# The Undergraduate Law Review at the University of Pittsburgh

Volume I Spring 2026 Issue I

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# Acknowledgments

**It takes a village.** Writing and research are inherently rigorous endeavors, and engaging in legal scholarship without the benefit of formal legal training or education makes the process all the more demanding. This publication would not have been possible without the guidance, encouragement, and support of the faculty, mentors, editors, and peers who challenged our thinking, refined our work, and believed in the dreams and professional goals of our writers.

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And lastly, we thank the many names and faces whose quiet support, encouragement, and contributions made this publication possible, even if they are not individually named here.

# Mission Statement

**Discover the law. Develop your voice.** Pittsburgh was built by industry—by machines, smokestacks, science, and coal—but more fundamentally, by people who learned, adapted, and spoke up in the face of change, often at times when those very industries failed to advocate for the diasporas and communities that laid the city's foundations. Drawing from that legacy, this journal exists to help undergraduate scholars discover the law as a living system and develop their own voices within it, recognizing that legal understanding, like the city itself, is forged through inquiry, struggle, and reinvention.

Naturally, our mission is to provide students with the opportunity to inquire, struggle, and reinvent. Our publications enable prospective jurists to wrestle with the law and challenge its meanings, while introducing, harnessing, and enhancing the very skills used by advocates in their professional livelihoods.

- We invite scholars to *discover the law as a living system*, mirroring the resilience of a city built by people who learned to adapt and reinvent amidst industrial upheaval.
- We empower students to *develop their own voices by wrestling with legal doctrine,* transforming academic inquiry into the sharpened skills required for professional advocacy.
- We provide the space *to inquire, struggle, and reinvent,* recognizing that true legal understanding is forged by questioning how the law protects—or fails—the communities that lay its foundations.

# Masthead Volume I, Issue I

# Letter from the Editors

Dear Reader,

On behalf of the Undergraduate Law Review at the University of Pittsburgh, we are pleased to present the first issue of our legal publication. Over the past six months, our editorial staff has worked tirelessly to establish the University of Pittsburgh's premier undergraduate legal journal. Marking the inception of the organization in September 2025, this year's Spring 2026 publication culminates the efforts from our editorial staff and participating writers to create a platform for understanding legal concepts and jurisprudence – for undergraduates. In a city built on steel, energy, and industry, our community has been predicated on the advancement of science and technology. In such environments however, legal scholarship and early opportunities thereof become more necessary than ever. Ethical industry requires law and justice.

Our writers articulate the legal importance of regulating sustainability, supporting community initiatives, and addressing emerging challenges in both national and international law. They explore these issues with rigor, creativity, and clarity, making complex legal concepts accessible to the undergraduate audience. Thus, we are excited for you to read and connect—to engage with the ideas, debates, and analyses presented, and to join a growing dialogue about the role of law in our communities. We hope this issue inspires thoughtful discussion, critical inquiry, and a deeper appreciation for the power of legal scholarship at the undergraduate level.

With that, we wish you an enjoyable read of the first ever publication from our legal journal. Please direct all inquiries to our website at www.ulratpitt.org.

With gratitude,

Andrew Romanchik, Editor-in-Chief

Gizelle Salsa, Editor-in-Chief

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# Mandating Disclosure or Enabling Greenwashing? A Legal Analysis of France's Environmental Cost Decree for Ultra-Fast Fashion

*By Sophia Lineman*

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## Summary

Entered into force on October 1, 2025, French Decree No. 2025-957 establishes a legal framework for calculating and communicating the environmental cost of textile products, representing France's statutory attempt to address the environmental harms of ultra-fast fashion (UFF). The decree imposes disclosure obligations on textile producers, requiring standardized reporting of a product's lifecycle impacts, including greenhouse gas emissions, water use, and material sustainability, within the French legal system. This paper analyzes the decree's statutory provisions, its interaction with related French legislation, and its compatibility with European Union internal market law, evaluating whether disclosure-based obligations constitute a legally enforceable mechanism capable of constraining UFF practices or merely facilitating corporate greenwashing. The analysis identifies limitations in the decree's mandatory scope and enforcement, highlighting potential gaps under EU law, and concludes with recommendations to strengthen its legal efficacy in regulating environmental harms within the textile sector.


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## Introduction

As the fashion industry increasingly conforms to a linear economic model, it has become exponentially more wasteful. Linear economies are defined by their ultimate trajectory toward waste rather than reuse. Within the fashion industry, this linear model follows a sequential path of resource extraction, production, distribution, consumption, and eventual disposal.[1] A significant driver of this pattern of overconsumption is the emergence of "ultra-fast fashion" (UFF), a term denoting a cyclical marketing strategy in which low-cost, high-volume manufacturing produces garments with brief lifespans[2], encouraging repeated consumer purchases.[3] Companies such as Shein and Temu exemplify this model, utilizing mass-production techniques to generate large quantities of inexpensive garments sold at prices substantially below conventional market rates.[4]

The cost structure underlying UFF is often achieved through reliance on low-quality synthetic fabrics and exploitative labor practices, raising potential legal concerns under domestic and international labor law frameworks. Consequently, the garments produced are inherently short-lived, incentivizing frequent replacement and sustaining a cycle of overproduction and overconsumption. This market structure, in which consumer demand is manipulated to reinforce an unsustainable economic model, raises questions under emerging environmental law doctrines,

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[1] Subramanian Senthilkannan Muthu, *Circular Economy in Textiles and Apparel: Processing, Manufacturing, and Design* 1 (2019) (Oxford: Woodhead Publishing).
[2] Assemblée nationale, *Proposition de loi n° 1557, visant à réduire l'impact environnemental de l'industrie textile* (2025).
[3] Muthu, *Circular Economy in Textiles*, *supra* note 1.
[4] Madinani Katleho Letwaba, *Unravelling Tales of Truth: The Digital Battle Between Greenwashing Giants and Fashion Eco-Warriors* (Master's thesis, Stellenbosch University 2025).

including extended producer responsibility and corporate due diligence obligations.

Clothing production has increased dramatically in recent decades, with output in 2020 twice that of 2000.[5] This surge poses significant environmental risks because the current linear economy fails to incorporate mechanisms for the reuse or recycling of textile waste, which now exceeds 92 million tons annually.[6] Synthetic fibers, which may take decades to degrade, are routinely discarded via incineration, landfilling, or export to developing countries, implicating cross-border environmental governance under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. UFF production is particularly resource-intensive, consuming substantial quantities of water, energy, and chemicals at each stage of textile processing. Global water use for textile production is estimated at over 79 trillion liters annually. Polyester manufacturing produces up to three times the carbon emissions of cotton production due to fossil fuel combustion byproducts. Additionally, chemical fertilizers, pesticides, and textile dyes contribute to local and global water pollution, with polyester, nylon, and acrylic collectively accounting for approximately 35% of microplastics in the oceans. These industrial processes are responsible for approximately 20% of global industrial water pollution.[7]

Despite the environmental risks and ethical concerns inherent in UFF, regulatory frameworks have historically been insufficient to prevent

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[5] Kirsi Niinimäki et al., The Environmental Price of Fast Fashion, 1 *Nat. Rev. Earth & Env't* 189, 189–200 (2020).
[6] Niinimäki et al., *The Environmental Price of Fast Fashion*, at 189.
[7] United Nations, *From Petroleum to Pollution: The Cost of Polyester* (Dec. 17, 2024), United Nations Western Europe.

exploitative production and predatory marketing. As consumer awareness of environmental impacts grows, they increasingly view UFF as illegitimate, prompting companies to engage in "greenwashing," the practice of presenting an environmentally responsible image without substantively mitigating harm. Greenwashing, first described in the 1980s, involves selective or exaggerated corporate communication regarding sustainability initiatives.[8] The absence of standardized, government-mandated disclosure creates substantial discretion for corporations, potentially implicating unfair or deceptive marketing doctrines under consumer protection law.

While UFF and greenwashing have expanded globally, legal regulation has struggled to keep pace with their growth. In response, governments have begun exploring regulatory interventions designed to curb environmental impacts and ensure corporate accountability. France, where the fashion industry represents approximately 6% of national sales, is at the forefront of this effort.[9] On September 6, 2025, France enacted Decree No. 2025-957, mandating transparency in textile production by requiring the calculation and communication of a product's "Coût Environnemental" via the Ecobalyse scoring framework.[10] Initially, the law permits brands to voluntarily calculate and disclose Ecobalyse scores, with independent NGO verification deferred for one year.[11] This phased approach raises critical questions regarding the decree's efficacy: will it genuinely reduce greenwashing, or might it facilitate it by granting

[8] Madinani Katleho Letwaba, *Unravelling Tales of Truth: The Digital Battle Between Greenwashing Giants and Fashion Eco-Warriors* (Master's thesis, Stellenbosch Univ. 2025).
[9] Matthieu Guinebault, *L'ultra Fast Fashion S'accapare 6% Des Ventes Françaises de Mode*, Fashion Network France (Oct. 28, 2025).
[10] *Decree No. 2025-957 on the Calculation and Communication of the Environmental Cost Applicable to Textile Products*, 2025 J. Off. République Fr. [JORF] No. 9.
[11] French Senate, *Draft Law Aimed at Reducing the Environmental Impact of the Textile Industry* (No. 1557, 17th Leg., D-2025-0336-EN-01) (June 10, 2025), National Assembly.

corporations first-mover advantage in self-reporting environmental impact?

The French legislative framework intersects with EU law, particularly concerning harmonization and regulatory compatibility. For example, Bill No. 1557, which addresses broader brand accountability, has drawn criticism from the European Commission. In a formal opinion, the Commission expressed concerns that the bill could undermine EU environmental initiatives and conflict with existing legal frameworks, signaling the potential for infringement proceedings under Articles 258–260 of the Treaty on the Functioning of the European Union (TFEU).[12] Such pushback underscores the challenges of national eco-legislation operating within a supranational regulatory environment, highlighting the need for careful alignment with EU directives, such as the Sustainable Products Initiative and the EU Green Claims Directive.

Notwithstanding implementation challenges and regulatory friction, Decree No. 2025-957 represents a pioneering legal approach to addressing the environmental consequences of UFF. By institutionalizing environmental impact calculations and requiring disclosure, the law advances corporate accountability and transparency in a sector historically marked by opacity and unsustainable practices. It establishes a legal framework through which governments can begin to hold textile producers accountable for their environmental footprint, offering a model that may inform future international regulatory approaches to ultra-fast fashion, corporate greenwashing, and sustainable consumer protection.

[12] Amaury Le Bourdon, *Navigating the Obstacle Course of the French Ultra-Express Fashion Bill*, CMS (Oct. 2, 2025).

## The Issue

Due to UFF's growing dominance in the textile industry, insufficient regulation has intensified environmental degradation. Legislation is necessary to prevent further impact, but the pace at which UFF operates has forced such initiatives to fall behind. France, in an attempt to mitigate these threats, has passed "Decree. No 2025-957" on the Calculation and communication of the environmental cost applicable to textile products. However, concerns have arisen regarding the decree's overall effectiveness at this small scale, its potential to encourage producer-led greenwashing, and its compatibility with EU policy. This paper will evaluate the law's true impact on UFF marketing and alignment with existing EU legal and policy frameworks.

## France's Decree No. 2025-957: Legal Framework for Environmental Cost Disclosure

Published in the *Journal Officiel* on September 9, 2025, and entering into force on October 1, 2025, Décret no. 2025-957 is enacted pursuant to France's Climate and Resilience Act, providing a statutory foundation for environmental disclosure measures in the textile sector. The decree was included in France's 2025/0086/FR notification to the European Commission to ensure compliance with EU mandates, explicitly referencing existing EU methodologies for calculating environmental.[13] The law's central objective is to standardize the calculation and communication of

[13] Decree No. 2025-957, *supra* note 10.

eco-scores for textile products sold in the French market, addressing longstanding gaps in corporate accountability and consumer transparency.

Prior to this legislation, the absence of binding definitions or regulatory requirements governing brand sustainability claims allowed for significant discretion, enabling companies to engage in misleading environmental marketing. Consumers lacked access to reliable information regarding a product's sourcing, production, and lifecycle impacts, perpetuating a linear fashion economy and enabling predatory marketing practices. Decree No. 2025-957 explicitly targets these deficiencies by imposing a legally enforceable framework for environmental disclosure.

The decree introduces "Subsection 6" into the French Environmental Code pursuant to Article 2 of the Law of August 22, 2021, on combating climate change and strengthening resilience to its effects. Subsection 6 delineates standardized calculation and communication procedures for environmental costs, operationalized through the Ecobalyse calculator. The decree defines eight key terms central to its scoring framework; four are particularly salient for assessing regulatory scope and legal effect:

- *Importer:* Any natural or legal person placing a product originating from another EU Member State or a third country on the French market. This definition clarifies the scope of regulated actors, ensuring both domestic and foreign producers fall within the decree's ambit.
- *Impact categories:* Encompasses greenhouse gas emissions, biodiversity damage, water consumption, and other natural resource

use. These categories constitute the primary criteria for evaluating a textile product's environmental footprint.

- *Sustainability coefficient:* A numerical coefficient characterizing a product's modeled lifespan, with low values indicating short lifespans and high values indicating longer durability. This metric operationalizes the law's broader objective of destabilizing linear production models and incentivizing circular economic practices.
- *Environmental cost:* Defined under Article L. 541-9-11, this represents the aggregated environmental impacts across a product's life cycle—including raw material production, processing, distribution, use, and end-of-life—expressed as a whole number in impact points. This component constitutes the core legal obligation imposed on textile producers.

The decree operationalizes enforcement through the official French Ecobalyse calculator (version 7.0), hosted on a government portal. Producers, and eventually third parties, may calculate the environmental cost of individual products. Disclosure requirements mandate that environmental costs be communicated wherever products are advertised, including online listings, physical retail displays, and social media platforms. Producers must provide a transparent breakdown of impact categories and durability coefficients, along with source documentation, on a publicly accessible portal. The decree further mandates standardized formatting for environmental cost disclosure, including the use of an official graphic, visibility requirements, and size equivalence with any unofficial

sustainability metrics. This provision directly mitigates the risk of misleading or de-emphasized corporate environmental messaging.

The phased implementation of the decree raises questions regarding its efficacy in immediately curbing greenwashing. From October 1, 2025, to October 1, 2026, eco-scoring remains voluntary unless a brand already displays another environmental metric, in which case the official Ecobalyse score must accompany existing disclosures. From October 1, 2026, onward, third parties, including NGOs, may calculate and publish eco-scores using publicly available data. This staged approach seeks to balance producer incentives with eventual external accountability, offering a structured path toward comprehensive enforcement and transparency.[14]

By codifying a standardized methodology for environmental impact disclosure, Decree No. 2025-957 represents a significant legal intervention in the regulation of ultra-fast fashion. It establishes enforceable obligations for producers, aligns national law with EU environmental mandates, and provides a framework for future litigation, regulatory oversight, and consumer protection in the fashion industry.

## Bill No. 1557: Advancing Transparency and Accountability in Ultra-Fast Fashion

Bill No. 1557, a 2024 French legislative proposal currently under promulgation, seeks to establish a comprehensive regulatory framework addressing ultra-fast fashion (UFF) through enhanced transparency and producer accountability. The bill's stated objectives include enforcing brand

[14] Decree No. 2025-957, *supra* note 10.

transparency, penalizing producer irresponsibility, and curbing the systemic overconsumption characteristic of the UFF model.

With respect to transparency, Bill No. 1557 mandates that retailers identified as "UFF" brands provide clear and standardized messaging for each product offered. These disclosures are to encompass both environmental and social impact scores, alongside additional information regarding the country of manufacture and guidance on responsible consumption. The content and format of these messages are to be determined in consultation with the French Agency for Ecological Transition. In alignment with Decree No. 2025-957, which requires official eco-scores to appear in social media advertising, Bill No. 1557 proposes explicit restrictions on influencer promotion of UFF products, effectively barring marketing campaigns that could obscure a product's environmental and social impacts.

Enforcement mechanisms are multifaceted. Extranational textile corporations would be required to designate a French representative responsible for compliance verification. The bill also introduces fiscal measures—referred to as "eco-contributions"—imposed on UFF products, including parcel taxes on imports, to discourage overproduction and unsustainable consumption. These taxation strategies, however, present potential challenges under Article 110 of the Treaty on the Functioning of the European Union (TFEU), which prohibits discriminatory internal taxation that could distort the single market.

Beyond EU compatibility concerns, the proposed requirement to provide responsible consumption guidance may inadvertently facilitate greenwashing. Messaging framed as consumer encouragement, rather than clear cautionary or factual information, risks undermining the law's intent

by conveying a superficially responsible image without substantive environmental impact reduction. The bill's emphasis on a singular, clearly presented environmental and social score could mitigate this risk by ensuring uniformity and clarity in disclosure.

While Bill No. 1557 introduces innovative policy measures—such as the influencer sponsorship ban and mandatory producer accountability—its broader success will depend on harmonization with EU law, effective enforcement mechanisms, and the establishment of standardized transparency requirements. The tensions highlighted by the bill underscore the limitations of relying solely on tax penalties or voluntary corporate measures, and emphasize the necessity of codified disclosure obligations to meaningfully constrain unsustainable UFF practices.[15]

## 2025 EU Waste Framework Update: Textile Waste and Extended Producer Responsibility

The European Union's 2025 update to the Waste Framework Directive, focusing on textile and food waste, provides a critical lens into member state initiatives addressing post-consumer textile disposal and the development of Extended Producer Responsibility (EPR) schemes. Current statistics reveal that only 22% of post-consumer textile waste in Europe is reused or recycled, while imports of ultra-fast fashion (UFF) continue to rise.[16] These trends underscore the urgency for strengthened regulatory measures targeting both production and end-of-life management.

EPR schemes impose financial responsibility on producers for the collection, sorting, and recycling of their products. Given the high costs

[15] Assemblée nationale, *Proposition de loi n° 1557*, supra note 2.
[16] Directorate-General for Environment, *Revised Waste Framework Directive Enters into Force*, EU Commission: Environment (Oct. 16, 2025.

associated with proper textile waste management under current systems, EPR incentivizes producers to adopt more efficient, sustainable disposal and production methods. This approach parallels the objectives of France's Decree No. 2025-957 by shifting accountability from consumers to producers. Unlike the French decree, however, the EU's updated framework does not establish standardized methodologies for environmental disclosure, leaving implementation largely at the discretion of individual member states.

The most relevant EU-wide life cycle assessment (LCA) methodology is the Product Environmental Footprint Category Rules (PEFCR) for apparel and footwear. While intended to harmonize product-level environmental assessments across the EU, the PEFCR framework is underutilized and suffers from significant limitations. It fails to incorporate factors critical to assessing the sustainability of UFF products, such as biodegradability, microplastic release potential, emotional durability, "fast fashion bias," or the environmental consequences of imported goods.[17] By contrast, France's Ecobalyse methodology explicitly addresses these dimensions, enabling a more nuanced and product-specific measure of environmental impact.

France's Decree No. 2025-957 thus represents a national initiative that complements EU circular economy objectives by emphasizing transparency at the product level rather than solely focusing on end-of-life waste management. At the same time, the decree highlights persistent regulatory fragmentation among EU member states and raises questions

[17] Ingun Grimstad Klepp et al., *Critical Review of Product Environmental Footprint (PEF): Why PEF Currently Favors Synthetic Textiles (Plastics) and Therefore Also Fast Fashion* (Feb. 2023), https://clothingresearch.oslomet.no/wp-content/uploads/sites/1026/2023/02/Background-paper-on-PEF.pdf.

regarding harmonization within the internal market. For instance, limitations on advertising or importation imposed by national disclosure rules could implicate Article 110 of the Treaty on the Functioning of the European Union (TFEU), which prohibits discriminatory taxation or regulatory measures that distort trade within the single market. These tensions underscore the ongoing challenge of reconciling national environmental innovation with supranational legal obligations, particularly in sectors such as ultra-fast fashion where rapid consumption and cross-border trade are intertwined.

## Assessing the Effectiveness of Decree No. 2025-957: Limitations and Policy Implications

France's Decree No. 2025-957 represents an innovative legal intervention aimed at holding textile producers accountable for environmental harm. However, the decree's primarily voluntary structure limits its potential to meaningfully curb greenwashing or standardize transparency in the French textile market. Based on the regulatory and policy analyses presented, while the decree may partially improve market transparency, it simultaneously risks reinforcing corporate irresponsibility without stronger enforcement mechanisms and coordinated support from both French and EU governance frameworks.

Comparatively, both the European Union's existing initiatives and France's Bill No. 1557 articulate broad reforms for the textile sector but lack concrete, actionable measures for implementation. Decree No. 2025-957 holds greater promise, contingent upon specific enhancements. While the law alone may fall short of achieving its intended objectives, it establishes a reference point capable of supporting supplemental policies. If adopted and enforced across the EU as a mandatory complement to Extended Producer

Responsibility (EPR) frameworks, environmental cost scoring could more effectively disrupt UFF marketing practices and advance circular-economy objectives.

## Conclusion

The accelerated proliferation of UFF practices necessitates comprehensive regulatory action. UFF brands rely on synthetic, plastic-based fibers—such as polyester, nylon, and acrylic—processed using crude oil, resulting in substantial carbon emissions and associated public health impacts in production regions. Chemical dyes and finishing agents contribute to the industry's 20% share of global industrial water pollution. Compounding these effects, UFF products often reach the end of their life cycle in less than one year. Short lifespans amplify textile waste, increase landfill use, and escalate microplastic pollution. Recycling and reuse infrastructure remains insufficient, further reducing circularity and enabling continued overproduction. Consumer awareness is low due to limited government-mandated disclosure, leaving space for predatory marketing and greenwashing. France is among the few nations actively addressing UFF's environmental externalities.

Decree No. 2025-957 seeks to standardize environmental disclosure for textile products, discouraging irresponsible purchasing and mitigating greenwashing. The law establishes an official scoring system, analogous to a life cycle assessment (LCA), for evaluating the ecological footprint of individual garments. Producers are required to publish the data underlying each score. Phase one permits only producers to calculate and disclose scores using the French Ecobalyse calculator; phase two, commencing October 1, 2026, allows NGOs and third parties to independently calculate and publish scores, creating external accountability. Products with

preexisting environmental messaging, such as water or carbon footprints, must display the official Ecobalyse score alongside such metrics, adhering to strict graphic and size standards.

The law's voluntary nature remains its most significant limitation. Outside of third-party scoring or existing messaging requirements, producers face no penalties for noncompliance. To address this gap, I propose a third phase mandating that eco-scores be calculated and published for all products entering the French market. Third-party verification should remain permitted to mitigate potential biases, ensuring transparency and comparability. A universal, standardized score would reduce consumer confusion and counteract inadvertent greenwashing, which arises when scores are selectively presented or absent.

To further enhance the decree's efficacy, supplementary policies from Bill No. 1557 should be integrated. These include mandatory disclosure of the country of origin alongside eco-scores and restrictions on influencer marketing for UFF products. Targeting relevant transparency measures from Bill No. 1557 would strengthen the overall framework while avoiding the bill's broader definitional ambiguities and policy diffusion.

At the EU level, a standardized implementation of Decree No. 2025-957 could harmonize environmental accountability across member states. Currently, the EU maintains the Product Environmental Footprint Category Rules (PEFCR) for apparel and footwear; however, these rules are voluntary and fail to capture key sustainability dimensions, including biodegradability, microplastic potential, fast-fashion bias, and environmental impacts of imports. Expanding the Ecobalyse methodology to the internal market could complement EPR obligations, reduce overall

textile waste, and promote circular-economy objectives while addressing current regulatory fragmentation.

Several counterarguments warrant consideration. Critics may challenge the necessity of a mandatory EU-wide eco-scoring system given the existence of the PEFCR framework. However, as PEFCR is voluntary and less comprehensive than Ecobalyse, adoption of a standardized, enforceable score would offer greater transparency and more actionable accountability for producers. Additionally, integrating selected measures from Bill No. 1557 into a focused transparency mandate would mitigate potential inefficiencies inherent in the bill's broader regulatory approach.

Finally, it is important to acknowledge that transparency measures alone cannot fully disrupt the linear fashion economy. While EPR and government-regulated scoring hold producers partially accountable, the primary deterrent burden remains on consumers. Broader systemic reforms are necessary to dismantle the entrenched linear production and consumption model underpinning UFF. Continued research on consumer behavior, regulatory incentives, and taxation strategies is essential to optimize policy design. In the interim, Decree No. 2025-957 should be maximized for efficacy through mandatory application, third-party verification, and targeted integration of supplementary transparency measures. Only through coordinated national and EU action can environmental regulation hope to keep pace with the accelerating growth of ultra-fast fashion.

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**About the Author**

Sophia Lineman is a Junior at the University of Pittsburgh, majoring in Environmental Studies with a minor in Political Science and pursuing the Pre-law track. As a Pitt Eco Rep and Sustainability Intern at Pitt Eats, she has gained hands-on experience in sustainable policy and environmental

initiatives. Sophia aspires to translate this expertise into a legal career as an environmental attorney, advocating for the protection of communities, ecosystems, and future generations. She is driven by the principle that a healthy environment is a fundamental human right and is committed to advancing policies and legal frameworks that uphold that right.

## Punishing the Unhoused: The Constitutional and Social Implications of *City of Grants Pass v. Johnson*

*By Myles Utterback*

### Summary

*The City of Grants Pass v. Johnson* (2024) emerged as a landmark case initially focused on the immediate struggles of homeless individuals in Grants Pass, Oregon, but it quickly reverberated into a national debate over homelessness and civil liberties. At the heart of the case were residents without access to shelter who faced city ordinances imposing fines for sleeping on public park benches—a practice many had no practical alternative to avoid. Affected individuals, classified as involuntarily homeless by lower courts, sued the city, arguing that the fines violated the Eighth Amendment's prohibition on cruel and unusual punishment. The case advanced through the judicial system and ultimately reached the U.S. Supreme Court. While multiple precedents were considered, they offered little support for the plaintiffs' claims. In a 6-3 decision, the Court ruled against the plaintiffs, holding that the Eighth Amendment did not provide sufficient grounds to declare the fines unconstitutional. Beyond the legal reasoning, this decision reflects broader societal factors: it underscores the complex interplay between homelessness, public policy, and the judicial system, and highlights how public perception and the prominence of homelessness as a political and social issue may act as a subtle but influential factor in shaping both policy and jurisprudence.

## Introduction

The Supreme Court of the United States (SCOTUS) occupies a singular role as the ultimate arbiter of constitutional interpretation, shaping the boundaries of law and civil liberties across the nation. At the founding, the Court had relatively limited influence and resources compared to the other branches of government. This changed dramatically with *Marbury v. Madison*, 5 U.S. 137 (1803)[1], which established the Court's power of judicial review, enabling it to invalidate laws or executive actions deemed unconstitutional.[2] With this authority, SCOTUS decisions often carry profound consequences—especially when they affect marginalized groups with little recourse, as exemplified in *City of Grants Pass v. Johnson*, 603 ___ U.S. (2024).[3]

## The Case

The case originated when plaintiff Debra Blake, assisted by the Oregon Law Center, an organization dedicated to assisting homeless individuals and those in need[4], challenged the City of Grants Pass, Oregon, for enforcing ordinances that prohibited sleeping in public parks.[5] The city, home to roughly 50–600 unhoused individuals, had fewer shelter beds than residents in need, forcing many to sleep outdoors.[6] Violating these ordinances exposed individuals to criminal penalties. In *Blake v. City of Grants Pass*, the district court granted class certification for the "involuntary homeless," including those sleeping outside city limits to avoid

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[1] *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).
[2] William T. Bianco & David T. Canon, *American Politics Today* 8th ed. (New York: W.W. Norton & Company 2022).
[3] *City of Grants Pass v. Johnson*, 603 U.S. ___ (2024).
[4] Oregon Law Center, *Home*, Oregon Law Center (2025), (providing general information on the nonprofit's mission of free civil legal services for low-income Oregonians).
[5] *City of Grants Pass v. Johnson*, 603 U.S. ___ (2024) *supra* note 1.
[6] *City of Grants Pass v. Johnson*, 603 U.S. ___ (2024) *supra* note 1.

harassment. The court found the ordinances violated the Eighth Amendment's Cruel and Unusual Punishment Clause, as they effectively penalized individuals for lacking alternatives.[7]

After Blake passed away in 2021, plaintiffs Gloria Johnson and John Logan assumed representation within the certified class. Grants Pass appealed to the U.S. Court of Appeals for the Ninth Circuit, which initially upheld the district court's ruling before later vacating it, noting existing Supreme Court precedent. The city subsequently filed a writ of certiorari, bringing the case to SCOTUS.[8]

The central legal question was: *Does a city's enforcement of anti-camping ordinances against involuntarily homeless individuals violate the Eighth Amendment's protection against cruel and unusual punishment?*[9] Plaintiffs contended that the scarcity of shelter beds meant enforcement of the ordinances was punitive for circumstances beyond the individuals' control. SCOTUS, however, maintained that the Eighth Amendment historically applies to punishment following criminal convictions, not to laws defining criminalized conduct.[10] Questions of what qualifies as "involuntary" homelessness and "adequate" shelter remain unresolved.

## Precedent and Legal Analysis

The Eighth Amendment provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments

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[7] *Blake v. City of Grants Pass*, No. 1:18-cv-01823 (D. Or.), Civil Rights Litigation Clearinghouse, (last visited Mar. 12, 2026) (summarizing federal district court litigation challenging Grants Pass ordinances under 42 U.S.C. § 1983).
[8] *Blake v. City of Grants Pass*, *supra* note 7.
[9] *City of Grants Pass v. Johnson*, 603 U.S. ___ (2024), Oyez.
[10] *City of Grants Pass v. Johnson*, 603 U.S. ___ (2024) supra note 9.

inflicted," a protection extended to the states via the Fourteenth Amendment.[11] Prior cases such as *Robinson v. California*, 370 U.S. 660 (1962), and *Powell v. Texas*, 392 U.S. 514 (1968), established the principle that criminalizing a person's status can constitute cruel and unusual punishment. In *Robinson*, the Court held that convicting an individual for narcotics addiction was impermissible, as addiction was treated as a "status" rather than an active conduct.[12] Plaintiffs argued that homeless individuals were similarly punished for their status, yet SCOTUS distinguished *Johnson*, emphasizing that the Grants Pass ordinances prohibited specific acts—sleeping or camping in public—not the condition of being homeless.

Similarly, *Powell v. Texas* challenged criminalization of public intoxication. The Court's interpretation underscored that the Eighth Amendment targets the imposition of punishment for conduct, not status.[13] *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006), and *Martin v. City of Boise*, No. 15-35845 (9th Cir. 2018), offered further guidance on homelessness ordinances, emphasizing the complexities of defining involuntary homelessness when shelter resources are inadequate. SCOTUS in *Johnson* ultimately rejected these precedents as insufficiently precise to dictate a national standard, leaving homelessness policy largely to local authorities.[14]

The Court's analysis in *Johnson* reveals a deliberate effort to confine the Eighth Amendment to a narrow and historically grounded role. By

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[11] Whitney K. Novak & Dave S. Sidhu, *The Eighth Amendment and Homelessness: Supreme Court Upholds Camping Ordinances in City of Grants Pass v. Johnson*, CRS Legal Sidebar LSB11203 (July 19, 2024), Congress.gov.
[12] *Robinson v. California*, 370 U.S. 660 (1962), Oyez.
[13] *Powell v. Texas*, 392 U.S. 514 (1968), Oyez.
[14] Novak & Sidhu, *Eighth Amendment and Homelessness*, *supra* note 11.

emphasizing the regulation of acts rather than conditions, the Court reaffirmed a doctrinal boundary that insulates constitutional punishment analysis from broader social realities. This approach reflects an understanding of the Eighth Amendment as a restraint on the state's penal authority, not as a mechanism for evaluating the fairness or inevitability of regulated behavior. In treating homelessness as an external circumstance rather than a constitutionally cognizable status, the Court declined to reinterpret cruel and unusual punishment in a way that would transform structural deprivation into a constitutional concern. The result is an interpretation that prioritizes doctrinal continuity over moral or social expansion.

The Court also expressed implicit skepticism toward frameworks that require judges to evaluate the voluntariness of conduct in light of systemic constraints. Prior decisions that linked Eighth Amendment liability to shelter availability invited courts to assess municipal capacity, individual access, and shifting resource conditions. The *Johnson* decision rejected this model, reasoning that constitutional standards should not depend on fluid empirical judgments. This reflects a preference for administrable rules that can be applied consistently across jurisdictions, rather than fact-intensive inquiries that risk uneven enforcement. In narrowing the scope of judicial inquiry, the Court reinforced a vision of constitutional adjudication that favors stability and predictability over contextual sensitivity.

Ultimately, *Johnson* illustrates the structural limits of constitutional litigation as a response to homelessness-related regulation. While the ordinances at issue may impose severe practical consequences, the Court's reasoning makes clear that constitutional invalidation requires more than

demonstrable hardship. The Eighth Amendment inquiry remains focused on the character of the punishment and the conduct it targets, not on the social conditions that render compliance difficult or impossible. This doctrinal posture effectively redirects reform efforts away from constitutional courts and toward legislative bodies and local governance. The decision thus reinforces a sharp distinction between constitutional prohibitions on punishment and political responsibility for addressing social vulnerability.

## SCOTUS Decision

In a 6-3 ruling, SCOTUS held that the enforcement of generally applicable laws regulating public camping does not constitute cruel and unusual punishment.[15] Justice Neil Gorsuch authored the majority opinion, with Justice Clarence Thomas concurring and Justice Sonia Sotomayor dissenting. The majority highlighted that the Eighth Amendment historically regulates conduct after conviction, not status, and thus the Grants Pass ordinances did not fall under its protection.[16] The dissent countered that the ordinances effectively targeted the status of homelessness, aligning with *Robinson*'s interpretation of the Eighth Amendment.[17] Thomas's concurring opinion further clarified that public opinion should not influence constitutional interpretation and that civil fines and exclusion orders are not punishments in the Eighth Amendment sense.[18]

## Jurisprudence, Separation of Powers, and Federalism

[15] *City of Grants Pass v. Johnson*, 603 U.S. ___ (2024) *supra* note 9.
[16] William Russell, *Grant's Pass v. Johnson: Supreme Court Decision Illustrates the Difficulties in Solving Homelessness*, New York State Bar Ass'n (Nov. 20, 2025).
[17] Russell, *Grant's Pass v. Johnson*, *supra* note _ 16.
[18] *City of Grants Pass v. Johnson*, *supra* note 3.

The ruling reflects judicial restraint, wherein the Court deferred to local and state authorities rather than imposing a national policy, interpreting the Eighth Amendment narrowly (Bianco & Canon 2022). Judicial activism had previously played a role in district and appellate courts advocating expanded protections for homeless populations, yet SCOTUS opted to maintain a restrained approach. This case exemplifies the separation of powers: while SCOTUS interprets laws, it does not create policy, leaving enforcement and regulation to legislative and executive branches.[19] It also underscores federalism, preserving state and local autonomy in addressing complex social issues such as homelessness.[20] However, this restraint marks a significant doctrinal pivot, signaling that constitutional protections may recede precisely where social vulnerability is most acute. By declining to constitutionalize the limits of municipal power over public space, the Court reshapes the boundary between punishment and governance, opening a legal terrain in which regulation can function punitively without triggering constitutional scrutiny. This recalibration may influence future civil liberties claims well beyond homelessness, redefining how courts distinguish between lawful regulation and impermissible punishment.

## Civil Rights, Civil Liberties, and Public Policy

The case situates itself at the intersection of civil liberties—protections from arbitrary government interference—and civil rights, which safeguard individuals from discrimination. The Eighth Amendment represents a civil liberty, yet SCOTUS' ruling limited its scope in the context of homelessness. Interest groups, including the American Civil Liberties

[19] Bianco & Canon, *American Politics Today*, *supra* note 2.
[20] Bianco & Canon, *American Politics Today*, *supra* note 2.

Union submitted amicus briefs advocating for protection of involuntarily homeless individuals.[21] Public opinion, however, often fails to prioritize homelessness: surveys indicate Americans attribute homelessness primarily to addiction, lack of affordable housing, and mental health issues, rather than systemic failures, diminishing the political incentive to address the issue nationally.[22] Local elections remain a more effective avenue for policy intervention[23], as legislators in areas with higher homelessness populations are more likely to address these concerns.[24]

The case exposes a tension between constitutional restraint and democratic accountability. By narrowing the Eighth Amendment's reach, the Court preserved a formal civil liberty framework while leaving civil rights protections against exclusionary governance largely untouched. This doctrinal choice shifts the center of gravity away from constitutional enforcement and toward political responsiveness, where protections depend not on judicial mandate but on electoral pressure and local governance. The analysis highlights how judicial limitation can recalibrate, rather than resolve, the relationship between constitutional law and social policy.

## Conclusion

*City of Grants Pass v. Johnson* demonstrates the limitations of SCOTUS in addressing social issues where constitutional interpretation intersects with ambiguous terminology and complex local realities. By

[21] ACLU, *City of Grants Pass v. Johnson*, American Civil Liberties Union (2024).
[22] Pew Research Center, *Americans' Top Policy Priority for 2024: Strengthening the Economy*, Pew Research Center – U.S. Politics & Policy (Feb. 29, 2024).
[23] Evyn Mitchell, *City of Portland Sets Top Priorities for 2025 Session of Oregon State Legislature*, Portland.gov (Jan. 30, 2025).
[24] Tanya De Sousa & Meghan Henry, *The 2024 Annual Homelessness Assessment Report (AHAR) to Congress*, U.S. Dep't of Hous. & Urb. Dev. (2024).

upholding the ordinances, the Court reinforced the principle that homelessness policy is primarily a matter for local governance, while highlighting the continuing gap between civil liberties protections and the lived realities of marginalized populations. Ultimately, the case illustrates the necessity of public engagement in local politics, where decisions on fundamental issues like homelessness are most directly determined. Blake's efforts underscore the importance of advocacy, even in the face of judicial restraint, reminding us that SCOTUS is not the final arbiter of all social change.

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**About the Author**

Myles Augustus Utterback is a freshman at the University of Pittsburgh. He is currently studying Politics & Philosophy as his major, with minors in Economics, Statistics, and Japanese. New to the Undergraduate Law Review, he hopes to develop his law-related writing skills so that they may help him in the future when he applies to law school. In his timeline at Pitt, he plans to concentrate in international relations and comparative politics, a subset of political science, and to explore political philosophers. Looking towards the future, Myles aims to become involved in diplomacy–either as a diplomat in a foreign country like Japan–or to engage in the field in his home country of the United States, preferably in Washington, D.C.

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**The Cost of Death: Capital Punishment on Fiscal Policy**

*By Audrey Wang*

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**Summary**

The death penalty remains one of the most controversial punishments in the American criminal justice system, with debates often centered on morality, constitutionality, and deterrence. This paper shifts the focus from normative and ethical considerations to a fiscal analysis of capital punishment in Pennsylvania. Despite maintaining an active death penalty system, Pennsylvania has not carried out an execution since 1999, yet continues to incur substantial costs associated with capital trials, lengthy appeals, death row incarceration, and execution preparedness. By examining the historical development of capital punishment jurisprudence, the structural features that drive higher costs in capital cases, and existing estimates of statewide expenditures, this paper argues that the death penalty imposes a significant financial burden on taxpayers while offering no greater practical benefit than life imprisonment without the possibility of parole. The analysis suggests that, from a cost-benefit perspective, Pennsylvania's capital punishment system is inefficient and diverts public resources away from crime prevention, victim services, and broader public safety initiatives.

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## Introduction

The death penalty has been debated for over 150 years, with the abolition movement starting in the late eighteenth century. Normative judgments and moral arguments are often placed at the center of the discussion on abolition, with scholars asking if it is morally acceptable to "tinker with the machinery of death."[1] Scholars question if capital punishment remains legal under the Eighth Amendment of the United States Constitution, which prohibits "cruel and unusual punishments."[2] Researchers question the practicality of the death penalty and ask if it is a viable punishment under a fallible judicial system. They question the necessity of the death penalty when presented evidence that the deterrence effect is inapplicable to the death penalty.

The goal is not to answer these questions, which do not hold concrete answers, but rather to examine the fiscal implications of capital punishment in Pennsylvania. This paper asks if the punishment of the minority is worth the financial burden of the majority. Pennsylvania's capital punishment system remains active and increasingly expensive, despite there being no executions since 1999. In 2015, former Governor Tom Wolf instated a moratorium on executions in Pennsylvania that stayed in effect as of 2024, with current Governor Josh Shapiro continuing his moratorium.[3] 352 people have been sentenced to death in Pennsylvania since they reinstated the death penalty in 1978, yet only three of them have been executed.[4]

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[1] Callins v. Collins, 510 U.S 1141 (1994).
[2] U.S. Const. art. I, § 8
[3] T.E. Board, Editorial, *Stepping Up on Ending Capital Punishment*, Pittsburgh Post-Gazette (Apr. 9, 2025).
[4] Pennsylvania, Death Penalty Information Center (Mar. 28, 2025).

When deciding whether to retain or repeal the death penalty in Pennsylvania, a cost-benefit analysis must be included. Setting aside all other moral and ethical considerations, a comparison of the findings of other studies indicate a high likelihood that the death penalty system costs taxpayers millions more dollars annually while offering our society advantages that a life sentence without the possibility of parole could equally effectively provide. Calculating the costs of the death penalty will provide us a tangible understanding for the kind of economic impact that will cost millions of dollars for Pennsylvanian taxpayers annually. While constitutional and moral arguments are central to the discourse on the viability of capital punishment in today's democracy, these arguments are subjective and difficult to quantify in a concrete manner. However, the cost and utility of the death penalty can be translated into real numbers, which may provide a more concrete, objective analysis on the utility of the death penalty.

## Cost Analysis of the Death Penalty

*History Behind Rising Costs of the Death Penalty*

In 1972 *Furman v. Georgia* case, the U.S. Supreme Court ruled that the death penalty violated both the Eighth and Fourteenth. The Court ruled that the death penalty was being imposed under arbitrary and inconsistent standards, which violated the constitution.[5] However, the justices did not rule that capital punishment was entirely unconstitutional. Furman argued that the death penalty was not intrinsically unconstitutional in its nature, but the arbitrary imposition of it was. So instead of repealing the death penalty, the Supreme Court called upon reforms for the capital punishment

[5] *Furman v. Georgia*, 408 U.S. 238 (1972).

system and mandated that there be a more universal standard on the application of the death penalty. This landmark Supreme Court decision invalidated the death sentences of almost 700 people as well as impose a de facto moratorium of the death penalty throughout the country. Justices Potter Stewart and Byron White argued that the erratic and arbitrary application of capital punishment violated the Eighth Amendment on the basis that it was a "cruel and unusual punishment."[6] Justice White argued that the sporadic and infrequent imposition of the death penalty weakened the penological justification of deterrence and that there was "no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which is not."[7] Retributive punishment was also discussed as a penological justification in the Furman case. Justice Stewart wrote that retributive punishment was constitutionally permissible as long as it wasn't being applied, in his words, "capriciously."[8]

However, Justices William J. Brennan and Thurgood Marshall held concurring opinions. While they both agreed that the death penalty was unconstitutionally imposed, they further argued that the death penalty was intrinsically unconstitutional as it was fundamentally incompatible with the "evolving standards of decency" of contemporary democracy, according to their interpretation of the Eighth.[9] Justice Marshall asserted that the average American know "almost nothing about capital punishment," and wouldn't "knowingly support purposeless vengeance."[10] He also argued that the mere possibility of wrongful execution delegitimized the integrity of

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[6] Fred P. Graham, Court Spares 600, *New York Times* (June 30, 1972).
[7] Daniel D. Polsby, The Death of Capital Punishment? *Furman v. Georgia*, 1 *Sup. Ct. Rev.* 1 (1972).
[8] Stephen F. Smith, The Supreme Court and the Politics of Death, 94 *Va. L. Rev.* 283 (2008).
[9] Jeffrey L. Kirchmeier, Into the Courthouse: The 1970s Abolition Strategy, in *Imprisoned by the Past: Warren McCleskey and the American Death Penalty* (New York 2015).
[10] *Furman v. Georgia*, 408 U.S. 238 (1972).

capital punishment as an institution. The Court delivered a per curiam opinion that held that "the imposition of the death penalty … in these cases constitute as cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments."[11] While a majority of the justices agreed that the application of the capital punishment violated the Eighth Amendment, there was no majority opinion on the rationale. While the decision did not repeal the death penalty, 630 death sentences were commuted to life imprisonment.[12]

In 1976, four years after Furman was decided, the Supreme Court held that "guided discretion schemes for imposing the death penalty were constitutional" in *Gregg v. Georgia,* 428 U.S. 153 (1976) . This decision led to bifurcated proceedings and developed new standards for capital sentencing, which included narrowing the scope of crimes eligible for death penalty.[13] Both Furman and Gregg contributed to the skyrocketing costs of capital litigation over the next five decades. The post-Furman era was marked with an increased average time between sentencing and execution due to the stricter standards and moratoriums imposed post-Furman and by Governor Wolf in 2015.[14] The costs associated with the death penalty no longer only included the costs of a capital trial and execution compared to a non-capital trial. Instead, the cost comparison made between a capital trial and a non-capital trial were "the cost of multiple capital trials, lengthy death row imprisonment, and execution itself, versus the cost of a single non-capital trial and lengthy non-death row imprisonment."[15] Now, the costs

[11] *Furman v. Georgia*, 408 U.S. 238 (1972).
[12] Kirchmeier, *supra* note 9.
[13] *Gregg v. Georgia*, 428 U.S. 153 (1976).
[14] M.D. Tortorice, Costs Versus Benefits: The Fiscal Realities of the Death Penalty in Pennsylvania, 78 *U. Pitt. L. Rev.* 519 (2017).
[15] Tortorice, *supr*a note 14.

incurred by a capital punishment trial can be categorized into four major components: 1) case investigation and trial preparation; 2) capital-trial; 3) post-trial appeals and appeal trials; 4) execution.

**Cost Breakdown on Capital Punishment Cases**

I. Investigation and Trial Preparation

Traditionally, two attorneys are provided by the state as defense counsel if the defendant is indigent, to address the two separate issues of guilt and sentencing. In contrast, a noncapital indigent defendant would only be assigned one attorney. Because they bear the burden of proof, the prosecution must reply with resources that are on par with or better. Investigations into capital cases typically take three to five times as long as those into noncapital cases since the state and defense must prepare for both the guilt and sentence phase.[16]

Capital trials require more than simply determining guilt. The prosecution side has the burden to provide evidence that the nature of the crime and aggravating factors meet the standards of imposing the death penalty. Conversely, the defense holds the burden of providing mitigating evidence to convince a jury not to vote for a death sentence. Reviewing mitigation evidence means hiring mitigation experts. These experts examine the whole scope of a defendant's entire life, including medical and psychiatric history, family history, work history, and childhood life. This process requires for experts to interview those closest to the defendant, including former teachers, doctors, family, friends, co-workers, employers, and more.

[16] Robert L. Spangenburg & Elizabeth R. Walsh, Capital Punishment or Life Imprisonment – Some Cost Considerations, 23 *Loy. L.A. L. Rev.* 45 (1989).

Furthermore, pretrial motions in capital trials are typically more intricate, lengthy, and present evidentiary challenges specific to the capital-case procedure. In a case involving the death penalty, voir dire, otherwise known as jury selection, takes a lot longer since each prospective juror must be thoroughly questioned about their views on the death sentence. Jurors are not allowed to serve if they are unable to objectively weigh the sentencing options.[17] Additionally, the defense has an interest in selecting jurors who are seemingly more open to accounting for mitigating evidence in their analysis. Because of the conflicting nature of jury selection in a capital case, voir dire has evolved from a brief procedure with the primary objective of excluding the most extreme possible jurors to a very complex, calculated, and time-consuming procedure. In certain jurisdictions, the voir dire process takes up as much time and money as the actual trial.[18]

II. The Capital Trial

Second, a large number of these expenses proceed to the capital trial. Almost always, capital trials are bifurcated proceedings: if the prisoner is found guilty of the crime, the sentence must be decided in a second, independent trial. The introduction of evidence and witness testimony are necessary for both sessions. The costs incurred by the state and the defense, such as attorney hours, expert witnesses, investigation and trial costs may be doubled during the sentencing phase if the defendant is found guilty. The jury determines whether to impose a death sentence or life in prison without the possibility of parole during the penalty phase. A non-capital case does not include this bifurcated process or its extra expense.

[17] Tortorice, *supra* note 14.
[18] Tortorice, *supra* note 14.

## III. Post-Trial Appeals and Appeal Trials

Because death penalty jurisdictions, including Pennsylvania, usually provide for automatic appellate review in the highest state criminal court, post-trial expenses in capital cases are substantially higher than those in non-capital cases. Reviews are optional in non-capital cases in many states. The procedure of making a direct appeal typically takes years. Besides appellate review, indigent capital inmates in Pennsylvania are also entitled to counsel for state habeas litigation, which is a legal procedure that prisoners use as a last resort to challenge the legality or constitutionality of their sentence.

Prisoners use habeas litigation to challenge the constitutionality or legality of the death penalty on a state-level, though at times, the case can be brought up to a federal level. The process of habeas litigation can take years and requires thorough investigation. The investigation process involved with habeas litigation includes investigating the "effectiveness of trial counsel" and "the compliance of prosecutors with their duty to disclose exculpatory evidence."[19] However, while indigent capital inmates are entitled to counsel in habeas trials, indigent prisoners in non-capital cases are not offered a state-compensated counsel for habeas.

## IV. Execution

The length of time that prisoners spend on death row affects the death penalty's relative cost. This is particularly true in areas like Pennsylvania where there is a sizable death row population and a high gap between sentencing and execution. The moratorium continued by Governor Shapiro

[19] Tortorice, *supra* note 14.

widens that gap; the last execution held in Pennsylvania was in 1999.[20] The additional security needed in comparison to regular prisons is one of the factors driving up costs. Furthermore, death row inmates are unable to work in jail and reimburse the state for the expenses of their detentions.

According to the Pennsylvania Department of Corrections, it costs Pennsylvania approximately $35,000 a year to house a non-capital prisoner in comparison to $45,000 a year for a death row prisoner.[21] Non-capital prisoners and capital prisoners are also housed differently; Pennsylvanian death row prisoners are held in solitary confinement cells in maximum-security facilities, under constant security and scrutiny by corrections officers.

**Exact Cost of the Capital Punishment System in Pennsylvania**

For decades, researchers have been trying to approximate the amount of money spent on the capital punishment system in Pennsylvania. Since then, numerous other groups have made an effort to calculate the cost of the capital punishment system in Pennsylvania. Although these figures are merely estimates, they represent the figures that our state must use. According to data from a 2008 Urban Institute research conducted in Maryland, "the average capital-eligible case in which prosecutors did not seek the death penalty costs roughly $1.1 million."[22] In the meantime, they estimate that the total expense "for a single death sentence in Pennsylvania is about $3.1 million."[23] According to the newspaper, the cases of the 185 inmates on Pennsylvania's death row cost $351.5 million.

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[20] Department of Corrections, *List of Individuals Executed by Lethal Injection (1995 to Present)*.
[21] Michael Hyland, *The Cost of Capital Punishment in Pennsylvania* (Nov. 18, 2014).
[22] Nicole C. Brambila & Liam Migdail-Smith, Executing Justice: A Look at the Cost of Pennsylvania's Death Penalty, *Reading Eagle* (June 19, 2016).
[23] Brambila & Midgail-Smith, *supra* note 22.

The estimate, according to the report, was conservative since it excluded cases that were overturned or in which the prosecution requested the death penalty but the jury imposed a different sentence. The estimated expenses of Pennsylvania's capital punishment might have cost Pennsylvanian taxpayers upward of $1 billion. Based on the 185 inmates on death row as of 2014, an earlier investigation had estimated a cost of at least $350 million. However, further investigation into cases that had already been overturned, in which inmates died, or in which inmates were executed before 2014, showed that 408 people had received death sentences.[24] In the time from 2014 to today in 2025, no prisoners on the death row have been executed.

In that decade, more than $350 million was spent on a death penalty system that has failed to execute a single death row prisoner since 1999. It is logical to conclude that the costs of the death penalty spanning from 1999 to 2025 are greater than just $350 million. Without the executions, the death penalty is materially speaking, no different than receiving a life sentence without parole, but costs millions of dollars more to litigate, prosecute, and sentence. There is no legitimate return on investment if the capital punishment system that is designed to execute death row prisoners is not effectively doing its job. Retentionists continuously argue that the role of death as a punishment serves as a deterrent to crime; however, there is no death. There are no executions in the State of Pennsylvania, but there is a system that sentences prisoners to death but only provides them life without parole.

[24] Death Penalty Information Center, *Cost of Pennsylvania Death Penalty Estimated at $816 Million, Could Reach $1 Billion* (Mar. 14, 2025).

While death penalty retentionists argue that these figures are mere estimates; they argue that the death penalty system should not be abolished or reformed under a non-exact cost-analysis. All of these objections, meanwhile, fail to see the bigger picture. These are estimates that need to be considered in order for Pennsylvania, like many other states, to discuss the important element of cost. The death penalty is objectively more expensive than life imprisonment without the possibility of parole, even without exact figures. This cost argument has been successful in assisting other states in determining which laws are most advantageous and effective for their criminal justice systems.

## Conclusion

Comparing the expense of the death penalty to alternative strategies for creating a safer community is essential. Here, abolitionists and retentionists share a same objective. The funds saved by abolishing the death penalty are urgently needed for crime prevention, forensic lab improvements, employing and training more police, solving more crimes, and speedy DNA testing. Other possible uses for the funds include social programs like financing for early childhood education, which could improve crime prevention. Not accounting for all other pertinent arguments for or against abolishing the death penalty, Pennsylvania must decide whether it would be better for our state's safety interests to spend hundreds of millions of dollars maintaining its current system—which probably won't result in any executions—or whether it would be wiser to use that money for victim services, crime prevention, or hiring more police detectives, prosecutors, and judges to apprehend and imprison the numerous murders that currently go unpunished due to a lack of resources for law enforcement. It is not reasonable nor cost-effective for Pennsylvania to have both.

## About the Author

Audrey Wang is a junior from Columbia, SC, Chapel Hill, NC, and Tainan, Taiwan, double-majoring in political science and psychology with a minor in economics. She has interned with the Innocence Project and will intern with the ACLU. Outside of her internships, Audrey serves as the DEI Outreach Vice Chair for SGB and is a member of the Political Science Student Association. She enjoys making matcha lattes, skateboarding, cooking, and spending time with her family as an older sister.

**Between State Authority and Civil Rights: Lessons from *Skrimetti***

*By Harper Leary*

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## Summary

*United States v. Skrimetti (2024)* marks a significant development in the Supreme Court's equal protection jurisprudence and its approach to state regulation of healthcare affecting transgender minors. This essay analyzes the legal and constitutional questions raised by Tennessee's Senate Bill 1, focusing on whether restrictions on gender-affirming care constitute sex-based discrimination under the Fourteenth Amendment and what level of judicial scrutiny such laws require. Through a close examination of the majority and dissenting opinions, including the Court's reliance on Geduldig v. Aiello and the dissent's invocation of Bostock v. Clayton County, the essay explores competing interpretations of sex classification, judicial restraint, and legislative authority. It further situates Skrimetti within broader trends in modern federalism, public opinion, and state-level policymaking, highlighting how the decision contributes to an increasingly uneven legal landscape for civil rights and access to healthcare in the United States.


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## Introduction

In a decision that will echo far beyond Tennessee, *United States v. Skrimetti* (2024) reshapes the legal landscape for transgender rights, state autonomy, and the role of the judiciary in protecting vulnerable populations. By upholding Tennessee's ban on gender-affirming care for minors, the Supreme Court compelled the nation to reconsider the scope of the Equal Protection Clause and the delicate balance between judicial oversight and legislative authority. The ruling reflects not only the Court's approach to civil rights in a politically polarized era but also broader questions of federalism, judicial philosophy, and public policy, serving as a stark reminder that while the Equal Protection Clause promises a shield against discrimination, its enforcement often hinges on the Court's shifting interpretation of federalism—leaving the question of whether the federal government has truly fulfilled its duty to protect minorities suspended in the delicate, often contentious, space between judicial restraint and the urgent need for legislative action.

## Background

In 2023, Tennessee enacted Senate Bill 1 (SB1), which imposed stringent restrictions on gender-affirming medical care for minors. The law prohibited healthcare providers from prescribing puberty blockers, hormone therapy, or performing sex-transitioning surgery for minors seeking to align their bodies with their gender identity.[1] SB1 also required transgender youth already receiving such care to cease treatment and exposed providers assisting these patients to potential lawsuits.[2] Notably, SB1 allowed the same treatments to continue for other medical conditions,

[1] *Senate Bill 0001*, Tennessee General Assembly (Nov. 19, 2025).
[2] *L.W. v. Skrmetti / U.S. v. Skrmetti*, American Civil Liberties Union (Nov. 20, 2025).

such as early-onset puberty, signaling that the law targeted transgender patients specifically.

The ACLU filed suit on behalf of three families and Dr. Susan Lacy, a Memphis-based physician, arguing that SB1 violated the Equal Protection Clause of the Fourteenth Amendment by discriminating based on transgender status and, therefore, sex. The district court found the law facially unconstitutional and issued a preliminary injunction.[3] The Sixth Circuit reversed, permitting the law to take effect. The Supreme Court granted certiorari in June 2024, setting the stage for a national examination of the legal protections afforded to transgender minors.

## Legal Issue

The central question was whether SB1 violated the Equal Protection Clause by discriminating based on sex or transgender status. Resolution depended on whether the Court would apply intermediate scrutiny—requiring that the law be "substantially related to an important government interest"[4]—or defer to rational basis review, which demands only that the law be "rationally related" to a legitimate government interest.

Plaintiffs contended that the law discriminated on the basis of sex: by denying treatments to transgender minors while allowing the same procedures for cisgender minors, SB1 directly targeted individuals whose gender identity did not match their sex assigned at birth. The state argued that SB1 regulated medical procedures rather than people, applying equally

[3] Nancy Rodriguez, *U.S. v. Skrmetti: ACS*, American Constitution Society (Nov. 19, 2025).
[4] Morgan Munroe & Sarah Kessler, *Levels of Scrutiny Applied by State Courts, Explained*, *State Court Report* (Nov. 19, 2025).

to all minors and justified by concerns about long-term effects, sterility, psychological harm, and the experimental nature of the treatments.

## Court's Analysis

The Supreme Court ruled 6-3 in favor of Tennessee. The majority, consisting of justices appointed by Republican presidents, applied rational basis review. It relied heavily on *Geduldig v. Aiello* (1974), which held that excluding pregnancy-related disabilities from insurance programs did not constitute sex discrimination. Extending this logic, the majority framed SB1 as a regulation of medical procedures rather than a law targeting a specific group of individuals. The dissent, authored by justices appointed by Democratic presidents, rejected this reasoning, citing *Bostock v. Clayton County* (2020), which prohibits discrimination based on sexual orientation or transgender status in employment. According to the dissent, intermediate scrutiny should apply because SB1 singled out transgender minors for treatment restrictions, denying them the same care afforded to cisgender minors. The majority emphasized that the law's classifications—minors versus adults and treatment for gender dysphoria versus other conditions—were rationally related to legitimate state interests. By this logic, the Court refused to second-guess legislative judgments in areas of complex medical and ethical questions. The dissent countered that the law's effect enforced gender norms, restricted personal autonomy, and represented a failure of judicial protection for a vulnerable minority.

## Judicial Philosophy and Separation of Powers

*Skrimetti* highlights the tension between judicial restraint and activism. The majority framed its decision as restraint, deferring to legislative judgment on difficult policy matters. The dissent argued that this

abdicated judicial responsibility to safeguard constitutional protections. The case illustrates the challenges of applying a living constitutional approach, requiring judges to interpret centuries-old provisions in light of contemporary understandings of gender identity.

The decision also underscores a notable shift in the separation of powers. By deferring heavily to state legislatures, the Court signals that laws targeting transgender individuals need only a plausible justification, granting substantial policy-making authority to states while narrowing federal judicial oversight. This approach mirrors post-*Roe v. Wade* abortion law, where the power to regulate fundamental rights has been returned to state governments, producing a patchwork of access and enforcement nationwide.

### Federalism and Civil Rights Implications

*Skrimetti* demonstrates the interplay of federalism and civil rights. States can now implement inconsistent regulations affecting fundamental rights and access to healthcare. Civil liberties for transgender individuals, including personal autonomy and equal access to medical treatment, are contingent upon state residency. By legitimizing state-level bans, the Court has reinforced a decentralized model of rights protection, emphasizing local policy discretion over national uniformity. However, this decentralization carries structural risks that extend beyond healthcare regulation and into the architecture of constitutional equality itself. When fundamental liberties hinge on geographic boundaries, the promise of equal protection becomes functionally diluted, transforming constitutional rights into privileges unevenly distributed across states. The Court's deference to state authority also recalibrates the balance between judicial protection of minority rights and democratic majoritarianism, privileging legislative

judgment even where historically vulnerable groups are concerned. This approach narrows the judiciary's role as a countermajoritarian safeguard, particularly in contexts where political processes may systematically exclude or marginalize affected populations. As a result, *Skrimetti* signals not merely a federalism turn, but a redefinition of how and when civil rights receive uniform national protection.

The ruling also raises important questions regarding the distinction between civil rights and civil liberties. While the plaintiffs argued that SB1 constituted discrimination under the Fourteenth Amendment, the Court's rational basis application permits broad legislative discretion in defining who qualifies for protection. This creates a precedent for outsourcing protections historically guaranteed under federal law to the political arena, where public opinion and partisan strategy increasingly determine legal outcomes. In doing so, the Court implicitly reframes certain claims not as matters of inherent liberty, but as policy preferences subject to majoritarian control. However, this approach risks hollowing out the Equal Protection Clause by allowing legislatures to recharacterize rights-bearing groups in ways that avoid heightened scrutiny. The result is a doctrinal narrowing in which constitutional protections operate unevenly, contingent upon how a legislature defines both the regulated conduct and the affected class. Over time, such reasoning may encourage states to test the outer bounds of permissible exclusion, confident that minimal judicial review will insulate contested regulations from meaningful constitutional challenge. Regardless, the decision signals a shift away from judicially enforced rights toward a model in which civil liberties increasingly depend on political vulnerability rather than constitutional principle.

Beyond its immediate effects, *Skrimetti* reorients the judiciary's role in mediating conflicts between emerging rights claims and traditional exercises of state authority. By declining to elevate access to gender-affirming care to heightened constitutional protection, the Court signaled a reluctance to recognize new substantive dimensions of liberty absent clear historical grounding. This approach privileges continuity over evolution in constitutional interpretation, effectively slowing the incorporation of contemporary understandings of identity and autonomy into Fourteenth Amendment doctrine. This methodological restraint functions not merely as interpretive caution but as a substantive limitation on whose autonomy the Constitution is willing to protect. The decision thus reflects not only deference to state legislatures, but also a commitment to confining constitutional liberty within historically bounded categories.

The ruling further complicates equal protection analysis by allowing differential treatment to persist without triggering meaningful constitutional scrutiny. When classifications affecting transgender individuals are evaluated under rational basis review, the burden shifts decisively in favor of the state, insulating legislative judgments from robust examination. Yet this doctrinal posture risks transforming equal protection into a largely formal guarantee, one that tolerates exclusion so long as it is framed as regulatory policy rather than explicit animus. In this sense, the decision narrows the functional reach of equal protection, constraining its capacity to address inequality that operates through ostensibly neutral legal mechanisms.

Finally, *Skrimetti* illustrates how federalism can operate as both a safeguard and a constraint on individual rights. While decentralization allows states to serve as sites of experimentation, it also permits entrenched

inequalities to persist across jurisdictional lines. However, when fundamental interests are fragmented along state boundaries, federalism ceases to be a neutral structural principle and instead becomes a determinant of constitutional experience. The resulting patchwork of protections transforms rights into geographically contingent entitlements, challenging the assumption that constitutional guarantees maintain uniform meaning across the nation.

## Broader Social and Political Implications

Beyond the courtroom, *Skrimetti* carries significant social and political consequences. Anti-LGBTQ+ legislation like SB1 reshapes public understanding of equal protection, creating formal legal categories that exclude transgender individuals from participation in public life, including healthcare, education, and public accommodations.[5] These laws threaten personal autonomy, enforce gender conformity, and exploit religious exemptions to justify discrimination, presenting complex conflicts with the Establishment Clause and First Amendment protections.

Politically, transgender individuals have become focal points in electoral strategy. Reports from the Global Philanthropy Project highlight deliberate campaigns to mobilize conservative voters by framing trans people as a "common enemy," exploiting public fear to win elections, and deepening societal divisions. The 2024 presidential election illustrated this dynamic, with over $80 million spent by the GOP on anti-trans advertising

[5] *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2025*, American Civil Liberties Union (Nov. 19, 2025).

in swing states.[6] Public opinion, shows growing polarization on transgender rights, reinforcing the legal and political power of state-level legislation.[7]

## Conclusion

*United States v. Skrimetti* is more than a statutory interpretation; it represents a significant moment in American legal and political history. By deferring to rational basis review, the Supreme Court has authorized a broader strategy of delegating equal protection enforcement to the political sphere, leaving the rights of transgender minors subject to state discretion and public opinion. Its effects extend beyond courtrooms into campaign messaging, statehouses, schools, and the lived experiences of transgender Americans. The ruling serves as a touchstone for ongoing debates about civil rights, federalism, and the judiciary's role in protecting marginalized populations, emphasizing that legal protections are increasingly contingent upon political and societal contexts.

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### About the Author

Harper Leary is a political science major with a minor in history on the journalism track and a strong interest in nonfiction creative writing. Her work is both comprehensive and engaging, with essays previously published in *The Philadelphia Inquirer* and *The Pitt News*. Having traveled extensively, Harper draws inspiration from her global experiences and a deep commitment to social justice. She aspires to pursue war correspondence, driven by a passion for investigative journalism, fierce advocacy, and reporting on issues such as violence, genocide, and American politics.


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[6] Samantha Riedel, *Election Night Proved Democrats Don't Need to Abandon Trans People to Win*, *Them* (Nov. 21, 2025).
[7] *Americans Have Grown More Supportive of Restrictions for Trans People in Recent Years*, Pew Research Center (Feb. 26, 2025).

# High School Essay Competition

**Our Prompt.** The Fourteenth Amendment to the United States Constitution provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." In United States v. Wong Kim Ark (1898), the Supreme Court affirmed that individuals born on U.S. soil are citizens regardless of their parents' nationality. In recent years, however, birthright citizenship has reemerged as a subject of political debate and proposed reform. This prompt invites a persuasive and analytical examination of the legal, historical, and social dimensions of birthright citizenship, including the significance of *Wong Kim Ark*, the constitutional scope of the Fourteenth Amendment, and the legal arguments that may support or challenge potential restrictions on birthright citizenship.

Our inaugural high school essay competition attracted submissions from many curious and intellectually engaged students. After careful review, we selected the three strongest essays for publication, recognizing their thoughtful analysis and commitment to engaging with complex legal and constitutional questions. See *The Significance of the Fourteenth Amendment* below.

## The Significance of the Fourteenth Amendment

*2025-2026 Winners: Sophia Malich, Ziad Rahman, and Arjun Puri*

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**Congratulations to Ziad Rahman, Arjun Puri, and Sophia Malich for their outstanding essays in this year's high school competition.** Their submissions illuminate the enduring importance of birthright citizenship in the United States, both legally and socially, and demonstrate remarkable understanding of the historical and constitutional principles at stake. Together, their perspectives create a multifaceted discussion on jus soli, the Fourteenth Amendment, and the moral and civic foundations of American citizenship.

Ziad Rahman or North Allegheny School District begins by emphasizing the clarity of the law itself: "The text of the Constitution, the spirit of the Reconstruction amendments, and the Supreme Court's ruling in *United States v. Wong Kim Ark* all say the same thing: yes" (Rahman). He reminds readers that the Citizenship Clause is precise: being born in the United States and "subject to the jurisdiction thereof" confers citizenship, regardless of parental status. Rahman underscores the enduring power of judicial precedent, noting that "Stare decisis, the idea that courts stick with precedent, makes this even firmer," illustrating that attempts by the executive branch to redefine jurisdictional boundaries fail against a century of settled law. His analysis demonstrates how legal interpretation, grounded in history and case law, protects the rights of children born in the United States.

Arjun Puri of North Allegheny School District complements this legal argument by placing it within a broader moral and social framework. He

reminds us that the principle of jus soli was born from a desire to correct injustice: "By grounding citizenship in birthplace rather than bloodline, [the framers of the Fourteenth Amendment] ensured that no future government could deny belonging based on prejudice" (Puri). Puri emphasizes that the *Wong Kim Ark* case was not merely a legal technicality but a reaffirmation of inclusion: denying citizenship based on parental status would signal that belonging is conditional, undermining the social stability that citizenship provides. He writes, "A newborn does not choose their parents' immigration status, so denying citizenship based on factors they cannot control would mean telling certain children that their belonging is conditional" (Puri). In this way, Puri extends Rahman's legal focus into the lived realities of immigrant families, illustrating the human stakes of constitutional interpretation.

Sophia Malich of Seneca Valley School District adds yet another layer, highlighting the practical and societal consequences of birthright citizenship. She draws attention to the logistical and civic implications of removing this right: "To have to test born Americans would then demand a revamped test, or different test, adding another complication to an already daunting and lengthy procedure" (Malich). Malich also situates *Wong Kim Ark* within a long tradition of common-law principles: "English Common Law used the principle of jus soli, meaning right by birth…This, however, is not feasible for a nation which receives significantly higher immigration rates, that being the USA" (Malich). By bridging historical precedent and contemporary concerns, she demonstrates that citizenship is not simply a legal status but a foundation for organized society, national identity, and opportunity.

Together, the three essays construct a coherent argument about why birthright citizenship remains essential. Rahman foregrounds the textual and judicial authority of the Constitution, Puri highlights its moral and human significance, and Malich emphasizes the social and practical consequences of maintaining—or undermining—this principle. Rahman points out that "Kids born here are Americans. That's what the Fourteenth Amendment says. That's what the Supreme Court said in *Wong Kim Ark*. No executive order changes that," framing the legal certainty behind this right. Puri echoes this, noting that citizenship "reflects America's civic identity…American identity is not inherited through blood but embraced through American civic life" (Puri). Malich reinforces the societal stakes: removing birthright citizenship could render millions stateless, disrupting fundamental social structures and national cohesion.

Moreover, their essays collectively trace the historical arc from the injustices of *Dred Scott* through Reconstruction, anti-Chinese sentiment in the late nineteenth century, and contemporary debates over immigration. Rahman highlights how the Fourteenth Amendment was designed to prevent future political tampering, citing Senator Jacob Howard's insistence that "Congress shouldn't get to decide who counts as a citizen just by passing whatever law it wants" (Rahman). Puri adds that the moral clarity of birthright citizenship has enduring relevance, as it ensures that equality "is not 'earned' later, but guaranteed at the beginning of life within America" (Puri). Malich reminds readers that these principles are intertwined with civic practice, from schooling to voting, emphasizing that citizenship shapes national identity in concrete ways.

The essays by Rahman, Puri, and Malich demonstrate that birthright citizenship is simultaneously a legal, moral, and social cornerstone of

American democracy. As Rahman notes, it is protected by law; as Puri observes, it upholds equality and inclusion; and as Malich explains, it sustains societal organization and opportunity. Their collective insights show that citizenship by birth is more than a policy—it is a promise, enshrined in the Constitution, that all who are born here belong fully to the nation. These students have not only defended the principle of jus soli with clarity and rigor but have also reminded us of the human and civic values that underline it.