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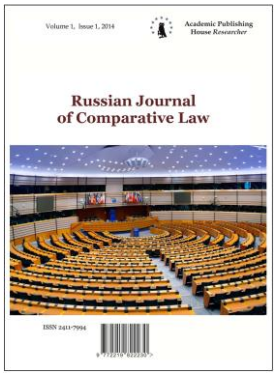

Evolution of Legal Topics, Rights and Obligations in the United States

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Abstract

What new constitutional rights does the American Legal system have to offer? The United States Constitution is a document that continues to be interpreted every year. The Supreme Court hears recent cases with the purpose of interpreting the meaning of the Constitution. Since the creation of the Supreme Court, the Constitution has been analyzed in different ways – some interpretations lasting decades and some amendments going through changes depending on the different ideologies of the Justices on the Court.

This article discusses some of the rights established by the Supreme Court from 2016 to 2019 and provides the background as to what led and influenced the evolution of such rights. Some of the most recent evolutions that have been decided by the Supreme Court include topics on: 1) travel restrictions, 2) digital privacy, 3) refusing services based on religious beliefs, 4) limiting dissemination on information about abortion, 5) double jeopardy, 6) detention of certain noncitizens with criminal records, 7) limiting voting rolls, 8) gerrymandering, and 9) affirmative action plans in university decisions.

Keywords: travel restrictions, digital privacy, gerrymandering, limiting voting rolls, detention of noncitizens with criminal records, refusing services based on religious beliefs, abortion, double jeopardy, affirmative action plans in university admissions.

1. Introduction

Individual rights play a major role in modern day society. Individual rights in the United States grant U.S. citizens the freedom and liberties necessary to pursue and live their lives without any interference from the government or other individuals (Rights or Individual Rights). Without individual rights, true American democracy would not exist and individuals would be deprived of social equality. The United States, through its Constitution, recognizes an extensive variety of individual rights, especially through its Bill of Rights (Nanzer). Nonetheless, the Constitution continues to be construed and new rights keep getting interpreted for the most part by the Supreme Court and some by the lower level federal courts especially the courts of appeals. Even though most new rights are derived from preexisting rights, these new rights continue the development of American society.

There are two general categories of rights that are recognized in the United States: natural and non-natural rights. Under the category of natural rights, there is a right to life, a right to liberty and a right to property. Further, there are many other recognized rights that derive from these previously mentioned natural rights. For example, the right against deprivation of one's life and the right against suffering abuse and injury are derived from the right to life. Another example comes

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from the right to liberty. This natural right led to the incorporation of the Bill of Rights, which includes the right to free expression and the right to bear arms. Finally, the right to reside in a good home is derived from the right to property. On the other hand, non-natural rights are divided into two general categories: rights of the person and citizenship rights. Non-natural rights of the person include the right to contract and the right to due process of the laws for those individuals who are subjected to criminal prosecution. Among other rights, non-natural citizenship rights include the right to vote and to be elected, and the right to the enforcement of these rights. Furthermore, in the world, there are universal rights adopted by the United Nations (UN), which are adopted internationally through treaties, conventions and declarations. These universal rights, otherwise known as human rights, were recognized by the UN for the first time in 1952 in the Universal Declaration of Human of Rights. There are four main principle rights adopted by the UN through the Universal Declaration of Human Rights. These principles include: 1) The right to freedom of speech and expression, 2) The right to freedom of religion, 3) The right to obtain economic security for well-being, and 4) The right to be free from fear or apprehension.

Following, this article will focus and analyze the new legal evolutions established by the Supreme Court of the United States of America between 2016 and 2019. More specifically, the article will address: 1) travel restrictions, 2) digital privacy, 3) refusing services based on religious beliefs, 4) limiting dissemination on information about abortion, 5) double jeopardy, 6) detention of certain noncitizens with criminal records, 7) limiting voting rolls, 8) gerrymandering, and 9) affirmative action plans in university decisions.

2. Materials and methods

The principal sources for this article writing are as follows:

(1) Crucial legal right developments shaped by the decisions of the Supreme Court of the United States of America,

(2) the Constitution of the United States of America, which has been amended and interpreted throughout the years by U.S. Supreme Court decisions, and

(3) the Universal Declaration of Human Rights, which has influenced some of the rights incorporated into the Constitution of the United States of America.

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3. Discussion

3.1. Travel Restrictions

On January 27, 2017, President Donald Trump signed Executive Order No. 13769, which suspended entry for 90 days of foreign nationals from seven countries, banned entry of all refugees for 120 days, and banned Syrian refugees entry for an indefinite amount of time. The seven countries affected by this order were Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen (Exec. Order No. 13769). The executive order was found to be sufficiently justified by national-security concerns to survive rational-basis review in *Trump v. Hawaii* : "…I determined that, for a brief period of 90 days, while existing screening and vetting procedures were under review, the entry into the United States of certain aliens from the seven identified countries – each afflicted by terrorism in a manner that compromised the ability of the United States to rely on normal decision making procedures about travel to the United States to rely on normal decision-making procedures about travel to the United States—would be detrimental to the interests of the United States." (Executive Order 13769, Protecting the Nation from Terrorist Entry Into the United States, 82 FR 8977 (Jan. 27, 2017)).

The executive order reasoned these seven countries were identified because Congress had restricted their use of the Visa Waiver Program (Iraq and Syria), the Secretary of State identified them as a state sponsor of terrorism (Iran, Syria, and Sudan), or the Secretary of Homeland Security designated them as countries of concern (Libya, Somalia, and Yemen).

The purpose of the Proclamation was to improve the vetting procedures of certain countries with deficiencies in the information they provide the United States, and assess whether citizens of that country were a public safety threat. The Department of Homeland Security conducted a comprehensive evaluation of every country's compliance with the information and risk assessment

baseline. This evaluation applied a system with three components to all countries to determine the sufficiency of their vetting procedures.

1. "identity-management information," which focuses on whether a foreign government ensures the integrity of travel documents by issuing electronic passport, reporting lost or stolen passports, and making available additional identity related information.
2. Consideration of a country's disclosure of a person's criminal history and suspected terrorist links, provides travel document exemplars, and facilitates the receipt of information about airline passengers and crews traveling to the United States to the U.S. Government.
3. Analysis of several factors such as national security risk, including whether the country is known or potentially a terrorist safe haven, and declines to receive returning nationals with final orders of removal from the United States.

The Department of Homeland Security (DHS) identified countries through their three-component system, and then conducted diplomatic efforts for fifty days to encourage the foreign government to improve their practices (Trump v. Hawaii). After the fifty days, DHS determined the vetting procedures were still not sufficient. Therefore, it was recommended to the President to limit travel of their citizens until more information could be obtained.

The Executive Order caused outrage by the public, who called it the Muslim Ban, since the majority of the countries on the list are predominantly Muslim countries (Trump's Executive order..., 2017; Diamond, 2017; Thrush, 2017). Ever since 9/11 when the Twin Towers were bombed, there has been anti-Muslim sentiments in the United States and a large misconception of terrorism being a tenant of the religion (Jetter). This Executive Order highlighted the continued comparison of Muslim people with terrorists, even though the order reasons that was not the intention (Exec. Order No. 13769). Additionally, U.S. citizens believed it violated the Establishment clause of the U.S. Constitution by banning majority Muslim countries. he values of the Establishment Clause are incorporated into the INA.

"...no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." (INA 1152(a)(1)(A)). Moreover, President Trump shared throughout his presidential campaign his desire to limit Muslim immigration and belief that Muslim are a national security risk. President Trump published, "Statement on Preventing Muslim Immigration," which called for a total ban on the entry of Muslim immigrants. These views did not change during his presidency, as he continued to make comments with expressing the same beliefs, and sharing anti-Muslim videos on social media (Trump v. Hawaii).

Immigration law in the United States is governed by the Immigration and Nationality Act (INA) (Immigration and Nationality Act, 2019). The INA enables the President to suspend the entry of all immigrants or any class of immigrants whenever the President finds that the immigrants' entry would be detrimental to the interests of the United States (8 U.S.C. § 1182(f)).

"Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." (8 U.S.C. 1182(f)).

Millions of Muslims were banned from entering the United States once the Proclamation went into effect. This led to people losing jobs, unable to continue schooling at U.S. schools, unable to visit with family members, and other effective legal prejudice reasons despite having a visa and entitlement to one (Waheed, 2018). Some of those hurt by the Proclamation were the state of Hawaii – as operator of a state university, individual citizens or lawful permanent residents with relatives applying for immigrant or nonimmigrant visas, and a nonprofit organization that operated a mosque in Hawaii. These groups came together and filed suit with the U.S. District Court for the District of Hawaii. The District Court granted a nationwide preliminary injunction barring enforcement of the restriction. The Ninth Circuit Court of Appeals affirmed the District Court's decision (Hawaii v. Trump).

In Trump v. Hawaii, 138 S. Ct. 2392, 2018, the Supreme Court held President Trump correctly exercised his authority to deny entry to immigrants or classes of immigrants if their entry would be detrimental to U.S. interests. The issues addressed by the Supreme Court were

(i) whether the President had the authority to under the INA to issue the Proclamation, and (ii) whether the Proclamation violated the Establishment Clause of the First Amendment.

The Supreme Court held 8 U.S.C. 1182(f) grants President Trump the authority to suspend the entry of immigrants when found to be detrimental to the interest of the United States. The Plaintiffs argued the president's power under 8 U.S.C. 1182(f) was limited to a discrete group of immigrants engaged in harmful conduct, and findings should include sufficient detail to enable judicial review. The Court reasoned the plain language of 8 U.S.C. 1182(f) granted the President the broad discretionary power rather than a residual power to temporarily stop the entrance of a small number of immigrants. The only requirement for 8 U.S.C. 1182(f) to be invoked is for the President to find that the entrance of a certain group of immigrants would be detrimental to the United States. President Trump exercised the power to limit the entry immigrants after a thorough review, which included the cooperation of several government agencies, such as the Department of State and Department of Homeland Security. The Proclamation was then issued applying the findings of this multi-agency review and diplomatic efforts with each individual country listed in the Proclamation. Additionally, the Court reasoned a President's methods on addressing national security is not relevant to the scope of their authority, and their measures should not be thoroughly explained for a court to determine whether the conclusion is valid. Lastly, the Court reasoned that the Proclamation's restrictions were only conditional and would remain in force only as long as necessary to address the information inadequacies and risks with the identified countries.

The Court held the Proclamation was facially neutral, and therefore, did not violate the Establishment Clause of the First Amendment. This means the Proclamation denies the entry to citizens of certain countries; it does not deny the entry to immigrants who practice a certain religion. Thus, the Proclamation is facially neutral because religion is not a factor for entry. The Court discussed what standard of review should be applied in this situation, and revisited cases where the denial of a visa affected a U.S. citizen (Trump v. Hawaii). Immigrants do not have a constitutional right to enter, however, judicial inquiry is involved when the denial of a visa burdens the constitutional rights of a U.S. citizen. The Supreme Court applied the standard of review established in *Kleindienst v. Mandel*, where it was discussed whether the denial of a visa infringed on a U.S. citizen's constitutional right to receive information. The Court will not analyze the President's use of discretion nor ask for a justification when the law is facially legitimate and has a bona fide reason (Kleindienst v. Mandel). However, the Court decided to apply rational basis review. Rational basis considers whether the policy is rationally related to the government's objective, which in this case, would be the vetting process. The Court held the Proclamation met the rational basis review, and the Proclamation did not merit to be struck down because it did not have the desire to harm a politically unpopular group (Trump v. Hawaii compare with Department of Agriculture v. Moreno).

Since the ruling in this case, the Trump administration has continued to sign Executive Orders that affect Muslims and severely affect their entrance to the United States (Exec. Order No. 13780; Proclamation No. 9645, 2017; Proclamation No. 9983, 2020). For example, an Executive Order was issued on January 31, 2020. This Proclamation expands Executive Order 9645 by adding six additional countries (Presidential Proclamation 9645…) These orders continue to be met with a lot of opposition (Doe et al. v. Trump).

3.2. Digital Privacy

Cell phones have increasingly become a part of our daily life (Mobile Fact Sheet, 2019). As cell phone technology improves, the more information is gathered on the owner in order to meet its owner's needs, whether it is the shortest route to a specified location or is there a place nearby that sells a certain item. The gathering of information by cell phone network providers has led to many questions regarding how this information can or should be used, who should have access to this information, and many others. Internet service providers store data on the location, date, and time of the usage, among other things. The Fourth Amendment has become a central part of the discussion when the Government is wanting access to the owner's cell phone information (What Information Does…, 2020).

The Fourth Amendment of the United States Constitution prohibits unreasonable search and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon

probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (US CONST. amend IV).

The purpose of the Fourth Amendment is for people to be free from arbitrary invasions by the government (Camara v. Municipal Court...). The Fourth Amendment was created as a response to unrestrained searches for evidence, as the British did before the American Revolution (Riley v. California). Historically, the Fourth Amendment had applied to cases where there was physical trespass (United States v. Jones). However, with the advancement of technology, a trespass now encompasses more than physical trespass. The Fourth Amendment is binding on the states by virtue of the Fourteenth amendment's due process requirement (Wolf v. Colorado).

A search involves a visual observation or physical intrusion by the government, which infringes upon a person's reasonable expectation of privacy or property (Kyllo v. United States). A reasonable expectation of privacy requires the person to exhibit an actual expectation of privacy, and that the expectation be recognized as reasonable by society. This privacy interest is dependent on the person's behavior (e.g., talking loudly in a public place), and the social context (e.g., using a telephone booth to conduct a phone conversation) (Katz v. United States).

A seizure under the Fourth Amendment requires some meaningful interference with an individual's liberty (an arrest) or possessory interest (a seizure) (Michigan v. Chesternut). For an item to be seized, the police must have a warrant. A warrant requires that it is (i) issued by a neutral and detached magistrate; (ii) based on probable cause established from facts submitted to the magistrate by a government agent upon oath or affirmation and (iii) particularly describe the place to be searched and the items to be seized (United States v. Ventresca). A warrant will be issued only if there is probable cause to believe that sizable evidence will be found at the premises or person to be searched (Carroll v. United States). The officers requesting the warrant must submit to the magistrate an affidavit containing sufficient facts and circumstances to enable the magistrate to make an independent evaluation of probable cause. In other words, an officer cannot present a conclusion for probable cause to exist (United States v. Ventresca).

Mr. Timothy Carpenter was charged with robbery and carrying a firearm during a federal crime of violence after the government identified him to be at robbery locations using his cell phone data. In 2011, the Federal Bureau of Investigations (FBI) believed Mr. Carpenter was a part of robbing several Radio Shack and T-Mobile stores. The police arrested one of Mr. Carpenter's accomplices who confessed to having robbed nine different stores throughout a period of four months. The accomplice provided cell phone numbers of others he worked with during the robberies, including Mr. Carpenter's (Carpenter v. United States). The FBI applied for a court order under the Stored Communications Act to obtain Mr. Carpenter's wireless carrier cell-site records. The order was granted and the FBI obtained information from Mr. Carpenter's cell phone providers: MetroPCS and Sprint. Every time Mr. Carpenter used the internet on his phone, MetroPCS and Sprint, respectively, saved the location, date and time of where he was accessing the internet. The FBI was able to track Mr. Carpenter's movement for 129 days during a period of four months and obtained a total of 12,898 location points. This information led to confirming Mr. Carpenter's presence at the scenes of the robberies. Mr. Carpenter argues tracking his location through wireless cell-site records is a violation of the Fourth Amendment as an unlawful search.

In Carpenter v. United States, 138 S. Ct. 2206, 2018, the Supreme Court held the warrantless seizure and search of cell phone records revealing the location and movement of a cell phone is a violation of the Fourth Amendment. The issue of the case was whether the government conducts a search, as defined by the Fourth Amendment, when it accesses historical cellphone records that provide information of the person's movement. The Court addressed (i) a person's expectation of privacy in their physical location and movements, and (ii) what information a person keeps to themselves and what is shared with others.

There is no privacy to physical location and movements when driving a car. In *Knotts*, the government placed a beeper in a container before it was purchased by one of Mr. Knotts conspirators. The government tracked the movement of the car where the container was placed. The Court reasoned there is no expectation of privacy because a vehicle's movement can be tracked by anyone who sees it. The Court held tracking one's movement with a beeper was not a violation of the Fourth Amendment. However, if the technology used is more invasive and for a long period of time, then it is a seizure for purposes of the Fourth Amendment. *United States v. Jones* involved the police placing a GPS on Mr. Jones' car and remotely tracking his movement. The Court

reasoned it was a seizure because the government allowed to track every single movement of Mr. Jones for a long period of time, infringing on a person's reasonable expectation of privacy.

A person does not have a reasonable expectation of privacy over information provided to others, even if believed to be used for a limited purpose. Consequently, the government may obtain information about a person without violating the Fourth Amendment. The Court reasoned that information shared to another is not a confidential communication, and if it is a document, there is no ownership or possession of the document. Therefore, there is no seizure under the Fourth Amendment. One takes a risk when verbally sharing information or providing documents. This principle has also been applied to the use of pen register, an instrument that registers the numbers dialed on a phone. The Court reasoned there is no expectation of privacy for the numbers one dials.

Here, the Court decided not to apply *Smith*, even though the wireless cell provider is a third party and Mr. Carpenter provided his information to the third party. Cell phone location records have a unique nature, which possess an expectation of privacy. The Court held an individual maintains a legitimate expectation of privacy in the record of their physical movements as captured by wireless carrier cell-site records (ECPA, 1986).

3.3. Refusing Services Based On Religious Beliefs

Same sex marriage was previously restricted through federal and state law (A Brief History of Civil Rights in the United States). The Defense of Marriage Act (DOMA) allowed states to only recognize marriages from other states that were between a man and a woman (Defense of Marriage Act, 1996). However, the movement to obtain marriage rights for same-sex couples expanded in the early 2000s, and by 2014, seventy percent of U.S. states recognized same sex marriages (Same-sex Marriage, State by State, 2015). In 2015, the Supreme Court held the fundamental right to marry extended to same-sex couples (Obergefell v. Hodges). Despite this decision, there are still people who oppose same sex marriage based on their religious beliefs.

The freedom of speech protects the free flow of ideas—an important function in a democracy. Protection for having differing views nationwide is granted by the First Amendment. The First Amendment protects the freedom of speech, religion, and the press.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

I amend.

The freedom of speech includes not only the right to speak, but also the right to refrain from speaking or endorsing beliefs with which one does not agree. The government may not compel an individual personally to express a message of which he or she disagrees (U.S. CONST. amend. I).

Charlie Craig and David Mullins, a same sex couple, were in the process of planning their wedding in July 2012. They went to the cake shop, Masterpiece Cakeshop in Lakewood, Colorado, to order their wedding cake. Jack Philips, the owner of Masterpiece Cakeshop, does not support gay marriage based on his religious beliefs. Mr. Philips refused to bake a wedding cake for the couple based on his views. Mr. Phillips is a devout Christian. At the time this happened, the state of Colorado did not recognize same sex marriage, and the couple planned to get married in a state that did recognize same sex marriage.

The couple filed a complaint with the Colorado Civil Rights Commission alleging discrimination under the Colorado Anti-Discrimination Act. The Commission held the cakeshop's actions were a violation of the Anti-Discrimination Act. Mr. Philips argued that being required to create a cake for a same-sex couple would violate his First Amendment right to free speech because he would be forced by the government to express a message that he disagreed with. Additionally, Mr. Philips argued that being required to create a cake for same-sex weddings would violate his right to the free exercise of religion, also protected by the First Amendment. Mr. Philips appealed his case all the way to the Supreme Court. The Supreme Court was presented with the issue of whether the order violated the U.S. Constitution.

In Masterpiece Cakeshop v. Colorado Civil Rights Commission, 584 S.Ct. 1719, 2018, the Supreme Court held objections to same-sex marriage is a protected view by the First Amendment. One's protected views cannot be used against them in disapproving of their decision making; therefore, one is free to have their own opinion.

Gay persons should be treated with dignity and worth, and in some instances, protect the exercise of their civil rights. However, opposing views of same sex marriage are protected views and may also be protected speech. The Court's discussion involved (i) does the state and its government entities have the authority to protect gay persons who are, or wish to be married, but face discrimination when they seek goods or service, and (ii) the right for all people to exercise the fundamental freedom under the First Amendment.

While religious and philosophical objections to gay marriage are protected under the First Amendment, it is a general rule that such objections do not allow business owners and other actors of the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law. The Court reasoned Mr. Philips activity was more than just the sale of goods; Mr. Philips would use his artistic skills that make an expressive statement when making the cake. This artistic expression formed an important component in Phillip's religious beliefs, which had to be applied in a neutral manner under a Colorado anti-discrimination statute. The Court reasoned Mr. Philips was justified for his actions in denying to make a cake for the couple. At the time, same sex marriage was illegal in Colorado, and Mr. Philips cake would have promoted illegal activity. Additionally, also at the time, Colorado law allowed storekeepers to decline to crate specific messages they considered offensive.

The Court held the Colorado Commission's treatment against Mr. Philips violated the state's duty under the First Amendment to not base laws on hostility to a certain viewpoint. The government cannot impose regulations that are hostile to the religious beliefs of affected citizens, and act in a manner that passes judgment upon a specific religious belief. The Free Exercise clause of the First Amendment bars even subtle departures from neutrality. The seven member Commission conducted several meetings open to the public and on record. Commissioners made comments implying that religious beliefs are not entirely welcome in the state's business community, and business owners must compromise their religious beliefs in order to conduct business. Laws and regulations must be viewpoint neutral, and the commissioners actions showed the regulation was meant to protect some and not all (Masterpiece Cakeshop…).

Since the decision in this case, other courts have held that business owners may discriminate based on their religious beliefs (Brush & Nib Studio v. City of Phoenix). Business owners can use religious beliefs to deny service to certain customers (Ripple Effect of the Supreme…, 2018).

3.4. A State Limiting Dissemination Of Information On Abortion

Abortion has been a political and heavily litigated subject in the United States. In 1973, the Supreme Court ruled pregnant women have the liberty to choose whether to have an abortion without excessive government restrictions. State laws have placed restrictions on abortions, from what information must be provided, waiting periods before obtaining an abortion, and the stage of the pregnancy when the abortion can be had (Roe v. Wade).

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

I amend.

During the last decades, Crisis Pregnancy Centers or CPCs have become more common throughout the United States. In an effort to prevent CPCs from disseminating false reproductive health information, several states have passed laws trying to regulate them. When an individual types "pregnant," "abortion," "clinic," and any similar keyword on an internet search engine, the results of the search will show the websites of Crisis Pregnancy Centers. Crisis Pregnancy Centers provide minimal information and limited services to women seeking help with an unintended pregnancy. These centers are commonly staffed by volunteers that are committed to Christian beliefs with no medical background. CPCs advertise to women who are pregnant or think they are pregnant. Most CPCs are unlicensed and do not have individuals certified in medicine, however, they often portray themselves as a legitimate medical facility offering reproductive services (Duane, 2013).

When a state government attempts to regulate speech—which is protected by the First Amendment–courts will weigh the importance of the right to free speech versus the interests or policies that the law is meant to serve. The speech being restricted by the regulation at issue is analyzed in two different categories: (i) content-based speech and (ii) content-neutral speech (Ward v. Rock Against Racism).

A content-based regulation forbids communication of a certain idea. It is presumptively unconstitutional for the government to place a burden on speech because of its content. Content-based regulations are subject to strict scrutiny and are less likely to be upheld by the court. To justify a content-based regulation, the government must show that the regulation is necessary to achieve a compelling state interest and is narrowly drawn to achieve that end.

Content-neutral regulations are subject to intermediate scrutiny. The regulation will be upheld if the government can show that it advances an important interest unrelated to the suppression of speech and does not burden substantially more speech than necessary or is narrowly tailored to further those interests (Reed v. Town of Gilbert, Ariz).

In 2015, California passed the California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (FACT) in 2015. The FACT Act imposed a two-notice requirement on facilities that provide pregnancy-related services—one for licensed facilities and one for unlicensed facilities. The Act required licensed pregnancy-related clinics to disseminate a notice stating the existence of publicly funded family-planning services, including contraception and abortion. The Act also requires that unlicensed clinics disseminate a notice stating that they are not licensed by the state of California.

The first notice requirement applied to licensed facilities, and in order to fall under this category, a clinic had to be a licensed primary care, a specialty clinic or qualify as an intermittent clinic under California law. In addition, two of the following six requirements had to be met:

(1) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women;

(2) the facility provides, or offers counseling about, contraception or contraceptive methods;

(3) the facility offers pregnancy testing or pregnancy diagnosis;

(4) the facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling;

(5) the facility offers abortion services;

(6) the facility has staff or volunteers who collect health information from the clients.

The FACT Act required licensed facilities to disclose a government-drafted notice on site stating that "*California has public programs that provide immediate free or low-cost access to comprehensive family planning services, including all FDA-approved methods of contraception, prenatal care, and abortion eligible for women. To determine whether you qualify, contact the county social services office at [insert the telephone number].*" Furthermore, the notice had to be in English and any additional languages identified by state law, posted in the waiting room, printed and distributed to all clients, or provided digitally at check-in.

The second notice requirement of the Act applied to unlicensed facilities, which meant that the facility was not licensed by the State, did not have a licensed medical provider on staff or under contract, and did not have the primary purpose of providing pregnancy-related services. Furthermore, an unlicensed facility had to satisfy two of the following four requirements: (1) the facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women; (2) the facility offers pregnancy testing or pregnancy diagnosis; (3) the facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling; (4) the facility has staff or volunteers who collect health information from clients. The Act required facilities to provide a government-drafted notice stating "this facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services." The notice had to be shown in all advertising materials and posted conspicuously at the entrance of the facility and at least in one waiting area.

California passed this act for the purpose of regulating crisis pregnancy centers. These centers offer a limited range of free pregnancy options, counseling, and other services to individuals that visit the center. There are nearly 200 licensed and unlicensed crisis pregnancy centers in California. The centers have discouraged and prevented women from obtaining abortions. In addition to these centers, the National Institute of Family and Life Advocates (NIFLA) is an organization with the stated goal of opposing abortion (Nat'l Inst. of Family & Life Advocates v. Becerra). NIFLA's mission is to stand up for unborn children through their action of defending pro-life centers, such as CPCs, from unconstitutional laws.

In *National Institute of Family and Life Advocates v. Becerra*, the Supreme Court held the Act was a content-based regulation of speech, and was unconstitutional because the notice requirements unduly burdened speech. Clinics were required by the Act to provide a government-drafted script about the availability of state sponsored services, including abortion. Organizations, such as the National Institute of Family and Life Advocates is an organization who opposes abortion. This organization, as well as others, would alter the script and dissuade women from using the services listed in the script. It is a violation of freedom of speech to not allow organizations to express their views (NIFLA).

The First Amendment prohibits laws that abridge freedom of speech. However, content-based or content-neutral regulations can be applied (U.S. CONST. amend. I). Content-based regulations are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. This standard shows the fundamental principle that governments do not have the power to restrict expression because of its message, ideas, subject matter or content. The notice requirement for licensed facilities by the FACT Act was a content-based regulation of speech making it subject to strict scrutiny. Licensed clinics were being required to give a government-drafted message about the availability of state-sponsored services, along with contact information on how to obtain them because California wanted to provide low-income women with information about state sponsored services. However, this reason did not make the regulation justifiable because it was not narrowly tailored to serve a compelling state interest. California's goal to educate low-income women about its abortion services was underinclusive. The notice only applied to facilities which primary purpose was to provide family planning or pregnancy-related services that provide two of six categories of specified services. Other facilities or clinics which serve another primary purpose or that provide only one category of those services, happen to serve low-income women and could educate them about the services the state can provide. California has almost one thousand community clinics that serve more than five million patients. However, most of those clinics were excluded from the licensed notice requirement without explanation. This raised a serious doubt about whether the government of California was authentically seeking to achieve the interest mentioned. Rather than achieving that interest, California looked like it was targeting a particular speaker or type of speech.

As for the second notice for unlicensed facilities, the state of California feared that women would seek the services of such facilities unaware of the fact that the facilities are not licensed under California law. In order for the notice requirement for unlicensed facilities to be upheld, the disclosure could not be unjustified or unduly burdensome. According to the Court, a disclosure has to remedy a harm that is potentially real and not just hypothetical and no broader than reasonably necessary. In this case, California had the burden of proving that the unlicensed notice was not unjustified or unduly burdensome, which they did not achieve. California failed to demonstrate that the unlicensed notice was more than just hypothetical. The state of California's only justification for the notice was to ensure that pregnant women in California know when they are getting medical care from professionals. California did not provide any evidence which could prove that pregnant women do not already know that the facilities are staffed by unlicensed medical professionals.

The services that provoked the creation of the notice requirement for unlicensed facilities can be practiced without having a medical license. Even if California had presented a non-hypothetical justification for the unlicensed notice, the Act unduly burdened protected speech. The requirement was deemed unduly burdensome for the reason that it required a twenty-nine word government issued statement on every print and digital advertising materials by an unlicensed facility. Each advertisement had to include the statement, "this facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services." This would make facilities give more attention to the message the government wants to show than the one the facilities are trying to convey. Therefore, the unlicensed notice was considered to violate the first amendment. California did not offer any justification for the required notice, it targeted speakers, not speech, and it imposed an unduly burdensome disclosure requirement that would chill protected speech (Nat'l Inst. of Family & Life Advocates v. Becerra).

3.5. Double Jeopardy

The Double Jeopardy Clause in the Fifth Amendment of our U.S. Constitution states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval force, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, not be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (US CONST. amend V).

The Double Jeopardy Clause offers four different types of protections. First, it prohibits the government from prosecuting an individual a second time for the same offense after he or she has already been tried and acquitted. Second, it prevents the government from prosecuting an individual twice for the same offense after he or she has already been convicted. Third, it precludes the government from imposing multiple penalties on an individual for the same offense in succeeding proceedings. Lastly, in certain situations, it stops the government from prosecuting a person twice for the same offense after a judge has prematurely ended his or her trial, either by mistrial or by dismissing a charge before a verdict has been reached in a case (Rudstein, 2005). Nonetheless, the primary purpose behind this safeguard clause is to prevent an individual to be subject to embarrassment, expense, ordeal, and a continuing state of anxiety and insecurity a second time for the same offense (Double Jeopardy).

The Double Jeopardy Clause goes back in history, but its meaning and function has reformed throughout time. Although this clause's exact origin is unclear, it has been traced back to the common law of England and Roman law. The first recorded mention in English law for Double Jeopardy traces back to the beginning of the thirteenth century in England. While the Double Jeopardy doctrine continued to develop in England, it also began to take root in North America during the seventeenth century. In 1639, the very first "American Bill of Rights" were enacted through the Act for the Liberties of the People created by the Maryland General Assembly. This Act contained a clause that is very similar to the modern Double Jeopardy clause contained in our Constitution; however, it's existence changed throughout the decades. For example, after the Revolution, in 1777, the Articles of Confederation did not contain a Bill of Rights, nor did it express any protection against Double Jeopardy. Following this, State Constitutions began incorporating similar protections against Double Jeopardy (Rudstein, 2005), but it was not until 1789, that the Fifth Amendment officially created a protection against Double Jeopardy in our U.S. Constitution). (U.S. CONST. amend. V; Rudstein, 2005).

Today, the Double Jeopardy Clause applies to both the federal and state government. However, throughout most of its history, it only applied to the federal government (Double Jeopardy, 2019). In *Palko v. Connecticut*, 302 U.S. 319 (1937), Frank Palko was charged with first-degree murder, but he was instead, convicted of a second-degree murder and sentenced to life in prison. The State of Connecticut, however, appealed this decision, and won a new trial. The decision of the new trial found Palko guilty of first-degree murder, and he was sentenced to death. In *Palko,* the Supreme Court refused to view the protection against Double Jeopardy as a fundamental right applied to the States through the Fourteenth Amendment's Due Process clause; thus, they upheld Palko's second conviction, which caused his death through the electric chair (Palko v. Connecticut).

However, in *Benton v. Maryland*, 395 U.S. 784, 1969, the Supreme Court reversed their holding in *Palko* and held that the Double Jeopardy Clause of the Fifth Amendment applies to the States through the Due Process Clause of the Fourteenth Amendment. In *Benton*, the petitioner was charged with both burglary and larceny, but the jury only found him guilty for the burglary charge and was sentenced to 10 years in prison. Petitioner appealed the decision and won because the jury's selection was unconstitutional. The case was remanded, and the petitioner chose to face a new trial with a new grand jury. This new trial indicted him on both the larceny and burglary charges, and he was found guilty on both. Petitioner appealed and disputed that he had already been acquitted on the larceny charge; he argued that indicting him again for the larceny charge amounted to double jeopardy. The Court reasoned that every right established by the Bill of Rights is to be seen as a fundamental right, and it should apply with equal force to the States as it does to the Federal government (Benton v. Maryland).

Most recently, the Double Jeopardy Clause has been highly controversial regarding the "separate sovereigns" exception that applies to it. This separate sovereign exception was created over 60 years ago, and it allows for the double prosecution of an individual for the same crime under federal and state governments. The reasoning behind the separate sovereign exception is that the federal and state government are two different entities with different laws (Fifth Amendment, 2019).

In Gamble v. United States, 139 S.Ct. 1960, 2019, the Supreme Court upheld the dual-sovereignty doctrine and reasoned that the doctrine is not an exception, rather it is corollary to the text of the Fifth Amendment of the U.S. Constitution (Gamble v. United States). In *Gamble*, the petitioner was convicted of a second-degree felony robbery resulting in getting barred from possessing firearms under federal and state law. (Gamble v. United States; Shapiro, 2018). Seven years after getting convicted, the petitioner was pulled over for a tail light malfunction (Shapiro, 2018). The police officer smelled marijuana, and searched his vehicle. During the search the officer found a handgun and arrested him. Gamble was then prosecuted in both state and federal courts (Williams, 2018).

The Court explained that the Double Jeopardy Clause prohibits individuals from being prosecuted twice for the same offense and that offenses are determined by law; thus, laws are determined by each sovereign. Further, the Court reasoned that two different laws by each sovereign create two different offenses, so a double prosecution is allowed. The Court explained that a sovereign specific interpretation of the Double Jeopardy Clause honors the substantive differences between the interests that two separate sovereigns can have in punishing the same crime. The Court adhered to their interpretation that even though the Constitution rests on a principle where the American people are sovereign, it does not mean that the same applies to the government regulation because the Constitution *splits* into two different regulations.

Through the *Gamble* decision, the Supreme Court has addressed the dual-sovereignty doctrine which is still in practice today. Therefore, individuals who presently engage in an offense that imposes penalties or regulations that vary through federal and state law can be prosecuted twice. Thus, it does not matter that he or she has already been prosecuted through the State or Federal government because they are seen as two separate entities (Gamble v. United States).

3.6. Detention of Noncitizens With Criminal Records

In 1996, a mandatory detention law was created through the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The IIRIRA extended the definition of what is known as an aggravated felony and increased mandatory detention for individuals engaged in these type of crimes with limited opportunities for judicial review. Under this Act, noncitizens, such as asylum seekers and lawful permanent residents, are placed in mandatory detention and are put on expedited removal proceedings if convicted of an aggravated felony. An aggravated felony includes any violent crime, theft, burglary with a term of imprisonment for at least one year, and illegal trafficking of drugs, firearms, or destructive devices (IIRIRA, 1996).

(43) The term aggravated felony means:

(A) Murder, rape, or sexual abuse of a minor;

(B) Illicit trafficking in a controlled substance;

(C) Illicit trafficking in firearms or destructive devices;

(D) An offense described in section 1956 of title 18 [of the U.S. Code] (related to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property deprived from specific unlawful activity) if the amount of the funds exceeded $ 10,000.

(E) An offense described in

(i) Section 841(h) or (i) of Title 18, or section 944(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) Section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of Title 18 (relating to firearms offenses); or

(iii) Section 5861 of Title 26 (relating to firearms offenses);

(F) A crime of violence for which the term of imprisonment at least one year;

(G) A theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year;

(H) An offense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom);

(I) An offense described in section 2251, 2251A or 2252 of Title 18 (relating to child pornography);

(J) An offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) An offense that-

(i) Related to the owning, controlling, managing, or supervising or a prostitution business;

(ii) Is described in section 2421, 2422, or 2423 of Title (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) Is described in any of section 1581-1585 04 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) An offense described in-

(i) Section 793 (relating to gathering or transmitting national defense information), 789 (relating to disclosure of classified information), 2153 (relating to sabotage), or 2381 or 2382 (relating to treason) of Title 18;

(ii) Section 3121 of Title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) Section 3121 of Title 50 (relating to protecting the identity of undercover agents);

(M) An offense that

(i) Involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) Is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) An offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(O) An offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) An offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(Q) An offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) An offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) An offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) An offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) An attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other

provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996 (INA 101(a)(43) (2020)).

In *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018), the Supreme Court held that periodic bond hearings for detained foreign citizens are not available under Section 235 and Section 236 of the Immigration and Nationality Act (INA). In *Jennings*, Alejandro Rodriguez, was a noncitizen, specifically a lawful permanent resident, who was convicted in 2004 for possession of a controlled substance and joyriding a stolen vehicle. Rodriguez was detained under 8 U.S.C. § 1226(c) for over 3 years without a hearing to determine what action was going to be taken against him, and he was released after several appeals in federal court. (Jennings v. Rodriguez).

(c) DETENTION OF CRIMINAL ALIENS

(1) CUSTODY. The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence [1] to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien (8 U.S.C. § 1226(c).

Under 8 U.S.C. § 1226(c), the attorney general allows for the mandatory detention of undocumented individuals and noncitizens for the commission of aggravated felonies or crimes involving moral turpitude. This statute allows for the detention of noncitizens who are awaiting the determination of whether they'll remain in the U.S. or not; thus this statute has been subject to a lot of controversy (8 U.S.C. § 1226(c) (2018)). One of the main arguments towards this statute is the violation of individuals' substantive due process due to their detention without any determination of whether they pose a danger to society or if they are flight risk, which are the determining factors that grant or deny their deportation (Lutz, 2019).

In July 2004, Rodriguez was subject to deportation, and he appealed the decision to the Ninth Circuit Court. The Ninth Circuit granted Rodriguez's cancellation of removal, after they found that joyriding a stolen vehicle was not an aggravated felony which would require deportation. The Ninth Circuit also reasoned that 8 U.S.C. § 1226(c) imposed an implicit six-month time frame on detention without a bond hearing before it became unconstitutional. The Ninth Circuit therefore held that the detention statute granted individuals in detention a statutory right to a bond hearing.

However, the Supreme Court did not agree with the Ninth Circuit, and they reasoned that constitutional avoidance can only apply to ambiguous statutes that could have more than one interpretation. The Court held that 8 U.S.C. § 1226(c) did not have any other interpretation because it did not mention anything with regard to bond hearings. Therefore, the Supreme Court refused to uphold any periodic bond hearings for noncitizen individuals detained in immigration centers (Jennings v. Rodriguez).

Furthermore, after the *Jennings* decision, another major immigration case arose in the Supreme Court in 2019. In Nielsen v. Preap, 139 S.Ct. 954, 2019, the Court held that a noncitizen

who is not immediately placed into immigration custody after being released from criminal custody, does not automatically get exempt from mandatory detention under 8. U.S.C. § 1226(c). In *Nielsen*, three lawful permanent residents were detained and taken into immigration custody years after they had finished serving their criminal sentences for crimes that could put them through removal. The petitioners argued that they had not been detained when they got released from their criminal custodies, so they shouldn't be subject to mandatory detention under 8 U.S.C. § 1226(c). The lower courts sided with the plaintiffs, and held that immigration detention under 8 U.S.C. § 1226(c) must be immediately after a noncitizen's release from their criminal sentence. The Ninth Circuit further explained that the text from 8 U.S.C. § 1226(c) explicitly states that immigration detention should immediately follow after release from criminal custody, and they rejected arguments that allowed detentions after substantial delays.

Nonetheless, the Supreme Court declined petitioners' arguments, and they held that a noncitizen is not exempt from mandatory detention under 8 U.S.C. § 1226(c) when immigration officials fail to take him or her into immigration custody as soon as they get released from serving their criminal sentences. The Court's reasoning was that the grammar and textual meaning of statute 8 U.S.C. § 1226(c) fixes the scope and term of a noncitizen's offense even if they were not immediately taken into immigration custody after serving their criminal custody. Furthermore, the Court also reasoned that even if a noncitizen is not detained under 8 U.S.C. § 1226(c)(1), he or she may be put into mandatory detention under 8 U.S.C. § 1226(c)(2) (Nielsen v. Preap).

The *Jennings* and *Nielsen* decisions have provided guidance for our judicial systems to follow with regards to noncitizens and their rights to periodic bond hearings and mandatory immigration detention following a criminal sentence. Today, noncitizens in the U.S. can be detained in immigration detention without any periodic hearings granted to them by our government, and those who have served criminal sentences can face mandatory immigration detention even if they were not automatically detained after their criminal release (Jennings v. Rodriguez; Nielsen v. Preap).

3.7. Limiting Voting Rolls

Voting is an important principle and rightful privilege for U.S. citizens under the democratic system of the United States (Douglas, 2008). Surprisingly, even though our Constitution prohibits discrimination to vote based on race, color, previous condition of servitude, and sex, there is no amendment that touches base on an explicit constitutional right to vote. Nonetheless, it is still a valued principle that gives the American people a voice and choice under representative democracy (Right to Vote Amendment).

When the U.S. Constitution was first enacted, the right to vote was only exercised by white male citizens over the age of 21. After many years of fighting for equal justice, the right to vote has now expanded to all American citizens over the age of 18, regardless of race, religion, sex, disability, or sexual orientation. Additionally, every state in the U.S. controls their own registration process, and in most states, citizens need to register first before being able to vote (Our Government: Elections & Voting). One of the problems that arises with states having the power to enact their own registration process is their authority to purge voting rolls (Smith, 2020). States, for example Ohio, have purged their voting rolls by taking out or erasing voter registrations from individuals who have not exercised their right to vote for several past elections (Lopez, 2018).

In *Husted v. A. Philip Randolph Institute*, 138 S.Ct. 1833 (2018), petitioners challenged Ohio's voter rolls clearing process. This process removes voter rolls of individuals who have died or relocated, and those who have not voted for the past 2 years. The latter are sent a notice to confirm their registration, and if the state does not receive a response back and the individual does not vote for the next four years after notice has been sent, they are cleared out from the voting rolls (Husted v. A. Philip Randolph Institute). Plaintiffs contended the process by arguing that it violated the National Voter Registration Act of 1993, which prohibits maintenance through the removal of an individual from the official list of voters for failure to vote. Plaintiffs also argued that the Ohio process also violated the Help America Vote Act of 2002 (HAVA) (Husted v. A. Philip Randolph Institute; see also National Voter Registration Act, 1993).

The National Voter Registration Act of 1993 (NVRA) gives Americans the opportunity to vote through a user-friendly and easier registration process.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS. The Congress finds that:

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and 2 local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) PURPOSES. The purposes of this Act are:

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter 20 registration rolls are maintained. (NVRA § 2(a)-(b)).

The Act was created to enhance and promote voting opportunities for citizens of the United States. Under NVRA § 8(b)(2), any state's program in charge of maintaining an accurate voter registration roll shall not remove the name of any individual from the official voter list by reason of the person's failure to vote (National Voter Registration Act, 1993).

However, in *Husted*, the Supreme Court reasoned that through the Act's plain text, it only forbids the removal of an individual for failure to vote if that's the sole reason for removal. The Court explained that Ohio's removal process does not violate the NRVA because failure to vote is not the sole reason for removal; instead, Ohio's process only triggers removal based on an individual's failure to vote.

Through this decision, the Court allows States to enact maintenance processes that allow for the removal of individuals who have not exercised their right to vote as long as failure to vote is not the sole basis for removal (Husted v. A. Philip Randolph Institute).

3.8. Gerrymandering

Gerrymandering, also known as redistricting, has been a highly controversial topic within the political system of the United States (Fazel, 2019). Gerrymandering is the practice of drawing boundaries of political or electoral districts in an effort to give one political party (OR RACE) an unfair advantage over its rivals (Gerrymander). Gerrymandering may also minimize the voting power of members of minority groups and may result in districts with bizarre or strange shapes (Ingraham, 2019).

The gerrymandering process is typically handled by the state legislatures, and the newly drawn maps are approved by each state's governor. Due to the state's legislatures and governors being in charge of redistricting, it typically results in biased district divisions (Prokop, 2018). The primary problem that arises with gerrymandering is that political parties utilize it as a weapon to favor themselves over the other party. (Tausanovitch, 2019). Using gerrymandering as a political weapon to favor one political party over the other effectively disenfranchises millions of American citizens from true population representation. As mentioned, gerrymandering has been highly critiqued in the political sphere, and there have been various challenged issues in the Supreme Court regarding the constitutionality and legality of this practice (Tausanovitch, Root, 2020).

First, in Gill v. Whitford, 138 S.Ct. 1916, 2018, the State of Wisconsin won a majority Republican state assembly, senate, and governor. The newly elected Republican government proceeded by developing a voting district map specifically designed to allow Republicans to maintain a majority despite any voting situation. The district map was introduced, passed, and signed by the governor into law. However, shortly before being signed, the new map plan was already facing a couple of legal challenges based on constitutional and statutory grounds; still, it was upheld by a federal court. The plaintiffs in Gill contended this plan as unconstitutional partisan gerrymandering against the Democratic party and voters in Wisconsin.

The Supreme Court vacated and remanded the judgment of the district court in this case on the basis of standing as per Article III of the U.S. Constitution. The Court held that plaintiffs in this case failed to demonstrate standing. The plaintiffs alleged harm based on partisan gerrymandering,

but they did not prove individual harm that would give them standing for a ruling on the plan (Gill v. Whitford).

Shortly after the Court's decision in Gill, the Court faced another issue regarding partisan gerrymandering. In Benisek v. Lamone, 138 S.Ct. 1942, 2018, Republican plaintiffs alleged that Maryland's Sixth Congressional District was gerrymandered on retaliation grounds against their political views. In 2017, before the 2018 election, plaintiffs sought a preliminary injunction in a District Court to prevent the congressional election to be held under the alleged gerrymandered district map. The District Court denied the motion and held plaintiffs failed to display a likelihood of success on the merits which was sufficient for a preliminary injunction, and that they did not have the power to award plaintiffs the remedy they sought with such time constraint. Lastly, the District Court reasoned that in order to make a diligent decision, it would be best to wait and rely on the outcome of the *Gill* case, which was facing the Supreme Court. The plaintiffs proceeded by petitioning the Supreme Court to vacate and remand the District Courts' order, as well as to review the District Court's decision for abuse of discretion.

The Supreme Court held that the District Court did not abuse its discretion by denying the motion for preliminary injunction. The Court explained that a party seeking a preliminary injunction must show a likelihood of success on the merits, irreparable harm in the absence of the preliminary injunction, that the balance of equities tips on petitioner's favor, and that it is the public's interest to get motion granted. Furthermore, the Court held that plaintiffs unreasonably delayed seeking the motion, and it was not in favor of public interest (Benisek v. Lamone).

Thirdly, in Virginia House of Delegates v. Bethine-Hill, 139 S.Ct. 1945, 2019, Virginia voters brought an action under the Equal Protection Clause of the Fourteenth Amendment alleging racial gerrymandering in 2014. In 2017, the Supreme Court heard the case and remanded it to the lower court since they applied the incorrect legal standard when they evaluated the racial gerrymandering claim. In 2018, the lower court determined that most of the gerrymandered districts were based on race against African Americans, so they struck them down as unconstitutional. The Virginia House of Delegates appealed the lower court's decision.

The Court held that the Virginia House of Delegates lacked standing to file its appeal. To bring an appeal in federal court, the complainant must have judicial standing, and they must show: 1) a concrete and particularized injury, 2) that is fairly traceable to the challenged conduct, and 3) likely to be redressed by a favorable decision. The Court held that the Virginia House of Delegates was not a primary party, and as an intervenor, they needed to independently show standing, which they did not. Lastly, the Court found that the Virginia House of Delegates did not have standing to represent the State's interests, nor did it have standing for their own right (Virginia House of Delegates v. Bethine-Hill).

Finally, in Rucho v. Common Cause, 139 S.Ct. 2484, 2019, a 2016 North Carolina congressional map was struck down by a District Court which found that the plaintiffs had standing, and the map was based on partisan gerrymandering. Following, the District Court enjoined North Carolina from utilizing the congressional map after November 18. This enjoinment led North Carolina Republicans to appeal the District Court's decision to the Supreme Court.

The Supreme Court found for the petitioners, and held that partisan gerrymandering claims are political questions that are beyond the reach of federal courts, such as the Supreme Court itself, therefore, the claims are not justiciable. According to the Court, a federal court's job is to resolve cases with judicial nature, not political issues. Because gerrymandering had existed prior to the creation of the Constitution, the Court reasoned that the Framers left the power of deciding partisan gerrymandering to the states' legislatures. Lastly, the Court explained that although they can decide on issues such as racial gerrymandering, they cannot decide on issues that lack any limited and precise standard, such as this one.

Overall, partisan gerrymandering is still a highly controversial political subject that has ultimately not been resolved through our judicial system. After several efforts to try and get a constitutional ruling on this subject, the Supreme Court has made it clear through *Rucho*, its most recent decision, that partisan political gerrymandering is a legislative issue that should be resolved through legislative reformation (Rucho v. Common Cause).

3.9. Affirmative Action Plans in University Admissions

College admissions criteria has been heavily debated, and each university applies a different method when deciding what applicants to admit. Affirmative action is the practice of including and

increasing the representation of different minorities based on gender, race, or nationality in an effort to increase diversity in the classroom and compensate for their history of exclusion and oppression in the areas of employment, education, or culture (Affirmative Action). This practice has been widely critiqued and has raised several controversies within the different races when it creates preferential selections in the areas it targets (Mansky, 2016; see also Affirmative Action, 2018).

The affirmative action policy was first brought up by President John F. Kennedy in 1961 through Executive Order No. 10925, where he mandated federal financed projects to take affirmative action to ensure that workplaces were free of racial bias or discrimination (Exec. Order No. 10925; Brunner, Rowen, 2020). However, it was not until 1965, that former President Lyndon B. Johnson issued Executive Order No. 11246, which enforced and required contractors to take affirmative action towards minorities in all aspects of the workplace including hiring and employment. The order instructed contractors to take and document the adequate measures to ensure equality in hiring; the order was amended in 1967 to include gender discrimination (Exec. Order No. 11246). Finally, the strongest forceful plan to promote fair hiring policies in construction jobs was the Philadelphia Order initiated by President Richard Nixon in 1969. The Philadelphia Order did not include quotas, but it forced federal contractors to demonstrate affirmative action to increase minority employment (Golland, 2014). After these orders, several cases based on affirmative action have been litigated in the Supreme Court of the United States throughout the decades, including Fisher v. University of Tex. at Austin, 136 S.Ct. 2198, 2016, which is the most recent in its category.

In *Fisher v. Univ. of Tex. at Austin*, a white female was denied to the University of Texas (hereinafter, UT) located in Austin, Texas. During her admission, UT was practicing Texas' Top Ten Percent Plan, which granted automatic admission to the top ten percent of every Texas high school's graduating class. Besides the Top Ten Percent program, UT's remaining seats where determined by different factors, primarily race. Fisher, the white female, made a claim under a District Court alleging that UT's consideration of race for the remaining part of admissions violated the Equal Protection Clause of the Fourteenth Amendment. The lower court held that UT's admission process was in fact constitutional. Plaintiff appealed the decision to the U.S. Court of Appeals for the Fifth Circuit, which sided with the lower court and held UT's consideration of race as constitutional. The Supreme Court held that the lower courts had applied the incorrect scrutiny standard to UT's admission process and remanded the case back. After applying the strict scrutiny standard, the lower courts once again determined that UT's admissions process was constitutional. The decision was once again appealed, and the Supreme Court granted its review for a second time.

The Supreme Court held that UT's consideration of race as one of its primary factors in its admissions process was constitutional and did not violate the Equal Protection Clause of the Fourteenth Amendment. The Court reviewed UT's admissions process policy under a strict scrutiny standard (Fisher v. University of Tex. at Austin). Strict scrutiny requires a policy to further a compelling governmental interest and is narrowly tailored to achieve that interest (Strict Scrutiny). The Court reasoned that educational diversity is a compelling interest as long as is not based on a quota nor a vague and unstructured idea. Furthermore, the Court held that UT expressed a focused and narrow goal of creating educational diversity, and provided a thorough explanation as to why this policy was the best possible way and why previous attempts had failed. Lastly, UT's consideration of race in its admission process is narrowly tailored to its compelling interest because there were no other viable ways of achieving their educational diversity goals (Fisher v. University of Tex. at Austin).

4. Results

The United States Constitution establishes the fundamental basis of law in the United States. This document keeps evolving and getting interpreted by the United States Supreme Court throughout the years. The results of these new interpretations are the developments of individual and fundamental rights afforded to American citizens. These protections have evolved as a result of societal shifts in U.S. societies in order to keep up with society. A strong sense of solidarity has emerged, as well as a commitment to human rights and civil liberties. These new rights should also be seen as a global success from a legal perspective, as they can aid prior work from other countries engaged in comparative studies of law between U.S. law and their respective countries' laws.

Finally, these freedoms can also be used to comprehend diplomatic agreements that the U.S has obtained before the rest of the world.

5. Conclusion

The legal structure of the United States of America, specially the United States' Constitution, encompasses so many innovations and evolutions, that it would be difficult to include them all in this post. Federal and state legislation, as well as Supreme Court rulings, determine the rights afforded to Americans. Further, the reason all of these different types of rights can coexist is because the U.S. government requires fundamental rights, created by the U.S. Constitution, to be secured on a federal basis while still allowing individual states to protect those rights that are important to them without intervention by the federal government. These fundamental rights are the descendants of the inherent and civil rights recognized by the United States, and they can be further split and defined into rights created out of need and rights created as a result of social shifts. Not only do most citizens believe that these constitutional protections are important, but they have already been defined by federal law and they must be recognized by every jurisdiction in the United States.

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