UTAMPA

UNDERGRADUATE LAW REVIEW

VOLUME 1 | ISSUE 1 |
FALL 2024

UNIVERSITY OF TAMPA UNDERGRADUATE LAW REVIEW

VOLUME 1 | ISSUE 1 | FALL 2024

LETTER FROM EDITOR-IN-CHIEF

Dear Readers,

As Editor-in-Chief, it is my great privilege to welcome you to the first edition of the University of Tampa's Undergraduate Law Review. This issue marks a particularly exciting milestone for us: the first-ever publication of the UTampa Undergraduate Law Review. As a co-founder of this initiative, I am immensely proud to see our vision come to life. Our goal has always been to provide a platform for undergraduate students to engage in rigorous legal scholarship, and this inaugural edition reflects the passion, dedication, and intellectual curiosity of our contributors and editorial team.

This publication comes at a time when legal discourse is more vital than ever. As society faces evolving challenges from technological advancements to questions of equity and justice, the role of law in shaping a fair and sustainable future cannot be overstated. Our contributors in this issue have engaged with these complexities, offering perspectives that are as diverse as they are insightful. Behind the scenes, this journal is a testament to the tireless work of our editorial team. From meticulously reviewing submissions to ensure the highest standard of publication, their dedication is unmatched. I am deeply grateful for their efforts and the professionalism they bring to every step of this process.

I want to express my heartfelt gratitude to several individuals whose support made the creation of this undergraduate law review possible. Dr. Thomson, thank you for your tireless efforts in reviewing and refining our articles. Your guidance has ensured our work is polished and professional. Dr. Fridy and Dr. Myers, we deeply appreciate your belief in us and the valuable insights and advice you shared, which shaped our journey. Dean Tankersley, your support and funding were instrumental in allowing us to publish this journal on our website. I extend my gratitude to the president and vice president of the FSU Undergraduate Law Review for taking the time to meet with me and my executive board partners. Your insights and advice were invaluable in shaping the construction of our article layout. Finally, I extend my sincere thanks to my co-founder, Aaliyah, and our executive board members, Alicia, Sarah, and Sydney. Their dedication and hard work have been the backbone of this organization and this journal.

As always, we invite our readers to join the conversation. Whether you are a practitioner, academic, student, or engaged citizen, your perspectives and feedback are invaluable. Please feel free to share your thoughts or submit your work for consideration in future editions.

Thank you for your continued support of the UTampa Undergraduate Law Review. Together, we contribute to a vibrant and essential legal discourse that has the power to inform and inspire.

With gratitude and best regards,

Elizabeth Garcia
Editor-in-Chief
UTampa Undergraduate Law Review

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Discrepancies Between Florida Statutes 61.13 and 61.13001

Elizabeth Garcia

INTRODUCTION

Florida family law, particularly regarding child custody and parental relocation, is often fraught with statutory conflicts that impact judicial decision-making and family dynamics. At the core of these issues are two statutes: Florida Statute 61.13 and Florida Statute 61.13001. It is imperative to note that the last factor in Florida Statute 61.13001 requires the court to consider Florida Statute 61.13. Each statute is designed to serve the child's best interests, yet they approach this goal from different, and sometimes conflicting perspectives. These conflicting frameworks often result in inconsistent judicial rulings, creating uncertainty for families navigating custodial and relocation disputes. This paper argues that the inconsistencies between Florida Statutes 61.13 and 61.13001 ultimately undermine a child-focused approach in Florida timesharing cases. To resolve these conflicts, this article proposes legislative reforms to harmonize statutory standards for timesharing and relocation, providing courts with a unified, predictable framework that better serves the best interests of children.

BACKGROUND AND PURPOSE OF FLORIDA STATUTES 61.13 AND 61.13001

Florida Statute 61.13 serves as the cornerstone for determining child time-sharing and time-sharing arrangements in Florida, with the guiding principle that all decisions should reflect the child's best interests.[1] Courts must consider a variety of factors, such as the emotional stability of the child, the continuity of the child's environment, and the quality of relationships the child maintains with each parent.[2] The intent behind Florida Statute 61.13 is to provide a broad and flexible framework that prioritizes the child's overall welfare, allowing courts to tailor

[1] Fla. Stat. § 61.13 (2024)
[2] Id at 61.13(3)(a)-(c) (2024)

decisions to the specific circumstances of each case. However, the enactment of CS/HB 1301 in 2023 introduced a presumption of equal time-sharing between parents,[3] which affects how courts apply Florida Statute 61.13. This rebuttable presumption encourages a baseline of equal parenting time, effectively requiring any deviation from equal time-sharing to be justified as necessary for the child's best interests.[4]

Conversely, Florida Statute 61.13001 is a specialized statute that applies exclusively to parental relocation, stating that relocation

> "means a change in the location of the principal residence of a parent or other person from his or her principal place of residence at the time of the last order establishing or modifying time-sharing, or at the time of filing the pending action to establish or modify time-sharing. The change of location must be at least 50 miles from that residence, and for at least 60 consecutive days not including a temporary absence from the principal residence for purposes of vacation, education, or the provision of health care for the child."[5]

Under Florida Statute 61.13001, the parent seeking relocation must file a formal petition, provide evidence supporting the relocation, and substantiate how the move serves the child's best interests.[6] This statute mandates a detailed examination of specific factors, including the relocating parent's motivation for the move, the effect on the child's relationship with the non-relocating parent, and the potential benefits of the relocation in terms of financial stability, educational opportunities, or family support.[7] This approach places a substantial burden of proof

[3] CS/HB 1301, 2023 Leg., Reg. Sess. (Fla. 2023) (enacted as Ch. 2023-301, Laws of Fla.).
[4] Fla. Stat. § 61.13(2)(c) (2024)
[5] Fla. Stat. § 61.13001(1)(e) (2024)
[6] Fla. Stat. § 61.13001(3)-(4) (2024)
[7] Fla. Stat. § 61.13001(7) (2024)

on the relocating parent, requiring them to satisfy each statutory criterion to justify the proposed move.

While both statutes aim to uphold the child's best interest, they diverge considerably in their application. Florida Statute 61.13's emphasis on stability and continuity in the child's existing environment can clash with the stringent relocation requirements of Florida Statute 61.13001, which prioritizes a structured analysis of the relocation's impact. For instance, *Coyle v. Coyle* emphasized the procedural rigor required by Florida Statute 61.13001, mandating a meticulous evaluation of each relocation factor, even when such scrutiny may interfere with Florida Statute 61.13's more flexible focus on custodial stability.[8] In *Coyle*, the relocation request was ultimately denied because the trial court failed to meet the detailed factor analysis required under Florida Statute 61.13001, illustrating the stringent standards that relocating parents must meet, even when continuity and stability may support the move.[9]

The introduction of an equal time-sharing presumption under CS/HB 1301 added another layer of complexity to this statutory conflict. This presumption can make relocations more challenging by emphasizing the importance of both parents' consistent involvement in the child's life. When applied to relocation cases, the equal time-sharing presumption may shift the interpretation of Florida Statutes 61.13 and 61.13001, as courts might be reluctant to approve moves that could disrupt an equal time-sharing arrangement. Under this presumption, a relocating parent must not only satisfy Florida Statute 61.13001's rigorous criteria but also overcome the presumption that equal time-sharing is in the child's best interests, an added evidentiary hurdle that may restrict relocations that disrupt shared parenting.

[8] Coyle v. Coyle, 8 So. 3d 127, 134 (Fla. 2d DCA 2009), 34 Fla. L. Weekly D933.
[9] Fla. Stat. § 61.13001(7) (2024)

As a result, courts are now challenged to reconcile the broad, child-centered considerations of Florida Statute 61.13 with the detailed, procedural requirements of Florida Statute 61.13001. This fragmented statutory landscape leaves parents and legal practitioners facing uncertainties in both time-sharing and relocation matters. When one statute's broad best interest analysis conflicts with the other's rigid procedural demands, courts may deliver inconsistent rulings, as seen in cases like *Coyle*. These inconsistencies underscore the need for a more harmonized approach to ensure that both stability and flexibility can be achieved in Florida's custody and relocation cases.

CASE LAW ANALYSIS AND JUDICIAL INTERPRETATIONS

To bridge the conflicting requirement, challenges regarding judicial interpretations of 61.13 and 61.130001 frequently show efforts to reconcile their conflicting priorities. Case law demonstrates this delicate balancing act, as judges handle the complex relationship between maintaining a child's security and attending to the formalities necessary for relocation requests. For instance, in *Sylvester v. Sylvester*, the trial court approved a custodial parent's relocation request but imposed a delayed timeline, allowing the move only once the child reached a certain age to preserve stability during a suggested crucial developmental period.[10] *Sylvester v. Sylvester*. The court's decision to conditionally grant relocation highlights the inherent tension between Florida Statutes 61.13 and 61.13001. While the relocating parent's reasons were seen to be valid, an immediate move could potentially disrupt the child's well-being and developmental needs. This ruling reflects a judicial attempt to uphold Florida Statute 61.13's stability principles while still honoring Florida Statute 61.13001's procedural framework, albeit with limitations.

In contrast, the ruling in *Coyle* exemplifies a stricter adherence to Florida Statute 61.13001's procedural rigor. In *Coyle*, the court overturned the approval of a relocation petition,

[10] Sylvester v. Sylvester, 992 So. 2d 296, 303 (Fla. 1st DCA 2008), 33 Fla. L. Weekly D2239.

emphasizing that the trial court had not meticulously evaluated each factor mandated by Florida Statute Section 61.13001(7).[11]This decision highlights the substantial burden placed on relocating parents under Florida Statute 61.13001, requiring exhaustive consideration of all relevant statutory factors to demonstrate that the proposed relocation aligns with the child's best interests, which is a clear contrast to Florida Statute 61.13's more flexible, holistic approach to time-sharing determinations.

Similarly, in *Arthur v. Arthur,* the court conditionally granted relocation, allowing the custodial parent to relocate only once the child reached a specified developmental milestone, as a way to mitigate potential disruptions to the child's stability.[12] The arbitrary ruling in *Arthur* reflects the judiciary's struggle to cohesively apply both statutes in cases where stability and mobility interests conflict. By setting conditions based on developmental benchmarks, the court attempted to reconcile Florida Statute 61.13's emphasis on continuity in the child's life with Florida Statute 61.13001's allowance for mobility, albeit under controlled circumstances.

These cases underscore the challenges inherent in the dual application of Florida Statutes 61.13 and 61.13001. Judicial decisions frequently reveal an ongoing struggle to prioritize one statute over the other or to strike an ideal balance between them. Courts may lean toward Florida Statute 61.13's stability mandate, particularly when relocation appears to disrupt a child's established environment, while in other cases, judges may prioritize Florida Statute 61.13001's procedural requirements, leading to relocation approvals contingent upon detailed factor analysis. This inconsistency leaves parents and legal practitioners uncertain about the likely outcomes of relocation disputes, as judges' decisions can vary widely depending on how each interprets and prioritizes the statutory frameworks. The resulting patchwork of judicial rulings

[11] Coyle v. Coyle, 8 So. 3d 127, 134 (Fla. 2d DCA 2009), 34 Fla. L. Weekly D933; see Fla. Stat. § 61.13001(7) (2024).
[12] Arthur v. Arthur, 987 So. 2d 212, 217 (Fla. 2d DCA 2008), 33 Fla. L. Weekly D1857.

reflects the difficulties courts face in providing a cohesive and predictable standard, illustrating the need for clearer legislative guidance to harmonize these conflicting statutes.

JUDICIAL INCONSISTENCY AND ITS IMPACT ON FAMILIES

The inconsistent interpretations of Florida Statutes 61.13 and 61.13001 can have a profound impact on families, often leading to prolonged litigation and unpredictable legal outcomes in time-sharing and relocation cases. Courts applying Florida Statute 61.13001's relocation criteria strictly may place an onerous burden of proof on the relocating parent, even in instances where the move would be advantageous to the child. The ripple effects of these statutory conflicts are particularly evident in cases involving prospective relocations. Courts may conditionally delay a parent's relocation until the child reaches a specified age, creating additional uncertainty for families. As demonstrated in *Arthur,* where the court granted a relocation request contingent upon the child reaching a certain developmental milestone, conditional orders are sometimes employed as a compromise solution to reconcile the statutory tensions.[13] However, while conditional orders can bridge the gap between Florida Statutes 61.13 and 61.13001, they also introduce further legal ambiguity and potential grounds for appeal. Families often find themselves in an unpredictable legal landscape, facing uncertainty about which standards or criteria will ultimately apply in their specific case.

This inconsistency leaves families uncertain about how courts will interpret and apply the legal standards in relocation cases. When courts adopt different approaches to balancing custodial stability under Florida Statute 61.13 and the procedural requirements of Florida Statute 61.13001, the legal framework can become inconsistent and difficult to navigate. As a result, families are often left in a state of protracted litigation with no clear resolution, facing the financial and emotional burdens of an unpredictable judicial process.

[13] Id at 214.

IMPACT OF CS/HB 1301

The enactment of CS/HB 1301 on July 27, 2023, fundamentally reshapes Florida's family law landscape by establishing a presumption in favor of equal time-sharing between parents in time-sharing arrangements,[14] which profoundly affects the interpretation and application of Florida Statutes 61.13 and 61.13001. This statute, codified as CS/HB 1301, mandates that Florida courts begin time-sharing determinations with a presumption of equal parenting time for both parents,[15] marking a significant departure from the case-specific "best interests" analysis traditionally applied. Previously, Florida Statute 61.13 emphasized continuity and stability in the child's environment, allowing courts to prioritize factors such as the child's existing community, school, and familial connections and to focus on fostering strong relationships with each parent based on the specific circumstances of the case.[16] The shift to a rebuttable presumption of equal time-sharing under CS/HB 1301 therefore necessitates that courts consider parenting time equality as a default, irrespective of individual case details, unless the equal division of time is demonstrably contrary to the child's best interests.

This new presumption complicates the interplay between Florida Statutes 61.13 and 61.13001, especially in the context of relocation. The statute demands that the relocating parent justify how a move impacting equal time-sharing can still serve the child's welfare, even when the relocation might necessarily limit the non-relocating parent's time with the child. This requirement places a heavier evidentiary burden on relocating parents, who may now need to provide substantial evidence that the benefits of relocation—such as improved economic opportunities, family support networks, or educational resources—outweigh the statutory preference for equal parenting time. Courts, therefore, must navigate the tension between Florida

[14] CS/HB 1301, 2023 Leg., Reg. Sess. (Fla. 2023) (enacted as Ch. 2023-301, Laws of Fla.).
[15] Ibid.
[16] Fla. Stat. § 61.13(3) (2023)

Statute 61.13001's child-centered best interests standard and CS/HB 1301's parent-centered time-sharing presumption.

Given the introduction of this statutory presumption, relocating parents are likely to encounter heightened scrutiny in proving that their proposed move serves the child's welfare without unduly infringing on the non-relocating parent's time. The presumption that equal time-sharing serves the child's best interests adds new complexity to the burden of proof required in relocation cases, as courts may be more inclined to deny relocation requests that risk disrupting the equilibrium of equal-time parenting. As relocation inherently challenges the practical feasibility of equal time-sharing, courts will need to carefully assess whether a relocation plan can feasibly accommodate significant time-sharing or if alternative arrangements would align with the child's best interests in the absence of strict equality.

The statutory shift brought by CS/HB 1301 calls for a recalibration of judicial approaches to ensure that custody and relocation decisions remain focused on the child's welfare amid the competing interests of both parents. Courts may increasingly need to weigh whether equal time-sharing remains viable post-relocation and consider more nuanced solutions that balance parental involvement with the child's overall well-being.

REBUTTABLE PRESUMPTION AND HOLISTIC APPROACH TO COMBINING FLORIDA STATUTES 61.13 AND 61.13001

To address the statutory conflicts inherent in Florida Statutes 61.13 and 61.13001, the Florida Legislature could introduce a rebuttable presumption within Florida Statute 61.13 that favors relocation when it demonstrably serves the child's best interests. Such an amendment would create a more predictable starting point for judicial decision-making in relocation cases by formally acknowledging the valid reasons a custodial parent may seek to relocate. Legitimate

motivations for relocation can include enhanced employment opportunities, proximity to extended family, or access to superior educational resources—all factors that may substantially benefit the child's welfare.[17] By establishing a rebuttable presumption in favor of relocation, the Legislature could facilitate a more balanced approach that allows courts to weigh the interests of both custodial and non-custodial parents more effectively without automatically disadvantaging the relocating parent.

The introduction of a rebuttable presumption does not guarantee automatic approval of relocation; rather, it shifts the initial burden of proof to create a more fair legal framework. Under this approach, once the custodial parent provides evidence that relocation is likely to enhance the child's welfare, the burden would then shift to the non-custodial parent, who would need to show that the proposed move would negatively impact the child's best interests. This shift in burden aligns with established legal principles of fairness and allows courts to more thoroughly consider both parents' perspectives within a consistent framework.[18] The proposed amendment could thus reduce the procedural and evidentiary challenges currently faced by relocating parents under Florida Statute 61.13001, creating a more balanced and effective standard for assessing relocation requests.

A rebuttable presumption in favor of relocation would offer courts a cohesive, structured approach to determining whether relocation serves the child's best interests. Such a framework would address the ambiguities within the existing statutes, which currently impose complex procedural requirements without offering clear guidance on prioritizing competing parental interests. By formally integrating relocation considerations into Florida Statute 61.13, the Legislature would provide courts with a streamlined and predictable standard that could

[17] Fla. Stat. § 61.13 (2023)
[18] Fla. Stat. § 61.13001(7) (2023)

potentially reduce prolonged litigation and foster a child-centered approach. This proposed framework would enable courts to balance custodial stability with the practical realities of modern family life, where mobility for career and familial support is often essential for parents.

UNIFIED BEST INTERESTS STANDARD FOR RELOCATION

An alternative legislative approach to resolving the conflicts between Florida Statutes 61.13 and 61.13001 would be to create a unified "best interests" standard that effectively merges the general custody considerations of Florida Statute 61.13 with the specific relocation criteria of Florida Statute 61.13001. By combining these statutory elements, the Legislature would provide courts with a comprehensive and cohesive framework for evaluating both custody and relocation issues, thus simplifying judicial decision-making and minimizing the risk of inconsistent rulings. This unified standard would incorporate key factors from each statute, enabling courts to evaluate elements such as the stability of the child's environment, the strength of the child's relationships with each parent, and the potential benefits of relocation within a single, integrated evaluative process.[19]

Implementing a unified standard would streamline the court's analysis, allowing judges to assess the child's best interests holistically without the need to navigate separate statutory frameworks. Such an approach would reduce the procedural complexity associated with applying both statutes individually, offering a more consistent judicial methodology that directly addresses all relevant factors in a single determination. This reform would be especially beneficial in light of Florida's changing family dynamics, as families today often face the necessity of relocating for employment or family support. A unified standard would be more adaptable to modern circumstances, acknowledging that a parent's need to relocate frequently intersects with broader concerns for the child's welfare.

[19] Fla. Stat. §§ 61.13(3), 61.13001(7) (2023)

By consolidating the factors for time-sharing and relocation decisions into a unified best-interests standard, the Legislature would create a balanced statutory model better suited to the practical realities of contemporary family life. This integrated framework would allow courts to assess both custody stability and relocation benefits in tandem, reducing the legal ambiguities and procedural burdens currently associated with Florida Statutes 61.13 and 61.13001. Adopting such a standard would enable courts to make determinations that more accurately reflect the best interests of the child, considering the combined weight of stability, parental relationships, and relocation advantages within a cohesive evaluative framework.

CONCLUSION

The conflicting demands of Florida Statute Florida Statutes 61.13 and 61.13001, alongside the recent presumption in favor of equal time-sharing under CS/HB 1301, present significant challenges in child custody and relocation cases. While each statute aims to promote the child's best interests, their differing approaches often result in inconsistent and prolonged litigation. To address these issues, legislative action is necessary to harmonize these statutes, either through a rebuttable presumption favoring relocation or a unified best interests standard. Such reforms would create a more predictable and cohesive legal framework, ultimately fostering an environment where time-sharing and relocation decisions prioritize the welfare of children above all.

Can Florida's Teen Labor Laws Meet Modern Workforce Challenges?

Aaliyah Cornelio

INTRODUCTION

Teen labor rights have become a major topic in legislative sessions across the United States, and with Florida at the vanguard of this effort, legislators are negotiating the difficult task of providing children with fulfilling employment possibilities while guaranteeing their safety in the workplace. Florida House Bill 49, introduced during the 2024 legislative session, brought the issue to the forefront by addressing gaps in the existing legal framework and introducing updated measures to align with the evolving demands of modern industries.[20] The purpose of the Bill is to amend current labor regulations about scheduling, workplace safety, and protections for young workers against exploitation.[21] The special risks that teenagers encounter in contemporary workplaces are recognized in the proposed legislation, which may not be consistent with the safeguards provided by antiquated laws.

Because juvenile workers may otherwise face hazards that could affect their education, well-being, and career prospects, this trend dictates the need for necessary measures such as safe work environments, occupational training, and appropriate working hours.[22] To effectively address the vulnerabilities of young workers in the modern economy, HB 49 proposes necessary revisions to the current labor laws. It revises employment regulations for minors aged 16 and 17. The bill removes certain employment restrictions for these minors, adjusts the age threshold for some limitations, and imposes rules on the maximum number of continuous hours they can work without a mandatory break. It also allows waivers of specific restrictions by parents, guardians, or authorized individuals and grants the relevant department head to issue waivers and enforce

[20] Fla. H.B. 49, Leg., Reg. Sess. (2024)
[21] Ibid.
[22] DOL. "Youth & Young Worker Employment," n.d. https://www.dol.gov/general/topic/youthlabor.

penalties for non-compliance.[23] The rising participation of teens in the workplace due to labor shortages has amplified the need for policies that balance job opportunities with adequate provisions, making the revisions proposed by HB 49, especially timely.[24]

This article explores Florida's current labor laws, identifies holes in the rules, and assesses how well HB 49's proposed revisions fill those gaps. The main question raised is whether HB 49 supports the need for teenage job opportunities while adequately reducing the risks related to teen labor. Even though HB 49 is an important step in the right direction for juvenile labor, more legislative action is required to fully safeguard young workers and provide a fair approach to teen employment.

BACKGROUND

The development of teen labor laws in the United States, beginning with the Fair Labor Standards Act of 1938 (FLSA), has focused on protecting children in the workforce. This historic law set minimum age limits and work-hour restrictions, among other baseline assurances that served as a model for state-level laws intended to stop child labor and profiteering.[25] Building upon the FLSA foundation, Florida created its teen labor regulations further safeguarding juveniles by imposing limitations on work hours, types of allowable jobs, and safety requirements. However, because Florida's current standards do not adequately address the needs of the modern workforce, their sufficiency is being scrutinized. While Florida laws aim to limit the number of hours and types of employment that teenagers can work, they are not flexible enough for industries, where juvenile workers frequently confront high demands and exploitative tactics including excessive hours with unpaid overtime, emotional manipulation, and more.[26] In

[23] Ibid.
[24] U.S. Bureau of Labor Statistics. “Employment and Unemployment Among Youth Summary,” n.d. https://www.bls.gov/news.release/youth.nr0.htm
[25] Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219
[26] Fla. Stat. § 450.081 (2023)

response to growing concerns about overwork, particularly in industries experiencing labor shortages, HB 49 seeks to modernize the state's teen labor laws by enacting stronger restrictions on work hours, enhancing safety standards, and expanding protections against victimization.[27]

Florida's present system has limits. Many of the state's legislation, which was created in the 1980s, are not well enforced and do not consider the needs of the current workforce, such as the impact of digital mistreatment and the need for flexible work schedules in big economic occupations. Children are exposed to exploitative working circumstances in the absence of strict enforcement, particularly in high-risk industries like retail and fast food. Although HB 49 is a step in the right direction towards modernizing these antiquated laws, its reliance on parental supervision may lead to uneven provisions, highlighting the necessity for more legislative changes to guarantee thorough and consistent defenses for young workers throughout the state.[28]

By analyzing cases like Adventure Landing and JGN Services LLC, it is evident that Florida’s child labor regulations fall short of safeguarding young workers. These cases show the urgent need for legislative reform by bringing to light systemic problems. By resolving these problems, HB 49 could guarantee that children are not subjected to hazardous working circumstances and receive the legal protections they are entitled to.

ADVENTURE LANDING

The U.S. Department of Labor fined Adventure Landing, a Jacksonville Beach Florida water park, $151,606 for violating federal child labor laws after employing 14 and 15-year-olds to work beyond legal hours during the school year. This is the second violation for Adventure Landing, which was previously fined in 2018 for similar offenses. As part of a consent order, the

[27] Ibid.
[28] Ibid.

company agreed to enhance child labor compliance, including improved training, reporting of violations, and submitting compliance progress reports.[29]

This case mirrors concerns addressed by HB 49, emphasizing how urgently HB 49's revisions are needed to update Florida's juvenile labor laws and close enforcement loopholes that keep young workers vulnerable to abuse. Despite state-specific legislation and current laws like the FLSA, outdated legislation, and inadequate oversight expose children to dangerous working conditions and long hours. HB 49's initiatives aim to tighten work-hour limitations, improve safety regulations, and increase safeguards against manipulation are essential.[30]

JGN SERVICES LLC

In February 2022, JGN Services LLC faced significant penalties after a 15-year-old worker fell from a roof while performing at a work site in Orlando. The U.S. Department of Labor's OSHA discovered that the company failed to implement required fall protection, resulting in severe injuries to the teenager. The company was cited for multiple violations, including allowing the minor to perform roofing work, use ladders, and exceed legal work hours. JGN Services was fined $55,841 for child labor violations and ordered to pay $106,600 in back wages.[31]

By modernizing work-hour limitations and implementing stricter safety regulations, HB 49 aims to stop incidents like this, where a minor was injured while being allowed to work long hours in hazardous conditions. HB 49's proposed reforms will help stop events like this by

[29] DOL. "FEDERAL JUDGE ORDERS FLORIDA WATER PARK TO PAY $151K IN PENALTIES AFTER DEPARTMENT OF LABOR AGAIN FINDS CHILD LABOR VIOLATIONS," n.d. https://www.dol.gov/newsroom/releases/whd/whd20241021.
[30] Ibid.
[31] DOL. "NOT CHILD'S WORK: DEPARTMENT OF LABOR FINDS FLORIDA ROOFING CONTRACTOR'S WORK PRACTICES ENDANGERED MINOR, JEOPARDIZED WORKERS' SAFETY, FULL WAGES," n.d. https://www.dol.gov/newsroom/releases/whd/whd20230310.

offering a stronger framework to defend young workers from exploitation and hazardous working conditions.

RECOMMENDATIONS FOR REFORM

To ensure that young workers in Florida have safe and productive work experiences, the recently passed HB 49 offers a promising chance to update teen labor standards. However, other amendments are required to handle the particular balance between employment and education, ensure skill-building, protect the health, and guarantee regulatory enforcement if HB 49 is to fulfill its promise of assisting young workers.

There needs to be some form of integration of work and academic schedules. Nowadays, many teenagers find it difficult to manage work and school, which frequently affects their academic performance. Teenagers may work longer hours on the weekends and during school breaks if HB 49 requires flexible work schedules that take into account the academic calendar. This arrangement would assist teenagers in obtaining worthwhile work experience that corresponds with their career objectives, in addition to alleviating the stress that comes with juggling work and education.[32] By emphasizing that learning should come before work, HB 49 can support teenagers in pursuing their job goals without sacrificing their academic performance.

Moreover, to turn juvenile employment into a chance for career advancement, HB 49 should mandate job training and skill development programs for young workers. Companies could offer skill-specific training programs in subjects related to high-teen employment industries, including food handling safety in the food service industry or customer service training in retail. These job-specific training programs would transform adolescent employment from temporary labor into a foundational experience in skill development, providing young workers with competencies that may help them in their future academic endeavors or career

[32] Mental Health America. “Balancing Work and School,” n.d

pathways.[33] Incorporating these initiatives into HB 49 would benefit teenagers while also boosting the economy by producing a workforce that is skilled and flexible.

Furthermore, teen workers frequently work in settings that can be emotionally and physically taxing, particularly in sectors like retail and food service. With an emphasis on identifying and resolving workplace dangers, HB 49 needs to have particular measures for safety briefings intended for young employees. Additionally, HB 49 should provide teenagers with the essential support systems they need to deal with stress at work by requiring access to mental health resources like frequent check-ins with supervisors or an anonymous reporting system.[34] HB 49 could guarantee that work experiences are beneficial and promote well-being rather than oppression by addressing the special safety and psychological needs of young employees.

Lastly, strict enforcement is necessary for any labor changes to be effective in stopping manipulation and disobedience. Increased money for labor inspectors tasked with keeping an eye on teen labor law compliance could help HB 49. To further emphasize how important it is to follow youth labor laws, companies who consistently break them should be subject to hefty fines or perhaps temporary suspensions. HB 49 would ensure that businesses uphold their commitment to providing safe, respectful work conditions for teenagers by strengthening the disincentive against subjugation by increasing the frequency and severity of enforcement actions.

Of course, there may be resistance to such measures. The new rules, such as required training and emotional support systems, may raise expenses for employers, according to critics, especially in sectors that are already struggling with a labor shortage. Additionally, small firms may worry that these regulations may restrict their ability to operate and decrease the number of

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[33] "Federal Programs for Transitioning to Employment | Youth.gov," n.d. https://youth.gov/youth-topics/youth-employment/federal-programs-support-transitioning-employment.

[34] Ibid.

young workers available during peak hours. The long-term advantages of developing a knowledgeable and supported staff, however, outweigh any potential costs associated with implementing these suggested improvements. In addition to protecting young workers, these measures would aid in the development of a workforce that is ready for the demands of the future economy.

The main objective of HB 49 is in line with redefining child employment as a chance for development rather than merely a source of inexpensive labor. HB 49 can guarantee youths' physical and emotional health while assisting them in gaining useful, transferable skills by tying job opportunities to educational and professional development objectives. The changes covered here offer a method to turn teen labor into a constructive, growth-oriented experience that benefits young people's development and fortifies Florida's workforce of the future. These reforms to HB 49 would redefine the nature of youth employment in Florida. By integrating academic priorities with flexible work schedules, requiring job training and skill-building, enforcing workplace safety and mental health standards, and strengthening regulatory compliance, HB 49 can set a new standard for teen labor provisions. Through these comprehensive legislative improvements, Florida can establish a forward-thinking model for youth employment, balancing the needs of young workers with the demands of the modern economy.

POTENTIAL SETBACKS AND LIMITATIONS

Critics may argue that more rules, such as mandatory job training programs, flexible work hours, and improved mental health protections, would make it harder for teenagers to find work, especially in fields where there are labor shortages.[35] Some lawmakers and business

[35] Employment Policies Institute. “The Lasting Benefits of Early Work Experience - Employment Policies Institute,” October 16, 2014. https://epionline.org/studies/the-lasting-benefits-of-early-work-experience/.

owners are among the critics who contend that more stringent laws will raise expenses and make it more difficult for small companies to hire young, part-time employees. They argue that small businesses might be unable to afford these extra costs, which could result in fewer hiring prospects or the complete elimination of part-time positions.[36]

However, the long-term advantages of funding teen labor outweigh these concerns. A skilled and well-trained workforce benefits employers by requiring less supervision, handling more responsibility, and fostering a more stable and productive work environment. HB 49 establishes a balanced approach by encouraging an employment structure that supports both job training and psychological interest while coordinating work schedules with school calendars.[37] Reforms that prioritize work-life balance, mental health, and skill development have the potential to increase employee productivity and loyalty over time, which will lower hiring and training expenses for companies.

Although occupational hazards are a legitimate issue, HB 49's proposed amendments are meant to lay the groundwork for more significant, gradual adjustments. To prevent minors from being overworked, which can cause weariness and raise the risk of accidents, the bill requires that work hours be in line with academic schedules.[38] Furthermore, encouraging businesses to offer job-specific training reduces workplace hazards by empowering teenagers to complete jobs safely and effectively. Although not all workplace hazards are addressed by HB 49's amendment, they are a crucial first step in establishing a disciplined, secure, and encouraging work environment for young people. Building on the basis established by HB 49, future legislative

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[36] Solodev. “Child Labor Laws & Information.” Ojt, n.d. https://www.fldoe.org/academics/career-adult-edu/career-tech-edu/additional-cte-programs-courses/ojt/childlabor.stml

[37] Ibid.

[38] Ibid.

changes may concentrate on additional industry-specific preservations, such as more stringent safety regulations or higher salary requirements.

By shielding teenagers from the discipline and difficulties of a real-world workplace, excessive regulation of juvenile employment may impede the growth of a work ethic and resilience. Work-hour limitations and training requirements may deny teenagers the chance to develop a strong work ethic and develop character through experience in hard occupations. This view, however, overlooks the fact that character and resilience are not compromised by promoting a safe, developmentally supportive work environment. Ensuring that teens work in environments that foster growth, skill acquisition, and a healthy balance between work and education prepares them for success. Research shows that when youth employment models emphasize education and training, they result in higher levels of resilience and career success.[39] Initiatives such as the Workforce Innovation and Opportunity Act (WIOA), for instance, emphasize the advantages of structured training and mentoring enhancing young people's educational attainment, employment retention, and long-term career outcomes.[40] Instead of exposing teens to unregulated, potentially harmful work conditions, HB 49 encourages the development of critical skills, including time management, problem-solving, and teamwork, within a framework that respects their physical and mental well-being. Such a balanced approach fosters maturity and discipline without compromising health and safety.

Although there are arguments against the changes that HB 49 proposes, each of these issues can be resolved by highlighting the long-term advantages of having a young workforce that is supported, protected, and well-trained. With its emphasis on skill development, safety,

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[39] InsideTrack. "Connecting Youth Adults to Career Pathways Through Evidence-based Mentoring." *InsideTrack,* March 23, 2023.
https://www.insidetrack.org/blog/connecting-young-adults-to-career-pathways-through-evidence-based-mentoring
[40] Pub. L. 113-128

mental health, and enforced rules, HB 49 provides a contemporary framework that can improve young people's employment experiences while also helping businesses and the economy as a whole. Florida can set a benchmark that links work and education for the state's young workers by implementing these reforms and modeling a juvenile labor policy that strikes a balance between protection and growth.

CONCLUSION

The defense of teen workers' labor rights has advanced significantly with Florida House Bill 49 (HB 49), but further legislative action is needed to address the entire range of issues that teenage workers encounter in contemporary workplaces. The limitations of current teen labor laws have been examined in this article, with special attention paid to work hours, safety standards, and barriers against exploitation. The realities of modern juvenile employment are not well addressed by current rules, which frequently overlook important factors including hazards to one's physical and mental health, workplace accidents, and excessive work hours that endanger the well-being of teenagers.

By updating work-hour laws and putting in place the required assurances for young people entering the workforce, HB 49 makes a significant step toward closing these inequities. Given that many teenagers are already exposed to hazardous working conditions, it is crucial to update labor rules for this vulnerable population to safeguard them and to raise a generation of workers who are ready for both personal and professional achievement.

Beyond Florida, HB 49 has ramifications since it offers a possible model for other states, such as Ohio, Texas, and Georgia, looking to update their teen labor legislation to take into account the current economic climate.[41] Young workers' physical and mental preparedness for

[41] Florida Education Association. “Weakening Child Labor Laws HB49/SB 1596.” Florida Education Association, February 2, 2024. https://feaweb.org/issues-action/2024-legislative-session/bills-were-watching/child-labor/.

future employment can be guaranteed by placing a high priority on their health and safety. Lawmakers must keep modifying and fortifying legislation to provide comprehensive protections to build on the foundation laid by HB 49, especially in high-risk sectors like retail and food service.

Building a healthier, more productive workforce requires making sure young people are supported, safe, and paid fairly. Even if HB 49 establishes a positive precedent, further legislation is required to completely safeguard and empower teen work in Florida and elsewhere in the future.

The Doctrine of Qualified Immunity Is An Affront to The Core American Value of *Justice For All*

Writer: Ted Lindlauf

Editor: Samantha Goetting

INTRODUCTION

In 1967, the United States Supreme Court established the doctrine of qualified immunity in *Pierson v. Ray.* This case surrounded overt racism and bigotry, where fifteen priests were arrested after entering a coffee shop for breach of peace because a few of them were black.[42] Subsequently, *Pierson v. Ray* defined qualified immunity as an affirmative defense that provides government officials with immunity from civil liability, should they not violate a "clearly established right".[43] Violating an established right is defined as something being "sufficiently clear that a reasonable officer would understand that what he is doing" is engaging in illegal conduct.[44] The issue lies within the application of qualified immunity, where courts often apply an unduly burdensome standard stating every minute detail of a case must be identical to another case where a qualified immunity defense was defeated.

Moreover, regarding qualified immunity, there is also a circuit court split. The Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits all place the burden of proof on the plaintiff to prove that the defendant is entitled to qualified immunity.[45] Strenuous to overcome, this burden is exorbitantly difficult to prove a negative and comprehend the mind of a government official defendant to prove that they acted outside of their official capacity. The First and Second Circuit Courts descend from this preposterous standard. The defendant seeking this

[42] Pierson v. Ray, 386 U.S. 547 (1967).
[43] Ibid.
[44] National Conference of State Legislators. "Qualified Immunity." *NCSL*, 12 Jan. 2021, www.ncsl.org/civil-and-criminal-justice/qualified-immunity.
[45] Ackerman, Matthew. "Reflections on a Qualified (Immunity) Circuit Split | Ackerman & Ackerman." Ackerman & Ackerman, March 17, 2022. https://ackerman-ackerman.com/reflections-on-a-qualified-immunity-circuit-split/.

special defense must prove that they did act within their official capacity as a government employee when they committed the alleged offense or action for which they are being sued. This standard makes much more sense legally and is more in line with other special defenses such as self-defense, where the defendant must present prima facie evidence of self-defense immunity. The problem with having a circuit court split is that government officials have a different standard of proof when they get sued. It can make understanding the law of the land more difficult because there is no unifying standard across the country. The positive is that when there is a circuit court split, The Supreme Court of The United States of America is more likely to take up the case and rule on it. A writ of certiorari, an appeal to a higher court, was filed before the court that requested an answer to this precise issue in *Sanchez v Guzman et al.*

SANCHEZ v. GUZMAN

Sanchez v Guzman is a civil rights claim against police officers who fired 66 shots into a car occupied by three people.[46] One was killed, one rendered paraplegic, and the third was grievously injured because of the shooting. The district court ruled that as a matter of law, the defendants were entitled to qualified immunity. The plaintiffs appealed to the Tenth Circuit Court of Appeals, arguing that if plaintiffs pursuing claims of excessive force defeat qualified immunity, they must prove that they are entitled to qualified immunity. This suggested that it is a form of absolute immunity as opposed to an affirmative defense that can be argued, as opposed to defendants.[47] Additionally, the plaintiffs stressed that the district court's ruling made it so that once the police pursue a chase, a plaintiff could never surrender as the plaintiffs in this case attempted, or should they be injured, their claims would be dismissed due to qualified immunity.[48] This would result in a suspect not having any incentive to surrender to police as they

[46] Sanchez v. Guzman, No. 22-1322, 2024 WL 2672430 (10th Cir. June 28, 2024)
[47] Ibid.
[48] Ibid.

may continue lawfully shooting them should they choose. This appeal was denied by the Tenth Circuit and as aforementioned, an appeal to The Supreme Court of the United States has been filed recently.[49]

This case serves as an example of someone being denied justice thus far as a result of qualified immunity as it presents a case where the plaintiff may have been wronged yet are unable to seek monetary compensation due to the profession of their tortfeasor. Had the person who caused the plaintiff's damages been anyone but an official of the government the plaintiff would have been able to get their case before a jury to decide if they are entitled to monetary compensation assuming that qualified immunity is the only thing blocking such. This means that government officials are receiving special treatment that only they are entitled to. This is an abhorrent standard holding government officials above that law that everyone else is expected to operate under and often denies justice to plaintiffs who deserve their day in court.

CORBITT v. VICKERS

On July 10, 2014, in Coffee County Georgia, Vickers, the defendant, and some police officers to going on an operation to arrest a suspect.[50] The apprehension effort spilled into the plaintiff's, Amy Corbitt's, front lawn where several innocent bystanders were in or around. Once Vickers and his colleagues were on the property they ordered everyone to the ground, children included, to put a gun to the back of one of the adults on the property before handcuffing them. While all of the children were obeying the officers' orders and staying put on the ground, Vickers began discharging his firearm upon the Corbitt family dog. The dog ran towards its owner; however, Vickers resumed firing upon the dog but he missed and hit one of the children who were all the while obeying the officers' orders.[51] Amy Corbitt filed a lawsuit against Vickers in

[49] Ibid.
[50] Corbitt v. Vickers, No. 17-15566 (11th Cir. 2019)
[51] Ibid.

his capacity for depriving her child of his rights to be free from excessive force under the Fourth and Fourteenth Amendments. The case was dismissed based on qualified immunity as Vickers was pursuing a suspect compliant with his duties as a police officer.[52]

The case of Corbitt v Vickers exemplifies the challenges plaintiffs face in seeking justice under the doctrine of qualified immunity. Due to the defendant's successful motion to dismiss, basic factual issues that ought to have been decided by a jury were not subject to court scrutiny in this case. Whether Officer Vickers' command for everyone on Amy Corbitt's property to lie on the ground was legal and whether his choice to shoot, first at the family dog and then at a child, was appropriate are the two main questions. These are both questions that the Corbitts deserve to have answered by a jury. They both also answer pertinent questions that go to Vickers's state of mind at the time of the shooting. However, the case was dismissed when Vickers filed a motion to dismiss based on qualified immunity so the Corbitts never got their day in court to plead their case.

OPPOSITIONS OF QUALIFIED IMMUNITY

Many proponents of qualified immunity argue that for government officials to be able to do their jobs without fear of bankrupting themselves over a mistake they made when they had to make a split-second decision, qualified immunity is a necessity. Police officers, in particular, must make life-and-death decisions in the heat of the moment every single day. However, the United States has clear and simple self-defense laws ubiquitously. These laws apply universally and are not just a privilege given to officials of the government.

In the United States, the five elements of self-defense are innocence, avoidance, reasonableness, imminence, and proportionality.[53] While not every jurisdiction requires all five

[52] Ibid.
[53] Branca, A. F. (2020). Legal Principles & Processes. In The Law of Self Defense Principles (pp. 19–20). essay, Andrew F Branca.

elements, adherence to these principles generally precludes liability in civil or criminal cases. Hypothetically, if a law enforcement officer satisfies all five elements in a use-of-force case, it is unlikely that a suit against them would succeed in any jurisdiction. However, the broader issue lies within the people's need to get relief when they suffer a grievous injury as a result of someone else's recklessness or negligence regardless of whether or not they were a government official. At a minimum it should be the government official who must prove why they are entitled to the qualified immunity defense at trial, they are the only ones who know why they acted the way they did.

In the case of *Sanchez v. Guzman,* perhaps, the officers at hand could present some evidence as to why they felt as though the actions they took were justified at the time given the totality of the circumstances.[54] In America, self-defense doesn't necessarily require the overt, conscious acts of a suspected attacker but rather a reasonable fear by the person claiming to be using self-defense. The question of how the officers felt or perceived the situation at the time can only be answered by them. It is not possible for a plaintiff trying to defeat a motion to dismiss to do so.

REFORM

To provide a solution that takes the often-valid concerns of those who firmly believe in qualified immunity, it is to be assured that officials in the government can do their jobs effectively and make split-second decisions with some degree of protection, but not the ability to act with impunity. The government should create a fund that officials such as police can pay into and if they choose to do so, that fund will pay for any verdict against them if they are to be sued as a result of their on-duty conduct. They could have membership tiers where you can pay a certain amount of money per month to get protected up to a certain dollar figure of a verdict or

[54] Ibid.

pay more per month and get a larger amount of protection. Perhaps, if someone is found to not be liable, this fund can pay for their attorney's fees. If this is to be done, however, we should completely get rid of qualified immunity as an absolute defense, it should still be able to be argued at trial that qualified immunity applies, but not at the motion to dismiss phase.

CONCLUSION

The judicial doctrine of qualified immunity should be left behind never to be looked back upon. This paper showed just a couple of examples where people were denied justice in cases they may have been entitled to; however, many more similar cases are filed in the United States every year. Several alternatives protect members of the government from liability such as the one mentioned in this article (similar to an insurance policy) and as such qualified immunity is a sorry excuse for the "necessary evil" to protect those officials. To preserve the rights of the American people to seek justice in civil court and to hold those who wrong others accountable, qualified immunity must be removed as a doctrine by which to govern.

Abortion Restriction: An Assault on Female Bodies

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Editor: Samantha Goetting

INTRODUCTION

Since 2018, the topic of reproductive rights has been a major focus of state and national legislative bodies, threatening the safety and well-being of women across the United States, with conservative states like Florida imposing increased restrictions on abortion access. In contrast to previously existing federal protections allowing for abortion up to the second trimester, the decision in *Dobbs v. Jackson Women's Health Organization* has allowed states like Florida to enact a six-week ban on abortion.[55] Per Florida Statute 390.011, an attack from the white male patriarchy on the liberties of women across ethnicities and socioeconomic statuses, further compounding historical, systematic marginalization and discrimination while asserting male supremacy.[56]

Reports of women facing unprecedented and harrowing consequences have been emerging from the loss of national protections for abortion access and the passage of restrictive state laws. Women are forced to carry nonviable fetuses to term, as they are unable to receive an abortion in their home state and lack the finances or time to travel, often hundreds of miles, to undergo this necessary procedure. The permissions and exceptions of restrictive abortion laws are far too narrow to reflect the actual experiences of women and meet their most basic needs, failing to account for the complexities that are incurred in the process of pregnancy.

This article examines the burgeoning legislature barring abortion access as well as the documented and possible implications of restricting what is an essential procedure. It will be

[55] Dobbs v. Jackson Women's Health Organization, 597 U.S. (2022)
[56] Fla. Sta. § 390.011 (1)(a) (2024)

debated as to whether laws such as Florida's six-week ban achieve anything other than the disenfranchisement of women, applying research and women's lived experiences to demonstrate the tangible, often agonizing effects of such legislature. While pro-life advocates assert these restrictions are in the interest of protecting human life, there exists no such attempt to aid a mother or child postpartum. Forcefully sanctioning the birth of children that are unwanted or unable to be adequately cared for, is a process that will only magnify and reinforce existing disadvantages.

BACKGROUND

Abortion was a sanctioned and allowable practice in North America until the mid-1800s, records which appear in legal and medical documents from those times.[57] The first laws surrounding abortion were enacted in 1821, and by 1910, abortion was criminalized in every state to curb the wave of female independence and autonomy occurring in the Victorian era.[58] Indeed, from the day of its conception, the anti-abortion movement has been founded on patriarchal and misogynistic ideals with the sole purpose of infringing on the rights of women.

Over the past 100 years, our society has made successful efforts to increase the rights afforded to women and decrease the imbalances between the genders. Restrictions on women's access to healthcare, the likes of which haven't been seen in over a decade, have been imposed. Preventing access to abortion will not benefit anyone, and will actually only serve to further compound the systematic disadvantages faced by women, especially those with minority or low-income status, while reinforcing an outdated and oppressive patriarchy. Additional ramifications of this decision include the disproportionate impact on communities facing obstacles to accessible healthcare. Women who are ethnic minorities, impoverished, disabled,

[57] Annalies Winny, "A Brief History of Abortion in the U.S.". Hopkins Bloomberg Public Health Magazine, Oct. 26, 2022
[58] Ibid.

undocumented, or far from urban centers are at an increased risk of carrying unwanted or dangerous pregnancies to term. The consequences of having a newborn or facing health complications from a pregnancy will only exacerbate existing issues for these women (i.e., financial, physical, or social).[59]

RELEVANT CASE LAW

The innate right to abortion has been repeatedly recognized and repealed in the United States. In 1973, the Supreme Court provided a decision on *Roe v Wade*, seven of nine justices concurred that the Due Process Clause of the Fourteenth Amendment, which guarantees that no state can "deprive any person of life, liberty, or property, without due process of law", implied a right to privacy.[60] As such, any law that broadly prohibited abortion without meaningful exceptions (i.e., stage of pregnancy, circumstances of conception, health of mother and fetus) was determined to violate this right to privacy.[61] Furthermore, the Court acknowledged the blatant "detriment that the State would impose upon the pregnant woman by denying this choice", such as forced health risks and financial challenges associated with childcare.[62] Following *Roe v Wade*, abortions in the first trimester of pregnancy were protected by federal law and unable to be restricted by any state legislature.[63] States were permitted to regulate abortion in the second trimester provided they were reasonably related to the preservation of maternal health. Once the fetus reaches the point of viability in the third trimester, states may prohibit abortion entirely with exceptions for lifesaving care.[64]

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[59] Risa E. Kaufman & Katy Mayall, "One Year Later: Dobbs v. Jackson Women's Health Organization in Global Context." American Bar Association, Jul. 26, 2023
[60] 410 U.S. 153 (1973)
[61] Ibid.
[62] Ibid.
[63] Id. at 164–65
[64] Ibid.

In 1992, the Court heard *Planned Parenthood of Southeastern Pa. v Casey* reaffirming the right to have an abortion as established in *Roe*, citing stare decisis, additionally establishing the standard of "undue burden."[65] The Supreme Court ruled that such undue burdens violated the Constitution and may not be imposed to regulate or restrict abortion.[66]

In a striking decision on *Dobbs v Jackson Women's Health Organization* on June 24, 2022, the Supreme Court ruled that "procuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution's text or in our Nation's history."[67] This statement shows a blatant disregard for factual elements of history, in which abortion access has been well documented since the conception of the United States.[68] Following the *Dobbs* verdict, the ability to regulate and restrain abortion was left up to the states, many of which have enacted full or near-complete bans on what has been demonstrated, both past and present, to be a lifesaving and essential element of healthcare for women.

ZURAWSKI v. TEXAS

Since the *Dobbs v Jackson* decision, several states have imposed draconian restrictions on abortion access, the results of which demonstrate the tangible threat that accompanies a loss of this essential healthcare procedure. The ambiguity around what sort of conditions constitute a danger to the mother's life has led many doctors to refuse care, and legislative efforts to provide more clarity on these laws have been unsuccessful. Samantha Casiano, a Texan woman whose fetus was diagnosed with anencephaly, a condition in which part of the brain and skull do not develop, was denied in-state abortions because no threat was posed to her health as the mother.[69] Due to financial concerns, Casiano was unable to take time off of her job to travel out-of-state to

[65] Planned Parenthood of Southeastern Pa. v Casey, 505 U.S. 846
[66] Ibid.
[67] Ibid.
[68] Ibid.
[69] Aria Bendix, "Woman suing Texas over abortion ban vomits on the stand in emotional reaction during dramatic hearing." NBC News, Jul. 19, 2023

receive an abortion; instead, she was forced to carry an unviable pregnancy to term and give birth to an infant that lived only 4 hours.[70] Casiano described this horrific experience as "the most traumatizing thing I've ever had to go through in my life," and to this day she struggles with her mental health as she tries to balance coping with this tragedy alongside her duties as a mother.[71]

Such a situation begs the question of how the denial of abortion is *not* a violation of a woman's constitutional right to privacy. Any person who is unable to make decisions about their own body certainly represents an infringement on this most basic, guaranteed right, present in both state and federal legislature. According to the Supreme Court's decision in *Casey* (1992), the distressing circumstances under which Ms. Casiano was impelled to carry a nonviable fetus more than constitute an undue burden, and the laws that forced her to endure this nightmarish ordeal should accordingly be treated as unconstitutional.[72] It is of note that out of all the plaintiffs in the *Zurawski* case, Ms. Casiano was the only woman who, because of her financial and temporal constraints, was unable to seek an out-of-state abortion.[73] Raised here is a fundamental issue within the restriction of abortion access, as it disproportionately encumbers women with low incomes in ways that encroach on the right to equality. The opportunity to receive an out-of-state abortion is one reserved for women who can afford to do so, and thus statewide restrictions fall short of curbing abortion. Rather, they force women into situations that reinforce existing disadvantages.

PROPOSAL FOR REFORM

[70] Ibid.
[71] Rebecca Wright, Her baby was going to die. Abortion laws forced her to give birth anyway, CNN, Mar. 31, 2024
[72] Ibid.
[73] Zurawski v. Texas 690 S.W.3d 644 (2024)

While it may not be realistic to expect all the nationally sanctioned reproductive freedoms of yore to be quickly reinstated, there are many steps states could take to reduce the infringement on female bodies and liberties. Examining Florida Statute 390.0111 reveals several harmful and burdensome regulations placed on abortion access. The requirement for women to visit two physicians constitutes an additional attempt to reinforce patriarchal control over feminine bodies. In 2022, women composed 38% of practicing physicians in the United States, and only 31.9% in Florida.[74] Consequently, many women will be forced to have the decision of abortion made for them by men not only legislatively, but physically; a practice that only further engenders the dissolution of autonomy and freedom already compromised by long-standing gender imbalances. Loosening this requirement would permit women to have greater involvement in these sensitive decisions and restore a degree of independence to the choice of procuring an abortion, allowing for privacy between a woman and her primary care physician.

Yet another barrier to receiving this procedure is the mandated documentation of rape, incest, or human trafficking for procedures past the six-week mark in Florida.[75] Advocates for victims of sexual assault contend that, in the aftermath of such a traumatic experience, victims have more pressing concerns than navigating the ins and outs of restrictive abortion laws (i.e., processing the emotional toll and coordinating medical and psychological care).[76] Moreover, this requirement is further confounded by factors of race and ethnicity: a survey conducted by the U.S. Department of Justice concluded that Hispanic women are significantly more likely to experience rape in their lifetime compared to non-Hispanic women, and additionally less likely

[74] Florida Health, 2022 Physician Workforce Annual Report, Nov. 2022
[75] Fla. Sta. § 390.011 (1)(d) (2024)
[76] Katia Riddle & Julie Luchetta, "Many state abortion bans include exceptions for rape. How often are they granted?" NPR, Oct. 26, 2024

to report this crime than their non-Hispanic counterparts.[77] Even if women do report a rape- which some studies suggest happens less than 5% of the time- one in five of these reports will be dismissed by police and deemed "unfounded."[78] Thus, the stipulation that an instance of rape, incest, or trafficking be documented for a woman to receive an abortion past six weeks prevents women from attending to the intricacies that accompany such trauma and impose unnecessary and undue burdens.

Removing these requirements will empower women to take more control over their reproductive process and dissolve patriarchal infringement on matters of pregnancy. Female-centered approaches to reproductive rights need to prioritize the experiences of women and acknowledge the systematic disadvantages that healthcare access and law enforcement prescribe. As it stands, restrictions on abortion only exacerbate the preexisting adversities women face regularly, from the dearth of same-sex healthcare providers to the bigotry of our justice system. These problems are magnified for women during pregnancy, a most vulnerable time in their lives.

CHALLENGES TO PROGRESS

Much of the rhetoric surrounding anti-abortion beliefs is rooted in religious and moral beliefs, rather than fact. Pro-life advocates have pushed to demonstrate the protection of an unborn fetus as inherently protected by the Constitution. Those who support the pro-life stance see unborn fetuses as persons and therefore deserve the same rights and liberties, specifically the right to life, afforded to born individuals. As argued in *Dobbs*, the court ultimately found that the original meaning of the Fourteenth Amendment, as enacted in 1868, implicitly included unborn

[77] Patricia Tjaden and Nancy Thoennes, "Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey." National Institute Of Justice Centers for Disease Control and Protection, Nov. 1998

[78] Jacey Passmore, "The Underreporting and Dismissal of Sexual Assault Cases Against Women in the United States." Brigham Young University Ballard Brief, 2023

children in its conception of personhood.[79] Accordingly, the right to life ascribed to a fetus is the same right to life ascribed to the woman carrying it. Interestingly, much of the existing legislature on abortion restriction seemingly prioritizes the life of the mother in life-threatening circumstances over that of the fetus, allowing for abortion under these conditions. Such a provision challenges the idea that the mother and fetus have an equal right to life, indicating that the life of a "born or naturalized" person outweighs that of a fetus, even in some of the most conservative states, like Texas and Florida. Indeed, it is unrealistic and unjustified to allocate the same rights possessed by living, breathing human beings to a fetus that is unborn or nonviable.

Other opponents to a woman's right to access reproductive healthcare purport the idea that abortion is "murder," alluding to arguments of personhood for fetuses. The origins of this view, however, are not grounded in morality or ethics, but rather a perpetuated assault on women's rights first initiated in the mid-1800s.[80] Simultaneously, the American Medical Association (AMA), composed exclusively of male physicians, in a concerted effort to "medicalize" pregnancy and strip women of authority surrounding these decisions, campaigned against abortion to criminalize the act.[81] Central to this crusade was the notion alleged by the AMA doctors assumed the role of "physical guardians of women," a statement blatantly steeped in outdated, patriarchal ideals and intended to subjugate and disempower women.[82]

CONCLUSION

A woman's ability to access lifesaving healthcare procedures has been thwarted by repressive and, ultimately, illogical legislation passed in recent months. Highlighted in this article are just some of the incredibly damaging consequences of abortion restriction, the extent

[79] Ibid.
[80] Neelam Patel, "The Insidious Origins of the "Moral" Argument Against Abortion Rights" Georgetown Law, n.d..
[81] Ibid.
[82] Ibid.

of which we have yet to fully see. The current allowances and exemptions to abortion bans fall short of accounting for the realities of pregnancy, instead reflecting outdated, but continually perpetuated, patriarchal ideals founded to control female bodies.

By instilling a six-week ban against abortion, Florida has taken an enormous step backward for women's rights and engendered the resurrection of misogynist views and initiatives. The anti-abortion movement, founded on an effort to disenfranchise women, accomplishes this aim with the inhuman conditions it subjects pregnant women to, particularly women of minority or low-income status. If reverence for human life was actually at the core of this argument, pro-life advocates would invest in the infrastructure, like subsidized child care or related expenses, necessary to support the livelihoods of mother and baby postpartum.

A phenomenon as unique to women as pregnancy requires solutions that are women-oriented, prioritizing the rights of the mother and advancing the resources she has available to effectively and responsibly raise a child. There is no provision in any abortion bans to allocate aid to mothers forced to give birth to children they are unable to adequately care for, a wholly paradoxical reality for a movement touting itself as preserving human life. Restricting abortion holds the potential to irreversibly disrupt the lives of women and families across the nation, forcing underprivileged or financially unstable individuals and their networks into situations not unlike Ms. Casiano's. The implications of abortion restriction speak to a larger effort to curb women's rights and terminate their medical autonomies, wrangling from them the ability to make essential and intimate decisions about their healthcare.

And who is to say the infringement on rights will stop with abortion? If we as a nation do not stand up in the face of this burgeoning constraint, the campaign against medical autonomy may only escalate. Abortion is a matter of life and death, of freedom and subjugation, of progress

and regression: but above all, a matter of healthcare. The fight for reproductive rights is a fight for the futures of everyone: a stark refusal to accept governmental restrictions imposed on individual bodies and a dedication to sovereignty in personal decisions.

The Fight to Repeal Florida's "Free Kill Law"

Writer: Ariana Chacana

Editor: Francesca Messina

INTRODUCTION

On October 18, 2019, two grieving daughters, Sandra Santiago and Norma Caceres, filed to appeal a dismissal of a medical negligence case against Dr. Francisco Rodriguez regarding their deceased mother, Ramona Reyes. Santiago and Caceres argued that their mother's death could have been prevented had Dr. Rordiguez adhered to appropriate medical standards in her treatment.[83] Both daughters asserted that multiple precautions could have taken place to diagnose metastatic lung cancer properly. In both 2009 and 2013, Dr. Rodriguez neglected to inform Reyes of the possibility of a lesion in her lung, as shown in the radiology reports from her computed tomography (CT) scans.[84] Additionally, Dr. Rodriguez failed to order serial CT scans to detect and monitor lesions, to prevent further medical complications. Furthermore, Dr. Rodriguez's failure to follow up with a biopsy regarding the 2013 serial CT scans contributed to the failure of a lung cancer diagnosis altogether.[85]

This case resulted in the court's decision of inducing a dismissal on the grounds of Statute 768.21 preventing Santiago and Caceres from pursuing punitive damages.[86] This illustrates a systemic issue of Florida's "Free-Kill Law," which further highlights the staggering limitations that Statute 768.21 imposes on grieving families seeking damages for medical malpractice. The dismissal of this case can be represented by Statute 768.21, where individuals over the age of twenty-five or parents of unmarried or childless adults are withheld from the right to claim

[83] Santiago v. Rodriguez, 281 So. 3d 603 (Fla. Dist. Ct. App. 2019)
[84] Ibid.
[85] Ibid.
[86] Ibid.

damages for wrongful death as a result of medical malpractice.[87] Florida Statute 768.21 has been an enduring issue that has drastically impacted the lives of individuals living in the state of Florida. The most prominent issue this statute upholds is that no matter how heinous the situation may be, a doctor cannot be held liable for damages resulting in extreme forms of medical malpractice.[88]

As such, Norma Caceres v. Francisco A. Rodriguez, M.D. represents the profound impact Florida Statute 768.21 has on families seeking justice. Sandra Santiago and Norma Caceres were forced to endure the devastating loss of their mother as they learned about her fatal diagnosis only after her death, knowing if proper medical precautions had taken place this outcome could have differed. Imagine a situation where a loved one is under an open-heart surgery operation. Following the procedure, the loved one dies of infection, resulting from a medical professional's failure to perform equipment sterilization. Tragically, there would be no right to file for a claim of medical negligence. This issue may sound irrational; however, this is the harsh reality that many medical malpractice victims have faced in the state of Florida.

This article highlights the detrimental impact of Florida's "Free Kill Law." It illustrates cases where families have been denied justice and compensation despite clear instances of medical malpractice, emphasizing the emotional and financial toll this law imposes on grieving families. This discussion advocates for the repeal of the statute to ensure accountability for medical professionals and fair compensation for all survivors affected by negligence, asserting that Florida Statute 768.21(8) is unconstitutional as it overrides patient welfare, allowing unchecked negligence to persist.

BACKGROUND

[87] Fla. Stat. § 768.21 (2024)
[88] Ibid.

Initially, wrongful death and survival were seen as two different claims for relief. The two causes of action can be differentiated based on the type of damages recovered and the claimant of those compensations. Before the enactment of Statute 768.21 in 1972, the class of damages that are potentially recoverable for loss of dependency, companionship, estate, and hedonic damages. Therefore, the decedent's estate may file a separate claim under Florida Statute 46.021, to seek recovery for the decedent's pain and suffering, and loss of income from the date of injury to the time of death, alongside medical and funeral expenses sustained.[89] In most states the decedent's family is warranted to file for a suit for one or both of these claims; however, Florida combined these two tort claims into one.[90]

When Statute 768.21 was originally implemented, the Florida Legislature eradicated the plea for the pain and suffering of the decedent, outwardly replacing it with a plea for the pain and suffering of qualified survivors.[91] Subsequently, pain and suffering damages are now granted to a singular group of beneficiaries, namely the decedent's immediate survivors. This has thus resulted in a limitation criticized by legal professionals, as it's "far more profitable [for a defendant] to kill the plaintiff than to scratch him."[92] In addition to the statute's dispensation of pain and suffering, it also hinders the next of kin's repossession of the decedent's estate. The consolidation of wrongful death and survival claims under Florida Statute 768.21, conjoined with a restrictive allocation of damages, has generated a great deal of controversy and deferred judicial interpretations within the legal systems.

GARBER V. SNETMAN

[89] Reese, Ryan. "RIGHTS WITHOUT REMEDIES: WHY LIMITING DAMAGES RECOVERABLE BY THE DECEDENT RENDERS THE FLORIDA WRONGFUL DEATH ACT INCONSISTENT WITH 42 U.S.C. § 1983," 2015. https://www2.stetson.edu/law-review/wp-content/uploads/2020/02/Winter-2015-44.2-Article-7x.pdf
[90] Id. at 558
[91] Id. at 560
[92] Ibid.

On March 26, 1994, Mrs. Golub was admitted to Mount Sinai Medical Center for a suspected stroke, following a procedure done by medical professionals on April 13, 1994, in hopes of removing what was believed to be a cancerous tumor in her pelvis.[93] Unbeknownst to her daughter, Lynn Garber, Mrs. Golub passed away not so long after on May 8, 1994. Lynn Garber, then, filed a medical malpractice lawsuit against the hospital citing emotional distress, loss of net accumulations on behalf of her mother's estate as well as loss and support of services. Snetman argued that the medical professionals acted with reasonable care and that Mrs. Golub's death was caused by underlying conditions, not by negligence.[94] Like Statute 768.21, Snetman proclaims that the hedonic claims of pain and suffering and loss of services are all speculative. In fact, Mrs. Golub's pre-existing medical history would have prevented her from aiding or contributing to her estate long-term. Unfortunately, the court ruled in favor of the defendant.[95]

Statute 768.21 had a prevailing significance on many families who had struggled to attain justice for their loved ones due to the statute failing to hold medical practitioners liable for their actions. This left many families with a lack of trust stemming from the absence of accountability on behalf of medical practitioners and the legal system. The statute devalued the lives of people who did not fit its precise requirements by restricting recourse for damages, which left adult children like Lynn unable to pursue justice for their loss. Families without conventional nuclear structure are disproportionately impacted by this legal loophole, which exacerbates sentiments of injustice and erodes public trust in the legal system's capacity to hold medical professionals accountable.

WOODWARD V. OLSON

[93] Garber v. Snetman, 712 So. 2d 481 (Fla. Dist. Ct. App. 1998)
[94] Ibid.
[95] Ibid.

On September 6, 2002, Mrs. Woodward fell off a roof and was rushed to the emergency room for treatment. In the emergency room, chest X-rays were conducted to reveal an area of increased density in the right lung.[96] Thus, the radiologist recommended further follow-up regarding the issue in which Dr. Olson failed to inform Mrs. Woodward of the x-ray findings. Consequently, Dr. Olson had failed to acknowledge that he had received the radiologist's report of the results from Mrs. Woodward's initial fall.[97] Dr. Olson claimed that these findings were due to Mrs. Woodward's smoking history rather than the injuries she suffered during an unintentional fall from the rooftop. Mrs. Woodward continued to see Dr. Olson for the next three years until, on August 1, 2005, Mrs. Woodward was admitted to the hospital due to abdominal pains. A chest x-ray was taken to understand better what was occurring.[98] The radiologist decided a CT scan would be best to gain a better understanding of what was happening, however, Dr. Olson did not inform nor recommend the CT scan to Mrs. Woodward. Dr. Olson retired soon after causing Mrs. Woodward to see another physician, who informed Mrs. Woodward of the earlier findings of her right lung. This caused Mrs. Woodward to file a medical malpractice lawsuit citing that Dr. Olson's treatment was below the standard of care and that he was negligent in not informing Mrs. Woodward of the findings.[99] The case hit a roadblock as an action for medical malpractice should be commenced within two years of the incident under 95.11(4)(b).

95.11(4)(b) states that action for medical malpractice should be commenced within two years of the incident.[100] This posed a significant roadblock for the case, Dr. Olson argued that the statute of limitations had already expired, to which the court agreed and sided with the defendant. However, if Woodward's condition had exacerbated and resulted in demise, the

[96] Woodward v. Olson, 107 So. 3d 540 (Fla. Dist. Ct. App. 2013)
[97] Ibid.
[98] Ibid.
[99] Ibid.
[100] Fla. Stat. § 95.11(4)(b) (2024)

allocations of Statute 768.21 represented under Florida's Wrongful Death Act could have proposed a different pathway leading survivors to seek justice.[101] Per Statute 768.21, the statute of limitations is repositioned where following the date of the descendants, permitting the personal representatives of the estate, or the deceased survivors to pursue reparations along with medical fees, hedonic damages, and pain and suffering.[102] In situations like these, where doctors are prohibited from attempting to elude liability, patients are warranted protection under the discovery rule. Furthermore, the discovery rule can be applied to the Woodward case, where the relationship between the negligence performed by Dr. Olson, and the harm caused that resulted in Woodward's death was not evident.[103] Under the employment of Statute 768.21 in wrongful death cases, operational limitations suppress the plaintiff from engaging in expeditious efforts throughout medical malpractice cases.

BARRIERS AND INCONSISTENCIES

Amendments to Florida Statute Section 768.21 Subsection 8 prohibit children or parents of the deceased from receiving financial compensation from medical malpractice lawsuits if the survivor of the deceased is 25 years or older.[104] Consequently, this prolonged issue has amplified financial inequities and judicial inconsistencies in wrongful death claims, affecting victims and their families. The statute prioritizes the financial interests of insurers and medical practitioners over patient welfare, enabling negligence to continue without accountability.[105] Since its implementation under the Wrongful Death Act in 1972, Florida residents have faced significant hardships. The act leaves survivors of the deceased without proper compensation, leaving them with financial and emotional distress.[106] This injustice highlights the need to repeal the statute,

[101] Ibid.
[102] Ibid.
[103] Fl. R. Civ. P. 1.280
[104] Ibid.
[105] Ibid.
[106] Fla. Stat. §§ 768.16–768.27 (1972)

ensuring fair compensation for those who have lost loved ones due to medical malpractice. Therefore, this statute should be repealed for the betterment of society allowing survivors of the deceased to process the death of their loved ones in a trouble-free manner.

Historically, financial barriers have been rooted in systemic issues. In 1986, the Academic Task Force reviewed the cost of medical malpractice using insurance premiums. They found that insurance premiums are critically high which increases medical care costs.[107] This finding culminated in the 1988 Florida Statute 776.201, which acknowledged that these escalating costs had far exceeded public interest and required legislative intervention.[108] Rather than resolving these inequities, future legal frameworks, including Statute 768.21, have strengthened the disparity in power by protecting insurance and medical professionals at the expense of victims.[109]

The strategies used by insurance companies, who take advantage of the uncertainties in the recently amended wrongful death statute to reduce benefits, present a substantial financial barrier for survivors. Insurers reinforce these hurdles by contesting claims on technical grounds and undervaluing pertinent non-economic losses. Survivors in low-income communities are particularly affected by this abuse of ambiguous legislative language because they frequently face unaffordable legal fees that outweigh possible compensation, depriving them of a realistic route to justice.[110] Florida Statute 786.21 has caused significant harm to countless families, leaving them without recourse during intense times of need. Our government was established to serve and protect its people, yet this statute fails to do so, creating more harm than good. This

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[107] Mizrahi v. North Miami Medical Center, 712 So. 2d 826 (Fla. Dist. Ct. App. 1998)
[108] Fla. Stat. § 776.201 (1988)
[109] Ibid.
[110] Cornell Journal of Law and Public Policy. "Justice Denied: The Fight to Reform Florida's 'Free Kill' Law for Medical Malpractice Victims – the Issue Spotter," n.d. https://jlpp.org/justice-denied-the-fight-to-reform-floridas-free-kill-law-for-medical-malpractice-victims/#:~:text=Florida's%20Free%20Kill%20Law%20has,medical%20malpractice%20victims%20without%20justice.

repeal is not just necessary; it's long overdue. Repealing this statute can reshape the narrative for grieving families, finally providing victims and their loved ones the justice and support that has long been withheld from them.

STATUTORY IMPROVEMENT PLAN

Statute 768.21 should be repealed and replaced with a framework that clearly defines who is eligible for compensation of the deceased while prohibiting limited age restrictions. Extending the statute of limitations could serve as protection for patients, acting as a barrier against potential forms of misconduct by medical professionals. By incorporating precise parameters for survivor eligibility and providing legal recourse to those who have previously been excluded, the amendment of Statute 768.21 must specifically address judicial unpredictability and systemic injustices. One noteworthy aspect to consider when evaluating the validity of Statute 768.21 is that Florida is the only state where the "free-kill law" stands, whereas other states have recognized limitations surrounding explicit restrictions and have authorized more inclusive approaches. For example, under Section 71.002 of the Texas Civil Practice And Remedies Code, the Texas Wrongful Death Act authorizes individuals residing in the state of Texas to file claims of negligence and sue for damages without age restrictions or if the child of the deceased is unmarried.[111] The drastic distinctions between Texas and Florida underscore why Florida must adopt a new approach, ensuring families receive fair remedies and have broader eligibility to file claims.

Policymakers have recognized the vast differences between Texas and Florida. For instance, Senator Clay Yarborough's introduction of Senate Bill 248 aims to amend the "free-kill law" by placing caps on claims against negligent doctors.[112] Although Senator Yarborough's

[111] Tex. Civ. Prac. & Rem. Code Ann. §§ 71.001–71.020 (West).
[112] Florida CS/SB 248, Medical Negligence, Reg. Sess. (2024).

efforts to find a reasonable compromise were well-intentioned, there have been many criticisms surrounding his rationale behind this bill. Grieving families are particularly affected, as compensation is capped at $500,000 for individuals and $750,000 in cases involving hospitals.[113] As a result, families expressed their concerns about medical negligence and how a cap on each claim would not resolve this issue. Additional findings also conclude the law has not reduced medical malpractice claims, questioning the validity of lawmakers' reasoning for keeping this law in place.[114]

CONCLUSION

Florida Statute 768.21(8) is highly unconstitutional, as it overlooks patient welfare and allows for gratuitous medical negligence to persist. Injustices found in the cases of Garber V. Snetman, Woodward V. Olson, and Norma Caceres V. Francisco A. Rodriguez, M.D., are few of many instances where families have suffered devastating losses at the hands of negligent physicians. The interplay between these cases has created a lack of accountability from the medical professionals at fault. Not only does this statute create immense emotional pain for those impacted, but it also creates a distrust of Florida's legal system, as it inordinately affects all residing families in Florida. Victims and their families have received absolutely no protection from this statute and have continued to be harmed by negligent doctors, a recurring theme amongst these cases. If proper implications were to be taken, families of victims would still have their loved ones with them today.

To Florida's policymakers, legal scholars, and practitioners: a change must not only be sought but urgently pursued. It is time to reform Statute 768.21(8), not only restoring trust in

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[113] LaGrone, Katie. "ABC Action News Tampa Bay (WFTS)." ABC Action News Tampa Bay (WFTS), January 23, 2024. https://www.abcactionnews.com/news/state/bill-aims-to-end-fls-free-kill-law-but-would-add-caps-to-how-much-victims-could-get.

[114] Ibid.

Florida's legal system but its medical system as well. By reforming the statute, future injustices can be prevented, and the fate of a sick patient will no longer be at the mercy of a negligent doctor. Policymakers ought to be held accountable for using their power to correct systematic flaws that undermine judicial unpredictability and public trust. Legal scholars can further contribute by leveraging their expertise and research to broaden our knowledge of implications regarding Statute 768.21 and propose new legal frameworks. Medical professionals are our front runners, with patients placing a significant amount of trust in them. To restore faith in Florida's legal system, prevent ongoing injustices, and stop medical providers from committing malpractice, all parties must be held liable for any form of negligence or wrongdoing. Thus, to rebuild a foundation rooted in trust and integrity, it is imperative to reform Statute 768.21.

The NCAA, NIL, and the Fight for Fair Compensation

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INTRODUCTION

Following the U.S. Supreme Court case ruling *NCAA v. Alston* in 2021, a dramatic and favorable decision revolutionized college athletics. Name, image, and likeness (NIL) is the ability of an athlete to profit from themselves.[115] In a world where college athletics contains extreme marketing power and influence, it was only time before college athletes were able to partake in a portion of it. The introduction of NIL into college athletics empowers student-athletes financially, enhances athlete development and professionalism, and increases growth among college programs. Without athletes, institutions have no standing in the athletic department because of the reliance on their athletes' skills and dedication to the sport, which has allowed the National Collegiate Athletic Association (NCAA) to become such an illustrious business.

THE EVOLUTION OF NIL

Over the years, fans have seen college athletes lead the ranks in NIL valuations. Colorado quarterback and son of NFL legend Shadeur Sanders, social media sensation and LSU star gymnast Livvy Dunne, and Texas quarterback phenom and nephew to two NFL legends Arch Manning; $6.2 million, $4.1 million, and $3.1 million respectively.[116] *NCAA v. Alston* had a sense of exhilaration and optimism when it was first ruled in 2021 because of the long overdue justice that damaged the reputation of the NCAA's treatment of its athletes.[117] Opinions and arguments

[115] Hosick, Michelle Brutlag. "NCAA Adopts Interim Name, Image and Likeness Policy."
[116] Cottongim, NicK. "Top 20 College Athletes with the Highest Nil Valuations." 93.5 / 107.5 The Fan, 18 Nov. 2024, 1075thefan.com/playlist/top-20-college-athletes-with-the-highest-nil-valuations/item/2.
[117] National Collegiate Athletic Association. v. Alston, 594 U.S. (2021)

for student-athlete payments have started since the 2005 Heisman Trophy Scandal where 2005 Heisman Trophy winner Reggie Bush was sanctioned by the NCAA along with members of USC for unauthorized payments throughout his collegiate career. Mr. Bush's influence on college football and even professional football was undeniable to such an extent that he won the prestigious award that all college football players dream of, The Heisman Trophy. All things changed in the following years as numerous news outlets reported that Mr. Bush had been receiving gifts, payments, and much more while playing at USC.[118] As a result, once confirmed by the NCAA, in 2010 Reggie Bush was sanctioned and stripped of his Heisman Trophy award.[119] Throughout Mr. Bush's college career at USC, the athletic program and school itself benefited greatly from his skillset winning three consecutive National Championship games[120] and significant financial gain.[121] In unofficial reports and testimony from Mr. Bush's lawyer from a recent suit, USC likely generated "'hundreds of millions' off of his client's name, image and likeness through various revenue streams".[122] The financial gain that USC received from Mr. Bush was remarkable and because of a policy that prohibited college programs from granting payments to their athletes at the time, third-party revenue sources had interfered with Mr. Bush. NIL allows third-party and college athletic programs to reward and glorify student-athletes for their impact that not only provides championships and trophies but also financial gain. This is

[118] Press, The Associated "Bush May Have Received Gifts at U.S.C." The New York Times, The New York Times, 15 Sept. 2006, www.nytimes.com/2006/09/15/sports/football/15nfl.html.
[119] Ricco, Joseph M. "Reggie Bush Battles Nil Exploitation." Sports Litigation Alert, 1 Nov. 2024, sportslitigationalert.com/reggie-bush-battles-nil-exploitation/#:~:text=Reggie%20Bush's%20Case&text=However%2C%20his%20college%20career%20was,his%20Heisman%20Trophy%20in%202010.
[120] National Football Foundation. "Reggie Bush." National Football Foundation, footballfoundation.org/hof_search.aspx?hof=2504#:~:text=During%20his%20three%20seasons%20in,55%2D19%20victory%20over%20Oklahoma.
[121] Kartje, Ryan. "Reggie Bush's Attorney Says the Heisman Winner Expects USC to Pay His Legal Fees." Los Angeles Times, Los Angeles Times, 1 Oct. 2024, www.latimes.com/sports/usc/story/2024-09-30/reggie-bush-wants-usc-pay-legal-fees-heisman-trophy#:~:text=How%20much%20Bush%20is%20asking,request%20to%20pay%20attorneys'%20fees.
[122] Ibid.

why NIL has become such an important issue that has garnered such a positive influence and effect since its ruling in favor of *NCAA v. Alston*.

LEGAL AND POLICY CHALLENGES

Since the court's ruling, the NCAA has continuously changed and altered its policy and bylaws regarding NIL which have led to instances finding themselves on the other side of a lawsuit.[123] A recently proposed policy change would "ban prospective college athletes (including current college athletes looking to transfer to another school who are in the 'transfer portal') from discussing potential NIL opportunities before they enroll."[124] This proposed policy change had initiated a lawsuit from Florida Attorney General Ashley Moody on behalf of violations set upon the University of Florida and Florida State University for NIL violations by the NCAA.[125] Following the original lawsuit, Attorney Generals nationwide, on behalf of their states' top athletic institutions, joined for an amended complaint that was issued on May 1, 2024.[126] The Amended complaint was significant as it now included additional states that also believed that the proposed policy change would be unjust and illegal.

ECONOMIC AND COMPETITIVE IMPLICATIONS

The amended plaintiffs included Tennessee, New York, the Commonwealth of Virginia, and the District of Columbia.[127] According to the amended complaint, the first violation that initiated the suit was on January 11, 2024, when the NCAA announced that a "Florida State

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[123] DeMoss, Robert L. "In 'case' You Missed It: NCAA Faces Mounting Antitrust Challenges over Nil Rules." Balch & Bingham LLP, 20 Sept. 2024, www.balch.com/insights/publications/2024/09/in-case-you-missed-it-ncaa-faces-mounting.

[124] "AMENDED COMPLAINT." IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, 2024. https://www.myfloridalegal.com/sites/default/files/2024-05/52-amended-complaint.pdf.

[125] Office of the Attorney General Ashley Moody. "In The Midst of Actions Against FSU and UF Over Alleged NIL Violations, AG Moody Takes NCAA to Court for Breaking Antitrust Laws." My Florida Legal, 1 May 2024, https://www.myfloridalegal.com/newsrelease/midst-actions-against-fsu-and-uf-over-alleged-nil-violations-ag-moody-takes-ncaa-court#:~:text=%E2%80%94In%20the%20midst%20of%20actions,and%20constantly%20changing%20NIL%20policy

[126] Ibid.

[127] Ibid.

assistant football coach violated NCAA rules when he facilitated an impermissible recruiting contact between a transfer prospect and the chief executive officer of an NIL collective."[128] This violation confirms the prohibited contact including NIL that the NCAA frowns upon. The second violation came on January 20, 2024, when it was reported that, "the NCAA is also investigating the University of Florida football program 'after a failed NIL deal' with a former recruit."[129] Again emphasizes the prohibited inclusion of NIL and prospective athletes. The final violation included in the amended complaint was reports that the NCAA was threatening the University of Tennessee with "imminent enforcement actions as well" for NIL dealings.[130] These three violations which were included in the amended complaint validate the beliefs of the "plaintiff states" and prohibit prospective student-athletes from capitalizing on their true athletic value. The violations reinforce the inability of prospective student-athletes to engage in financial discussions and prohibit prospective student-athletes from deciding on pursuing their education destination which prevents the student-athletes from engaging in financial discussions that improve their development outside of just athletics. These proposed policy changes even though intended to progress NIL policies and bylaws have only created challenges for athletic programs. The NCAA is constantly amending these policies and bylaws which athletic programs are unbeknownst to causing violations resulting in penalties.[131]

BALANCING EDUCATION AND ATHLETICS

The updated petition also indicates a "restriction among competition between schools and third parties."[132] When considering the proposed policy changes, larger and financially better-off athletic programs with superior endorsement deals would be prohibited from poaching

[128] Id. at 11
[129] Id. at 11
[130] Id. at 11
[131] Ibid.
[132] Id. at 3

student-athletes by offering NIL incentives, thus prohibiting competition and ultimately student-athlete development. It is understood by many that the better-performing college athletic programs tend to be wealthier, if these "wealthier" athletic programs were unable to offer NIL incentives to attract top-tier talented prospective athletes, then are the athletes truly able to be in the best situation for not only their career development but personal accolades. The decision a prospective athlete has to make concerning their next four years honoring and representing a logo and or crest is important, so why can't it be done in a competitive way that defines an athlete's ultimate value?

THE PATH FORWARD FOR NIL

The restated claim continues by introducing the NCAA's involvement in violating antitrust laws. The approval of the proposed policy change would in theory prohibit a free-market environment subjecting the NCAA to violating antitrust laws. College athletic programs as mentioned above, would be unable to poach prospective student-athletes which hinders their ability for exposure to financial discussions and career development. NIL discussions and negotiations provide student-athletes with an early understanding of business which could foster long-term success beyond their collegiate career. The specific antitrust laws that the NCAA violates are on behalf of *The Sherman Act*, which was passed in 1890 and prohibits anti-competitive business practices in a resort to prevent monopolization.[133] With the proposed actions mentioned above and in the complaint, the NCAA would then find itself in violation of *The Sherman Act* due to the prevention of allowing prospective student-athletes to construct a decision that as mentioned earlier will impact them for their next four years reliant on financial valuation. It should be clear that all intentions are on behalf of bettering the athlete and

[133] Competition, Bureau of, and Staff in the Office of Technology and the Division of Privacy and Identity Protection. "The Antitrust Laws." Federal Trade Commission, 4 Mar. 2022, www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws.

their decision-making, but with the approval of the proposed policy change, it seems otherwise because of the limitations on prospective student-athletes from making their decision without the financial entertainment NIL allows.

CONCLUSION

The legal filing furthers its opposition to the NCAA's proposed policy change by expressing its contention stating the proposed policy change would, “harm the states’ economies and the welfare of their athletes and should be declared unlawful and enjoined.”[134] The prevention of these NIL opportunities for prospective student-athletes would not only prevent a strong economic advantage for the states that these institutions belong in, but would also prohibit college athletic programs from development and growth. These proposed policy changes would further prevent smaller institutions with greater and more meaningful sponsors from attracting higher sought-after athletes which would further prevent them from competition and growth. The athletic programs, if unable to offer NIL incentives to prospective student-athletes, would prevent fan engagement, potential sponsorship deals, and ultimately recruiting opportunities which are all key factors to the ability for growth among college programs.

The NCAA generates a large percentage of its revenue from ticket sales, TV rights, and marketing rights.[135] Even though deemed a “non-profit”, the NCAA’s revenue reports from the 2023 fiscal year equate roughly to $1.3 billion.[136] This revenue resembles the economic opportunity and potential for college programs to achieve as almost all of the revenue is redistributed to programs with the better performing and championship-caliber teams being

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[134] Id. at 1

[135] “Finances.” NCAA.Org, www.ncaa.org/sports/2021/5/4/finances.aspx#:~:text=The%20NCAA%20receives%20most%20of,ticket%20sales%20for%20all%20championships.

[136] Crowe LLP. “NATIONAL COLLEGIATE ATHLETIC ASSOCIATION CONSOLIDATED FINANCIAL STATEMENTS August 31, 2023 and 2022,” 2023. https://ncaaorg.s3.amazonaws.com/ncaa/finance/2022-2023NCAAFIN_FinancialStatement.pdf.

provided more. The distribution of these large amounts of revenue explains why it is imperative to allow competition at the fullest degree as it provides for the best outcome. With the proposed policy change introduced by the NCAA, institutions would be unable to provide a sense of commitment and worthiness to their prospective athletes because of the inability to use their sponsorship deals and financial position that could set them above other programs. As acknowledged previously, the proposed policy change would be detrimental to the prospective athlete as they would be unable to uncover their entire value in such an important decision.

With that being said, on February 23, 2024, a U.S. District Judge for the Eastern District of Tennessee, Judge Clifton Corker, awarded a preliminary injunction halting the NIL-recruiting policy changes until a final decision is made**.**[137] In the ruling, a court order specified that the NCAA had until September 30, 2024, to respond to the amended complaint.[138] Shortly after, the NCAA's President Charlie Baker announced a pause to all investigations and no penalties would be issued on March 1, 2024.[139] Even though the NCAA's NIL-recruiting ban has been temporarily suspended, a final court decision has not been made.[140] Sullivan continues by informing the next steps the NCAA can partake in, whether it is "appellate review by the Sixth Circuit Court of Appeals or that a permanent injunction is unwarranted."[141] The NCAA should revoke its policy changes as it serves for the best outcome for not only athletes but institutions. As the NCAA looks to move forward from this case there are many others they still must address. The NCAA has been involved in countless lawsuits on similar grounds suggesting a breach of antitrust laws which leads to me believing that the NCAA is having a difficult time

[137] Ibid.
[138] Ibid.
[139] Sullivan, William et al., "Another Brick in the Wall: NCAA Enjoined from Enforcing NIL Rules Prohibiting Student-Athletes from Negotiating with Third Parties." Pillsbury Law, 5 Mar. 2024, www.pillsburylaw.com/en/news-and-insights/ncaa-third-party-nil.html.
[140] Ibid.
[141] Ibid.

trying to separate a prospective student-athlete education from an athletic endeavor. Initial intentions for these proposed restrictions were for the preservation of separating education from athletics in what the NCAA defines as "amateurism."[142] The importance of separation is so that athletes choose "the 'best educational opportunities', as opposed to choosing schools based on what schools would offer the most money."[143] The NCAA's intentions were there no doubt, but their execution and way of enforcing these new policy changes were heavily challenged.

When one realizes the dedication and effort student-athletes put towards their specific sport in addition to their education, it's hard to justify why prospective student-athletes should not be evaluating their decision financially. According to the NCSA, in a recent study, it was reported that division one athletes are dedicating anywhere from 40 hours upwards to 60 hours a week for their sport**.[144]** This is why the proposed policy changes in turn hinder the prospective student-athlete as they prevent financial discussions which will only lead to success throughout and beyond their years at these athletic programs. The amended complaint reiterates the fact that it is an honest, genuine call for change. The actions brought forward by the NCAA as specified above violate *The Sherman Act's* antitrust laws and are unfair for the prospective student-athlete.

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[142] "Game over? NCAA Nil Recruiting Ban under Attack on Antitrust Grounds." Game Over? NCAA NIL Recruiting Ban Under Attack on Antitrust Grounds | Villanova University, The Jeffrey S. Moorad Center for the Study of Sports Law, 7 May 2024, www1.villanova.edu/villanova/law/academics/sportslaw/commentary/mslj_blog/2024/GameOverNCAANILRecruitingBanUnderAttackonAntitrustGrounds.html.

[143] Ibid.

[144] NCSA College Recruiting. "Study: Time Demands of D1 Student-Athletes Are Excessive." NCSA College Recruiting, 1 Dec. 2022, www.ncsasports.org/blog/study-time-demands-d1-studentathletes-excessive.

Knox v. The Palestinian Liberation Organization

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INTRODUCTION

On the night of January 17, 2002, Aharon Ellis, an American citizen, was murdered in a terrorist attack in Israel. This terrorist attack was carried out by a Palestinian terrorist organization referred to as the al-Aqsa Martyrs Brigade, an organization funded by the Palestinian Liberation Organization (PLO). In the *Knox v. The Palestinian Liberation Organization* case, Ellis' family sought damages from the PLO and the Palestinian Authority (PA).[145] The defendants argued they were immune from the lawsuit under Palestine's sovereignty however, the court rejected this claim.[146] For decades there has been ongoing conflict between Palestine and Israel over religion and self-determination. On October 7th, 2023, a Palestinian terrorist organization, known as Hamas, launched an attack against Israel. Following this attack, we are witnessing increased violence in the Middle East and United States involvement; this makes *Knox* relevant today.[147] One may argue whether the Anti-Terrorism Act (ATA) is a political weapon with ill-intent deployed by the United States to support their international interests since it gives United States courts extensive capacity to hold foreign entities liable for terrorist attacks. By reviewing the history of the PLO and the Israel-Palestine conflict, the application of the ATA, and the results of relevant cases it is clear that the ATA was not used as a political weapon with ill intent against the PLO and PA in *Knox.*

BACKGROUND

[145] Knox v. The Palestine Liberation Org., 248 F.R.D. 420 (S.D.N.Y. 2008)
[146] Ibid.
[147] Global Conflict Tracker. "Israeli-Palestinian Conflict | Global Conflict Tracker," n.d. https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict.

Understanding the history of the PLO and the overall conflict between Palestine and Israel is essential to determining whether the ATA was used as a political weapon with ill intent in *Knox*. Palestine was previously under the control of the Ottoman Empire however, following World War I Britain took over. In 1947, the question of Palestine was presented to the United Nations (UN). The UN created "Resolution 181 (II)" which "decided to partition Palestine into two states, one Arab and one Jewish."[148] Since then, the government and leadership of Palestine have been fragmented - an essential requirement to avoid the ATA lawsuit. The closest resemblance of a political authority in Palestine is the PLO established in 1964 by the Arab League. Lack of political authority in Palestine by definition counters the notion that the *Knox* ruling was made with bad faith and will be discussed later in this review. The PLO consisted of various Palestinian groups to reclaim a Palestinian state and establish independence.[149] The motivation behind the creation of the PLO can be seen through its extensive history of displacement and oppression. The original goal of the organization was to liberate Palestine exclusively through armed struggle and reject the state of Israel.[150] However, their approach shifted towards diplomacy during the Oslo Accords period in the 90's. All in all, comprehending the history of the PLO and the overall history of the conflict between Palestine and Israel is vital to determining whether the ATA was used as a political weapon.

Understanding how the ATA is applied to international law is also essential to determining whether the ATA was used as a political weapon with ill intent in *Knox*. The ATA grants "Any national of the United States injured in his or her person, property, or business

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[148] Admin, Dsu. "General Assembly - Question of Palestine." Question of Palestine, October 1, 2024. https://www.un.org/unispal/data-collection/general-assembly/#:~:text=The%20question%20of%20Palestine%20was,under%20a%20special%20international%20regime.

[149] The Palestine Liberation Organization (PLO). The Palestine Liberation Organization (PLO), n.d. https://lsa.umich.edu/content/dam/cmenas-assets/cmenas-documents/unit-of-israel-palestine/Section2_%20PLO.pdf.

[150] Yale Law. "The Avalon Project : The Palestinian National Charter," n.d. https://avalon.law.yale.edu/20th_century/plocov.asp.

because of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees."[151] The goal of the ATA is to remedy US nationals who were affected and, through legal punishment, deter acts of terrorism. Additionally, the ATA extends liability to "any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism."[152] These issues are central to the PLO's inability to claim sovereign immunity under the Foreign Sovereign Immunities Act (FSIA), and will also be discussed later in this review. Overall, the ATA was signed into law to deter and punish acts of terrorism.

PRIOR CASES

Examining relevant cases and their rulings is critical to determining whether the ATA was used with malicious intent against the PLO and PA in *Knox*. Between 2002 and 2003 Hamas launched several terrorist attacks in Israel. There were sixteen U.S. national victims caught in the crossfire of these attacks. Relatives of these victims brought charges against a foreign bank and sought compensatory damages under the ATA. They claimed that the foreign bank knowingly provided financial support to Hamas during the time of the attacks. The Arab bank was found liable for the attacks and the plaintiffs were awarded $100,000,000 by the United States District Court for the Eastern District of New York. The Arab bank appealed the ruling, leading to *Linde v. Arab Bank, PLC* in 2018. They believed that the plaintiffs didn't present sufficient evidence to rule in their favor. However, their movement for reconsideration was vacated and remanded because it is "warranted only where the court has 'overlooked' matters or controlling

[151] 18 U.S.C.A. § 2333 (West)
[152] Ibid.

decisions."[153] Additionally, the parties involved in the original case agreed to terms that would waive a retrial if vacated or remanded. Regardless, if the Arab bank had successfully claimed reconsideration, the plaintiffs would have maintained their $100,000,000 settlement agreement. This is relevant to *Knox* due to the pivotal role of the ATA in the final rulings presented. Under the ATA, the Arab bank can be held liable since they were proven to be associated with the financial support of Hamas. This is closely related to the actions carried out by the PLO in *Knox* since they were also proven to provide financial and material support to the al-Aqsa Martyrs Brigade. Due to the harming of U.S. nationals in both cases, the U.S. is obligated to intervene legally to protect the victims and their relatives. Conclusively, the ATA grants the U.S. capacity to deter and punish acts of terrorism toward U.S. nationals, discrediting the assertion that it is used with malicious intent in either case.

In 2014, two United States nationals were killed in Somalia by an alleged foreign terrorist organization (FTO). Relatives sought compensatory damages under the ATA, claiming that entities conspired to provide material and financial support indirectly through Dahabshiil. Dahabshiil is a hawala network that allows entities to transfer funds discreetly "through a system of off-setting accounts among its branches". This case became known as *Hussein v. Dahabshiil Transfer Services Ltd.* in 2017. The plaintiffs claimed that the support was for al-Shabaab, an organization designated as an FTO by the United States government in 2008. The defendants pursued a motion to dismiss under the argument that the plaintiffs did not have sufficient elements necessary to draw a connection between Dahabashiil and the accusation of providing aid to al-Shabaab. Additionally, the ATA requires "some evidence that the defendant was aware of 'substantial probability' that Americans would be injured…". The United States District Court of New York ruled that the plaintiffs were incapable of drawing an evidence-based connection

[153] Linde v. Arab Bank, PLC, 269 F.R.D. 186 (E.D.N.Y. 2010)

between Dahabashiil and their "conspiracy" to aid al-Shabaab, granting the defendant's motion to dismiss. This case is relevant to *Knox* as demonstrated by the importance of the ATA in the decision to dismiss.[154] Since the plaintiffs were deemed incapable of providing an evidence-based connection between Dahabashiil and their "conspiracy" to aid al-Shabaab, the United States District Court of New York could not intervene by providing victims compensatory damages. In contrast to *Linde*, *Hussein* demonstrates the limits of the ATA. The court dismissed claims because the plaintiffs failed to provide evidence of a direct connection. These cases illustrate that while the ATA grants broad jurisdiction, it requires rigorous evidentiary standards, undermining arguments that it is wielded as a political weapon. Together, they demonstrate the Act's balance between justice for victims and fairness in its application. Although the tragedy that transpired in Somalia resulting in the death of two U.S. nationals is grievous, they cannot justifiably hold the defendants accountable. Overall, by examining relevant cases it is clear that the ATA was indeed not signed into U.S. law to be utilized as a political weapon with ill intent.

LEGAL ANALYSIS AND ARGUMENTATION

Through analyzing *Knox* we can determine whether the ATA was used as a political weapon with ill intent against the PLO and PA. The defendants attempted to dismiss the case by claiming sovereignty and legitimate governance through the PLO. The Foreign Sovereign Immunities Act (FSIA) bars federal courts from civil action against foreign states. However, the defendants failed every test necessary to pass the claim to sovereignty. The first test for protection under sovereignty: statehood. In 1988, the Palestinian National Council (PNC) attempted to declare Palestine as an independent state with Jerusalem as its capital. They were accepted and recognized by many countries including the Soviet Union, India, etc. However, the

[154] Hussein v. Dahabshiil Transfer Servs. Ltd., 230 F. Supp. 3d 167 (S.D.N.Y.), aff'd sub nom. Hussein v. Dahabshiil Transfer Servs. Ltd, 705 F. App'x 40 (2d Cir. 2017)

United States and Israel never recognized Palestine as an independent state. This fact, therefore, dismisses the statehood aspect of FSIA. Later, in 1995 the PLO and Israel entered into an interim agreement known as the Oslo Accords which would create a state of Palestine. The defendants tried to use this fact in their claim to statehood; however, the United States District Court of New York determined that the interim agreement discussed an eventual statehood rather than an already existing statehood. Once again, the courts dismissed the defendant's claim for statehood based on this determination. As mentioned previously in this review, the lack of political authority in Palestine by definition counters the notion that the *Knox* ruling was conducted with bad faith.

The second test for protection under sovereignty: is "control over territory and population". Israel has a history of oppression of Palestinians that is motivated by religious and racial differences. This can be seen through their seizures of Palestinian land, forcible transfer, denial of nationality and citizenship, and movement restrictions preventing humanitarian aid to the Gaza Strip.[155] The defendants argue that Palestine has a comprehensive government excluding the limitations caused by Israel's oppression which cannot legally be used against them. However, to be considered for this, the government in question ought to have the capacity to make governmental decisions without the influence or assistance of foreign governments. The Oslo Accord agreement between Israel and Palestine states that Israel shall transfer their governmental power over Palestine to the PA, granting them the capacity to successfully act independently. Until then, the PA has limited jurisdiction and Israel will continue to exercise their powers and responsibilities. Arguments arise regarding Israel's sovereignty over Palestine

[155] UNICEF. "The Gaza Strip - The humanitarian impact of 15 years of blockade," June 2022. https://www.unicef.org/mena/documents/gaza-strip-humanitarian-impact-15-years-blockade-june-2022 ; Amnesty International. "Israel's Apartheid Against Palestinians: A Cruel System of Domination and a Crime Against Humanity," September 28, 2022. https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-a-crime-against-humanity/.

as oppressive which ultimately blocks any claim against their governmental control. However, defendants need to argue that there was statehood of Palestine before the allegedly oppressive Israel occupation to bypass this. The defendants lacked sufficient evidence, leading the court to dismiss their claim for control over territory and population. This failure to meet a second requirement of the FSIA further undermines any argument of malicious application of the ATA in *Knox*.

The final test for protection under sovereignty: the "capacity to conduct foreign relations". The ability of a nation to conduct international agreements is an essential aspect of gaining independence in international law. Once again drawing upon the interim agreement, the PLO and PA are not capable of carrying out international agreements without approval from Israel. Given this fact, the PLO and PA do not have sufficient capacity to conduct foreign relations. Overall, through analyzing *Knox* it is evident that the United States District Court of New York did not use the ATA as a political weapon with ill intent. The court instead followed established criteria for the defendant's claim of FSIA protection.[156]

CONCLUSION

The topic of anti-terrorism laws can be controversial since they give United States courts extensive capacity to hold foreign entities liable for terrorist attacks. However, by reviewing the history of the PLO, the history of the Israel-Palestine conflict, the application of the ATA, and the results of relevant cases it is clear that the ATA was not used as a political weapon with ill intent against the PLO and PA in *Knox*. The defendants attempted to dismiss the case by applying the FSIA and avoiding a lawsuit; however, they failed every test necessary for sovereign protection. Conclusively, the U.S. must have the ability to compensate victims of those impacted by terrorist attacks in foreign nations.

[156] Ibid.

Reevaluating Juvenile Sentencing in Florida

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INTRODUCTION

The criminal justice system is a source of great debate, with many states taking different stances on it throughout the country. Some adhere to a more punitive approach while others focus on rehabilitation. The juvenile justice system is no different. Many states differ in just the same way, trying to manage punishment versus rehabilitation. While the Supreme Court has laid precedents regarding juvenile justice that all states must follow, that does not mean that differences in the systems do not exist. Florida is one state whose main focus seems to be on punitive measures for juveniles. This focus can be harmful to these juveniles who may not get the chance to be rehabilitated through the system. Florida's juvenile justice system over-utilizes adult court transfers and imposes lengthy sentences, which fails to address the root causes of delinquency in youth. Changes in Florida Statutes 985.556, 985.557, 921.1401, and 921.1402 can help reduce the number of children who are being failed in the ways of the justice system.

FLORIDA STATUTES 985.556 AND 985.557

One significant aspect of the flawed juvenile system in Florida is the transfer of juveniles to adult court. In the United States, Florida is number one, out of all states, in prosecuting juveniles as adults.[157] Florida Statutes 985.556 and 985.557, outline how juveniles can be transferred to adult courts. Florida Statute 985.556 discusses how a minor would get a waiver to be tried as an adult in a Florida court.[158] Florida Statute 985.557 outlines the circumstances in

[157] Chopra, Sonia. "Court Watchers Urge Change in Florida, Which Is No. 1 in Prosecuting Youth as Adults." Juvenile Justice Information Exchange, August 3, 2022. https://jjie.org/2022/08/04/court-watchers-urge-change-in-florida-which-is-no-1-in-prosecuting-youth-as-adults/.

[158] Fla. Stat. § 985.556 (2024)

which a juvenile can be charged as an adult.[159] These transfers can take place either by waivers or direct files. Through either, a child as young as 14 can be moved to be tried as an adult.[160] A big issue in this system comes from the direct file process which allows the state's attorney to file information, a legal document, based on their judgment and discretion, that adult sanctions should be considered or imposed.[161] The problem with this is that it grants prosecutors too much discretion when it comes to transferring youth without enough oversight from judges. Because of this, too many juveniles will be put into the adult system without their circumstances being evaluated by judges. Once in the adult system, it can be harder for them to rehabilitate. Between raising the age from 14 and mandating more oversight from judges, the number of adolescents entering adult court could change drastically in Florida and allow these children to be rehabilitated. The precedent that should be followed in these statutes was established before the Supreme Court.

KENT v. UNITED STATES

The Supreme Court case, *Kent v. United States* set the precedent for due process for juveniles within the juvenile justice system. This case involved *Kent*, a 16-year-old boy, who then admitted involvement in several incidents involving robbery and rape.[162] Without a full investigation or a reason provided, the juvenile court waived its jurisdiction and sent Kent to be tried as an adult.[163] Kent appealed to the Supreme Court which ruled in his favor.[164] The Court held that the juvenile court's waiver of jurisdiction was not valid since there was not a sufficient investigation before the juvenile court's waiver of jurisdiction.[165] This case established due

[159] Fla. Stat. § 985.557 (2024)
[160] Fla. Stat. § 556 (2018)
[161] Fla. Stat. § 557 (2018)
[162] *Kent v. United States, 383 US 541 (1966)*
[163] Ibid.
[164] Ibid.
[165] Ibid.

process for juveniles, ensuring it is the same due process standard that is granted to adults by the 5th Amendment, which states that no one shall "be deprived of life, liberty, or property, without due process of law."[166] The significance of this case and Florida's current statutes is the lack of adherence to the principles established in *Kent*. The lack of oversight from judges in the direct file process violates the precedent established in *Kent v. United States*. This is significant because it reinforces the punitive measures that allow juveniles to be moved into the adult system rather than keeping them in the juvenile system to be rehabilitated.

GRAHAM v. FLORIDA

In *Graham v. Florida*, the Supreme Court argued whether it violated the 8th Amendment, the right to no cruel or unusual punishments, to impose life sentencing to juveniles who committed non-homicide offenses.[167] This case involved a 16-year-old, Graham, who was convicted of armed home robbery and sentenced to life in prison without parole by a Florida state court. However, Graham appealed, arguing that this sentencing of its face violates the 8th Amendment.[168] When this case was brought to the Supreme Court, the majority ruled that it was a violation of the 8th's protection against cruel and unusual punishments since the class of offenders, juveniles, has been governed by previous case law.[169] This case established the precedent that juveniles cannot be sentenced to life without parole for non-homicide offenses. Thereafter, it ensured that juvenile offenders convicted of non-homicide crimes had a meaningful opportunity for release in Florida. Subsequently, Florida sentencing statutes, such as Fla. Stat. 985.556 and 985.557, were revised to take this decision into account and change the process and ease of moving juveniles into the adult system.

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[166] U.S. Const. amend.V
[167] U.S. Const. amend.VIII
[168] Ibid.
[169] *Graham v. Florida, 560 US 48 (2010)*

MILLER v. ALABAMA

Similar to the *Graham v. Florida* case, *Miller v. Alabama* addressed the question of whether it was a violation of the Eighth Amendment to sentence any juvenile to life in prison without the possibility of parole.[170] In this case a fourteen-year-old, Evan Miller was sentenced to a term of life imprisonment without the possibility of parole, Miller appealed this decision to the Supreme Court.[171] The Supreme Court held that the sentence being imposed on a juvenile regardless of the crime is a violation of the protections against cruel and unusual punishments.[172] The Court held that children differ from adults constitutionally when it comes to sentencing since they are thought to have less understanding of the law, and therefore decreased responsibility within society.[173] *Miller v. Alabama* set the standard that sentencing a child to life imprisonment without the possibility of parole is a disproportionate sentence. Juveniles should be afforded the ability to be rehabilitated within the system and that cannot happen if they are spending the rest of their lives in jail with no chance of parole. The *Miller* decision also requires new sentencing hearings in lower courts which allow judges to consider the individual circumstances of the child's crime.[174] Through this landmark decision, children in the juvenile justice system have been more adequately treated as children and receive sentencing that is more fair to their particular circumstances. Through this case, all Florida Statutes must cohere this decision, which provides juveniles and better chance at being rehabilitated in the juvenile justice system.

FLORIDA STATUTES 921.1401 AND 921.1402

Through Florida statutes 921.1401 and 921.1402 sentencing guidelines are given for juveniles under the age of 18 at the time of their offense. Florida Statute 921.1401 governs

[170] *Miller v. Alabama, 567 US _ (2012)*
[171] Ibid.
[172] Ibid.
[173] Ibid.
[174] Miller v. Alabama, Equal Justice Initiative (2022), https://eji.org/cases/miller-v-alabama/#:~:text=The%20Miller%20v.,the%20circumstances%20of%20the%20crime.

sentencing for juveniles tried as adults and convicted of serious crimes, stressing individualized assessment and rehabilitation.[175] Courts must hold a separate hearing to consider factors like the juvenile's age, maturity, home environment, and potential for rehabilitation. While life imprisonment may be imposed, alternative sentences with opportunities for reform, such as rehabilitation programs are also considered. According to the statute, juveniles sentenced are eligible for judicial review after 15 or 25 years depending on the offense.[176] By enabling judges to take into account mitigating circumstances when determining the appropriate sentence for minors convicted as adults for serious crimes, Statute 921.1402 conforms to guidelines outlined in *Miller v. Alabama*.[177] *Miller's* focus on the necessity of tailored sentencing that takes into consideration the particular circumstances and developmental variations of young offenders and provides alternatives while maintaining accountability is reflected in the statute's procedural regulations.[178]

However, Florida statute 921.1402, states that juveniles who are sentenced to lengthy terms can have those sentences reviewed.[179] Juveniles who are convicted of non-homicide offenses are eligible for a review of their sentence after 15 years.[180] Juveniles who are convicted of first-degree murder or equivalent offenses are eligible for a review of their sentence after 25 years.[181] The length of these sentence reviews is arguably disproportionate when sentencing a child. Shorter time frames for reviews of sentencing, especially for children convicted of crimes that do not include homicide, would be beneficial to rehabilitation attempts for juveniles. This is because it could allow the juvenile justice system to assess the juvenile's behavior and

[175] Fla. Stat. § 1401 (2018)
[176] Ibid.
[177] Ibid.
[178] Ibid.
[179] Fla. Stat. § 1402 (2018)
[180] Ibid.
[181] Ibid.

participation in rehabilitation programs, and how they have changed since the time of their offense.

CONCLUSION

Overall, it is clear that Florida statutes, in particular, are focused on a more punitive approach to sentencing when it comes to juvenile offenders. The Supreme Court has established that children are less culpable than adults in terms of committing crimes, due to still being in their developmental stage. However, Florida statutes and rates of transfers to adult court do not reflect this. Florida's "tough on crime" policies, which allow for harsh sentencing for juveniles, could be damaging to youth who enter the juvenile justice system. Changes must be made to focus on youth rehabilitation rather than condemning them to life prison sentences and repeat offenses.

The Legal Implications of Drone Misidentification and Reckless Behavior

Elizbeth Garcia

INTRODUCTION

The rapid integration of drone technology has given rise to unique legal disputes, particularly those involving private citizens and the use of firearms against drones. The case of Dennis Winn, a 72-year-old, Lake County, Florida resident, highlights these conflicts. This article argues that Winn should not face the charges brought against him based on Florida Statute Section 790.19, Florida Statute Section 806.13(1)(b)(3), and Florida Statute Section 790.15(1), which relies on a framework of precedents and statutory interpretation. While reckless conduct involving firearms is unacceptable, this article explores whether the circumstances merit these charges.

BACKGROUND

Dennis Winn, a 72-year-old man, was arrested in Lake County, Florida, after allegedly shooting and damaging a drone that was attempting to make a delivery for Walmart. The incident resulted in substantial damage to the drone, valued at over $2,500. Winn faces several serious charges arising from the incident, each with its own legal implications: (a) shooting or throwing a deadly missile into dwellings, vessels, or vehicles (Florida Statute 790.19);[182] (b) criminal mischief above $1,000 (Florida Statute 806.13);[183] (c) discharging a firearm in public or on residential property (Florida Statute 790.15).[184] This case arises amid the ongoing expansion of drone delivery services, particularly in Florida, where Walmart announced its partnership with DroneUp, a Virginia-based commercial drone services company, in 2020.[185] Walmart's rollout of

[182] Fla. Stat. § 790.19 (2024)
[183] Fla. Stat. § 806.13 (2024)
[184] Fla. Stat. § 790.15 (2024)
[185] Walmart, *We're Bringing the Convenience of Drone Delivery to 4 Million U.S. Households in Partnership with DroneUp* (May 24, 2022),

drone deliveries in Florida aims to enhance delivery capabilities and promote the broader use of drone technology in business operations.[186] The incident involving Winn, however, dictates the tensions between new technologies and individual property rights, privacy concerns, and public safety.

The arrest affidavit details that Winn shot the drone as it hovered around 75 feet above his property while attempting a mock delivery for Walmart. A two-man DroneUp crew was present for the demonstration, as the company sought to test the viability of its drone delivery system in the region. The drone was reportedly descending when the crew members heard what they believed was a gunshot. Upon further inspection, they discovered a bullet hole in the drone's payload system, rendering the drone inoperable and resulting in an estimated $2,500 worth of damage. The crew immediately returned to Walmart's operations base, and law enforcement responded to the scene. Winn was contacted at his residence, where he allegedly admitted to using a 9mm handgun to shoot the drone.[187] According to the affidavit, Winn expressed his belief that the drone was surveilling him, referencing prior encounters with drones that he perceived as invading his privacy. Winn was arrested and later released on bond.

While drone delivery systems promise increased efficiency and innovation, they also raise questions about individual rights, particularly regarding privacy. Winn's actions demonstrate the potential for conflict between personal privacy concerns and commercial drone operations. Although the legal system must balance these interests, Winn's case will likely test the boundaries of privacy protections and how they intersect with emerging technologies like

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https://corporate.walmart.com/news/2022/05/24/were-bringing-the-convenience-of-drone-delivery-to-4-million-u-s-households-in-partnership-with-droneup.

[186] Walmart Newsroom, Sky-High Ambitions: Walmart to Make Largest Drone Delivery Expansion of Any U.S. Retailer, WALMART (Jan. 9, 2024), https://corporate.walmart.com/news/2024/01/09/sky-high-ambitions-walmart-to-make-largest-drone-delivery-expansion-of-any-us-retailer?povid=3585490_Banner_LearnMore.

[187] Arrest Affidavit, State of Florida v. Winn, No. 24CF1570-04 (Fla. Cir. Ct. June 28, 2024).

drone delivery services. The legal challenges, in this case, will likely contribute to the evolving body of law surrounding drone use, privacy concerns, and the appropriate legal remedies for those who feel their privacy is being infringed upon by new technologies.

THE MISAPPLICATION OF FLORIDA STATUTES IN THE WINN CASE

Florida Statute 790.19 prohibits the discharge of a firearm at dwellings, vessels, or vehicles, including aircraft. The Florida Supreme Court has historically interpreted the statute narrowly, focusing on malicious intent toward occupied structures or conveyances.[188] Winn's shooting of a Walmart delivery drone lacks malicious intent to harm occupants or the drone operator. Unlike manned aircrafts, drones are unmanned and lack the physical presence of individuals that this statute aims to protect. This absence of immediate risk to human life distinguishes this case from U.S. v. Causby, 328 U.S. 256 (1946), where aircraft intrusion into private property was weighed against safety concerns.[189]

Per Florida Statute 806.13(1)(b)(3), criminal mischief involves willfully damaging another's property. For a charge to hold, the prosecution must prove the defendant's intentional, malicious intent to cause damage to the property in question.[190] This standard is not met in Winn's case, as Winn's actions in shooting down the Walmart delivery drone were not motivated by an intention to damage property, but by genuine concern over the perceived invasion of his privacy. The case of *State v. Kettell* offers valuable insight into this argument, where the court ruled that the defendant's actions, though reckless, were not done with malicious intent and thus did not meet the requirements for criminal mischief. The key takeaway from *Kettell* is that the statute requires a deliberate and willful intent to damage property. Damage mage that occurs as a result of an error in judgment or mistaken belief cannot be considered criminal mischief if there

[188] Fla. Stat. § 790.19 (2024)
[189] United States v. Causby, 328 U.S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946).
[190] Fla. Stat. § 806.13(1)(b)(3) (2024)

is no malice behind it.[191] The court in *Kettell* emphasized that an accident or an error in judgment, such as Winn's misunderstanding of the drone's presence, cannot be classified as criminal mischief unless there is a clear, malicious intent.[192]

Furthermore, the facts of *Kettell* reinforce that even if the defendant's actions were reckless, this does not automatically equate to criminal mischief if the defendant's intent was not malicious.[193] Similarly, Winn's behavior was likely rash or overly cautious in response to a perceived threat, but it was not motivated by ill will or the desire to destroy Walmart's property. His belief that the drone violated his privacy aligns with a reasonable defense in this context, where his actions, although possibly misguided, were rooted in a mistaken belief rather than malicious intent to damage property. Like in *Kettell*, where the court found no criminal mischief due to the lack of malicious intent, Winn's mistaken belief about the drone's purpose and his reactive behavior does not meet the legal threshold for willful and malicious property damage under Florida Statute Section 806.13(1)(b)(3). Therefore, Winn's defense against the criminal mischief charge should be upheld, as his actions were motivated by privacy concerns, not an intent to harm Walmart's property.

Lastly, Florida Statute Section 790.15(1) prohibits firearm discharge in residential areas without legal justification.[194] *Norman v. State* is a Fourth District Court of Appeal case in Florida that addressed the legal boundaries of firearm use in public spaces, particularly in the context of self-defense and lawful justification. The case provides critical guidance on interpreting firearm statutes, including when discharging a firearm in public is legally permissible.[195] In *Norman*, the defendant was arrested and charged after openly carrying a firearm in public. Florida law

[191] State v. Kettell, 980 So. 2d 1061, 33 Fla. L. Weekly S255, 2008 WL 1819421 (Fla. 2008).
[192] Ibid.
[193] Ibid.
[194] Fla. Stat. § 790.19(1) (2024)
[195] Norman v. State, 159 So. 3d 205 (Fla. Dist. Ct. App. 2015), 2015 WL 669582, 40 Fla. L. Weekly D458.

generally prohibits the open carrying of firearms but provides certain exceptions, including when the firearm is used in self-defense. Norman argued that his actions were protected under the Second Amendment and Florida's self-defense statutes. The case focused on whether Norman's conduct, although technically in violation of Florida's firearm statutes, could be excused under the state's self-defense laws and the broader constitutional right to bear arms.[196] The primary issues before the Florida Supreme Court were: (a) whether the statutory prohibition on openly carrying firearms was outweighed by Norman's claim of self-defense; (b) whether the prohibition on open carry violated Norman's Second Amendment rights; (c) whether intent and surrounding circumstances play a role in determining violations of firearm statutes.[197] Winn's situation involves questions of intent, justification, and the context of his actions, like the issues addressed in *Norman*. As in *Norman*, the Court must evaluate whether Winn's actions were justified under the circumstances. Winn believed the Walmart drone invaded his privacy, which provides a subjective justification for his behavior. Unlike Norman, who lacked an immediate threat, Winn's perception of a privacy violation contextualizes his actions as a defensive response to a perceived intrusion. The Court in *Norman* rejected a broad interpretation of self-defense, but Winn's use of a firearm was not aimed at people or used recklessly in a populated area. Instead, it was directed at a specific object he believed posed a threat to his privacy. While the state has an interest in preventing the reckless discharge of firearms, Winn's case reflects the problem between enforcing public safety laws and recognizing legitimate privacy concerns. The Court in *Norman* emphasized the importance of alternatives, which could suggest that non-criminal resolutions (e.g., education or mediation) might better address Winn's actions. While Norman limited the applicability of self-defense, Winn's unique context—reacting to perceived privacy violations

[196] Ibid.
[197] Ibid.

from drone activity—sets his case apart. Courts should consider these distinctions when evaluating whether criminal charges under Florida Statute Section 790.15(1) are appropriate or whether alternative remedies are more just.

A NUANCED PERSPECTIVE DRONE CLASSIFICATION AND FAA REGULATIONS

In *Singer v. City of Newton,* the U.S. District Court for the District of Massachusetts addressed the complex interplay between federal and local regulations governing drones. The case showcases the challenges posed by the Federal Aviation Administration's (FAA) classification of drones as "aircraft" under 14 C.F.R. Part 107,[198] and the burgeoning patchwork of state and local laws seeking to address concerns unique to drone operations.[199]

Michael Singer, a physician and inventor, challenged four provisions of the City of Newton's drone ordinance, arguing they conflicted with FAA regulations.[200] The court ultimately struck down these provisions under the doctrine of conflict preemption, emphasizing that cities cannot enforce regulations that interfere with federal law.[201] Specifically, the court invalidated the city's requirements for local drone registration, bans on flights below 400 feet over private property and over public property, and a line-of-sight rule stricter than the FAA's.[202] Judge Young found that these restrictions either created operational conflicts or encroached on areas of aviation safety exclusively regulated by the FAA.[203] This decision demonstrates the FAA's primacy in managing operational safety and licensing for drones but also underscores gaps in federal rules regarding issues such as privacy and nuisance. The FAA has acknowledged states' authority to regulate privacy and property concerns, areas traditionally within local police

[198] 14 C.F.R. §§ 107.3, 107.130 (2024).
[199] Singer v. City of Newton, 284 F. Supp. 3d 125 (D. Mass. 2017), 2017 WL 4176477.
[200] Massachusetts District Court Finds Portion of Local Drone Ordinance Preempted by FAA Regulation. — Singer v. City of Newton, No. CV 17-10071, 2017 WL 4176477 (D. Mass. Sept. 21, 2017), 131 Harv. L. Rev. 2057 (2018)
[201] Ibid.
[202] Ibid.
[203] Ibid.

powers. The court's analysis suggested that while states and municipalities cannot impede the FAA's goal of integrating drones into national airspace, they retain the ability to address drones' functions and purposes, provided such regulations do not interfere with federal operational standards.[204]

The court's reasoning, while confined to conflict preemption, reflects an intuitive division of regulatory authority. Federal law governs the operation and safety of drones, ensuring consistent standards across jurisdictions, while states and localities can legislate the non-operational aspects, such as privacy protections and landowner rights.[205] This division aligns with traditional regulatory roles and avoids the "patchwork problem" of inconsistent local laws obstructing drone use across city and state boundaries. For *Newton* and similar jurisdictions, the lesson is clear. While federal law dominates operational safety and airspace management, there remains room for state regulation that addresses the societal and property implications of drones. Municipalities can tailor their ordinances to avoid conflict preemption by focusing on drone purposes and mitigating risks like privacy invasion. However, sweeping bans or operational rules are likely to face judicial invalidation if they intrude on the FAA's domain.

Ultimately, the court's ruling in *Singer* underscores the need for a clearer framework to reconcile federal and local authority over drones. While the FAA establishes the rules to "get drones into the air," states and cities can determine how drones are used on the ground. Balancing these roles will be essential as drone technology becomes increasingly integrated into everyday life.

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[204] Federal Aviation Administration, State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Office of the Chief Counsel & Office of the General Counsel, U.S. Dep't of Transp., July 14, 2023, https://www.faa.gov/sites/faa.gov/files/State-Local-Regulation-of-Unmanned-Aircraft-Systems-Fact-Sheet.pdf.
[205] Ibid.

THE RIGHT TO PRIVACY AND ITS INTERACTION WITH PROPERTY RIGHTS

The right to privacy, as established in *Katz v. United States*, rests on the principle that individuals are entitled to a reasonable expectation of privacy in spaces where they seek to exclude others, even from intangible intrusions like surveillance. Justice Harlan's concurrence in *Katz* introduced the now-fundamental two-part test: a person must exhibit an actual expectation of privacy, and that expectation must be one society recognizes as reasonable. This protection applies not just to physical spaces but to any context where an individual seeks to preserve privacy from external observation or interference.[206]

Winn's perception of a drone hovering near his property as a privacy intrusion is rooted in the principles laid out in *Katz*. Just as the Supreme Court in *Katz* extended Fourth Amendment protections to electronic eavesdropping outside the traditional boundaries of physical trespass, Winn's reaction addresses the novel challenge posed by drones—unmanned, low-altitude vehicles capable of surveilling private properties.[207] Unlike the phone booth in *Katz*, which served as a modern setting for private communication, Winn's property represents a tangible extension of his personal sanctuary. This aligns with Locke's theory, as described in *Property is Privacy*, which considers property—including the home—not just as a physical possession but as a manifestation of personal autonomy and liberty.[208]

Katz signaled a shift from the traditional property-based trespass theory of privacy to a broader understanding grounded in the protection of personal spaces and activities. This approach directly informs Winn's claim. While the Fourth Amendment primarily restricts government intrusions, its underlying principles resonate with concerns about private actors

[206] Katz v. United States, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).
[207] Ibid.
[208] Morgan Cloud, Property is Privacy: Locke and Brandeis in the Twenty-First Century, 55 AM. CRIM. L. REV. 1 (2018), https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2018/04/55-1-Property-is-Privacy-Locke-and-Brandeis-in-the-Twenty-First-Century.pdf.

using drones to breach an individual's expectation of privacy.[209] Winn's case dictates a societal consensus, supported by the Florida Constitution's Article I, Section 23, which explicitly protects individual privacy beyond the limits of federal constitutional provisions.[210] Locke's theory in *Property is Privacy*, which influenced the development of Whig ideas and later constitutional principles, defines property broadly to include not only tangible assets like land but also rights to liberty and personal expression.[211] Under this framework, the drone's presence over Winn's property could be seen as violating his right to exclude others from a space where he exercises both physical control and privacy.

The FAA regulates drones, classifying them as "aircraft" and focusing on safety and integration into the national airspace.[212] However, *Katz* shows that privacy protections are not limited to physical or federal regulatory frameworks but extend to new contexts shaped by technology.[213] In *Singer v. City of Newton*, the court invalidated local ordinances that conflicted with federal drone regulations but clarified that states retain authority over issues like privacy and trespass. Similarly, drones operating at low altitudes over private property implicate privacy concerns traditionally within state jurisdiction, particularly when federal rules do not directly address such intrusions.[214] In *Katz*, the Court protected Katz's right to keep his communications private within a phone booth. Applying this reasoning to Winn's situation, drones capable of

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[209] U.S. CONST. amend. IV.
[210] Fla. CONST. art. I, § 23.
[211] Morgan Cloud, Property is Privacy: Locke and Brandeis in the Twenty-First Century, 55 AM. CRIM. L. REV. 1 (2018), https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2018/04/55-1-Property-is-Privacy-Locke-and-Brandeis-in-the-Twenty-First-Century.pdf.
[212] Morgan Cloud, Property is Privacy: Locke and Brandeis in the Twenty-First Century, 55 AM. CRIM. L. REV. 1 (2018), https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2018/04/55-1-Property-is-Privacy-Locke-and-Brandeis-in-the-Twenty-First-Century.pdf.
[213] Katz v. United States, 389 U.S. 347, 350-52 (1967).
[214] Singer v. City of Newton, 284 F. Supp. 3d 125 (D. Mass. 2017), 2017 WL 4176477.

capturing visual or other data over private property intrude upon the same expectation of privacy, even without physical trespass.[215]

To reconcile federal and state regulatory interests, Florida could enact legislation addressing drone operations over private property. Such laws might explicitly prohibit drone surveillance or data collection without the consent of property owners, aligning with principles articulated in *Katz.* Additionally, courts could interpret existing privacy laws in light of *Katz*, recognizing drones as a modern technological challenge that requires balancing operational freedom with privacy protections. The Florida Constitution's explicit privacy protections provide a foundation for such measures, allowing the state to safeguard its residents from unwarranted intrusions. Judicial adoption of *Katz*'s expectation-of-privacy framework could further refine the balance between drone regulation and individual rights, offering clarity and consistency across cases like Winn's.

CONCLUSION

Dennis Winn's case highlights the legal complexities arising from evolving drone technology and its interaction with privacy, property rights, and firearms laws. Applying charges such as Florida Statute Section, Florida Statute Section 806.13(1)(b)(3), and Florida Statute Section 790.15(1) without considering Winn's lack of malicious intent or his reasonable privacy concerns sets a concerning precedent. Courts should adopt a measured approach, to ensure education and civil remedies over criminal penalties address the underlying tensions between technology and individual rights.

[215] Katz v. United States, 389 U.S. 347, 352-53 (1967)