their property from areas without prior notice as to where the property would be taken.[48] Fundamentally, BID work is consistent with anti-homeless advocacy and policing, as such practices are premised on the idea that laws criminalizing activities inherent to being unhoused *help* unhoused people. These outreach efforts can violate state and federal laws. BID actors' policing constitutes cruel and unusual punishment, as their actions criminalize unhoused people for performing unavoidable and necessary, life-sustaining acts in public.

The drive to criminalize unhoused people remains strong and ever-present. It is extremely difficult to appease those who are frustrated at the declining conditions of the urban areas in which they reside, while still offering compassion and assistance to those at the very margins of society. Ultimately, the criminalization of unhoused people should be understood as a means of managing the conditions that are a result of growing inequality through increasingly punitive measures of state control.[49] Anti-homeless laws demonstrate and perpetuate a highly exclusionary form of citizenship, primarily concerned with the aesthetics of the urban landscapes.

Particularly evident in Los Angeles is the phenomenon of the "global city," which allows local officials and businesses to argue that they have no choice but to uphold an image, seen in the form of extravagant convention centers, gentrified art districts, and concert halls, as a means to extend the degree in which capital can be located. The logic of a globalized economy rests on the notion that, to be successful, people must buy into the ideology that their spaces are more than just factors of production. Factors play off other factors in the pursuit of a continual spatial fix to crises of accumulation. As a response, to uphold a global city, there has to be the regulation of spaces, which essentially seeks to "eliminate" people so as to uphold the capital that cities are desperate to

[48] Los Angeles Catholic Worker *v.* Los Angeles Downtown Industrial District Business Improvement District, No. CV 14-07344.
[49] Vitale, A. S. (2018), *The End of Policing*, Verso Books.

attract.[50] Cities must do what they can to make themselves alluring and attractive so that capital– in the form of businesses and tourists– will simultaneously transform the new urban economy.

In 2021, Los Angeles city and county officials cleared the encampments at Echo Park Lake,[51]a lake in the neighborhood of Echo Park, which borders the neighborhoods of Silverlake and Chinatown. Silver Lake was coined by Forbes as "America's Hippest Hipster Neighborhood," in 2012[52] –an indicator of gentrification by means of aesthetics– as it boasts vintage stores, coffee shops, farmers markets, and so on. Residents in the area complained of drug use, crime, and trash, and received more than 4,000 signatures on an online petition asking the city to remove the camp.[53] Former Mayor Eric Garcetti framed the effort as a success, claiming that it was the largest housing transition of an encampment in the city's history. However, this success is not so evidently clear. The effort resulted in 179 arrests, and a year later, few residents from the encampment actually received long-term housing.[54] Of the 183 people on the "Echo Park Lake placements list," only 17 received long-term housing, while 48 remained on a waiting list. Fifteen people went back to living on the streets, and 6 people died.[55] This recent demonstration of the urgency in regulating the homeless takes on a form of control that is intentionally exclusive. For law-makers, the regulation of space and the annihilation of the unhoused allows the city to become a place of order, pleasure, consumption, and accumulation.[56]

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[50] Mitchell, D., "The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States", Antipode, 29: 303-335, 1997. https://doi.org/10.1111/1467-8330.00048.

[51] Reyes, E., Smith, D., & Oreskes, B., "The Echo Park homeless camp is gone. What does it mean for L.A.?", *Los Angeles Times*, March 27, 2021. https://www.latimes.com/california/story/2021-03-27/echo-park-homeless-camp-gone-la-crisis.

[52] "America's Hippest Hipster Neighborhoods", *Forbes*, September 20, 2012. https://www.forbes.com/sites/morganbrennan/2012/09/20/americas-hippest-hipster-neighborhoods/?sh=287f49cbcb38.

[53] Vives, R., "A year after Echo Park Lake encampment removal, few are in permanent housing, report finds". *Los Angeles Times*. March 24th, 2022. https://www.latimes.com/california/story/2022-03-23/echo-park-lake-encampment-housing-report.

[54] Vives, "A year after Echo Park Lake encampment removal", *Los Angeles Times*.

[55] Roy, A.; Bennett, A.; Blake, J.; Coleman, J.; Cornfield, H.; Harrell, L., et al., *(Dis)Placement: The Fight for Housing and Community After Echo Park Lake*, 2022. https://escholarship.org/uc/item/70r0p7q4.

[56] Mitchell, D., The Annihilation of Space by Law.

Efforts such as the Echo Park Lake encampment removal provide ideological grounding that reassert certain privileges of citizenship– to reassure citizens that democracy is intact, despite unsettling shifts of the scales in the capitalist economic system. With homelessness remaining a crisis as a result of a globalized economy, chaotic notions about home and community instill in people a certain fear of the sight of unsheltered people scattered in public, abandoned by the government and city. Anti-homeless legislation and the regulation of unhoused people seeks to annihilate the spaces in which unhoused people have no choice but to live. Regulating the public space, then, becomes an intentional act of exclusion in which there is a notion of a "legitimate public" that includes those who have a place governed by private property– or more specifically, landed property–to constitute true and valid citizenship.

The case of Echo Park demonstrates the local government's concern with creating a landscape of the city, so as to not leave bad impressions on visitors and residents. The misguided impression that a park is unsafe is enough justification to proliferate anti-homeless regulation. In effect, the regulations uphold the essence and value of a landscape. A landscape is a scene– an aesthetic encapsulation that is a particular way of seeing the city. Order and control, then, take precedence over the harsh and ugly realities of everyday life. Echo Park and those in the Silverlake neighborhood would opt for a landscape that captures comfort, relaxation, and lighthearted consumptions at storefronts that uphold this imagery of capital, not the imagery of poverty-stricken individuals who obstruct the ideology of comfort.

Additional threats to the livelihood of the unhoused communities of Los Angeles continue to arise, as the city is set to host the 2026 World Cup– and two years later, the 2028 Summer Olympics. Los Angeles, historically, turned the tide for hosting the Olympics. In 1984, no city wanted to host the Olympic Games. The 1976 Games in Montreal cost 9.2 times more than initially

budgeted and yielded a debt that took thirty years to pay down.[57] The International Olympic Committee was desperate to find a venue, and with no competition, Los Angeles stepped forward to make the deal. The IOC was to guarantee any losses suffered, and Los Angeles could get by with its existing sports infrastructure that came from hosting the 1932 Olympics. With aggressive marketing of corporate sponsorships by Peter Ueberroth, the L.A. Organizing Committee gained a surplus of $215 million.[58] Following this major success, countries lined up for the honor of hosting the games. Furthermore, the cost of hosting the FIFA World Cup has risen to nearly $229 billion,[59] far surpassing the cost of several hundred in millions of dollars in 1994. The Games undoubtedly benefit their wealthy promoters, but those who are working-class or at the bottom of the income ladder suffer the consequences.

Globalization, alongside market forces and skewed distributions of market power ultimately widen economic inequality within cities and countries. Although hosting sporting events are not the driving force behind a city's inequality, they likely reinforce and contribute to the existing conditions of inequality. The members of the executive boards of IOC and FIFA belong to the economic elite, and "rub elbows," with political and business leaders in the cities they visit.[60] Considering how heavily publicized and visible these Games are, the likelihood of wasteful spending increases– contributing to the scorn of the local population.

Mayor Eric Garcetti, one of the most vocal and powerful boosters of the Los Angeles 2028 Games, has repeatedly said that the city is capable of ending homelessness on the streets by the time

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[57] Zimbalist, A. (2016), What's Wrong with the Olympics and the World Cup? In *Circus Maximus: The Economic Gamble Behind Hosting the Olympics and the World Cup* (pp. 1-8), *Brookings Institution Press*.

[58] Zimbalist, A., What's Wrong with the Olympics and the World Cup?.

[59] Craig, M., "The Money Behind The Most Expensive World Cup In History: Qatar 2022 By The Numbers," *Forbes*, November 19, 2022. https://www.forbes.com/sites/mattcraig/2022/11/19/the-money-behind-the-most-expensive-world-cup-in-history-qatar-2022-by-the-numbers/?sh=1e93227bff5e.

[60] Zimbalist, A., "What's Wrong with the Olympics and the World Cup?."

the Games come.[61] Similarly to what happened at Echo Park Lake, this plan does not entail actually housing people, but rather, a strategy of displacement.[62] This includes the physical removal of unhoused people from public spaces, as they are the visible counterpart of the efforts to increase capital in the city. Traditionally, preparing for major games in L.A. includes the sweeping of tent encampments that tourists arriving at LAX were likely to see enroute to the stadium. This was seen more recently for the 2021 Super Bowl, which was held at SoFi Stadium, and in the past, as LAPD made their way to Skid Row to chase away or forcibly remove people who were sleeping on the sidewalks.[63] In 1982, laws were passed by City Council members to limit people's access to public spaces– controlling where they could live and sleep, specifically prohibiting "the use of streets for habitation."[64]

The scale of L.A.'s homelessness crisis is much too severe to ensure that the teetering arrival of the Games will be met with a solution. The most recent projected budget for the 2028 Games is $6.9 billion, which is supposed to be 100 percent privately financed by the IOC, philanthropists, sponsorships, hospitality, and ticket sales.[65] This raises concern, as the average final cost of a given Olympic Games is around 172 percent of the original budget. In the case of L.A., if the Olympics run over budget, the contingency fund would fall short by nearly $4.4 billion. The crisis of chronic homelessness in the city should be the primary concern for action. The Olympic Bid Committee has raised over $50 million in private funds– and a staggering 14% of these estimated funds will be raised over ten years by taxpayers through Measure H and pay for basic services for the unhoused

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[61] Smith, D., "Garcetti says L.A. can end street homelessness in a decade," *Los Angeles Times*, March 21, 2018. https://www.latimes.com/local/lanow/la-me-ln-garcetti-end-homelessness-20180321-story.html.
[62] Boykoff, J., & Zirin, D. "Los Angeles has already ceded too much power to the Olympic machine," *The Guardian*, February 24, 2023. https://www.theguardian.com/sport/2023/feb/24/los-angeles-2028-olympics-karen-bass-ioc.
[63] White, L. L., "The 2028 L.A. Olympics Are Already Creating a Housing Disaster," *The New Republic*, 19, 2022. https://newrepublic.com/article/167453/2028-los-angeles-olympics-housing.
[64] Chandler, J., "LA Olympics 2028: How will the city treat its homeless?" *Curbed LA*, July 12, 2018. https://la.curbed.com/2018/7/12/17454676/los-angeles-olympics-homeless-police-militarization-security.
[65] "Who is paying for the 2028 Olympic and Paralympic Games?," *LA28*, n.d. https://la28.org/en/faqs/who-is-paying-for-the-2028-olympic-and-paralympic-games-.html#articleIntro.

community of Los Angeles.[66] Measures aimed at persuading City Council members to take a stand for cancellation are politically shrewd; however, this stance risks alienating the powerful developers who will ultimately financially benefit from the Games.

Mayor Karen Bass declared a homelessness state of emergency on December 12, 2022, her first day in office. This program, "Inside Safe," as she claims, is "not coercing people, this is not ticketing or incarcerating people." This initiative is to cost under $100 million and will house 95% of those who are unsheltered.[67] However, these figures are fundamentally skewed and problematic. The first step to directing this initiative, is of course, through sweeping. Departments responsible for processing affordable housing and shelter applications are responsible for completing all reviews within 60 days, when such reviews typically take six to nine months.[68] A unique study conducted in May 2022 by the Rand Center on Housing and Homelessness in Los Angeles calls into question the 95% figure cited, and they found that less than one-third of the individuals experiencing unsheltered homelessness: "would accept an offer of group shelter or a recovery or sober living housing offer." More than two-thirds would opt to stay on the streets.[69] What's more demonstrative of the reach of state power, is that the most commonly reported factors that prevented respondents from moving into housing in the past were never being reached to complete the housing intake process (41%), privacy concerns (38%), and safety concerns (32%).[70]

Ongoing dependency on hotels or shelters as temporary housing and shelter as a response to residential instability is problematic, demonstrated through the largely negative experiences of those who do lie in such facilities. Provision of such shelters do nothing for people experiencing

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[66] NOlympics LA., *Analysis – NOlympics LA*. NOlympics LA, n.d. https://nolympicsla.com/analysis/.
[67] Smith, D., "Mayor Bass' program to move homeless people indoors to launch Tuesday," *Los Angeles Times*, December 18, 2022. https://www.latimes.com/california/story/2022-12-18/bass.
[68] Smith, D. "Bass seeks to hasten construction of affordable housing," *Los Angeles Times*, December 16, 2022. https://www.latimes.com/california/story/2022-12-16/bass-executive-order-on-housing.
[69] Ward, J. M., & Garvey, R., *Study of Unhoused People in Los Angeles Finds Numbers Growing; Only One-Third Willing to Move into Group Shelters*, RAND Corporation, May 4, 2022. https://www.rand.org/news/press/2022/05/04.html.
[70] Ward, *Study of Unhoused People in Los Angeles Finds Numbers Growing*.

homelessness except achieve the offering of a temporary, generally unpleasant experience– respite from harsh weather, and basic sustenance. There is substantial evidence that is convincing enough to demonstrate that shelter regulations restrict individual autonomy, through violence and intimidation that is often seen in such congregate settings. As a result, some of the most vulnerable people in populations will reject entering shelters.[71]

In the same way that anti-homeless statutes reject a person's conduct that is inherent to being unhoused, short-term accommodations lack the assertive street out-reach work with the provision of suitable housing support that is specific in maintaining its accommodation and wide social supports that provide an effective pathway out of rough sleeping on the streets.[72] This maintains the privacy that governmental spheres deprive. Sweeping, in particular, as the first step to distribute housing services, perpetuates a passive dependence upon temporary housing programs and solidifies unhoused people's positions as deficient. Solutions such as "Inside Safe" are neither motivated by or directed toward truly solving homelessness. Rather, they further a spatial battle– in which success is founded upon harassment and regulation. The overt and recurring violence–not simply limited to the violent processes of containment and constriction– but also the real estate developers whose projects come with high stakes, or the Mega Sports Events to come, efface the presence of unhoused people altogether. When private spaces exhaust all possibilities of public space as a means for proliferating capital and landscape, there is nowhere left for the unhoused to engage in the daily activities they've always engaged in, as the places they've always known as *home* will no longer allow them to be there.

Conclusion

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[71] O'SULLIVAN, E., Responding to homelessness. In *Reimagining Homelessness: A Blueprint for Policy and Practice* (1st ed., pp. 21–48), Bristol University Press, 2020. https://doi.org/10.2307/j.ctv10rrcfk.5.

[72] Rankin, S. K.Hiding Homelessness.

Homelessness is a controversial, complex issue. The potential remedies to alleviate the nationwide crisis are far and wide in scope. Due to a lack of guidance from the Supreme Court on how to handle procedural challenges to cities' responses to homelessness, lower and state courts are faced with division in addressing such litigation. This article has sought to represent how anti-homeless statutes– as they become far more common and controversial– constitute a form of cruel and unusual punishment, as such involuntary conduct is the natural consequence inherent to the status of being unhoused. The silent war waged against the unhoused in not only Los Angeles, but also in cities nationwide–seen in the form of the proliferation of anti-homeless statutes, evidently within the realm of law–redefine citizenship privileges and demonstrates a degree to which the public sphere is to be perceived. The concern for livability and desire to make urban centers attractive areas of capital annihilates space and ultimately, people.

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Disregarding Reproductive Health for Political Gain: An Exploration of Contradictions Within the Abortion Debate in North Carolina (1973-2022)

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Note: Although the initial time frame for this research concluded in 2022, the current congressional session has yielded numerous changes for reproductive rights.

As of April 24, 2023, abortion remains legal in North Carolina. Abortion procedures are accessible until 20 weeks of gestation, with no enforced gestational limit when the patient's health is determined to be at risk. However, earlier in April, a bill was filed in the NC House of Representatives that would ban abortion procedures in their entirety – the only exception being a pregnancy that puts a woman's life at risk. The bill specifies that aborting an ectopic pregnancy would not be punishable by law, while leaving any further expansion on medical 'risk' to be determined. This piece of legislation would legally recognize the beginning of 'life' at conception. Amidst internal conflict, North Carolina abortion providers have gained national recognition for their work post-Roe, as they have been serving countless patients throughout the South. The passage of House Bill 533, or the Human Life Protection Act of 2023, would effectively ban nearly all abortion procedures within the state – effectively cutting off access to countless patients.

Introduction

In 1972, the Supreme Court of the United States (SCOTUS) ruled in favor of abortion legality through *Roe v. Wade*, a case that has gained widespread recognition for federally protecting access to abortion services. However, the case has long been disputed within conservative circles and has been receiving elevated pushback from state legislatures composed of Republican majorities. Following the 2022 ruling in *Dobbs v. Jackson Women's Health Organization*, abortion services are no longer federally protected and their legality has been effectively turned over to state governments. Over the last several months, state legislatures nationwide have employed abortion bans of varying severity. However, is this political pushback indicative of public opinion regarding abortion legality? Through a multi-sourced analysis of various perspectives, campaign finances, and opinion polls, I argue there is a disconnect between public opinion and government action on abortion in North Carolina. Over the last fifty years (1972-2022), public opinion has been increasingly shifting in favor of pro-abortion legislation, yet government officials continue to move in the opposite direction. Rather than working to push legislation that best enforces the interests of their constituents, NC lawmakers are grounding their legislative efforts in partisan politics and financial gain.

North Carolina, having formally solidified its role as a swing state in the twenty-first century, is a well-known battleground for partisan politics. Within the tumultuous chaos, the issue of abortion has flown under the radar, remaining ever present, but unspoken under the umbrella of conservative platforms. Reproductive rights became embedded in federal politics following then presidential nominee Ronald Reagan's campaign promise to prioritize traditional family values. Widely regarded as the "religious right," white conservative Evangelicalism informally merged with

the GOP in the late 1990s as a product of political polarization.[1] Abortion legislation manifests in this polarization as the "pro-life" and "pro-choice" divide; the former claiming that abortion is akin to murder and, by definition, works to hinder family creation, while the latter views abortion as a critical family planning service. In recent history, "pro-abortion" terminology has emerged to promote abortion as essential healthcare while recognizing the emotional multiplicities that accompany abortion care. While some abortion services are elective in nature, others are life-saving procedures that result in the termination of a highly desired pregnancy. The "pro-life" vs. "pro-choice" binary has resulted in a purposeful ignorance of the wide spectrum of abortion experiences by politicians. This simplification plays well into polarized politics. By choosing to centralize this dichotomy and pursue divisive messaging, representatives are choosing to work towards their own political gain and furthering their own individual ideologies rather than engaging the public in genuine discourse about reproductive healthcare.

Is the personhood debate important?

Within their 1972 *Roe v. Wade* ruling, SCOTUS justices made the federal stance on reproductive healthcare clear: abortion services are federally protected. The justices are very intentional in terms of which topics they choose for judicial consideration. Justice Blackmun, writing for the 7-2 majority, recognized that conceptions of personhood, rather than the medical procedure itself, is the most disputed aspect of abortion amongst the public. However, he notes that the justices deem it unnecessary to "resolve the difficult question of when life begins" because so many pull from their personal religiosity to define it.[2] The first amendment to the Constitution, in its intention to protect religious liberties, establishes a clear boundary between church and state in the

[1] John Fea, Laura Gifford, Griffith R. Marie, and Lerone A. Martin, "Evangelicalism and Politics," last accessed April 2, 2023, https://www.oah.org/tah/issues/2018/november/evangelicalism-and-politics/.
[2] *Roe v. Wade*, 410 U.S. 113 (1973).

Establishment Clause. In order to uphold this freedom, Justice Blackmun writes that because national religious multitudes result in various definitions of personhood, the Court does not have the capability to create a universal definition within the bounds of constitutional reason. The opinion reads: "We need not resolve the difficult question of when life begins…It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until live birth. This was the belief of the Stoics. It appears to be the predominant, though not the unanimous, attitude of the Jewish faith. It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained."[3] Any attempt by SCOTUS justices to elucidate personhood on the grounds of evangelical Christianity (whom the vast majority identify conception as the beginning of life) would ultimately result in an infringement upon the religious freedoms of some portion of the citizenry. The judicial branch has an inherent interest in upholding the Establishment Clause of the First Amendment in order to preserve the social contract of the Constitution.

The United States government was constructed through a prevailing notion of democratic plurality. Namely that in order to live under one structured government, citizens would have to sign on to the social contract while recognizing there may be a disconnect between legality and their own individual moral code. Within their opinion, the Court addresses the presence of this plurality for many within the frame of abortion. The justices remark that even though one's personal opinion of abortion may classify it as a moral wrong, this should not necessarily hold sway over federal law. Rather, it is the responsibility of the justices to interpret the Constitution, and subsequently the law, in order for all citizens to best live according to their own moral codes. Conceptions of personhood

[3] *Roe v. Wade*, 410 U.S. 113, 160 (1973).

do not need to be considered within discussions of abortion legality. Because the United States is not a theocracy, basing a decision solely on the religious beliefs of some is not cohesive to national stability nor does it align with constitutionality.

Allocating discourse on personhood to other entities is a pillar of the *Roe* decision. The justices do not federally legalize abortion procedures, however they recognize a fundamental "right to privacy" that their conceptual dialogue addresses. Pulling from the First, Fifth, Ninth, and Fourteenth Amendments, the justices found that all Americans have an implicit "right to privacy" that is constitutionally protected; abortion rights fall under this protection as federally guaranteed privacy between a patient and their doctor.[4] The court noted that it is up to the states to determine how an individual's right to privacy is upheld. This measure has resulted in various abortion restrictions throughout the nation, as legislatures intentionally obstruct access to reproductive healthcare under the guise of protection.

Governing officials successfully utilized this tactic in 2012, passing a Mississippi law that required doctors who perform abortions to be board-certified OB-GYNs, as well as have admitting privileges at a local hospital.[5] By increasing the administrative hurdles required to provide abortion care, this law significantly minimized the number of physicians capable of doing so. Jackson Women's Health Organization, infamously known as The Pink House, has been single-handedly providing abortion care to the entire state since 2002. Within the sole abortion clinic in Mississippi, every provider was a board-certified OB-GYN. However, despite numerous attempts at obtaining

[4] *Roe v. Wade*, 410 U.S. 113, 153 (1973).
[5] Debbie Elliot, "Only Abortion Clinic In Miss. Fights To Stay Open," NPR, last accessed April 2, 2023, https://www.npr.org/2012/06/29/155976574/sole-abortion-clinic-in-miss-fights-law-to-stay-open.

admitting privileges, only one physician had managed to secure them from a nearby hospital.[6] House Bill 1390 was officially overturned in federal court a year later, marking the end of required admitting privileges.[7] Had it remained in effect, the bill would have reduced the number of physicians providing abortion care to one – all while abortion remained "legal" within the state. This chain of events embodies the goal of TRAP laws, or Targeted Restrictions on Abortion Providers, which create an environment that minimizes abortion care in its totality without outright criminalizing the procedure itself.

Yielding further interpretations and enforcement of the "right to privacy" to state governments has resulted in a transformation of the abortion debate. While the general public seems ready to follow the directives of the Supreme Court and discuss abortion legality beyond the realm of personhood, local politicians seem to be unwilling to move beyond the 1972 *Roe* decision.

Who is the general public?

Perspectives on abortion morality vary on an individual basis, and it is important to recognize the multiplicity of these perspectives even amongst the general public. Specialized knowledge on abortion practices exists within the general public because several large sub-groups both hold this information and distribute it within their respective social circles. While mainstream political debates center on a bifurcation of abortion attitudes, the general public is ready to have a far more nuanced discussion. Within the state of North Carolina, medical students and healthcare providers prove to be two examples of the diversity present in the general population.

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[6] Emily Le Coz, "Mississippi's Last Abortion Clinic Faces Closure," Reuters, last modified November 28, 2012, https://www.reuters.com/article/us-usa-abortion-mississippi/mississippis-last-abortion-clinic-faces-closure-idUSBRE8AR18V20121128.

[7] Center for Reproductive Rights, "Federal Judge Blocks All Enforcement of Mississippi Admitting Privileges Requirement," Center for Reproductive Rights, last modified April 16, 2013, https://reproductiverights.org/federal-judge-blocks-all-enforcement-of-mississippi-admitting-privileges-requirement/.

An IRB-approved study conducted at the University of North Carolina School of Medicine found that "the majority of students, regardless of stage of training, felt abortion was morally acceptable".[8] Furthermore, the more clinical exposure a student had (in any field, not just obstetrics or gynecology) positively correlated to more acceptance towards second-trimester abortions. While much of the debate on abortion legality has consisted of discussion around trimester-based regulation, this study provides evidence that such regulation has little to no medical backing. Increased clinical training led to more abortion acceptance overall within the School of Medicine.

Within the study, students who found abortion to be morally disagreeable cited religious and political affiliations as the guiding framework behind that stance. The medical training and exposure they had undergone (even within the OB-GYN field) ranked secondary to their religiosity and political leanings when determining their thoughts on abortion. While neither of those avenues should hold relevance regarding abortion legality, they are indicative of various perspectives on abortion even amongst medical students. This plurality in thought suggests that some within the medical profession are able to differentiate between personal morality and public health.

Abortion providers themselves are another specific group of North Carolinians who have a stake in abortion legality. Within another study conducted in North Carolina, researchers spoke primarily to abortion providers throughout the state in order to explore the intricacies of their work. One might believe that the passage of *Roe* would have created more efficient and safe working conditions for abortion providers, yet in North Carolina (and numerous states across the country) the opposite rings true. Although state legislators did not have the capacity to criminalize abortion procedures, many enacted TRAP laws to decrease access to abortion.

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[8] Christopher L. Bennett, David A. McDonald, Alex Finch, Stuart Rennie, and Jessica E. Morse, "North Carolina Medical Student Views on Abortion," *North Carolina Medical Journal* 1, no. 79 (January 1, 2018): 16, https://doi.org/10.18043/ncm.79.1.14.

Numerous TRAP laws have been passed by the North Carolina General Assembly, minimizing access to abortions throughout the state.[9] Section 49(c) of NC Senate Bill 353 establishes that abortion clinics are subject to annual examination by the North Carolina Department of Health and Human Services (NCDHHS) to ensure they meet standards equating the "requirement[s] for the licensure of ambulatory surgical centers".[9] Worth noting is the decreased risk abortion procedures pose, as compared to carrying a pregnancy to term and giving birth.[10] Clinics that failed to produce infrastructure meeting surgical standards were forced to close their doors, producing a shortage throughout the state.[11] Within a single gubernatorial administration in 2013, 11 clinics were forced to close their doors. This statistic continued to decrease after abortion restrictions were quietly tucked into a motorcycle safety bill. By the end of the year, over 90% of counties in North Carolina were operating without an abortion provider.[12]

Providers recognize the increased geographical barrier that TRAP laws inevitably produce, as more and more clinics are forced to close rather than face the legal ramifications of noncompliance. These barriers result in decreased services overall, while also creating psycho-emotional burdens for patients.[13] Forced ultrasounds, a seventy-two hour waiting period, and mandated counseling are just

[9] Guttmacher Institute, "Interactive Map: US Abortion Policies and Access After Roe," Guttmacher Institute, last modified March 22, 2023, https://states.guttmacher.org/policies/north-carolina/abortion-policies.
[10] Elizabeth G. Raymond, Daniel Grossman, Mark A. Weaver, Stephanie Toti, and Beverly Winikoff, "Mortality of Induced Abortion, Other Outpatient Surgical Procedures and Common Activities in the United States," *Contraception (Stoneham)* 90, no. 5 (2014): 476–479.
[11] Planned Parenthood, "North Carolina Abortion Providers And Reproductive Justice Activists File Sweeping Litigation Challenging Multiple Abortion Restrictions," Planned Parenthood, last modified September 3, 2020, https://www.plannedparenthood.org/about-us/newsroom/press-releases/north-carolina-abortion-providers-and-reproductive-justice-activists-file-sweeping-litigation-challenging-multiple-abortion-restrictions-2.
[12] Planned Parenthood, "North Carolina Abortion Providers And Reproductive Justice Activists File Sweeping Litigation Challenging Multiple Abortion Restrictions."
[13] Rebecca J. Mercier, Mara Buchbinder, and Amy Bryant, "TRAP Laws and the Invisible Labor of US Abortion Providers," *Critical Public Health* 26, no. 1 (2016): 77–87.

a few examples of TRAP laws that affect patients and providers. Ultimately, this legislation is proposed to elongate both the act of seeking an abortion as well as the procedure itself.

Studies done on the broader North Carolinian population reflect the diversity of viewpoints, while painting a larger picture regarding the polarization of abortion politics. In her research, Dr. Judith Blake combines results from numerous sources: Gallup surveys from the late 1960s through 1977 and nationwide surveys conducted by the National Opinion Research Center (NORC) from 1972 to 1975. Based on these results, Blake recognizes a vast acceptance for abortion legality while identifying an unease for elective abortions. She notes that this disapproval can be explained through the wording of survey questions. "The elective-abortion justification was presented after those concerning the woman's health, the possible illegitimate status of the pregnancy, and financial stress. Instead of asking whether abortion should be legal, these studies asked if it would be 'all right'. This may have introduced a slight negative bias, since some people feel that, in a pluralistic society, many things should be legal even though given individuals do not consider them 'all right'".[14] Blake's understanding of abortion legality within a pluralistic society aligns with the majority opinion in the 1972 *Roe* decision.

Another study aimed at specifically analyzing trends and stability of public opinion on abortion legality around the mid 1970s found that a state-by-state analysis revealed an increased abortion support overall leading up to and immediately after the SCOTUS ruling. However, North Carolina was an outlier within the regression analysis. Those opposing elective abortions ("abortion on demand") rose by .06%. While seemingly miniscule, trends of abortion support in North

[14] Judith Blake, "The Supreme Court's Abortion Decisions and Public Opinion in the United States," *Population and Development Review* 3, no. 1/2 (1977): 45–62.

Carolina did deviate from the national norm.[15] Scholars Eric Uslaner and Ronald Weber go on to speculate that this slight opposition towards abortion may have made it more possible for the North Carolina General Assembly to pass TRAP laws. The *Roe* decision shifted the center of the abortion debate, prompting opponents to pursue new avenues of obstruction. Federal programs, like Medicare and Medicaid, were scrutinized for their role in funding abortions for poor women. Ultimately, "the fight to deny federal funds for abortions occupied a great deal of time…[effectively] stalling appropriations bills for the Department of Health, Education, and Welfare for months" (Uslaner and Weber, 1979, p. 1785). In accordance with this shift, the North Carolina General Assembly has taken numerous strides to cut off financial support for abortions since 1973. Such withholding of funds significantly impacts low-income individuals.

It is worth noting the increased presence of abortion restrictions following the 1972 *Roe* decision. TRAP laws were passed in many states that purposefully minimized access to abortions. Sponsors of these laws justified their legality by implying they assisted women in making their healthcare choices, despite having no evidence to corroborate their claims. In this way, TRAP laws clearly appeal to citizens who may feel a sense of unease towards elective abortions, but fully support therapeutic abortions. Undeniably, TRAP laws cause more harm than good, and North Carolina is no exception.

What is happening legislatively?

The right to privacy, as it relates to sexual relationships and reproductive health, has been judicially addressed numerous times prior to the 1972 *Roe* ruling. "As early as 1923, the U.S. Supreme Court ruled that the U.S. Constitution protects personal decisions regarding marriage and the family

[15] Eric M. Uslaner and Ronald E. Weber. "Public Support for Pro-Choice Abortion Policies in the Nation and States: Changes and Stability after the Roe and Doe Decisions." *Michigan Law Review* 77, no. 7 (1979): 1772–1789.

from governmental intrusion."[16] In 1965, SCOTUS upheld the right to use contraception for married couples, and extended that right to all people regardless of marital status nearly a decade later. "In its 1973 ruling in *Roe v. Wade*, the Court held that the Constitution's protections of privacy as a fundamental right encompass a woman's decision to have an abortion."

SCOTUS goes on to uphold federal protections for abortions, via the right to privacy between a woman and her doctor, through two additional court cases: *Planned Parenthood v. Casey* (1992) and *Whole Woman's Health v. Hellerstedt* (2016). Although these protections limited state governments from criminalizing abortion services, many local legislatures passed TRAP laws with the sole purpose of minimizing access to abortion procedures. This ultimately resulted in lack of access to a plethora of reproductive healthcare services.

Several states made their anti-abortion position known following the *Roe* ruling, North Carolina being one of them. The General Assembly immediately banned abortions following 20 weeks of gestation unless the procedure was carried out both (1) due to a medical emergency and (2) within a hospital setting. During the same time period, federal Medicaid funds were officially blocked from abortion coverage. The 1976 Hyde Amendment disallowed usage of Medicaid funds to assist low-income individuals with obtaining abortion services.[17] Over the next decade, NC lawmakers further restricted access to financial aid. By the 1990s, those eligible for state-funded financial assistance meet the following qualifications: the abortion must (1) take place within the first 112 days of gestation (roughly three and a half months) and (2) may only be performed in cases of

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[16] ACLU Foundation, "Undue Burdens: A History of North Carolina Abortion Restrictions," ACLU of North Carolina, last accessed April 2, 2023, https://www.acluofnorthcarolina.org/sites/default/files/field_documents/aclunc_undue_burdens_nc_abortion_restrictions_report_forprint.pdf.

[17] Planned Parenthood, "Hyde Amendment," Planned Parenthood Action Fund, last accessed April 2, 2023. https://www.plannedparenthoodaction.org/issues/abortion/federal-and-state-bans-and-restrictions-abortion/hyde-amendment.

"fetal abnormalities, rape, incest, when the pregnant individual's life is in danger, has a developmental disability, or is a minor."[18]

In the early 2000s, the NC General Assembly passed a law requiring parental consent for abortions if the person seeking an abortion is a minor. This restriction can only be bypassed in cases of medical emergency, or if the minor is granted permission through the court system. Additionally, lawmakers repealed the state abortion fund, effectively ending state-sponsored financial support for lower income individuals seeking abortions. The ACLU recognizes that this disproportionately affects "people of lower income, people of color, immigrants, transgender people, and gender nonconforming people to access a legal medical procedure".[17]

In 2013, the "Woman's Right to Know Act" passed and became official state law.[17] This piece entertains anti-abortion rhetoric that accuses clinics of lacking transparency and pursuing economic gain at the cost of women's health. The law enacts various measures all aimed at restricting abortion access. The act mandated a twenty-four-hour waiting period (including counseling and inaccurate medical data), added state-mandated counseling to the 1995 "parental consent law," required forced ultrasounds, and allowed individuals to bring lawsuits against providers they claimed violated any section of the act.

Two years later, the NC General Assembly further exacerbated abortion restrictions through the "Women's and Children's Protection Act."[17] This legislation increased the waiting period from twenty-four to seventy-two hours, required doctors to send in the ultrasounds of people who had abortions to the NCDHHS, outlawed the employment of minors at abortion clinics, and called on

[18] ACLU Foundation, "Undue Burdens: A History of North Carolina Abortion Restrictions," ACLU of North Carolina, last accessed April 2, 2023, https://www.acluofnorthcarolina.org/sites/default/files/field_documents/aclu-nc_undue_burdens_nc_abortion_restrictions_report_forprint.pdf.

the NCDHHS to provide annual reports on demographic and medical data of abortion seekers. An additional provision mandates that abortion clinics must undergo annual inspections by the NCDHHS and obtain transfer agreements with local hospitals.[17] All of these motions have been widely criticized by women's rights groups and reproductive healthcare providers as unnecessary at best, and purposefully obstructive at worst. Representatives from the Planned Parenthood Federation of America, SisterSong Women of Color Reproductive Justice Collective, the Center for Reproductive Rights, and the ACLU Reproductive Freedom Project have all released statements following the 2020 legal efforts to strike down abortion restrictions in North Carolina, citing those efforts as extremely debilitating to reproductive healthcare access throughout the state.[17] The abortion debate cycles around legislative action, legal debate, and public opinion.

Following the 2022 SCOTUS ruling in *Dobbs v. Jackson Women's Health Organization*, abortion is no longer federally protected under the recently disputed constitutional right to privacy. North Carolina felt the seismic aftershocks of this decision, as abortion providers and supporters organized to meet the rise in demand. Clinics reported an increase in out-of-state abortion seekers as local governments across the nation both reenacted pre-Roe bans and created new restrictions as well.[19] In August, US District Judge William Osteen Jr. reinstated North Carolina's ban on abortions after twenty weeks of gestation; this legislation predates scientifically-recognized fetal viability by several weeks.[20] As of now, North Carolina is considered a safe haven for abortion seekers, but conservative politicians have publicly asserted their intentions to criminalize the procedure if the outcomes of the midterm elections allow them the opportunity to do so.[21]

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[19] Kate Kelly, "How the Fall of Roe Turned North Carolina into an Abortion Destination," The New York Times, last modified March 4, 2023, https://www.nytimes.com/2023/03/04/us/abortion-north-carolina.html.
[20] G. H. Breborowicz, "Limits of fetal viability and its enhancement," *Early Pregnancy* 5, no. 1 (2001): 49-50.
[21] Rachel Crumpler, "How Long Will North Carolina Remain an Abortion 'Safe Haven'?," North Carolina Health News, last modified August 30, 2022,

What are the effects of this legislation?

Extensive research affirms that abortions are particularly safe medical procedures, especially when compared to full-term pregnancies.[22] The abortion-related mortality rate (AMR) stands at approximately 0.7 per 100,000 abortions; well below the calculated rates of plastic surgery and dental procedures. The CDC reported the 2019 maternal mortality rate (MMR) as 20.1 deaths per 100,000 live births.[23] Additionally, research confirms that MMRs are much higher for women of color due to healthcare disparities.[24] Not only is this statistically far higher than the AMR, but the maternal mortality rate continues to trend higher while abortion-related rates remain stagnant.[25]

Expansive literature clearly establishes the safety of abortion procedures, and notes that harm is deduced from carrying unwanted pregnancies.[26] The *Turnaway Study*, a longitudinal inquiry analyzing the effects of unwanted pregnancies on women's lives and the self-reported health statuses of women who obtained an abortion, found that unwanted pregnancies served as a greater health risk than abortion procedures. Unwanted pregnancies caused "abnormal bleeding, anemia, blood transfusion, eclampsia, extended postoperative wound healing, fractured pelvis, hypokalemia, infection, postpartum hemorrhage, retained placenta" and other potentially life-threatening complications reported by women.[27] Whereas women who obtained abortions reported significantly

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https://www.northcarolinahealthnews.org/2022/08/08/how-long-will-north-carolina-remain-an-abortion-access-point/.

[22] Raymond, "Mortality of Induced Abortion, Other Outpatient Surgical Procedures and Common Activities in the United States," 476–479.

[23] Donna L. Hoyert, "Maternal Mortality Rates in the United States," *NCHS Health E-Stats* (2019).

[24] Bani Saluja and Zenobia Bryant, "How Implicit Bias Contributes to Racial Disparities in Maternal Morbidity and Mortality in the United States," *Journal of Women's Health* 30, no. 2 (2021): 270–73, https://doi.org/10.1089/jwh.2020.8874.

[25] William M. Callaghan, "Overview of Maternal Mortality in the United States," *Seminars in Perinatology* 36, no. 1 (2012): 2–6, https://doi.org/10.1053/j.semperi.2011.09.002.

[26] Sharon Cameron, "Recent Advances in Improving the Effectiveness and Reducing the Complications of Abortion," *F1000Research* 7 (2018): 1881. https://doi.org/10.12688/f1000research.15441.1.

[27] Caitlin Gerdts, Loren Dobkin, Diana Greene Foster, and Eleanor Bimla Schwarz, "Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth after an Unwanted Pregnancy," *Women's Health Issues* 26, no. 1 (2016): 55–59. https://doi.org/10.1016/j.whi.2015.10.001.

fewer adverse health effects. These results reveal the heightened medical risks associated with unwanted pregnancies and reinforce the relative safety of abortions.

TRAP laws lead to potentially severe health consequences and increased restrictions on abortion access. Therefore, legislation that purposefully obstructs abortion providers and burdens patients is concretely prioritizing political action over reproductive healthcare and the well-being of the general public. Abortion procedures are not significant health risks. Rather, adverse psychological and physical conditions abound when abortion care is restricted.

Who is funding decisions on abortion legality?

According to numerous surveys conducted by Gallup Polls, nationwide public support for pro-abortion policies is on the rise; abortion has reached historically unprecedented levels of acceptance. However, despite this progressive tolerance, state legislatures continue to restrict abortion access. Based on analyses of public opinion and legislative action, it is clear that there is a disconnect between the two regarding abortion. The continued influence of the "religious right" on the present-day political field serves as an explanation for this disconnect.[28] Rather than acknowledging public discourse on abortion perspectives, local representatives are more apt to engage in the political divide produced by anti-abortion advocates because it is a smoother path to financial gain and career solidification.

The campaign finance records from North Carolina's current state senators, Richard Burr and Thom Tillis, reveal that their political careers are well-funded by Republican elites. Within the 2022 congressional cycle, Burr received nearly $200,000 in financial assistance from his top two

[28] Fea, "Evangelicalism and Politics."

donors: leadership PACs and the BGR Group.[29] Although the latter claims to operate as a bipartisan lobbying firm, the individuals they represent presumably invest in conservative politics. Additionally, the numerous leadership PACs backing Burr are politically partisan in nature. The same financial analysis of Tillis' records reveal his top donors giving close to seven million over the time period spanning from 2017 to 2022. Over two million dollars worth of these funds were derived directly from organizations and individuals that identify as conservative or Republican.[30] This demonstrates the profitability of appealing to partisan politics. Shortly before the *Dobbs* decision dropped, the Senate voted on a bill to codify abortion rights on a federal scale; both Burr and Tillis voted against this measure - for the second time.

Financial motivations drive the political polarization of democratic governance. A clear example of financially-driven political action can be seen through the work of Love Life in North Carolina. The organization originated in Charlotte, NC, and now has affiliated branches throughout the country. Love Life's mission is to work towards the complete eradication of abortion procedures. Within the 2020 fiscal year, Love Life received over one million dollars in donations and total revenue; this money goes towards salaries and political lobbying.[31] Love Life is one example of the religiously-affiliated (typically evangelical Christian) organizations that work to influence the political realm by pushing anti-abortion legislation. In this way, local legislation is more primed to reflect the political views of extreme minorities (see: the religious right) rather than being all-encompassing of the total population.

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[29] "Sen. Richard Burr - Campaign Finance Summary," OpenSecrets, last accessed April 2, 2023, https://www.opensecrets.org/members-of-congress/richard-burr/summary?cid=N00002221.
[30] "Sen. Thom Tillis - Campaign Finance Summary," OpenSecrets, last accessed April 2, 2023, https://www.opensecrets.org/members-of-congress/thom-tillis/summary?cid=N00035492.
[31] "Love LIFE/Global Impact Ministries," Cause IQ, last accessed April 2, 2023, https://www.causeiq.com/organizations/love-life,811486957/.

This influence has real-world effects. There are currently 14 medical clinics that offer abortion services in North Carolina; in contrast, there are over 100 Crisis Pregnancy Centers, or CPCs.[32] These centers are listed as religious institutions, and are therefore completely tax-exempt. CPCs are not run by medical personnel, and are rarely staffed by anyone with any degree of medical training. These centers do not offer abortion services, but intentionally do not make this clear through their advertising material. CPCs are backed by organizations like Love Life in order to confuse people seeking abortions, and aim to purposefully disrupt the process of obtaining an abortion.

Are we all on the same page?

As an increasing number of states pass nearly all-encompassing abortion bans, it has become clear that there is a disconnect between public opinion and government action regarding abortion legality. Abortion restrictions and pro-abortion attitudes amongst the public exist within a positive regression line. Although the public is asking more nuanced questions about abortion, political officials seem content to base their legislative moves on partisan politics and personal financial interests. This is true of politicians in North Carolina. Rather than acknowledging the multiplicities of abortion perspectives in the state and choosing to engage in meaningful discourse, local politicians actively choose to reap the benefits of conservative lobbying and better their professional careers through conservative allyship and halfhearted political performances. TRAP laws definitively hinder abortion access, but retain public approval through deceptive messaging. This legislation negatively impacts women's health, but linguistically implies otherwise. North Carolina is a

[32] "State Facts About Abortion: North Carolina," Guttmacher Institute, last accessed April 2, 2023, https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-north-carolina.

microcosm of abortion politics, reflecting how state government action can negate the people's will and well-being in favor of feeding a polarized political system.

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